

Victorian Law Reform Commission (VLRC)

Improving the Response of the Justice System to Sexual Offences



Response to Issues Paper B

Sexual Offences: Key Issues in the Criminal Justice System

1. Is there a need to improve attitudes towards victim survivors or the understanding of sexual harm within the criminal justice system? If so, how?

Victoria Police has undertaken significant work to address common myths and misconceptions around sexual offending throughout the criminal justice system, and notes that continual efforts across the justice system are required to deliver an increased understanding of sexual harm, improve attitudes and address harmful misconceptions about victim-survivors.

The creation of Sexual Offences and Child Abuse Investigation Teams (SOCITs) has been beneficial to both police and victim-survivors, creating an enhanced understanding of sexual harm. However, there is still a need to improve attitudes towards victim-survivors and increase understanding of sexual harm within the criminal justice system more broadly.

In 2017, Victoria Police and the Australian Institute of Family Studies (AIFS) developed *Challenging misconceptions about sexual offending: Creating an evidence-based resource for police and legal practitioners*. This resource aims to educate police and judiciary around common sexual offending myths and misconceptions by synthesising over 40 years of research and evidence. It provides a clear picture of what should be considered a misconception, alongside the current evidence of what behaviours may be displayed by both offenders and victim-survivors.

As canvassed in Victoria Police's response to **Issues Paper E**, incorporating this educative objective into jury directions would provide benefit to sexual offence cases, by addressing misconceptions such as reasons for delays in the reporting of sexual offences.

Regular, comprehensive training, tailored to the specific role in the criminal justice system, is recommended to ensure sexual offences are responded to appropriately. Increased provision of information about sexual offending via jury directions and use of expert evidence is also recommended. Further information should also be provided to those within the criminal justice system regarding memory and the effects of trauma on memory, to improve attitudes towards victim-survivors.

It is important to note that, while there have been improvements, societal attitudes towards victim-survivors of sexual offences are slow to change, and research indicates that people continue to hold unconscious biases which may impact their beliefs and decision-making in the criminal justice processes. Addressing these underlying beliefs requires widespread cultural change that address gender inequality.

In 2020, Victoria Police established the Gender Equality and Inclusion Command (GEIC). This dedicated focus on gender equality to continually ensure the existence of a safe, inclusive and respectful workplace will significantly contribute to a more effective service delivery for the community, particularly for victim-survivors of child abuse, sexual offences and family violence given the deliberate drive to positively change organisational culture.

Within the justice system more broadly, there is merit in supporting the Judiciary, Magistracy and registry staff maintaining contemporary understanding of sexual offences and victim-survivors' responses, as understanding of victim-survivor trauma progresses, and emerging forms of sexual harm are more broadly understood.

Further, the inclusion of sexual crime expert witnesses to inform jurors in respect to victim-survivors and offender behaviours may provide an opportunity to improve understandings of sexual harm within the system, to the direct benefit of the victim-survivors and to the court. The inclusion of expert witnesses may also assist to enhance the understanding of advocates, juries and judicial officers, and would reinforce the value in breaking down myths and misconceptions.

Ensuring trauma-informed approaches that promote safety, trustworthiness, choice, collaboration and empowerment are built into criminal justice frameworks, practices and procedures at a structural level should ensure the criminal justice system is positioned to respond to this type of complex offending.

2. Do you support introducing a specialist court for sexual offences? Why or why not?

Victoria Police notes the potential merits of introducing a specialist court for sexual offences, however also notes that a number of opportunities already exist to extract similar benefits in mainstream courts through improving training and understanding about sexual offending and sexual harm, and through improvements to the evidentiary process and design of court facilities.

Consideration of the establishment of specialist courts would need to take into consideration the ability of such courts to provide the capacity to hear matters more quickly, ensure judicial availability (if relying on a set number of trained, specialist court judges) and be distinctly focussed on improving outcomes and support available to victim-survivors.

