

# Victorian Law Reform Commission (VLRC)

## Improving the Response of the Justice System to Sexual Offences



### Response to 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?**

Access to clear, relevant information about the criminal justice response to sexual offences is integral for those who have been sexually harmed so that they can make informed decisions and are supported in their choice whether to report sexual harm to police and other agencies, in seeking a criminal or civil response.

As discussed in detail in Victoria Police's responses to **Issues Papers C, E and G**, opportunities exist at various stages in the criminal, restorative and alternative justice processes to support victim-survivors by addressing and removing barriers to reporting sexual harm. This included ensuring supports, court and justice procedures and access to information is planned around the specific needs of victim-survivors from Victoria's diverse priority communities<sup>1</sup>, rather than these cohorts being secondary to mainstream supports.

As discussed in Victoria Police's response to **Issues Paper F**, other key administrative and integrity functions which support the justice system's response to sexual offending, such as restricting public access to registered sex offender information are of critical importance to maintaining the privacy of victim-survivors, preventing further potential barriers to reporting.

#### **2. How can collaboration within the sexual assault system be improved, so that the justice system responds effectively to sexual harm?**

Victoria Police acknowledges the significant improvement to collaboration that has been achieved through the successful commencement and operation of Multidisciplinary Centres (MDCs), which have allowed agencies supporting victim-survivors of sexual offending to form more connected partnerships, and better meet the needs of victim-survivors. Building on this model is critical to ensuring the justice system responds effectively to sexual offending.

MDCs are critical sites for Victoria Police collaboration with other agencies, including co-locating support services in purpose-built, unmarked facilities to more effectively respond to the needs of victim-survivors and provide a trauma-informed response. The MDC model, which Victoria Police strongly supports, facilitates a multi-agency response whereby multiple services can provide a wrap-around service to support victim-survivors.

Victoria Police has an ongoing commitment and investment in the MDC model, and staff development days and state-wide and local MDC forums run several times through the year. These forums include all partner agencies and offer opportunities for professional development, shared learning and increased collaboration.

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<sup>1</sup> Throughout this submission, Victoria Police uses the term 'priority communities' as a broad term to refer to groups and individuals it recognises have diverse experiences and service needs. Examples of priority communities referred to throughout this submission include (but are not limited to) people with a disability, those from a culturally and linguistically diverse background, seniors, young people, members of the LGBTIQ+ community and other cohorts which traditional support services may not have been designed initially to support.

Victoria Police notes there are further opportunities to enhance the MDC model, and increase collaboration between agencies including increased involvement by specialist supports designed to meet the needs of Victoria's diverse priority communities, such as services designed to better support the unique needs of victim-survivors from culturally and linguistically diverse backgrounds, and individuals with diverse communication needs.

Acknowledging that MDCs were originally designed to primarily support the needs of women and children, there is a growing need for the MDC model to support other victim-survivor cohorts with diverse needs. In particular, family violence practitioners have observed opportunities exist for expanding the provision of MDCs and diversity of services available to support the broadest possible cohort of victim-survivors.

Opportunities also exist to build on the success of the MDC model through increased collaboration between agencies to ensure victim-survivors receive a timely response. Increased access to forensic medical practitioners positioned within MDCs would reduce the need for victim-survivors to have to travel to hospitals for this purpose and would be consistent with the spirit in which MDCs were intended.

Practical improvements such as this would not only improve victim-survivors' experience at reporting and initial stages following reporting of sexual offending, but would improve wellbeing and mental health outcomes by ensuring that an examination can occur at the earliest opportunity, and that key evidence can be preserved as early as possible in order to support prosecution.

Anecdotal feedback from police and staff working across MDCs and other services that support victim-survivors is that there would be significant advantages to cross-agency, or multi-agency reflective practices, rather than this being confined to a single agency, or work area.

Victoria Police notes that effective collaboration could be improved through greater collaboration between the Specialist Children's Court Prosecutions Unit and Department of Families, Fairness and Housing<sup>2</sup> (DFFH) specialist legal advisors in assessing matters being suitable for a Therapeutic Treatment Order by the Therapeutic Treatment Board.

As discussed in Victoria Police's response to **Issues Paper E**, opportunities also exist to better support victim-survivors during proceedings and prosecution decisions, by ensuring communication between the Office of Public Prosecutions, Victoria Police and victim-survivors is maintained so that the experiences and expectations of victim-survivors and their families can be effectively managed, and their need for supports anticipated.

