

DOMESTIC
VIOLENCE
VICTORIA

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

Submission

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YOUR VOICE AGAINST VIOLENCE

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About Domestic Violence Victoria (DV Vic)

Domestic Violence Victoria (DV Vic) is the peak body for specialist family violence response services for victim-survivors in Victoria. As such, DV Vic is recognised as the statewide voice of Specialist Family Violence Services (SFVS) responding to victim-survivors. DV Vic is a membership-based organisation and is accountable to its members, who also comprise its Board of Governance. DV Vic's core membership comprises statewide and regional specialist agencies working with victim-survivors of family violence across Victoria. DV Vic is an independent, non-government organisation that leads, organises, advocates for, and acts on behalf of its members utilising an intersectional feminist approach. However, the organisation is ultimately accountable to victim-survivors of family violence and works in their best interests.

DV Vic's work is focused on advocating for, supporting, and building the capacity of specialist family violence practice and service delivery for victim-survivors; system reform; and research, policy development and law reform. DV Vic analyses the views and experiences of member organisations, the evidence on family violence, and the lived experience of victim-survivors, and translates this into innovative and contemporary policy, practice, and advocacy.

DV Vic holds a central position in the Victorian family violence system and its strategic governance and is one of the key agencies with responsibility for providing family violence subject matter expertise, technical assistance, capacity building, and policy and practice advice to the SFVS sector, broader sectors, government, and other partners and stakeholders.

Language and Terminology Used

Family Violence

DV Vic recognises family violence as any behaviour that occurs in family, domestic or intimate relationships that is physically or sexually abusive; emotionally or psychologically abusive; economically abusive; threatening or coercive; or is in any other way controlling that causes a person to live in fear for their safety or wellbeing or that of another person. This definition includes violence within a broader family context, such as extended families, kinship networks and 'family-like' relationships which can include a paid or unpaid carer for people with disabilities; families of choice for LGBTIQ people; and cultural kinship networks.¹ In relation to children, family violence is defined as behaviour by any person that causes a child to hear or witness or otherwise be exposed to the effects of the above behaviour.²

While recognising this broad definition of family violence and wide range of family relationships in which it can occur, this submission will focus on sexual violence that occurs in the context of family

¹ Domestic Violence Victoria. (2020). *Code of Practice for Specialist Family Violence Services for Victim-Survivors* (2nd ed.). Domestic Violence Victoria. <http://dvvic.org.au/members/practice-development/>; *Family Violence Protection Act 2008* (Vic) s.5. http://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/vic/consol_act/fvpa2008283/

² *ibid*

violence and primarily within the context of current and former intimate partner relationships (often referred to as intimate partner sexual violence (IPSV))³.

Sexual Violence

The World Health Organisation defines sexual violence as any sexual act, attempt to obtain a sexual act, sexual harassment, or act directed against a person's sexuality, using coercion, by any person regardless of their relationship to the victim, and in any setting, including the home and work⁴. Sexual violence can include “rape; sexual abuse; unwanted sexual advances or harassment and intimidation at work and elsewhere; being forced to watch or engage in pornography; sexual coercion; having sexual intercourse because you are afraid of what your partner might do; forced prostitution; and trafficking”⁵.

Where sexual violence is perpetrated by an intimate partner it “is characterised by deliberate intimidation and coercion and may either be pressure to perform sexual acts that the victim is not comfortable with, or to engage in acts at a time that they do not wish to do so”⁶. Sexual violence perpetrated by an intimate partner rarely occurs in isolation and often forms “part of a larger pattern of coercive control of a partner”⁷. We note that in research and literature other terms “such as sexual harm, sexual abuse, and sexual assault are used interchangeably with sexual violence”⁸ and we use these terms in this submission when referring to research and/or data that uses these terms.

Victim-Survivor

DV Vic uses the term victim-survivor to refer to both adults and children who experience family violence.⁹ The term victim-survivor includes all individuals and groups of people who are primarily targeted and affected by family violence. This gender-inclusive use of language is applied to acknowledge the disproportionate harms of family violence against people who identify as women and their children, while at the same time recognising that family violence impacts people across a diversity of gender identities, sexual identities, social and cultural contexts, and within various intimate partner and family and family-like relationships.¹⁰ DV Vic acknowledges the emerging evidence-base that is articulating the ways in which gender diverse and gender non-binary communities are targeted and affected by family violence, and which have been under-researched to date. DV Vic also acknowledges that intersecting systems of privilege and oppression translate to diversity in experiences and affects for different groups of victim-survivors.

³ Australian National Research Organisation for Women’s Safety. (2019). *Intimate partner sexual violence: Research synthesis*. (2nd Ed.; ANROWS Insights, 08/2019). Sydney, NSW: ANROWS.

⁴ World Health Organisation (2002). Cited in Slade, N. (2020). *Literature review on international best court support models for victim-survivors of sexual violence*. Ministry of Social Development Te Manatu Whakahiato Ora. (New Zealand) <<https://apo.org.au/sites/default/files/resource-files/2020-12/apo-nid310285.pdf>>

⁵ Australian Institute of Health and Welfare (2018). *Family, domestic and sexual violence in Australia 2018*. Cat. no. FDV 2. Canberra: AIHW. p3; see also Krug EG et al. (2002). *World report on violence and health*. Geneva, World Health Organization. p149-150: notes that sexual violence can also include forced marriage, denial of right to use contraception, forced abortion, violent acts against the sexual integrity of women. <https://www.who.int/reproductivehealth/topics/violence/sexual_violence/en/>

⁶ Cox, P. (2015). *Sexual assault and domestic violence in the context of co-occurrence and re-victimisation: State of knowledge paper* (ANROWS Landscapes, 13/2015). Sydney, NSW: ANROWS. p11.

⁷ *ibid*, p11

⁸ Cook, Cortina, Koss (2018) cited in Slade, N. (2020). *Op cit*. p3

⁹ Domestic Violence Victoria. (2020). *Op. cit*.

¹⁰ *ibid*.

In this submission, where we use the term victim-survivor we are referring to adult victim-survivors of sexual violence perpetrated by a current or former intimate partner (unless stated otherwise).

Perpetrator/User of Violence

The terms ‘perpetrator’ and ‘user of violence’ are used interchangeably to refer to adults who use family violence. DV Vic acknowledges that across the spectrum of experiences and relationships in which family violence is perpetrated, family violence is most frequently and severely perpetrated by men. DV Vic understands this to be a manifestation of gender inequality and gender hierarchies in Australian society, and that people perpetrating violence also experience intersecting systems of both privilege and oppression.

