



VLRC Review: Improving the Response of the Justice System to Sexual Offences

Key points

- This submission is provided following a meeting between the Victorian Law Reform Commission (VLRC) and the Victorian Institute of Forensic Medicine (VIFM) on 8 December 2020.
- In addition to information requested by the VLRC following the consultation meeting, the submission provides further information on the role of the VIFM and the services it provides in relation to sexual offences in Victoria.
- In the context of the justice system's response to sexual offences, the VIFM's clinical forensic practitioners - doctors and nurses - conduct forensic medical examinations of victims at the request of police and victims. These medical services have two main objectives:
 - a health-related purpose, safeguarding victims with respect to the assessment of, and planning for, the management of any physical injury, mental health and other immediate medical concerns (for example, infections, pregnancy risk etc), and
 - a justice-related purpose, ensuring the collection and documentation of forensic evidence for the criminal justice system, including the forensic documentation of injuries and related observations, and the material collection of intimate sample for forensic scientific analysis.
- This role means that the VIFM can support the health and welfare of a victim and provide expert evidence that may be used to corroborate the victim's account for the justice system.
- The body of evidence gathered by clinical forensic practitioners from the VIFM, whether the result of forensic medical examinations or laboratory analysis, has particular value for crime intelligence activities aimed at crime prevention and the early detection of perpetrators, particularly serial perpetrators.
- In addition, this information supports academic activities in public health and criminology.
- The VIFM's expert role, and several decades of experience, also places the VIFM in a unique position to respond to policy issues that arise in the operation of the justice and healthcare systems, particularly where these systems intersect.

Role of the VIFM

The VIFM's statutory functions

1. The VIFM is an independent statutory authority established to provide forensic medical and scientific services to the courts and the community.
2. The VIFM is established under the *Victorian Institute of Forensic Medicine Act 1985* (formerly known as the *Coroners Act 1985*)¹.
3. The VIFM sits within the Victorian Government's Justice Portfolio with a multidisciplinary staff of 211 FTE.
4. The VIFM's statutory responsibilities are to provide independent, expert forensic medical and scientific services to the coroner, Victoria Police and the wider court system, and to teach and undertake research. The VIFM operates the Donor Tissue Bank of Victoria, which sources human tissue from both the living and deceased donors for lifesaving and life enhancing therapies.
5. The VIFM's mission is to provide quality-driven, ethically-grounded, independent forensic medical and scientific services for the justice system; to expand and share our knowledge locally and globally; and to make a positive contribution to the health and safety of our community.

The VIFM's services in the justice system's response to sexual offences

6. In the context of the justice system's response to sexual offences, the role of the VIFM is to provide acute forensic medical sexual assault services for adults in liaison with victim support organisations and police². In addition, in cases of physical and sexual assault resulting in the death of the victim, forensic pathologists at the VIFM carry out the medical investigation to assist the coronial investigation process.
7. The VIFM's clinical forensic medical services are provided around the clock and across the state at sites including hospital emergency departments, Crisis Care Units (CCUs) attached to hospitals (dedicated examination areas located in hospitals), custom examination suites at Multidisciplinary Centres (MDCs) and, where medically appropriate, locations such as a nursing home or in prison.
8. The VIFM's Clinical Forensic Medicine (CFM) team includes senior medical staff and a Forensic Nurse Coordinator from a range of medical fields, including emergency medicine, general practice and sexual health. The VIFM also maintains a network of hospital specialists, including neurologists, ophthalmologists, paediatricians and gynaecologists, who are able to provide specialist clinical advice in particular forensic cases.
9. CFM services are provided in both regional and metropolitan Victoria through a network of doctors (Forensic Medical Officers: 'FMOs') and nurses (Forensic Nurse Examiners: 'FNEs') located across the state.

¹ See section 64(2) of the Victorian Institute of Forensic Medicine Act for the objects of the VIFM and section 66 of that Act for the functions of the VIFM.

