

Victorian Law Reform Commission (VLRC)

Improving the Response of the Justice System to Sexual Offences



Response to Issues Paper F

People Who Have Committed Sexual Offences

1. Do responses to sexual offending sufficiently address the diverse needs of different people who have committed sexual offences? If not, what more is needed?

Victoria Police acknowledges that improving responses to sexual offending requires unique and varied interventions, in response to the background, circumstances and individual needs of people who have committed sexual offences. Victoria Police also acknowledges that in many instances, people who commit sexual offences also have a history of being sexually offended against.

Victoria Police sees there is merit in exploring more tailored and specific interventions, to address the diverse needs of convicted sexual offenders, at each stage of the justice process, including upon release.

Offenders from within Victoria's diverse priority communities require services that are developed to respond to specific cultural, social and personal needs, including those which are understanding of specific cultural and social factors relevant to the individual, background and lived experience. This is necessary to ensure sustained, effective engagement with these offenders, as a vehicle to prevent reoffending, by providing the opportunity for uncensored therapeutic discussions about particular cognitive distortions these individuals may hold and to address their motivations to offend.

Victoria Police notes that at present, there is heavy reliance on a multi-agency approach, delivered by a range of service providers to meet the needs of convicted offenders. However, more targeted interventions focused on preventing further offending, would be beneficial.

As discussed in Victoria Police's response to **Issues Paper C**, technology continues to play an increasing role in sexual offending, a challenge which is compounded by increased availability and widespread popularity of technology (such as dating apps and image-sharing platforms) amongst the community.

In addition to ensuring technology-facilitated sexual offending can be identified and offenders can be held to account, current responses by services supporting those who have committed sexual offences involving the use of technology (such as offences involving child exploitation material, or image-based sexual abuse), do not in many instances adequately address the risk of continued, unfettered access to technology for some individuals. This is a shared challenge across the justice system, and presents particular challenges for those who have used the technology to overcome internal inhibitions, groom and facilitate their offending.

There is merit in exploring more targeted support that holds sexual offending behaviour in view while addressing trauma, socio-economic circumstances, educational attainment, mental health, drug and alcohol misuse, homelessness, family violence, cultural practices, marginalisation and racism, given these are common factors associated with recidivism.

Post sentence offenders

With respect to post-sentence offenders, Victoria Police notes that there remain ongoing challenges regarding the capacity and capabilities of the forensic disability sector to effectively support offenders. In this sector, demand for beds and access to programs often exceeds demand. Strict eligibility for offenders to access many programs also presents challenges in supporting a therapeutic response.

For offenders living with a disability, access to programs and facilities providing services under schemes including the National Disability Insurance Scheme has become increasingly challenging to navigate as sexual offenders are at times unable to secure access due to the risk they are deemed to present.

There are inconsistencies and misconceptions held about the relevant level of risk certain post-release offenders present. Anecdotal feedback from police members involved in the post-release offender management process is that violent offenders who pose a higher or more genuine level of risk are often able to access programs and services that sexual offenders aren't. Similar challenges are known to occur with respect to access to private and public housing as well as to medical services, including general practitioners.

In contrast, registered sex offenders (RSOs) are not subject to the same 'case management' approach as post-sentence offenders, and there is no shared legislative responsibility or remit to coordinate services for these offenders.

The *Sex Offenders Registration Act 2004* aims to reduce reoffending however does not focus on treatment and rehabilitation. Whilst some RSOs may be low risk, and may be registered for life, there are some high-risk offenders, particularly who are being released from long periods in custody, whose reoffending may be minimised through access to relevant services.

For these RSOs, reducing reoffending requires a multi-agency approach to coordination of services, similar to the Family Violence Risk Assessment and Management Panels (RAMPS) with a formally convened meeting with key agencies and organisations.

2. How well are rehabilitation or reintegration measures for people who have committed sexual offences working? How can they be improved?

Noting the issues raised in response to **Issues Paper F, Question 1** regarding the challenges faced by service providers in meeting the diverse needs of individuals, similar challenges exist for rehabilitation and reintegration measures for people who have committed sexual offences.

Currently, there are limited measures of success for sex offender rehabilitation and reintegration, with these measures relying heavily on recidivism alone as a measurement of success. This is insufficient and a broader range of measures is required, with possible examples being period of desistance, type of harm and general reductions in criminality. There are opportunities to improve these measures, with many treatment programs (except those targeting child sexual offenders) also not sufficiently focusing on the classification of offending, which is often critical to rehabilitation and reintegration.