Introduction

DV Vic welcomes the opportunity to contribute to this important review being undertaken by the Victorian Law Reform Commission into *Improving the Response of the Justice System to Sexual Offences*. Unfortunately, sexual assault that occurs within the context of family violence is common and under-reported¹¹ and whilst reform activity since the Victorian Royal Commission into Family Violence (RCFV) is resulting in specialist family violence responses being developed by the justice system¹², the reality for many victim-survivors of sexual assault in the family violence context is that they still confront barriers in accessing justice, safety and support. These barriers are compounded by the hidden nature of sexual assault, the misconceptions that continue to persist that most sexual assault is committed by strangers¹³ and the lack of understanding about the nature and dynamics of sexual assault in the context of family violence.

For victim-survivors who do seek safety and support, they are still often required to simultaneously navigate multiple fragmented and complex systems as the ‘siloes’ service responses identified by the RCFV have not yet been resolved¹⁴. Unfortunately, this can result in some victim-survivors finding their involvement in criminal proceedings “more distressing than the crime itself”¹⁵, being retraumatised by the interaction they have with the justice system and experiencing the criminal justice process and the outcome as not being just or fair. It is therefore critical that focus is maintained on improving justice system responses to family violence and sexual offences to ensure that barriers that prevent people from accessing the system are removed and victim-survivors are not re-traumatised or harmed by their engagement with the justice system.

¹¹ Family Safety Victoria (2018). *Family Violence Multi-Agency Risk Assessment and Management Framework: A Shared Responsibility for Assessing and Managing Family Violence Risk*. Melbourne, VIC: State of Victoria; State of Victoria (2014-16), Royal Commission into Family Violence: Report and recommendations, Vol II, Parl Paper No 132.

¹² For example, the development of a Specialist Family Violence Court model and roll-out of Specialist Family Violence Courts, specialist roles within Victoria Police, remote hearing pilot etc.

¹³ Tidmarsh, P. and Hamilton, G. (2020). *Misconceptions of sexual crimes against adult victims: Barriers to justice*. Australian Institute of Criminology. Canberra. p8; ANROWS. (2017). *Are we there yet? Australians’ attitudes towards violence against women& gender equality: Summary findings from the 2017 National Community Attitudes towards Violence Against Women Survey (NCAS)*. Sydney, NSW. <<https://www.anrows.org.au/research-program/ncas/>>

¹⁴ State of Victoria. (2014-2016). Vol II. Op. cit.

¹⁵ Victorian Law Reform Commission (VLRC). (2020). *Committals Report*. Victoria. p9.

In this submission we seek to bring attention to the complexity that stems from the co-occurrence of family violence and sexual assault and highlight the importance of developing ‘whole-of-system’ victim-centred and trauma-informed processes and responses. Co-occurrence in this submission, refers to “when an intimate partner uses sexual violence”¹⁶ and consequently, comments made in this submission primarily relate to how justice responses can be improved for adult victim-survivors of sexual violence. To provide context for our submission, we will firstly detail the prevalence, nature and dynamics of sexual assault within the context of family violence including the risk and safety implications for victim-survivors. We will then respond to questions where DV Vic can contribute relevant knowledge and expertise. The answers we provide speak to the broad themes that cut across all the Issues Papers namely, equitable access to justice, designing responses that meet the needs and experiences of all victim-survivors, building on past reforms and complementing current reform activity that is underway, and considering a range of justice options.

DV Vic has had the opportunity to review the submission made by Sexual Assault Services Victoria (SAS Vic) and we endorse that submission. We have not repeated information or expert opinion that has been covered in the SAS Vic submission or responded to questions that we believe have been answered in detail in the SAS Vic Submission.

Prevalence of sexual assault within the context of family violence

Sexual assault that occurs in the context of family violence is common with data showing that most perpetrators of sexual assault are known to a victim-survivor¹⁷. In the familial context, sexual assault is more often perpetrated within an intimate relationship with data from the most recent Personal Safety Survey showing that “for 66 per cent of people who had experienced sexual assault in the last 12 months, this was perpetrated by a current or former partner, boyfriend or girlfriend or date”¹⁸. We note however that the co-occurrence of sexual assault and family violence is likely to be much higher than what is reflected in available data as sexual assault often goes unreported and/or is not asked about when a victim-survivor seeks safety and support from services and systems¹⁹. This results in it still being a “profoundly hidden crime”²⁰. The higher co-occurrence is reflected in recent data gathered from family violence and sexual assault services with practitioners estimating that “80 per cent of adult women presenting for family violence had experienced sexual assault, and that more than 70 per cent of adults, young people and children presenting for sexual assault had experienced family violence”²¹.

Research shows that “certain populations are more likely to experience sexual assault” including people from Aboriginal and Torres Strait Islander and LGBTIQ communities, people who are homeless, people who are living with disabilities and people who have previously been victims of sexual assault at any point throughout life²². Whilst limitations in data make it difficult to establish whether these

¹⁶ Cox, P. (2015). Op. cit. p11.

¹⁷ Family Safety Victoria (2018). Op. cit. p12; Department of Premier and Cabinet (DPC). (2020). *Family Violence Reform Rolling Action Plan 2020-2023: Sexual Assault and Family Violence*. <<https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023>>; AIHW (2018). Op. Cit.; State of Victoria (2014-2016). Vol II. Op. cit.

¹⁸ DPC (2020). Op. cit.

¹⁹ State of Victoria (2014-2016). Vol II. Op. cit. p215

²⁰ Tidmarsh and Hamilton (2020). Op. cit. p1

²¹ Watt, J. (2020). *Progressing Recommendation 31: Phase 1 Project Final Report*. Prepared for DV Vic and CASA Forum. p20.

²² AIHW (2020). Sexual assault in Australia. Cat. No. FDV 5. Canberra: AIHW. p3

communities experience sexual assault in the family violence context more frequently, we do know that people from these communities are also more likely to experience family violence and confront more structural and systemic barriers that prevent them from seeking safety and support. For additional prevalence data, we refer the Commission to two recent reports from the Australian Institute of Health and Welfare and a report produced by ANROWS:

1. [Sexual assault in Australia](#)²³
2. [Family, Domestic and Sexual Violence in Australia](#)²⁴
3. [Sexual assault and domestic violence in the context of co-occurrence and re-victimisation](#)²⁵

Nature and dynamics of sexual violence in the context of family violence

Sexual violence has devastating and life-long impacts on all victim-survivors but the nature and dynamics of sexual assault that occurs in the context of intimate partner relationships is different from sexual assault that is perpetrated outside the family/familial context. Further, sexual violence in the intimate partner context is still a ‘taboo’ subject and is poorly recognised by victim-survivors, friends/family, the community, and response systems²⁶. Misconceptions that perpetuate the myth that sexual assault is more likely to be perpetrated by strangers and the relatively recent criminalisation of rape within marriage²⁷ are likely to contribute to this lack of recognition and shame and stigma for victim-survivors. This can lead to poor identification of sexual violence in the intimate partner context, create barriers to reporting and impact on service responses.

