

Victorian Law Reform Commission (VLRC)

Improving the Response of the Justice System to Sexual Offences



Response to Issues Paper G

Sexual Offences: Restorative and Alternative Justice Models

1. Do you support adopting a restorative justice model for sexual offences? Why or why not?

Victoria Police is generally supportive of restorative justice models for offending where it supports the victim-survivor's sense of justice. However, in the absence of in-depth evaluations on the effectiveness of current restorative justice programs for sexual offences Victoria Police notes a number of outstanding considerations as to the features and eligibility for any restorative justice model would need to be explored in detail (discussed in response to **Issues Paper G, Question 2** below).

Further, detailed investigations into impacts on recidivism rates, community views, and potential pressure placed on victim-survivors to pursue a less traditional pathway would be required and only then could consideration be given to the adoption of a restorative justice model for sexual offending.

Victoria Police understands that many victim-survivors report feeling disempowered by the criminal justice process. It is possible that restorative justice processes may provide particular victim-survivors with an opportunity to reduce their trauma, and an additional pathway to seek restoration and justice.

Any proposed restorative justice model would need to consider the unique needs of victim-survivors, the nature of the offence, the victim-survivor's relationship with the offender and with their community as well as a range of other factors. Consideration would also need to be given to whether the risk of re-traumatisation of victim-survivors can be effectively mitigated, noting that sexual offenders – including those who engage in sexual offending against children, or to maintain coercive control over another person – may not be suitable candidates for restorative justice processes, given pre-existing power imbalances.

In this context, Victoria Police notes that participation in restorative justice processes may provide further opportunities for offenders to reassert control. Mitigation of this risk through thorough screening and management would be a central consideration in the adoption of restorative justice processes.

On this basis, Victoria Police considers that before a restorative justice model for sexual offences could be adopted, detailed consideration should be given to the features and safeguards of a proposed model.

2. If a restorative justice model is adopted, what should its features be?

Noting Victoria Police's position in response to **Issues Paper G, Question 1** (above), central to any restorative justice model must be an assurance that the wishes, and consent of victim-survivors is paramount. In combination, features of any proposed model must appropriately mitigate the risk of re-traumatisation for victim-survivors and ensure that the needs of Victoria's diverse priority communities, particularly those who traditional support services have not been built to accommodate, are planned for and met.

Careful consideration should also be given regarding when, if at all, restorative justice processes should occur. Victoria Police notes that in most circumstances, it may not be appropriate for a victim-survivor who is still a child to be involved in restorative justice process. Further, it would be inconsistent with community expectations if there was a possibility of someone who has sexually offended being incentivised to participate in a restorative justice process and rather, participation should only be out of a meaningful and genuine desire for an individual to take responsibility and be accountable for their actions.

It is essential that any restorative justice process occurs separately to criminal justice processes, including the ability for restorative justice to occur without a criminal prosecution progressing. Further, it would be important that an offender's participation in one restorative justice process would have no bearing over, or potential to undermine future investigations and proceedings.

As in any restorative justice setting, the features of any model would need to allow for a clear and reasonable understanding by victim-survivors of their expectations if they choose to participate. Appropriate and highly specialised support for victim-survivors to manage these expectations is critical to ensure that participating in a restorative justice process improves their experience of the justice system.

Further, any restorative justice model for sexual offending should be aligned as closely as possible with the restorative justice model for family violence, noting the common interrelationship between these two types of offending.

Extensive consultation with Victoria Police, service providers, victim-survivors and advocates (from all cohorts, including priority communities as noted above) at each stage of developing a proposed model would be necessary, prior to determining the ultimate suitability of adopting any restorative justice model for sexual offending.

3. Is there a role for an inquisitorial model or features for sexual offences? If so, what should this look like?

Victoria Police acknowledges the challenges faced by complainants, in particular the opportunities for re-traumatisation of victim-survivors via the current structure of the adversarial model. However, Victoria Police would encourage the VLRC to consider existing opportunities to reform the adversarial system in the first instance, rather than the introduction of an inquisitorial model for sexual offences.

This would be consistent with the findings of The Royal Commission into Institutional Responses to Child Sexual Abuse, which Victoria Police notes did not recommend an inquisitorial justice model for responding to the sexual abuse of children, or for creating a separate criminal process for sexual abuse. Noting this, and in the absence of in-depth exploration of opportunities available to reform existing processes, it is difficult to justify the introduction of an inquisitive model for sexual offending at this time.

Importantly, Victoria Police notes that the introduction of a separate inquisitorial model in this context may, in practice, not be able to afford persons accused of sexual offences the fundamental right to a presumption of innocence, which may give rise to procedural challenges at various stages of the criminal justice process.

4. Is there a role for new initiatives to enable people who have experienced sexual harm to tell their stories and have them acknowledged? Why or why not?

For some victim-survivors, telling their story is a therapeutic and empowering process. There should always be suitable avenues and opportunities to do so, and Victoria Police would welcome any advancements that provide victim-survivors with meaningful opportunities to share their experiences. Victoria Police also acknowledges the valuable contribution victim-survivors make when sharing their experiences of sexual harm, and that this can empower others to come forward to police to report sexual offences committed against them.

Aligned with Victoria Police's response to **Issues Paper G, Question 2**, the introduction of new initiatives for victim-survivors to share their stories should be designed around the needs of Victoria's diverse priority communities, rather than considering these cohorts as secondary to mainstream initiatives.

Progressing initiatives designed for cohorts who traditional initiatives have not been built to accommodate has the potential to produce positive and meaningful therapeutic outcomes. It can often be challenging for victim-survivors to find someone with a shared experience (separate from the shared experience as victim-survivors of sexual offending) to identify with and relate to through mainstream initiatives. Examples of such groups include male victim-survivors of sexual offending, and victim-survivors from backgrounds that may have traditionally held mistrust for police.

5. Are there Aboriginal justice models that you think should be considered for sexual offences? If so, what are their strengths and weaknesses?

Victoria Police acknowledges that members of Aboriginal communities are best placed to provide the Victorian Law Reform Commission with advice on the strengths and weaknesses of Aboriginal justice models, and the suitability of these models for sexual offences.

Victoria Police welcomes the opportunity to participate in detailed consultation on any proposals put forward to the Victorian Law Reform Commission by members of the Aboriginal community, relating to the inclusion of Aboriginal justice models for this purpose.

6. Do you support another alternative justice model for sexual offences? How should it work?

Refer to Victoria Police's responses to **Issues Paper G, Questions 1-3**.