² In cases of physical or sexual assault resulting in the death of the victim, forensic pathologists at the VIFM carry out the medical investigation required for the coronial and criminal investigative processes.

10. Under a service level agreement (SLA) with Victoria Police, the VIFM's CFM practitioners undertake forensic medical examinations when requested by police. Under the SLA, sexual assault examinations are intended to form part of a comprehensive health service to assist victims of sexual assault through provision of a specialised and integrated approach from a number of health professionals.
11. Forensic medical examinations serve the dual purpose of providing appropriate medical care and collecting forensic medical evidence that may be used in the investigation and prosecution of an offence. CFM practitioners take a therapeutic approach to the forensic examination and in the context of their forensic role, their highest priority is to ensure the health and well-being of each patient (whether an alleged victim or alleged offender).
12. While forensic medical examinations are usually provided at the request of police investigators, CFM practitioners will also undertake such examinations for patients and collect forensic specimens 'just in case' they wish to make a complaint to police in the future. This is a specific service offering that is currently only provided on a trial basis at a small number of examination sites.
13. While services to paediatric victims of assault are the primary responsibility of the Victorian Forensic Paediatric Medical Service, under the VIFM's SLA with police, the VIFM is responsible for providing services to alleged offenders who are children. Services include the collection and preservation of forensic evidence.
14. Under the SLA, CFM practitioners at the VIFM also provide medico-legal opinion reports to police on a range of matters, including the interpretation of injuries. The provision of these reports can lead to CFM practitioners giving expert evidence in criminal trials, crucial evidence that underpins safe convictions and appropriate acquittals.

Availability of services and sites across Victoria

15. There are currently five CCUs and two MDCs where forensic medical examinations can be undertaken in the Melbourne metropolitan area, and nine CCUs and four MDCs in regional areas of Victoria. A fifth MDC is currently under construction. Thus, in total there are 20 established examination sites across Victoria.
16. The emergence of the COVID-19 pandemic in early 2020 has resulted in the modification of where CFM services are provided.
17. The following further information about CFM services, requested by the VLRC, is based on data from the 2018-19 year; a more standard operating year than 2019-20, which was obviously significantly affected by the COVID-19 pandemic.

Forensic medical examinations in recent sexual assaults

18. As noted above, CFM primarily conducts forensic medical examinations at the request of police.
19. In 2018-19, CFM practitioners were requested to conduct 640 forensic medical examinations of victims of recent sexual assaults. A recent sexual assault is one where the victim presents to police within 72 hours of the alleged offence. In these cases, and under the terms of the SLA with Victoria Police, the CFM practitioner is required to attend within two hours of the police request for their services.

Metropolitan cases

20. Of these 640 examinations, 485 (or approximately 76%) were conducted in the Melbourne metropolitan region.
21. Of the 485 examinations conducted in the Melbourne metropolitan region, 422 (87%) were conducted in the five CCUs located at: Monash Medical Centre, Royal Women's Hospital; Sunshine Hospital; Austin Hospital; and Maroondah Hospital.
22. Twelve of the 485 examinations (2%) were conducted in hospitals in the emergency department. These hospitals were the Royal Melbourne Hospital, Dandenong Hospital and Alfred Hospital.
23. It is noted that in the majority of the hospitals where the examinations are carried out, victims can also be referred to specialist gynaecological services if required.
24. Twenty-three of the 485 examinations (5%) were conducted at the Dandenong MDC a stand-alone facility which is not co-located with emergency or specialist medical services.
25. Twenty-eight of the 485 examinations (6%) were conducted at the following sites:
 - VIFM (65 Kavanagh Street, Southbank)
 - Police Station
 - Prison
 - Private Residence
 - Residential Care Facility.

Regional cases

26. Of the 640 examinations in 2018-19, 155 (24%) were conducted in regional Victoria. 57 of these examinations were conducted at the MDCs in Morwell, Bendigo and Mildura. The remaining examinations were conducted in regional CCUs.