As noted by the RCFV, sexual assault that occurs within the intimate partner context is frequently violent and repeated and “forms part of a controlling pattern of behaviour, designed to dominate, humiliate and denigrate a victim”²⁸. Perpetrators are likely to be using other forms of physical and non-physical violence resulting in a victim-survivor experiencing an ongoing pattern of abuse that they are living with all the time²⁹.

Where sexual assault is perpetrated by an intimate partner, intervention by the justice system does not mean that the relationship will end. As noted by Tidmarsh and Hamilton (2020):

*Victims often stay in a relationship with their abuser. This may be for a multitude of reasons: fearing for their own safety or the safety of others such as children, friends, family or pets; feeling ashamed and responsible for their own rape; believing they can change the abuser’s behaviour; or realising that they are isolated or without financial support*³⁰.

²³ ibid

²⁴ AIHW (2018). Op. cit.

²⁵ Cox, P. (2015). Op. cit.

²⁶ Backhouse, C. & Toivonen, C. (2018). *National Risk Assessment Principles for domestic and family violence: Companion resource. A summary of the evidence-base supporting the development and implementation of the National Risk Assessment Principles for domestic and family violence* (ANROWS Insights 09/2018). Sydney, NSW: ANROWS.

²⁷ Australian Women’s History Network (2016). *Rape in marriage: Why is it so hard to criminalise sexual violence?* Accessed online on 25 January 2021 <<http://www.auswhn.org.au/blog/marital-rape/>>

²⁸ State of Victoria (2014-2016). Vol II. Op. cit. p216

²⁹ Family Safety Victoria (2018). Op. cit. p29; Cox, P. (2015). Op. cit.

³⁰ Tidmarsh and Hamilton (2020). Op. cit. p9

If separation does occur, it does not mean that the sexual violence will stop, and engagement with the justice system can create opportunities for ‘systems abuse’³¹ to occur or prolong contact with the perpetrator. Certain types of violence may cease, but other forms of violence or tactics may continue to be used by a perpetrator. This context means that even if a victim-survivor has ‘physically’ left a relationship, they will be living with the traumatic impacts of the violence they have experienced and are likely to still be living with violence and in fear of the perpetrator. Therefore, it is essential that when victim-survivors engage with the justice system, they encounter a victim-centred and trauma-informed response that ensures they feel safe throughout the process, they are not retraumatised or revictimised and does not make them responsible for managing their own safety throughout the process. A victim-centred and trauma-informed response would keep victim-survivors engaged and informed throughout the processes and provide them with choice, autonomy and agency (see below for additional detail on victim-centred and trauma-informed justice responses).

For further detail on the nature and dynamics of sexual assault in the context of family violence we refer to Commission to:

1. [Volume II](#), Chapter 12 of the Royal Commission into Family Violence Report³²
2. [Intimate partner sexual violence - research-synthesis](#) - ANROWS³³
3. [Misconceptions of sexual crimes against adult victims.pdf](#) - AIC³⁴

Sexual assault and family violence risk

Sexual assault that occurs within the context of intimate partner violence is a “high-risk indicator of further violence and death”³⁵ and is included in family violence risk assessments such as the Multi-Agency Risk Assessment and Management framework (MARAM) and the National Risk Assessment Principles³⁶ (NRAP). As noted in the NRAP, “survivors’ who are sexually abused by their partners are at a much higher risk of being killed, particularly if they are also being physically assaulted, and IPSV is a significant indicator of escalating frequency and severity of domestic and family violence”³⁷. Further, research conducted by Campbell et al. “found that physically abused women who also experienced forced sexual activity or rape, were seven times more likely than other abused women to be killed”.³⁸ We note that a risk factor specific to children has also been included in the MARAM framework recognising that “perpetrators who demonstrate sexualised behaviours towards a child are also more likely to use other forms of violence against them”³⁹.

Evidence also shows that planning to leave or separate is a high-risk period for victim-survivors and in the review of family violence deaths between 2010 and 2014, actual or intended separation was a

³¹ The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*. <<https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>>

³² State of Victoria (2014-2016). Vol II. Op. cit.

³³ Australia’s National Research Organisation for Women’s Safety. (2019). Op. cit.

³⁴ Tidmarsh and Hamilton (2020). Op. cit.

³⁵ Family Safety Victoria (2018). Op. cit. p12

³⁶ Backhouse and Toivonen (2018). Op. cit. The evidence-based high-risk factors have been developed from a review of “empirical studies, academic and practice-based literature, and reports produced by international and Australian domestic violence death review committees and Coroner’s Courts”. p42.

³⁷ Ibid, p4

³⁸ Campbell et al. (2003) cited in Backhouse and Toivonen (2018). Op. cit. p43

³⁹ Family Safety Victoria (2018). Op. cit. p30

characteristic in over half of cases where women were killed by a male intimate partner⁴⁰. Engagement with the justice system is also recognised as a time when violence can escalate⁴¹ and it is therefore critical that the high-risk nature of this time is reflected in justice responses to victim-survivors.

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

Given the complex nature and dynamics of sexual assault that occurs in the context of intimate partner violence and the high risk it presents to victim-survivors, it is critical that all parts of the family violence and sexual assault system work together to remove barriers to reporting and accessing justice to ensure victim-survivors receive safe, trauma-informed and victim-centred responses. Given the interconnectedness of the sexual assault system, this necessitates taking a ‘whole-of-system’ view to ensure that all parts – including all elements of the justice system – are working together in a way that places victim-survivors at the centre and provides them with the tailored support they need. Critical to the success of a ‘whole-of-system’ response is coordination between services⁴² and a common and consistent understanding of family violence (inclusive of sexual violence) across systems and services. Important considerations in improving responses to victim-survivors include:

- How can the system provide trauma-informed and victim-centred responses?
- What must the system look like for victim-survivors to feel safe to seek support and make it easier for them to access appropriate supports and safety?
- What barriers currently prevent victim-survivors accessing the system?

Trauma-informed and victim-centred justice responses

Trauma-informed and victim-centred approaches within the justice system acknowledge a person’s inherent strengths, autonomy and dignity, maximising their choices and control over their lives. Such responses place the victim at the centre of the justice process and acknowledge the trauma they have experienced/are still experiencing and the impact that trauma may have on how they engage with the system. Some of the elements of trauma-informed and victim-centred justice system responses identified in research and literature include:

- Treating victim survivors with dignity and respect. This would include access to a safe, supportive, compassionate, and non-judgmental environment.
- Mechanisms that enhance victim-survivors’ sense of wellbeing and safety (physical, emotional and cultural)
- Providing culturally appropriate services. This would include acknowledgment of impact of intergenerational trauma.