### **3. 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?**

Given the large proportion of sexual offences that occur in the context of family violence, collaboration between these two services is critical. This was reflected in recommendation 32 of the Royal Commission into Family Violence - *'The Victorian Government review [within five years] family violence and sexual assault services to determine whether and, if so, how family violence and sexual assault responses should be unified.'*

It is critical that the family violence system is responsive to sexual offending given that research indicates that women who experience sexual violence in an intimate partner relationship are at greater risk of being seriously injured or murdered, and the high co-occurrence of child sexual and physical abuse in these circumstances. This is reflected in the Victoria Police Family Violence Report (FVR - 'L17') risk assessment which includes a question about sexual violence. Police complete an FVR at every reported incident of family violence.

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<sup>2</sup> Formerly the Department of Health and Human Services

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In recognition of the distinct specialties of each unit but recognising the overlap between these types of offending, Victoria Police has integrated Family Violence Investigation Units (FVIUs) alongside Sexual Offences and Child Abuse Investigation Teams (SOCITs) in the Wyndham, Geelong and Dandenong MDCs. Plans for a further FVIU to be co-located at the new MDC currently being established in Shepparton, are underway. Integrating this within the family violence response has increased collaborative practices between agencies, and greatly improved support for victim-survivors. Further work to mature and develop these arrangements is an ongoing focus by Victoria Police, noting also the practical and resourcing limitations to co-locating services.

In addition to the above, there are further opportunities for improving how family violence and sexual assault systems operate together by strengthening referral pathways and information sharing between agencies. It is integral that there are consistent, state-wide referral practices to ensure those who enter the family violence service system and have experienced sexual violence are connected with the appropriate sexual assault services, in a timely manner to ensure immediate and holistic care.

Equally, it is important that there are clear procedures in place for agencies to link in victim-survivors of sexual offending to family violence systems. Greater clarification of service pathways and information sharing between services providers in the Orange Doors, MDCs and other external agencies will help to ensure victim-survivors receive a consistent response and information sharing will not depend on the initial intake point or individual case worker.

As mentioned above and notwithstanding practical and resourcing limitations, there are opportunities for the MDCs to co-locate in future a greater range of services more responsive to the specific needs of broader cohorts of victim-survivors. This could include a greater range of dedicated family violence support services.

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

Collaboration between key agencies is integral to ensuring effective responses to child sexual abuse.

The joint response to child abuse by Victoria Police and Child Protection is governed by the *Protecting Children – Protocol between Department of Human Services and Victoria Police (2012)* (the Protocol). The Protocol aims to minimise the need for children to retell their story to different professionals through joint Victoria Police and Child Protection visits.

Noting that research indicates that disclosure rates of sexual abuse by children in interviews is low, experience of family violence practitioners within Victoria Police is that enhanced feelings of safety and good rapport with interviewers and/or professionals are key factors in a child's choice to disclose. For this reason, the importance of initial attendance and relationship-building by agencies is critical.

There are also opportunities to improve joint planning responses at the intake stage. Under the *Children, Youth and Families Act 2005*, Child Protection is required to notify Victoria Police of a child in need of protection due to sexual abuse, physical abuse or serious neglect at the point of intake.

Family violence practitioners within Victoria Police have identified that a large proportion of notifications that are referred to Victoria Police do not meet the threshold for a police response. Further agency collaboration at the intake stage could ensure that police receive relevant information at the earliest opportunity and only for reports that are appropriate. In addition, with SOCITs and DFFH Sexual Abuse Investigation Teams (SAITs) being located at MDCs, there are opportunities to streamline inter-agency requests for assistance through such mechanisms.

Victoria Police and Child Protection have also provided a collaborative response through the Enhanced Response Model (ERM) pilot, which was developed with the overarching objective of providing a coordinated and effective response to children who were at risk of or may have experienced childhood sexual exploitation. The main aim of the ERM were to stop the sexual exploitation of children known to Child Protection, reduce the risk of reoccurrence, and to hold offenders to account.

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The ERM piloted interventions and processes that focused on the areas of governance, intelligence, investigation and disruption of offenders. It also involved enhancing relationships with young people and information sharing practices between Victoria Police, DFFH and community service organisations (CSOs), in particular those organisations who are providers of residential care. While, due to resourcing constraints, the pilot was not rolled-out state-wide, learnings from the ERM have now been integrated into business-as-usual practices.

Family violence practitioners within Victoria Police also consider that there may be benefits in looking at joint response models from other jurisdictions to ensure that the justice system can effectively respond to sexual harm.

The New South Wales (NSW) Joint Child Protection Response Program (JCPR) involves a tri-agency response from a Department of Communities and Justice Services (DCJS) Child Protection caseworker, a police officer and a NSW health worker to children and young people at risk of significant harm, as a result of sexual assault, serious physical abuse and extreme neglect.

These agencies share information about a report of child abuse that meets the JCPR criteria – when there is a possibility the abuse constitutes a criminal offence. The process includes criminal investigation by police, with DCJS completing a risk assessment and determining the need for Children’s Court action and NSW Health providing medical examination, counselling and therapeutic support for victim-survivors and their non-offending family members.