VIFM staff conducting examinations

27. Of the 640 examinations in 2018-19, 201 (31%) were conducted by a male clinical forensic practitioner and 439 (69%) were conducted by a female clinical forensic practitioner. Appropriate clinical chaperones (a doctor or nurse) are made available when needed.
28. In 109 of the examinations (17%), patients were seen by a Registered Nurse practitioner. Most of these cases were in regional areas: 90 of the 155 regional cases (or 58%) were examined by a Registered Nurse practitioner.

Services to offenders

29. In 2018-19, CFM practitioners provided services (clinical examinations and biological specimen collection) in relation to 30 alleged offenders in sexual assaults.
30. Twenty-five of these cases (83%) were seen at a police station.

Influencing policy

31. The VIFM's mission is to provide quality-driven, ethically-grounded, independent forensic medical and scientific services for the justice system; to expand and share our knowledge locally and globally; and to make a positive contribution to the health and safety of our community.
32. The VIFM's extensive expertise in what is a niche medical and scientific professional realm means that the VIFM has the knowledge base to inform a wide variety of policy environments, and the VIFM has made a significant contribution to relevant external policy-making over many years.
33. For example, in November 2018, the VIFM conducted a review into the practice and response of members of the Australian Council for International Development (ACFID) in the prevention of sexual misconduct.³ The review was commissioned by the Board of ACFID in order to evaluate its members' abilities to provide a safe and trusted environment that safeguards all who have contact with the organisation including staff, volunteers, partner organisations and beneficiary communities from sexual misconduct.
34. Leveraging the VIFM's expertise, and collaborating with professional, government and academic partners, allows the VIFM to have a positive effect on disease and injury prevention and the way forensic medicine and science is practised both in Victoria and with regional partners.
35. The VIFM also works to proactively counter misconceptions about forensic practice and its role in the justice system⁴. The VIFM has undertaken several projects to create a better understanding of the forensic medical role in Victoria and its importance for justice, public health and safety, and family and community welfare.
36. For example, the *Afterlife*⁵ web series explores what goes on "behind the doors" at the VIFM and the Coroners Court of Victoria, and seeks to educate the public about procedures within the coronial system linked to the administration of justice, and about the other features of the VIFM's role, including clinical forensic medicine.
37. The VIFM has incorporated this approach to influencing policy in its strategic plan, with areas of focus for the current plan period including: promotion of the VIFM's work in preventing elder abuse and reform of the aged care sector; use of forensic techniques to support resolution of missing persons' cases around Australia; prevention of drug harms; supporting family violence services and contributing to legislative reform in death investigation (including justifiable demand reduction).

³ <https://www.vifm.org/wp-content/uploads/ACFID-Report-Final.pdf>

⁴ Some describe this as the "CSI effect", which refers to the ways in which the exaggerated portrayal of forensic science on crime television shows influences public perceptions.

⁵ <https://www.vifm.org/media-and-events/vifm-web-series/>

Research, education and training

Department of Forensic Medicine

38. The VIFM's research, education and training role is carried out in association with the Department of Forensic Medicine at Monash University (DFM).
39. The Victorian Institute of Forensic Medicine Act establishes a joint position of Director of VIFM and Professor of DFM. The Director/Professor is responsible for the strategic direction and activities of the DFM, that is housed at the VIFM and operates under the governance of the Monash University Faculty of Medicine, Nursing and Health Sciences.
40. The activities of the DFM are integrated into the fabric of the VIFM, drawing on the expertise of forensic experts for both research and teaching. This connection between academia and clinical practice – within the context of the Victorian Public Service and the university environment – is a synergistic relationship that benefits from the significant advantages provided through being embedded in both government (justice) and the university (health).
41. At a practical level, this means that the research and teaching done within the Academic Programs Division of the VIFM supports the service delivery carried out by the VIFM.