⁴⁰ Australian Domestic and Family Violence Death Review Network (2018). *Data Report 2018*. Domestic Violence Death Review Team, Sydney, p12

<[https://www.coroners.nsw.au/documents/reports/ADFVDRN_Data_Report_2018%20\(2\).pdf](https://www.coroners.nsw.au/documents/reports/ADFVDRN_Data_Report_2018%20(2).pdf)>

⁴¹ Family Safety Victoria (2018). Op. cit.: an ‘imminence’ risk factor was added to the MARAM recognising that “certain situations can increase the risk of family violence escalating in a very short timeframe”. p27.

⁴² Salter, M., Conroy, E., Dragiewicz, M., Burke, J., Ussher, J., Middleton, W., Vilenica, S., Martin Monzon, B., & Noack-Lundberg, K. (2020). *“A deep wound under my heart”: Constructions of complex trauma and implications for women’s wellbeing and safety from violence* (Research Report, 12/2020). Sydney: ANROWS.

- Understanding that victim-survivors have individual responses to trauma that “explicitly acknowledge how systems of privilege and oppression interact to impact a women’s experience with trauma”⁴³.
- Applying practices and procedures that are informed by the unique needs of each victim-survivor.
- Providing coordinated support for victim-survivors throughout the duration of the criminal justice process.
- Prioritising confidentiality and seeking consent in information sharing protocols. For example, holding closed hearings and restricting or barring media access.
- Providing information about the court process, support services, and legal rights to victims/survivors. This may include providing information about delays occurring in the court system.
- Enabling victim-survivors to make an informed choice.
- Designing feedback loops for victim survivors of sexual violence to communicate their experiences of the quality of responses by police.
- Providing education and training for professionals working in the criminal justice system who interact and engage with victim-survivors. This may include “ensuring that all service providers receive training in the causes, consequences and intersecting dynamics of violence against women, the many forms this violence takes and the impact on victims/survivors”⁴⁴.

Pathways to justice: the role of support and services

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?

A change in community attitudes about sexual assault

To make it easier for victim-survivors to access the supports and services they need, we must create a systemic response built on a set of values and attitudes where victim-survivors feel safe to disclose their experiences of sexual assault. If a victim-survivor fears they will be blamed, judged or not-believed, it is unlikely that they will disclose the abuse, particularly given the sense of shame and stigma they are likely to be experiencing. The attitudes of professionals within the systemic response and more broadly in the community must reflect the lived experience of victim-survivors and this is reliant on people having a contemporary understanding of the prevalence, nature and impacts of sexual assault and particularly sexual violence that occurs in the context of intimate partner relationships.

Unfortunately, myths and misconceptions about sexual crimes are still present in the community and the legal profession which contribute to a lack of understanding and awareness of what constitutes

⁴³ Lisa De La Rue and Lilyana Ortega. (2018). *Intersectional Trauma-Responsive Care: A Framework for Humanizing Care for Justice Involved Girls and Women of Color*. Journal of Aggression, Maltreatment & Trauma, 28:4, 502-517.

⁴⁴ UN Women Virtual Knowledge Centre to End Violence against Women and Girls <https://www.endvawnow.org/en/articles/1790-victim-survivor-centred-approach.html>; Garza, M.R., Rich, K. & Omilian, S.M. (2019). *A Trauma-Informed Call to Action: Culturally-Informed, Multidisciplinary Theoretical and Applied Approaches to Prevention and Healing*. Journal of Aggression, Maltreatment & Trauma, 28:4, 385-388; De La Rue, L. & Ortega, L. (2019). Op. cit.; Crosby, S.D. (2016). *Trauma-Informed Approaches to Juvenile Justice: A Critical Race Perspective*. *Juvenile and Family Court Journal* 67, No. 1. National Council of Juvenile and Family Court Judges; Slade, N., Ministry of Social Development Te Manatu Whakahiato Ora. (2020). Op. cit.

sexual violence, create barriers to reporting and seeking help, affect how people respond to disclosures and impact on justice processes including the attitudes held by people working within the justice system and jurors (see additional comments below in response to *Issues Paper B*)⁴⁵.

We note that the attitudes held by the community are particularly important given that most people who experience family violence “rely solely on informal supports...rather than accessing formal services,”⁴⁶ meaning that they are more likely to disclose to a friend or family member. It is therefore critical that if a victim-survivor does seek support ‘informally’ they receive a response that validates their experience and does not blame or judge them, and this is reliant on the community understanding the nature and dynamics of sexual assault and holding attitudes that do not perpetuate myths and misconceptions.

We note that systemic cultural and attitudinal change will require a long-term commitment and collaboration between all levels of Government and programs aimed at changing community attitudes must be informed by people with subject matter expertise.

Access to relevant, timely and tailored information

When victim-survivors disclose or report sexual violence, they need access to information about available services, legal options and processes and the information must be tailored and provided in multiple formats to ensure that it meets the diverse needs of victim-survivors. For example:

- Information must be translated into community languages,
- Provided in formats that meet the needs of victim-survivors with disabilities,
- Be culturally appropriate and sensitive, and
- Must be in Easy English/Plain English and avoid legal ‘jargon’ used by those working in the justice system as this ‘jargon’ is extremely confusing and difficult for a person ‘outside’ the system to understand⁴⁷.

Victim-survivors must have access to accurate and timely information that clearly communicates how they can access services and the justice system but that also sets out the response they will receive. Access to this information is critical in ensuring that victim-survivors can make an informed decision about whether it is safe for them to seek support and to know what will happen if they decide to do so, as this will inform future safety planning and influence future help-seeking behaviour.

In deciding what type of information and how it should be provided, the impact of trauma on those who may be accessing information and services must be also taken into consideration. Experiences of trauma can impact on the way victim-survivors access information and mean that they may need to receive the same information multiple times in different formats⁴⁸. Consulting with victim-survivors

⁴⁵ Tidmarsh and Hamilton (2020). Op. cit. p3

⁴⁶ Day, A., Casey, S., Gerace, A., Oster, C., & O’Kane, D. (2018). *The forgotten victims: Prisoner experience of victimisation and engagement with the criminal justice system* (Research report, 01/2018). Sydney, NSW: ANROWS. p9

⁴⁷ Centre for Innovative Justice. (2019). *Supporting Justice*. RMIT University. Melbourne.
<<https://supportingjustice.net/>>

⁴⁸ Tidmarsh and Hamilton (2020). Op. cit.

would also seem prudent to ensure that the information meets the needs of those who will be accessing it.