The benefit of this model is that each agency has a clear role, within its area of expertise, and the child or young person and their family receive support throughout the process, including immediate access to crisis counselling. Increased collaboration and information sharing also provides the opportunity to improve justice system responses, allowing for increased numbers of offenders to be identified and charged, enhanced standards of briefs of evidence, and more prosecutions.

As discussed in Victoria Police’s response to **Issues Paper E**, evidentiary and justice system processes can also be improved by reducing complainant and witness exposure to different court systems to provide the same evidence. Victoria Police notes that in England and Wales, a Crown Court Judge presiding over a trial for sexual offences can sit simultaneously as a Family Court Judge presiding over any child protection proceedings.

At the conclusion of the criminal trial, and irrespective of the jury’s finding, the Judge will proceed to make findings of fact (to the civil standard) on the child protection application. This reduces the risk of the complainant and any witnesses being further exposed to trauma.

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

As discussed in detail in Victoria Police’s responses to **Issues Papers C, E and G** opportunities exist at various stages in the criminal, restorative and alternative justice processes to ensure services that support victim-survivors are appropriately planned and delivered, removing barriers to reporting sexual harm and seeking justice.

**6. 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?**

Victoria Police notes that continual assessment of governance and achievement of shared outcomes is valuable in improving the justice system’s response to sexual harm, and notes that any updates or changes to these arrangements should include the development of primary prevention objectives, and continued commitment to shared victim-centric principles.

This would require all agencies understanding what such principles may look like for the various stages of the justice process and their own service delivery. Governance in the form of accountability and complaints mechanisms on behalf of victim-survivors, such as the recent Victorian Victims of Crime Commissioner amendments, would be of benefit to victim-survivors.

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**7. What are the opportunities for, and benefits of, improving data, research and evaluation in relation to sexual offending?**

Quality data, research and evaluation is necessary to understanding how well the criminal justice system is currently responding to all cohorts of victim-survivors of sexual offences and can provide invaluable insight into future directions for reform.

Improving and expanding the research collection of information from victim-survivors about their experiences with the criminal justice system, including reporting sexual offences to police, investigation processes, reasons for withdrawing complaints (if done so) and court experiences will better inform service delivery. This data is either not currently routinely collected or is not collected in a format that can be easily analysed. An increase in Victoria-specific research on these issues would help guide agencies and identify key areas for improvement.

Providing opportunities for complainants to evaluate their justice system experience as a victim-survivor would also allow them the opportunity to discuss what they believe could be improved, what worked well and for them to make suggestions. Such feedback could be used to help improve the systems used by police, the courts as well as the support services.

Research into offenders and their motivations and drivers for offending would also be of great value not only to the court but to police and support services within the community. Prevention is the key to reducing sexual offending and an understanding of the reasons behind a persons' motivations and drivers to sexually offend may provide valuable insight. Allowing offenders an opportunity to provide this information discreetly post offence and post any court outcomes will ensure their privacy, but it would also allow researchers to identify trends, deficiencies in education regarding what is appropriate when engaging in sexual activity with another person and at what point support services should engage with offenders to attempt to prevent sexually based offending.

Under *Policing Harm, Upholding the Right: Victoria Police strategy for family violence, sexual offences and child abuse 2018-2023*, Victoria Police has committed to develop methods for victim-survivor feedback to inform police practice. Work on this project is currently underway and will provide police with a systematic approach to collecting information from victim-survivors, enabling their voices to inform future policy and practice improvements.

For those working with victim-survivors from Victoria's diverse priority communities, a lack of data and qualitative research specific to a number of vulnerable cohorts (such as LGBTIQ+ communities and families) mean that it is often difficult to plan for, and deliver services that meet the community's diverse needs. Improving service provision and data capture that is LGBTIQ+ specific throughout a victim-survivors journey through the criminal justice process will ensure that appropriate measures are taken to support and understand the complexities of non-binary/hegemonic heteronormative sexual and family violence.

Importantly, there are a number of emerging LGBTIQ+ specific referral services that could be linked into the justice system to ensure that victim-centric and nuanced care is delivered in order to reduce secondary victimisation. This includes the use of inclusive and respectful information, communications (that do not assume a binary/heterosexist view) but have a community specific approach. This is uniquely important in the case of transgender sexual violence.

Further, a current issue is inconsistency in, and inability to link, data sets between agencies accurately and efficiently. There are significant opportunities for increased collaboration across agencies to improve databases and information sharing practices, as well as regular system wide reporting mechanisms such as through the Crime Statistics Agency which would allow for greater whole of system analysis.

**8. How well does the sexual assault system work? How would you improve it?**

Refer to Victoria Police's responses to **Issues Papers C and E**.