Victoria Police believes that there is a rationale for rehabilitation support being available for the duration a person is on the sex offender register. Further, a person who has committed sexual offences should be able to access the same case management and treatment team throughout the duration of their registration. At a practical level, this would allow for continued risk assessment and mitigation plans to be informed and accurately assessed by professionals who have known the offender for a prolonged time and who are best placed as practitioners to address concerns promptly, and as they arise.

In summary, there is merit to exploring a more coordinated and integrated system of assessment and treatment of offenders. Increasing community education regarding offender typologies will aid reintegration measures and support those who are committed to not reoffending. Further, rehabilitation and reintegration measures are more likely to be supported by victim-survivors and the community if the offender has served an appropriate sentence, demonstrated their remorse and accepted responsibility for their actions.

Reintegration measures will not be effective in the absence of recognition on the part of the offender that their behaviour was criminal and harmful. Proposed rehabilitation and reintegration measures should complement the current statutory offender management measures in Victoria.

Post-sentence offenders

Post-sentence offenders can access services available through the Department of Justice and Community Safety's Forensic Intervention Services and are able to receive referrals for private treatment. Where a post-sentence offender has been unable to secure access to programs necessary for their treatment, the post-sentence Multi-Agency Panel is able to provide support by funding access to private treatment or counselling.

Victoria Police notes that anecdotally, this support arrangement is working well. However, as noted in response **Issues Paper F, Question 1**, there remain continued challenges in ensuring individuals with diverse or complex needs are able to access the treatment and services they require (in particular, forensic disability services).

As discussed above, there are opportunities available to better support high-risk RSOs who are not subject to Supervision Orders, and therefore, not required to undertake treatment or eligible to access Multi-Agency Panel supported access. When support is not available, registered sex offenders are at risk of being excluded from services and civic activities that would otherwise support their rehabilitation and reintegration efforts, such as supported housing and mental health supports.

In practice, a lack of support for protective factors can also mean that risks factors which may potentially trigger offending behaviours, such as social isolation, unemployment, stress and housing insecurity cannot be effectively mitigated.

This gap in services provided to support the rehabilitation and reintegration of RSOs also presents similar challenges and risks for offenders on Supervision Orders, who transition off their orders (particularly at short notice) and into the community. Those on Supervision Orders are subject to strict conditions and are provided with structure and considerable support to position them with the best possible opportunities to undertake rehabilitation and reintegration.

Whilst transition is planned and coordinated whilst an offender remains subject to a Supervision Order, there are currently no provisions for enabling an offender to gradually reduce their reliance on these supports once a Supervision Order is expired or is suddenly revoked. Individuals who rely on these supports to manage and mitigate their risk of reoffending may face significant challenges.

Noting the potential opportunities available to better support rehabilitation and reintegration of sexual offenders, Victoria Police would welcome the opportunity to contribute to detailed consultation on any proposal to reform access to supports.

3. How well are post-sentence detention and supervision, and sex offender registration working? How can they be improved?

Post-sentence detention and supervision

The primary challenge faced during post-sentence detention and supervision is from offenders who are not motivated to engage in necessary treatments, or to advance their rehabilitation and reintegration prospects. Additional challenges occur when these offenders transition from a Supervision Order into the community.

While the community protection aspect of the *Serious Offenders Act 2018* can be achieved, many aspects of rehabilitation and reintegration are difficult to progress. As discussed in response to **Issues Paper F, Questions 1 and 2**, opportunities exist to improve access to forensic disability services, and a range of other services to better support post-sentence offenders.

Opportunities also exist to consider potential improvements to the eligibility criteria for serious offender registration, noting recent expansion of this scheme to include serious violent offenders in certain circumstances. Despite this expansion, Victoria Police sees merit in considering further improvement, to address the limitations imposed by the current strict eligibility criteria.

To illustrate potential outcomes associated with current eligibility criteria, the following example is indicative of the potential risks to community of particular offenders being excluded from eligibility for supervision presently. While acknowledging that eligibility criteria is necessarily complex, Victoria Police notes that the outcome described in the following example is unlikely to be in line with what the community would reasonably expect.