We note that improving access to information may lead to more victim-survivors seeking help and support and we must ensure that the services within the sexual assault and family violence systems are resourced to meet additional demand so that victim-survivors can access support across Victoria.

Addressing barriers to seeking safety and support - access to justice for all victim-survivors

Systemic, structural and attitudinal barriers can prevent victim-survivors from reporting and disclosing sexual harm and accessing the justice system. These barriers may stem from:

- siloed service responses,
- fragmentation and gaps that exist between systems,
- an under-resourced and overburdened justice system struggling to meet increasing demand and complexity,
- a lack of contemporary and consistent understanding of family violence and sexual violence across the justice system, and
- attitudes that perpetuate myths and misconceptions about sexual crimes.

Further, victim-survivors who already experience marginalisation including victim-survivors from Aboriginal and Torres Strait Islander and LGBTIQ communities, victim-survivors from refugee/migrant backgrounds, culturally and linguistically diverse communities and victim-survivors with disabilities confront additional exclusion and discrimination that act as barriers to accessing justice. Barriers to accessing justice were detailed in the RCFV report and it is critical that focus is maintaining on identifying and removing barriers, so all victim-survivors have safe and equitable access to justice⁴⁹.

Working together: Collaboration within the sexual assault system

How can the relationship between family violence services and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?

Relationship between specialist family violence and sexual assault services

Recommendation 31 and 32 of the RCFV focus on the potential for improving and increasing collaboration between the family violence and sexual assault sectors. In 2018, DV Vic and SAS Vic (previously CASA Forum) designed the *Progressing Recommendation 31: Phase 1 Project* to inform and progress the implementation of Recommendations 31 and 32. In 2019, the Project was funded by Family Safety Victoria with the final report for the [Progressing Recommendation 31 Project](#) released in December 2020.

The project found that specialist family violence and sexual assault sectors are highly complementary and frequently interconnected, and that there is enthusiasm across the sectors for greater connection and collaboration. Furthermore, the findings highlighted that the distinct specialisation of each sector

⁴⁹ State of Victoria (2014-2016). Vol II. Op. cit. see Chapter 12; State of Victoria (2014-16). *Royal Commission into Family Violence: Report and recommendations*, Vol III. Parl Paper No 132: Chapters 14-16.

should continue to be recognised and sustained in practice, policy and funding, along with support for greater collaboration into the future.

The report made 20 recommendations to strengthen collaboration between the two sectors which included: identifying essential elements for collaborative practice; developing collaborative practice approaches; identified service gaps; professional development opportunities; areas for further examination and research and the need for additional resourcing to facilitate the development of a strengthening collaborative practice implementation plan. We note that findings from the report have been referred to in the Family Violence Rolling Action Plan 2020-2023 in strengthening responses to sexual assault. We encourage the Commission to review the [Report](#) when considering submissions related to this section of the Issues Paper.

Whilst the report contains important Recommendations for improving collaboration between the family violence and sexual assault services it notes that “in some way it appears unusual to examine greater collaboration between the sexual assault and family violence sectors without also examining this interaction across the broader service system. Several participants reported that the priority for greater collaboration was not with either specialist sector but with the broader service system”⁵⁰. These comments speak to the need for a ‘whole-of-system’ approach highlighted earlier in this submission to ensure that responses developed to sexual offences are coordinated and consistent with interconnected parts of the broader system.

Relationship between specialist family violence services and the broader sexual assault system

The relationship between other elements of the sexual assault system and SFVSs was outside the scope of the Project including the relationship between:

- The two state-wide after-hours services - Safe Steps and the Sexual Assault Crisis Line (SACL)),
- The Family Violence Support and Safety Hubs (branded as “The Orange Door”) and Multi-Disciplinary Centres (MDCs), and
- Specialist Victoria Police responses to sexual offences and family violence – SOCITs and FVIUs

Closer examination of the relationship between Safe Steps and SACLs was identified as an area for further exploration in the Project report and strengthening collaboration and referral pathways between these two services will ensure that victim-survivors can access the support they need. We note that established referral pathways have been in place for some time between Victoria Police and SFVSs which result in all victim-survivors of family violence and perpetrators being informally or formally referred to support services⁵¹. This could result in an after-hours referral for a victim-survivor of sexual violence being received by Safe Steps rather than the SACL as to our knowledge no such referral protocol is in place between Victoria Police and sexual assault services. Strengthening the collaborative relationship between the state-wide after-hours services would ensure that a victim-survivor of sexual assault gets access to a crisis care response and is supported in the initial stages of the police response

⁵⁰ Watt, J. (2020). Op. cit. p38

⁵¹ Family Safety Victoria (2018b). *Family violence referral protocol: Between the Department of Health and Human Services, Family Safety Victoria, Department of Justice and Regulation and Victoria Police*. State of Victoria.

by a CASA counsellor/advocate. We provide comments below in response to **Issues Paper D** in relation to The Orange Door and MDCs and specialist police responses.

How can the relationship between child protection and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?

As this submission focuses on sexual violence that occurs within the context of intimate partner violence, the comments provided in this section relate to child protection involvement that results from intimate partner violence (including sexual violence) and specifically how child protection engages with adult victim-survivors of sexual violence who are parents/carers of children. As noted in the submission DV Vic made to the Family Violence Reform Implementation Monitor in 2020, “within the Child Protection system...SFVSs still report that mothers are expected to take responsibility for keeping their children safe by keeping the perpetrator out of the household, rather than the statutory and non-statutory systems engaging perpetrators to take responsibility for the effect their behaviours have on their family”⁵². DV Vic noted that it is crucial that focus and responsibility is placed on the perpetrator to ensure that they are kept in ‘view’ of the system and that a victim-survivor is provided with the support they need (referred to as ‘pivoting to the perpetrator’).

For victim-survivors of intimate partner sexual violence, this would involve child protection providing appropriate referrals to sexual assault services and/or SFVSs for mothers as well as children to ensure that mothers can access the services they need to be able to support their child(ren), rather than placing unrealistic expectations on mothers who are trying to recover from violence that has been perpetrated against them.

Working with other services and systems

How can we improve how other services and systems work with the sexual assault system, so that people are supported to seek justice?