Victoria Police would welcome the opportunity to participate in detailed consultation on any proposal to establish specialist courts, should reform to establish these arrangements be considered by Government.

3. If you support introducing a specialist court for sexual offences, what features should it have?

Noting Victoria Police's response to **Issues Paper B, Question 2**, features of a specialist sexual offences court should, at a practical level, provide for better case management to reduce delays, greater access to support services for victim-survivors and treatment program for perpetrators and greater collaboration between agencies, and a greater commitment to trauma-informed practices.

Specialist courts with dedicated judges and training for all staff (legal and non-legal) may assist in ensuring that criminal justice processes for victim-survivors of sexual offending are safe and accessible, reducing re-victimisation. In addition, they may provide greater opportunity for intervention with perpetrators in a way that is conducive to supporting behaviour change.

Specialist judges, who would acquire a high degree of expertise, could bring many benefits to sexual offence cases. Supported by education and training, specialist judges could contribute to improved understanding of the impact of sexual offences on victim-survivors and how sexual crimes are perpetrated, allowing them to tailor their practice to reduce stresses on victim-survivors through better decision-making on issues such as evidence and treatment of victim-survivors during questioning.

While a specialist court will not automatically address all the underlying challenges, such as meeting an evidentiary threshold where there is at times limited physical evidence, its existence may lead to more consistent judicial outcomes. This may also have positive flow on effect to the community, encouraging reporting and reducing system-wide attrition.

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A central consideration of any specialist court should be ensuring that the criminal justice process is as easy to navigate as possible for victims, aiming to reduce the number of times a victim is required to re-tell their story, for the purpose of reducing re-traumatisation of victims and their families. As highlighted in detail in Victoria Police's responses to **Issues Papers C, E and G**, ensuring any new process or system also considers the needs of Victoria's diverse priority communities, rather than these cohorts being considered secondary to any mainstream system design, is essential.

If established, it would be essential that a specialist court have jurisdiction to hear multiple offences even if only some are sexual offences. This is to prevent related, but non-sexually related offences, being tried separately despite their being an interconnected narrative that would be difficult to present separately. Without the necessary jurisdiction, there would be adverse impacts on victims.

Given the overlap between sexual offences and family violence, detailed consideration would need to be given as to how specialist sexual offences courts and the Specialist Family Violence Courts introduced across Victoria as recommended by the 2016 Royal Commission into Family Violence would operate together in a way that achieves the best outcomes for victims and reduce delays.

A specialist sexual offences court could have similar functions and be modelled off these courts, noting that this provides the opportunity to allow for greater integration between responses to sexual offences and family violence. As an alternative to a specialist court, a specialist sexual offences list could provide similar benefit, by providing specialised personnel to improve the service delivery for victims.

As noted above, Victoria Police would welcome the opportunity to participate in detailed consultation on any proposal to establish specialist courts, should reform to establish these arrangements be considered as a recommendation by the Victorian Law Reform Commission in its final report.

Do you support changing the role or nature of the jury in trials for sexual offences? Why or why not?

As noted in Victoria Police's response to **Issues Paper B, Questions 2 and 3** and to **Issues Paper E**, the creation of a specialist sexual offences court or list would present an opportunity for judges and advocates to receive training in how to present evidence and provide directions in sex offence cases in a manner which may be better understood by jury members.

Victoria Police notes that expert evidence may be given under section 388 of the *Criminal Procedure Act 2009* about the nature of sexual offences, and the social, psychological and cultural factors that may affect the behaviour of a person who has been the victim, or who alleges that he or she has been the victim, of a sexual offence, including the reasons that may contribute to a delay on the part of the victim to report the offence.

This provision permits that a jury may hear expert evidence and may accept or reject it. This is appropriate in increasing jury awareness and understanding of the nature and effects of sexual offending. There is no necessity that the jury themselves become experts in these areas, however it may be beneficial in providing an impanelled jury with increased education relating to sexual offences, the reporting of such offences and identified myths and misconceptions. It is vital that any such information is conveyed to the jury prior to evidence being heard.