Example

- An offender commits multiple serious sexual offences of rape, whilst under the age of 18. Due to the offender being under the age of 18, these are not eligible offences under the *Serious Offenders Act 2018*.
- The offender serves a custodial sentence and is released from custody as an adult. The offender proceeds to commit further offences that are not eligible under the Act, even though they may indicate a pattern of behaviour or serious escalation of risk (such as a violent incident where a bystander intervened prior to a sexual offence being committed).
- Despite this indication of a pattern of behaviour of serious escalation of risk for this offender, as the offender wasn't charged with an eligible offence under the *Serious Offenders Act*, they cannot be considered for a Supervision Order.

While Victoria Police notes these criteria rightly exist to ensure that the civil, non-punitive post-sentence scheme is limited to the critical cohort of offenders who present an unacceptable risk of further serious sexual and violent offending, there is merit to exploring expanded eligibility criteria further. On this basis Victoria Police would welcome the opportunity to contribute to detailed consultation on any consideration given by the Victorian Law Reform Commission on possible changes to eligibility for this, and other offender registration schemes including eligible offences.

Sex offender registration

In recent times the Sex Offender Registry has been subject to several reviews, including the Victorian Auditor General's Office (VAGO) review into the Management of Registered Sex Offenders, which identified improvements. In particular, the review focused on how Victoria Police can move beyond the minimum legislative compliance to better manage those offenders who pose the highest risk of reoffending and therefore improve community safety.

VAGO proposed nine recommendations for Victoria Police to improve RSO management across the state. Victoria Police accepted all nine recommendations in-principle and provided an action plan to address each. Victoria Police is currently implementing these recommendations to improve the consistency and quality of RSO management. These recommendations are important in enhancing RSO management in Victoria.

The *Sex Offender Registration Act* was also amended to provide for Sex Offender Prohibition Orders (Prohibition Order). Victoria Police can now apply to the Court for a Prohibition Order to prohibit specific behaviours of an RSO if that behaviour poses a risk to the sexual safety of one or more persons or the community generally.

This may include prohibitions on attending specific locations (such as certain types of social and civic locations including licenced venues and parks), associations with specific persons, curfews, and behaviours related to drug and alcohol consumption.

Victoria Police notes that Prohibition Orders appear to be operating well as an enforcement tool for those high-risk RSOs who do not meet the threshold for a Supervision Order, notwithstanding the challenges associated with Supervision Order eligibility, as outlined above.

Management of sex offender information

The management and disclosure of sex offender information is of critical importance to Victoria Police. Ensuring the integrity of how this information is managed and disclosed is central to managing risk and maintaining the privacy of victim-survivors.

Victoria Police acknowledges that in certain circumstances, victim-survivors, advocates and the broader community may consider there to be potential public benefit in establishing a publicly available sex offender register. However, Victoria Police notes that this may not be in the public interest and may create an unacceptable level of risk to community safety.

Maintaining appropriate restrictions on the public availability of sex offender information is necessary to mitigate potential risks to the community, and to support the management and supervision of registered offenders.

Victoria Police notes that research consistently shows that public registers of sex offender information do not reduce sex offender recidivism rates and rather, may have criminogenic effects.

This is because making RSO details public can significantly undermine factors associated with reduced risk of reoffending, such as housing, community and familial connections as well as social integration, employment and mental health.

While public registers of sex offender information may present some advantages, detailed consideration on the possible implications for the community's perceptions of safety, in a Victorian context, would need to be considered. This includes whether the existence of a public register may create a false sense of security, or an assumption in certain circumstances, that people who do not appear on a public register do not pose a risk to children.

Additionally, the possibility that publication of identifying information about an offender may inadvertently disclose the identity of victim-survivors, including child victim-survivors, would also need to be considered. Examples of how this might eventuate is if the offender is well known in the community, or where identifiable or familial links exist between the offender and their victim-survivor. Publishing specific offence details about an offender may also create the same risk if, for example, the offences involved incest.

Victoria Police also notes the concerns of some in the community that a public register of sex offender information may also encourage increased vigilantism towards RSOs, their families and those involved in the management of RSOs in the community. Ensuring the publication of such information did not result in sex offender registration being perceived as a secondary form of punishment would also need to be considered.

While Victoria Police notes that under current laws it would not be possible for this to occur, careful consideration must be given to ensuring any changes with respect to sex offender registration do not undermine, or be seen to alter the interpretation of, the objectives of sex offender registration laws.