Creating collaborative, trauma-informed and victim-centred responses – working together

As a result of the RCFV, the responsibility for addressing family violence has broadened resulting in multiple systems and services having a responsibility for identifying and responding to family violence. Whilst the role of specialist family violence services and responses remains crucial, responsibility for identifying and responding to family violence has expanded. There is increased recognition of the wide range of system ‘entry points’ for victim-survivors, which are required to ensure that no matter where a victim-survivor reaches out to for help, they will receive the help and support they need and be referred to appropriate services. This removes the responsibility for navigating complex systems from the victim-survivor and ensures they are met with a ‘no-wrong door’ response from any service/system.

This systemic response to family violence and the frameworks and schemes (i.e. the MARAM Framework, Family Violence Information Sharing Scheme (FVISS) and Child Information Sharing Scheme (CISS))⁵³ that underpin the system are “based on the belief that to provide consistent, effective and safe responses for people experiencing family violence, services need a shared understanding of family

⁵² Domestic Violence Victoria (2020b). *Monitoring the Family Violence Reforms: Submission* <<http://dvvic.org.au/publications/monitoring-the-family-violence-reforms-submission/>>. p12

⁵³ See: Victorian Government (2020). *Information sharing and MARAM reforms*. <<https://www.vic.gov.au/information-sharing-schemes-and-the-maram-framework>>

violence and of the responsibilities of the professionals involved”⁵⁴. A ‘shared understanding’ across systems and services is vital to ensure that every part of the system can systematically recognise and respond to disclosures of family violence (inclusive of sexual violence) and to facilitate collaborative responses being developed. It would be important to develop such a shared understanding to improve how services and systems work with the sexual assault system.

We welcome the commitment by the Victorian Government in the 2nd Rolling Action Plan to the development of a sexual assault strategy as this will strengthen the systemic response to sexual assault and we look forward to working with the Government and partners to provide expertise on sexual violence in the family violence context to inform the development of the strategy⁵⁵. We also welcome the focus on training for legal professionals which includes working with legal services to ensure that training aligns with the MARAM Framework and embedding “family violence competency into Continuing Professional Development frameworks for legal practitioners across Australia”⁵⁶. This will assist in embedding a shared understanding of family violence - including sexual assault that occurs in the context of family violence - across the justice system.

Issues Paper B: Sexual Offences: Key Issues in the Criminal Justice System

Is there a need to improve attitudes towards victim-survivors or the understanding of sexual harm within the criminal justice system?

As noted in response to Issues Paper A, there is a need to improve attitudes and understanding of family violence and sexual harm across the community and within the criminal justice system. If outdated attitudes, biases and stereotypes related to sexual violence and the impact of trauma are held by professionals in the criminal justice system it can result in victim-survivors being blamed, not believed and if they don’t meet the ‘ideal victim’ stereotype can result in them being misidentified as the perpetrator or viewed as lacking credibility⁵⁷. Attitudes conveyed by individuals and systems can directly or indirectly discourage disclosure⁵⁸ as it can result in victim-survivors not having confidence in the ‘system’ and fear that they will not be believed and can lead to family and sexual violence not being identified by professionals working in the criminal justice system.

Recent research conducted by Salter et al. (2020), found that current evidence shows that women who have experienced multiple and repeated forms of violence are frequently not believed or supported when reporting abuse by an ex-partner and successful criminal justice outcomes are rare. This has led to “broad agreement in the literature that the criminal justice system is not designed to accommodate people who have been affected by trauma” (p102).⁵⁹. Further, a lack of understanding and

⁵⁴ Family Safety Victoria (2018). Op. cit. p11

⁵⁵ DPC (2020). Op. cit.

⁵⁶ *ibid*

⁵⁷ Nancarrow, H., Thomas, K., Ringland, V., & Modini, T. (2020). *Accurately identifying the “person most in need of protection” in domestic and family violence law* (Research report, 23/2020). Sydney: ANROWS: provides a comprehensive analysis of the ‘ideal victim’ stereotype and misidentification.

⁵⁸ The Australian Institute of Judicial Administration (2019). National Domestic and Family Violence Benchbook. <<https://dfvbenchbook.aija.org.au/contents>>

⁵⁹ Salter, M. et al. (2020). Op. cit. p102

misconceptions about the impact trauma has on memory⁶⁰ can result in victim-survivors being viewed as lacking credibility as they may not be able to recall specific details which contributes “to the high attrition rates of rape cases in the criminal justice system”⁶¹.

Further, we submit that there also needs to be a shift in culture and attitude in criminal proceedings, so victim-survivors are viewed as central to the criminal justice processes rather than being viewed as peripheral to the process. This aligns with the Objects and Principles set out in the *Victims’ Charter Act 2006* which states that even though a victim-survivor is not a party to criminal proceedings they have an “an inherent interest in the response by the criminal justice system to that crime”⁶² and should be “treated with courtesy, respect and dignity by investigatory agencies, prosecuting agencies and victims’ services agencies”⁶³.

It is therefore crucial that legal professions in the criminal justice system (i.e. police, lawyers and magistrates/judges etc) undertake mandatory training and ongoing professional development to ensure that they have a contemporary understanding of the nature, dynamics and impacts of family violence - including sexual assault that occurs in the context of family violence - and trauma informed practice approaches. This will influence the attitudes they hold and would facilitate victim-centred and trauma-informed criminal justice responses.

Attitudes of jurors

As noted in **Issues Paper B**, “jurors bring their own attitudes and understanding about sexual harm into the courtroom”⁶⁴. Therefore, if the attitudes held by jurors in sexual offences trials are based on misconceptions and myths about sexual harm and/or victim-blaming attitudes, it may influence the way they view evidence and/or lead to prejudice amongst jurors. Awareness of juror bias may also affect victim-survivor reporting and willingness to participate in criminal trials. As jurors are drawn from the community, changing community attitudes about sexual assault is essential (also see response provided to Issues Paper A: *A change in community attitudes about sexual assault*).

We note that during COVID-19, legislation⁶⁵ was introduced by the Victorian Government to allow trial by judge alone. This provides an opportunity to review how judge-alone trials have worked during this time and to evaluate not only the sentence/outcome but also the victim-survivor experience.

Do you support introducing a specialist court for sexual offences?

DV Vic welcomed the introduction of Specialist Family Violence Courts (SFVC) following the RCFV⁶⁶ and support the introduction of a specialist court for sexual offences. Given the high co-occurrence of sexual assault and family violence, if a specialist sexual offences court were introduced, consideration would need to be given to how cases where a sexual offence and other family violence criminal offences have been committed would be managed so that victim-survivors are not required to interact with and

⁶⁰ Tidmarsh and Hamilton (2020). Op. cit. p6

⁶¹ *ibid.* p6

⁶² *Victims’ Charter Act 2006* (Vic). s4(1)(ba)

⁶³ *ibid.* s6(1)

⁶⁴ VLRC (2020). *Issues Paper B: Sexual Offences: Key Issues in the Criminal Justice System*. p5

⁶⁵ *COVID-19 Omnibus (Emergency Measures) Act 2020*

⁶⁶ For key features of the SFVC model refer to: <https://www.fvrim.vic.gov.au/report-family-violence-reform-implementation-monitor-1-november-2019/specialist-family-violence> and <https://www.vic.gov.au/family-violence-recommendations/all-family-violence-matters-are-heard-and-determined-specialist>

navigate multiple courts/jurisdictions. We encourage the Commission to review evaluations and learnings from the SFVCs in considering this section of the Issues Paper.