Current and future research

42. The VIFM believes that sophisticated data analysis should underpin the expert opinions that the VIFM produces and how the VIFM is run to support their production.
43. The VIFM's electronic case management systems hold valuable data that is currently underutilised, but which could be used to provide an enhanced evidence base for the VIFM's expert medical and scientific opinions, supporting their admissibility in legal proceedings.
44. Recently, the VIFM has engaged with industry partners to advance forensic medical and scientific knowledge and practice. The VIFM seeks out opportunities for interdisciplinary partnerships to create more research and teaching outputs and service improvements.

Violence Investigation, Research and Training Unit

45. The Violence Investigation, Research and Training Unit (VIRTU) undertakes research and training activities that enhance the medico-legal investigation of self-inflicted and interpersonal violence. These activities are also intended to contribute to the evidence-base on violence to support the criminal justice system processes and public health and safety outcomes.
46. The VIRTU team looks for opportunities to research and respond to issues that arise in practice. Research projects are also influenced by practitioner interest and capacity.
47. Current VIRTU projects include:
 - prevalence and characteristics of self-reported neck compression among patients presenting for a clinical forensic examination in Victoria
 - diagnostic tests used to identify neck and head injuries following neck compression among victims of interpersonal violence: a systematic review

- how changes to the delivery of clinical forensic medical services during COVID-19 impacted the workforce and conduct of patient examinations.
- input into a Commonwealth-funded project for sexual violence response training.

Forensic Informatics to analyse case data

48. Artificial Intelligence (AI) and advanced data analytics are playing an increasing role in medicine. The DFM Academic Programs area has begun to explore the possibilities of AI and Machine Learning as it could be applied to the VIFM's forensic databases to improve efficiency of case management, data search capability, and to develop ways to improve the evidence base for forensic conclusions presented in court.
49. In order to foster this new area of research endeavour, collaborations are being formed with Monash University Faculty of Information Technology and the School of Bio Medical Imaging, as well as with the Defence Science and Technology Group within the Commonwealth Department of Defence.

Other research projects

50. **Attachment 1** includes a list of current and completed research projects relevant to the VLRC Review.

Education and training role

51. The DFM and VIFM's Academic Programs Division, which teach at both the undergraduate and post-graduate level, is recognised as an important contributor to international forensic medical and scientific teaching and research.
52. Academic Programs provides vital academic input into the VIFM's day-to-day business and its research and study underpin the VIFM's credibility in the courts, as well as more broadly in the justice system and the public health domain. This collaboration also provides the VIFM's practitioners with important avenues for professional development to build their own knowledge and expertise, and to share this expertise through teaching.

Example of current training program - Training in the prevention of sexual violence for frontline workers

53. In December 2019, the VIFM, in partnership with the DFM, was successful in obtaining a \$4.5 million grant (over three years) from the Commonwealth Department of Social Services for the development and delivery of free accredited training in the prevention of sexual violence for frontline workers in the health and community services sectors Australia-wide.
54. The objective of the grant is to build capability and capacity of the service system by training frontline workers to better recognise and respond to all people who experience sexual violence. Frontline workers receive disclosures of sexual assault; however, many are not adequately trained to respond appropriately to people who disclose.
55. The training under this project is:
 - being developed with the expertise of the VIFM's clinical forensic medical practitioners
 - underpinned by a strong evidence base to ensure the package is trauma-informed, culturally appropriate, and responsive to the diverse needs of the community

- will be tailored to meet the different needs of workers in the health and community services sectors
 - will equip frontline workers with the skills and knowledge necessary to respond to people experiencing sexual violence in a supported, rights-based fashion.
56. There are two different training models that will be deployed to train frontline responders to sexual violence and delivered online:
- the medical college training model, where medical professionals (doctors and nurses) undertake training as Continuing Professional Development units
 - the vocational education training model, where other frontline workers, such as social workers, teachers, police and aged care workers undertake training courses.
57. This is a three-year project. The first two years are allocated to the development of the training materials and the third year is allocated to the delivery of a pilot training program (for delivery by the end of June 2022).