Victoria Police has previously considered the potential benefits of decision-making processes outside of jury trials, such as the option to request a judge-only trial. This would be a fundamental alteration of the operation of the current criminal justice system and would require substantial consultation.

It is noted that judge-only trials may deliver improvements to victim experiences in the criminal justice system through shorter trial lengths and a reduction in the number of people victims are required to repeat their story to. Such trials may only be effective in certain circumstances, and subject to the management of key issues such as the risk of unconscious bias and potential decreases in conviction rates as evidenced in other jurisdictions.

4. How well are reforms working to avoid delays in the criminal justice process, and what other reforms could address delay?

In addition to Victoria Police's responses to Issues **Paper C** discussing a range of challenges to investigations and to **Issues Paper E** discussing delays at prosecution and trial stage, Victoria Police notes that previous reforms relating to child victims within the court system have been beneficial in reducing delays, due largely to the stricter timeframes for committals and court appearances post-charge. Despite this, delays in sexual offence cases are common and can arise throughout various stages of the court process.

Victoria Police places priority on prosecuting crimes of a sexual nature, in particular where the offending involves child victims observations of prosecutors within Victoria Police is that securing suitable dates for contested cases with multiple witnesses in the summary jurisdiction is challenging and may give rise to delays. Expanded options for remote appearances should alleviate, in part, this issue.

More generally and as discussed in detail in Victoria Police's response to **Issues Paper E**, delays at different stages of the prosecution, trial and appeal processes can present compounding challenges for victim-survivors. As noted in Victoria Police's response to **Issues Paper B, Question 3**, the introduction of a specialist sexual offences court may assist in addressing these delays. A distinct court, or distinct sexual offences list would, in principle, allow for enhanced case management to assist in the identification and management of delays from the earliest opportunity.

5. How well are support programs for people who have experienced sexual harm working? How can they be improved?

In order to ensure support programs in place for those who have experienced sexual harm are accessible and comprehensive, it is critical that they are appropriately resourced. Victoria Police notes that it would be timely to review the resourcing provided for key programs such as the Victims and Witness Assistance Service (VWAS) to ensure they are appropriately resourced to support the needs of victim-survivors.

As detailed in Victoria Police's response to **Issues Paper E**, investment in the expansion of the Victorian Government intermediaries pilot program could also be considered, to improve the justice system experience of vulnerable victim-survivors, including those with communication difficulties, by ensuring they are afforded access to skilled communication specialists. Currently, the range of offences for which an intermediary can be utilised under the pilot is narrower than the range of offences for which a Video Audio Recording of Evidence (VARE) statement can be used under the *Criminal Procedures Act 2009*.

There is merit in exploring expansion of the intermediaries scheme, for utilisation in a broader range of offences to ensure that those with communication difficulties and vulnerability can access this service, regardless of the exact nature of the offending.

As noted above, the VWAS provides specialist and dedicated support to victims and witnesses throughout the court process. Consideration may also be given to a dedicated service that aims to support victims as they make the decision to report to police, and through the investigative process.

Due to the complexity and sensitivity of the police investigative process, victims may require dedicated support from professionals who have expertise in justice procedures for the extent of the investigation and court process. Mirroring the valuable contribution Centre Against Sexual Assault Centre (CASA) counsellors make in supporting victims in their decision to report to police (such as within hospitals or crisis care units), ongoing support throughout the justice system process may be complementary to these existing supports.

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Further, victims, when appropriately supported, may be in a better position to provide detailed police statements or other evidence which may ultimately allow for better court outcomes. Noting that victims regularly do not disclose sexual offending against them or engage in criminal justice processes until many years after the offending, it is integral that support services are accessible and appropriate for victims of historical sexual offences, including those from Victoria's diverse priority communities.

6. What other issues affect the criminal justice process as a whole, and what should be done to address them?

Refer to Victoria Police's responses to **Issue Paper A**, and Issues **Papers C-F**.