How well are support programs for people who have experienced sexual harm working?

We endorse comments made by SAS Vic in relation to specific support services for victim-survivors and reiterate the need for greater coordination between support services and other elements of the sexual assault system to reduce fragmented and siloed responses and ensure victim-centred system responses.

Further, we welcome the comprehensive Victims Services Review and the [report](#) produced by the Centre for Innovative Justice⁶⁷. We support the future service model proposed in the report and agree that it will result in the ‘system’ “actively navigating victims of crime through the criminal justice and broader service system; providing tailored information and advice; and proactively checking in to identify where victims’ needs have changed”⁶⁸ rather than this responsibility resting with a victim-survivor. In this sense, it will provide a more coordinated and integrated victim support system that places the needs of the victim at the centre. Such a system has the potential to reduce the potential for re-traumatisation and to provide victim-survivors with the comprehensive, timely and tailored assistance they deserve.

Issues Paper C: Defining Sexual Offences

We endorse comments made by SAS Vic in relation to questions in Issues Paper C.

Issues Paper D: Sexual Offences: Report to Charge

How well are Sexual Offence and Child Abuse Investigation Teams (SOCITS) and Multidisciplinary Centres (MDCs) working? How can they be improved?

We endorse SAS Vic’s observations regarding how well SOCITs and MDCs are currently working as they are well placed to provide comments in this area. In relation to SOCITs, it will be important over time for the relationship between the newer Family Violence Investigation Units (FVIUs) and SOCITs to be strengthened and communicated to external stakeholders as it is likely that SOCITs and FVIUs will have contact with the same victim-survivor given the high co-occurrence of family violence and sexual assault. We acknowledge that there is some guidance in the Code of Practice for the Investigation of Family Violence that states the relevant SOCIT must be contacted if a sexual offence is alleged, but it is not clear who holds responsibility for the case when sexual assault and other family violence offences have been committed against an adult victim-survivor. In our view, given the complexities that could arise where multiple criminal offences have been committed and concurrent family violence civil options are also being pursued, comprehensive guidance is required for such cases and should be developed if it is not already included in the Victoria Police Manual.

⁶⁷ Centre for Innovative Justice (2020). *Strengthening Victoria’s Victim Support System: Victim Services Review - Final Report*. RMIT, Melbourne.

⁶⁸ *ibid.* p16

Further, if police are also pursuing concurrent civil options (i.e. Family Violence Safety Notice of Family Violence Intervention Order), clear processes will need to be established for which Unit/Team pursues the civil options and holds responsibility for assessing and managing family violence risk. For example, when intimate partner sexual violence is reported and the SOCIT is managing the case, do they apply for the FVSN/FVIOs and complete the Family Violence Report or is this handled by the FVIU? In such cases, we are concerned that a victim-survivor may have to engage with two different sections of Victoria Police and our preference would be for one specialist Unit/Team to hold responsibility for the case and for the SOCIT and FVIU to coordinate internally so that responsibility does not sit with the victim-survivor.

Further, it would be important for police in each Unit/Team to have relevant knowledge and expertise to respond to sexual violence that occurs within the context of IPV so they can identify patterns of abuse and co-occurring forms of non-physical and physical family violence. For example, if the SOCIT is responsible for the case, then SOCIT officers should receive training in family violence risk assessment and management and if they had not already done so, such as the training related to completing the Family Violence Report (FVR). This will ensure that they are aware of how the FVR differs from the MARAM Framework so that they are aware of high-risk factors – such as sexual assault – that are not currently ‘scored’ in the FVR⁶⁹. Conversely, if the FVIU is responsible, it would be important that police in those Units have specialist training and skills in identifying and responding to sexual assault and knowledge of referral pathways.

In relation to MDCs, it will be important for the relationship between MDCs and the newer Family Violence Support and Safety Hubs (“The Orange Door”) to be clarified and strengthened. We note that one of the recommendations and areas for further investigation identified in the Recommendation 31 Report was to examine the collaborative effort between MDC and Orange Door models as this was out of scope for the project. Participants who were interviewed as part of the project “expressed a level of caution and concern as to the location and intersection between specialist services and the Orange Door services, and the alignment between MDCs and the Orange Door”⁷⁰.

The police investigation process

We support comments made by SAS Vic in relation to questions 2-4 and reiterate the importance of the police investigation process being victim-centred and for trauma-informed investigative procedures and interviewing techniques to minimise the possibility for re-traumatisation. It is also important that police who are conducting the investigation and taking statements have additional knowledge and skills about the nature and dynamics of family violence so they can understand that the sexual assault is likely to be a part of a controlling pattern of behaviour, designed to dominate, humiliate and denigrate a victim and it is also likely that other forms of abuse have been perpetrated against the victim-survivor. Without the skills of an experienced and knowledgeable investigator the true extent and nature of the abuse that the victim-survivor has experienced may not be captured during the investigation process and the pattern of abusive behaviours will not be documented.

⁶⁹ Victoria Police (2019). *State wide implementation of the Family Violence Report: Informing referral agencies and government stakeholders about changes to the Victoria Police response to family violence*: notes that if the final score on the FVR is 4+ an automatic referral is sent to referral agencies and the case is reviewed by an FVIU. If the final score is 0-3 it results in an informal referral for all parties.

⁷⁰ Watt, J. (2020). p26

It is also critical that police meet their obligations under the Victims' Charter, the Victoria Police Manual and the Codes of Practice that relate to the investigation of family violence and/or sexual assault by proactively communicating with the victim-survivor and any support services that are working with them throughout the investigation process and regularly seek their views⁷¹. Victim-survivors must be at the centre of the process and must not become periphery to the process. Appropriate supports must also be in place throughout the process which may include interpreters, victim support services or an Independent Third Person (ITP).

Do you support access to alternative ways of reporting sexual harm?

Given the multiple and complex barriers that can prevent victim-survivors from reporting sexual violence, DV Vic would support exploration of alternative ways of reporting sexual harm. In examining alternative reporting options, it would be useful to consider how these could better meet the diverse needs of victim-survivors.