Service delivery and funding

58. The VIFM is an independent forensic medical agency supporting justice services across the state.
59. While the VIFM's forensic pathology services are directly funded by the Victorian government to meet a wide variety of policy objectives, the VIFM's CFM services are undertaken on a fee-for-service basis, subject to a contract with Victoria Police.

Other information requested by the VLRC following consultation meeting

Collaboration

Suggestions about what structures would work to ensure better governance of collaboration

60. The VIFM believes that the best victim support service system combines pathways to care with the safeguarding of justice outcomes.
61. Agencies within the victim response system provide complementary services. Collaboration means understanding where that service fits within the system and how it operates with the other services within that system.
62. The VIFM is very interested in collaborating with other agencies to improve higher level governance over sexual assault services, such as previously existed through the Statewide Steering and Advisory Committees. These arrangements would be driven by the needs of victims and the justice system.

Collaboration with the eSafety Commissioner in relation to technology-facilitated sexual assaults and the need for action to protect potential victims while online

63. On 23 December 2020, the VIFM provided the VLRC with a submission prepared by Dr Rowse, Dr Tully, Dr Parkin and Associate Professor Basset on technology-facilitated sexual assault. The paper set out several recommendations, including a recommendation for the establishment of a core interest group of representatives working in the sexual assault field in Victoria to foster formal collaboration in this evolving area and facilitate a coordinated response to key issues.

64. The paper identified that the core interest group would benefit from representation from: adult and child clinical forensic services (the VIFM and the Victorian Forensic Paediatric Medical Service); child advocacy groups; Victoria Police; representatives of the judiciary and criminal justice system; the Victorian Department of Education and Training; public health representatives; youth advocacy representatives; and representation from the office of the eSafety Commissioner.

DJCS strategic review of the VIFM

65. To assist the VIFM to streamline operations and address financial and infrastructure deficits, the Department of Justice and Community Safety, on behalf of the Attorney-General, commenced a strategic review of the VIFM in December 2020. CFM services are only one aspect of this review, which is still in progress.

Impact of COVID-19 on VIFM clinical forensic medicine services

66. The practice of clinical forensic medicine it is particularly vulnerable with respect to the risk of COVID-19 infection and community spread. This is because the VIFM's nurses and doctors provide a mobile service at multiple locations across the state, including health care settings, increasing the risk that the practitioners may become vectors of infection of COVID-19.
67. During the COVID-19 pandemic, the VIFM's challenge has been to provide a modified clinical forensic practice model that minimises the risk of community transmission of COVID-19 and the risk of DNA contamination of forensic specimens. Consequently, the VIFM has introduced a range of alterations to the traditional clinical forensic medical processes and procedures in response to the COVID-19 pandemic.
68. In relation to sexual assault services, these alterations have included:
- an increase in the number of forensic telemedicine consultations where, in the opinion of the practitioner, this would not compromise the quality of the assessment
 - the wearing of PPE by the practitioner and the suspected victim or offender during 'face-to-face' medical examinations
 - verbal (medical history-related) COVID-19 screening performed prior to 'face-to-face' examinations where appropriate
 - a reduction in the number of centres where forensic medical examinations are offered in order to reduce the number of opportunities and locations where viral transmission could occur in the community.
 - the delivery of medical expert evidence in criminal trials or other legal proceedings by video link.
69. The result of these alterations to the delivery of forensic medical services is still being understood.
70. The VIFM has reviewed and published some data on its experience of providing services during the pandemic – see *Sexual assault examination and COVID-19: risk reduction strategies in conducting forensic medical examinations of a suspected or confirmed COVID-19 positive patient in Melbourne hospital hot zones* by Rowse, J., Cunningham, N. & Parkin, J.A., *Forensic Science, Medicine and Pathology* (2020).
71. VIRTU is also conducting further research into how changes to the delivery of CFM services during COVID-19 impacted the workforce and conduct of patient examinations.