Victoria Police would welcome the opportunity to participate in detailed consultation on any recommendations in relation to sex offender registration and the availability of sex offender information, being considered by the Victoria Law Reform Commission, and subsequently by Government.

4. **Is there a role for early intervention or diversion programs for adults responsible for sexual harm? Why or why not?**

Early intervention

There is a role for early intervention for adults, and young adults, considering sexually offending, inclusive of those who may self-identify as requiring an intervention to prevent a possible escalation in their desire to offend or urge to follow through with offending ideations.

Given that a significant portion of adults who commit sexual offences have a history of childhood trauma, early intervention should target children who are at risk of, or have experienced childhood abuse, including sexual abuse. It is crucial that intervention supports the healthy development of children so that problematic sexual behaviour does not occur later in life.

Victoria Police notes that it is well established in research that a portion of child sexual abusers do not have a paedophilic interest in children and their offending against children is purely opportunistic. This cohort of opportunistic child sexual abusers are unlikely to engage in early intervention programs, given that they do not have paedophilic interests.

Protective behaviour measures targeting children and their social networks (schools and parents) are more effective early intervention tools. Victoria Police acknowledges that many jurisdictions have intervention programs in place post-offending. Comparatively, in Victoria, access to programs is relatively limited and many offenders who commit sex offences who are undergoing remand or sentence may not get the opportunity to enter these programs.

Victoria Police believes that there is an ongoing community safety risk when such offenders do not have access to intervention programs. Ensuring access to the programs conducted in the custodial setting is important from both a rehabilitation and community safety perspective. Notwithstanding the associated resourcing considerations, Victoria Police is supportive of seeking continued opportunities to create intervention programs for offenders who commit sex offences, early in their offending history, prior to their offending escalating to the most serious sex offences.

Diversion

Victoria Police notes the high harm, high impact nature of sexual offending against complainants is too great to not be addressed by the rules of community deterrent and specific sentencing. On this basis Victoria Police does not support the adoption of diversion programs for adults responsible for sexual harm.

5. **If you support early intervention or diversion programs for adults responsible for sexual harm, what should be the features of the program?**

Noting Victoria Police's response to **Issues Paper F, Question 1**, there is a recognised need for supported early intervention programs. Currently, there are significant challenges for a person who is at risk of offending to access affordable or funded early intervention programs that would support the prevention of their offending.

The features of any early intervention programs should be such that participants are provided with information, appropriate access to therapeutic treatment and referrals to services that suit the individual's needs. Programs should be easily accessible, not cost-inhibitive, and include safeguards such as mandatory reporting requirements for service providers where it is identified that an individual presents an immediate risk to public safety (such as if an offender indicates intent to follow through with offending ideations, or discloses non-reported offending).

Noting that the requirements of early intervention programs and the needs of their potential participants would be diverse and complex, Victoria Police would welcome the opportunity to participate in detailed consultation on specific early intervention models, or programs being considered by the Victoria Law Reform Commission.

6. **What is working well in responding to harmful sexual behaviour in children? What improvements can be made?**

Victoria Police notes that while anecdotally, community-based programs providing therapeutic intervention to support children exhibiting harmful sexual behaviour are working well, mitigating risk of future offending requires long-term considerations for how these services can best be delivered, including approaches for how best to address wait times for children to access counselling services related to problematic sexual behaviour. Further, Victoria Police acknowledges that there are additional barriers faced in the provision of services to harmful sexual behaviour in young people in rural and regional locations, subject to their own unique geographic and resourcing challenges.

As discussed separately in Victoria Police's responses to **Issues Papers C and G**, it would be beneficial to consider the suitability and accessibility of programs and supports across all criminal justice settings in relation to sexual offending, for victim-survivors, offenders and those who are at risk of offending.

Noting Victoria Police's response to **Issues Paper F, Questions 1, 4 and 5**, current programs aimed at addressing harmful sexual behaviour should also be evaluated, and if necessary restructured, to ensure the needs of young people and their families from Victoria's diverse priority communities are planned for and met. As noted in the above responses, opportunities exist to improve upon current early intervention programs to identify and respond to harmful sexual behaviour at multiple stages in the criminal justice process, including for children.

7. **What other issues need to be addressed to improve Victoria's approach to sexual offending?**

This question is addressed throughout Victoria Police's responses. Refer in particular to Victoria Police's responses to **Issues Papers C, E and G**.