Issues Paper E: The Trial Process

We endorse the comments made by SAS Vic in response to the questions in **Issues Paper E**. DV Vic remains concerned about committal proceedings in sexual offence and/or family violence cases and particularly the impact such proceedings have on victim-survivors. DV Vic's preference is for committals not to happen in family violence/sexual assault cases and if the evidence must be tested for a paper-based system or recorded evidence to be used to minimise the potential for re-traumatisation/re-victimisation.

We also reiterate the concerns we raised during the VLRC Review of the Committals process that "cross-examination during committal proceedings can be unnecessarily traumatic for victims and witnesses"⁷² and we support the recommendation (yet to be implemented) in the Committals report that Magistrates must consider the trauma impact on victim-survivors when approving cross-examination⁷³.

Issues Paper F: People who have committed sexual offences

We endorse comments made by SAS Vic and support a diverse range of interventions and responses for people who commit sexual offences. We note that there are currently a limited number of interventions for perpetrators of family violence and DV Vic supports the expansion of the type of interventions that are available, as well as exploration of the use of mandatory counselling orders, to ensure that a tailored and nuanced response can be provided. Perpetrator interventions need to have the safety of victim-survivors as the number one priority to ensure that the way the system intervenes with the perpetrator does not adversely impact on a victim-survivors safety.

⁷¹ The Victims Charter (n.d.). accessed on 21 January 2021

<<https://www.victimsofcrimecommissioner.vic.gov.au/about/the-victims-charter>>

⁷² VLRC (2020). Committals Report. Op. cit. p118

⁷³ *ibid.* pxxi

Issues Paper G: Restorative and Alternative Justice Models

We support the exploration of alternative justice models as the current adversarial nature of court proceedings can be intimidating and harmful for victim-survivors and can replicate the power and control dynamics of an abusive relationship. The recent review of the committals process in Victoria found that despite efforts to improve the experience of victims/witnesses, many “continue to find their involvement in criminal proceedings unpleasant and stressful. For victims and witnesses who have experienced trauma, involvement in the adversarial criminal justice system can be a particularly difficult and damaging experience”⁷⁴.

Inquisitorial and restorative justice models

An inquisitorial and/or restorative justice model may offer an alternative to the adversarial model and should be explored. We encourage the Commission to look at any evaluations of the Family Violence Restorative Justice Service pilot which was established in response to Recommendation 122 of the RCFV to see how successful the pilot has been and to determine whether a similar model may be suitable in sexual offence cases⁷⁵.

Is there a role for new initiatives to enable people who have experienced sexual harm to tell their stories and have them acknowledged?

As noted in the *Review of the Victims of Crime Assistance Act* “the opportunity for a victim to be heard and acknowledged was often described to the Commission as ‘powerful’, ‘empowering’ or ‘therapeutic’”⁷⁶. We note that not all victim-survivors will want to have this opportunity but a pathway that provides them with the opportunity to be heard - if they choose to do so - should be available as victim-survivors do not often get the opportunity to be heard during the criminal justice process.

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

How can the interaction between other justice processes and the criminal justice system be improved?

Multi-jurisdictional legal needs

Whilst noting that this review is focussing on criminal justice responses to sexual offences, it is difficult to look at the criminal justice system in isolation as “cases involving family violence are heard in many different legal jurisdictions”⁷⁷ resulting in victim-survivors often having multiple and complex legal needs. Navigating multiple jurisdictions can be extremely confusing and complicated and the ‘gaps’ that currently exist between jurisdictions provide opportunities for perpetrators to manipulate the legal

⁷⁴ *ibid.* p9

⁷⁵ Department of Justice and Community Safety (n.d.). *Restorative Justice for Victim Survivors of Family Violence*. <<https://www.justice.vic.gov.au/fvrjservice>>

⁷⁶ VLRC (2018). *Review of the Victims of Crime Assistance Act 1996 - Report*. VLRC. p111

⁷⁷ State of Victoria (2014-16). *Vol III*. Op. cit. Note: jurisdictions may include: Magistrates Court (both civil and criminal), Children’s court and Family Court.

system to maintain and ‘reassert their power and control over the victim’ (referred to as ‘systems abuse’⁷⁸). Focus must remain on addressing the jurisdictional gaps that still exist.

Evidence shows that for a myriad of reasons, “women who experience sexual assault by a known perpetrator are more likely to delay seeking assistance compared to those who experience sexual assault by a stranger”⁷⁹ which means that victim-survivors who experience sexual assault within the context of family violence are more likely to initially encounter the civil jurisdiction (e.g. via a Family Violence Intervention Order application). It is therefore imperative that holistic and trauma-informed justice responses are developed that simultaneously address a victim-survivors’ multiple and cross-jurisdictional legal needs - which align to new mechanisms in Victoria such as MARAM and the FVISS - rather than developing stand-alone responses in separate parts of the justice system.

The Victims of Crime Assistance Tribunal

DV Vic supports the recommendations made in the Review of the Victims of Crime Assistance Act 1996. We would welcome a commitment from the Victorian Government to implementing and funding the recommendations to ensure greater access to financial assistance and recognition for victims-survivors of family violence.

Conclusion

The complex nature and dynamics of sexual assault that occurs in the context of intimate partner violence and the high risk it presents to victim-survivors means that it is critical that all parts of the family violence and sexual assault system work together to remove barriers to reporting and accessing justice to ensure victim-survivors receive safe, trauma-informed and victim-centred responses. Given the interconnectedness of the sexual assault system, this necessitates taking a ‘whole-of-system’ view to ensure that all parts – including all elements of the justice system - are working together in a way that places victim-survivors at the centre and provides them with the tailored support they need. Strengthening collaboration between all parts of the system is required to build a bridge between fragmented systems and siloed service responses to ensure that victim-survivors have access to a seamless support system and to reduce the potential of being re-traumatised by their engagement with the system.

Alternative justice models should be explored as the current adversarial nature of court proceedings can be intimidating and harmful for victim-survivors and can replicate the power and control dynamics of an abusive relationship. Alternative approaches to justice may provide additional ways for victim-survivors to access the justice system and are more likely to meet the diverse needs of victim-survivors.

In developing improved responses to sexual offences, victim-survivors must be central to the process, their safety must be prioritised, they must be believed, their traumatic experiences validated, and tailored support provided so they can recover from the trauma and harm they have experienced.

⁷⁸ The Australian Institute of Judicial Administration. (2019). *National Domestic and Family Violence Benchbook*. <<https://dfvbenchbook.aija.org.au/understanding-domestic-and-family-violence/systems-abuse/>>

⁷⁹ Tidmarsh and Hamilton (2020). p3.