



**Sexual Assault  
Services** Victoria

Victorian Law Reform Commission:  
Improving the Response of the  
Justice System to Sexual Offences

Submission  
December 2020

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## Acknowledgements

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We also wish to acknowledge our service users, the clients that we work with, whose experiences of sexual assault and of the justice system have informed this submission.

Many thanks also to partner agencies and colleagues for their support throughout this challenging year.

*Sexual Assault Services Victoria acknowledges the Traditional Owners of country throughout Australia. We pay our respects to Aboriginal people and their cultures, and to elders past and present.*

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# Terminology

CA	Counsellor Advocate
CASA	Centre Against Sexual Assault
CALD	Culturally & Linguistically Diverse
FME	Forensic Medical Examination
FMO	Forensic Medical Officer
HSB	Harmful Sexual Behaviours
IPSV	Intimate Partner Sexual Violence
JIC	Just in Case (Forensic Medical Examination)
RJ	Restorative Justice
SACL	Sexual Assault Crisis Line
SAS	Sexual Assault Service
SAS Vic	Sexual Assault Services Victoria
SOCA	Sexual Offences & Child Abuse Units
SOCIT	Sexual Offences & Child Abuse Investigation Team
VARE	Visual & Audio Recorded Evidence
VFPMS	Victorian Paediatric Forensic Medical Service
VIFM	Victorian Institute of Forensic Medicine
VS	Victim Survivor

## About Sexual Assault Services Victoria

Formerly CASA Forum, Sexual Assault Services Victoria (SAS Victoria) is the newly incorporated and expanded peak body for sexual assault services and harmful sexual behaviour services.

SAS Victoria shares a vision for a world free from sexual assault and violence. We know that sexual assault is both a consequence and reinforcer of the power disparity that exists largely between men, women and children. It also happens within families and in multiple other settings and types of relationships, including within the LGBTIQ+ community.

Sexual assault occurs along a continuum of violent behaviour, from uninvited sexual behaviour that makes the recipient feel uncomfortable, harassed, or afraid; unwanted touching or remarks; sexual harassment; coerced sexual activity; to rape with physical violence and threat to life.

We believe in the power to prevent sexual assault and violence with coordinated social, cultural and political action. This action exposes the gendered nature of sexual assault and challenges the context in which sexual assault is able to thrive.

We also believe in the possibility of recovery from sexual assault and family violence when systems are in place to provide timely and appropriate support. We advocate for services that address trauma and empower service users through a victims' rights model.

SAS Victoria aims to build a consistent, responsive, quality, coordinated service system, that promote the rights and recovery of victim survivors of sexual assault and addresses the social and systemic factors that contribute to harmful sexual behaviours in children and young people impacted by violence and abuse.

Our work is based on our shared understanding of the causes, consequences and impact of sexual assault.

Our advocacy is founded on service user experiences.

We bring over 30 years of evidence-based practice knowledge, and practice-based evidence wisdom to the task of reforming system responses to sexual assault. We aim to help shape and guide systems to ensure service users are able to get the support they need when they need it.

## Executive Summary

*Most of the clients I have seen in 8 years of sexual assault work say their experience of the justice system was the same if not worse than the sexual assault.*

Counsellor/Advocate

### **Increasing community awareness, attitudinal change and access to support**

Victim survivors (VS) of sexual assault experience multiple barriers to reporting and access to justice. They lack confidence in police responses to sexual violence and are deterred by court processes from pursuing criminal charges.

For some cohorts, including people with a disability, Aboriginal and Torres Strait Islander people, those from culturally and linguistically diverse (CALD) backgrounds, and lesbian, gay, bi-sexual, transgender, intersex and queer (LGBTIQ) people, other particular barriers to reporting and access to justice apply.

Community awareness about of the nature and dynamics of sexual assault must be strengthened. There is a need for increased awareness about the range of behaviours that constitute sexual assault, and the settings in which it occurs. This must include awareness raising about the prevalence of sexual assault that occurs within families and as part of family violence; and that children and young people are also victims of sexual harm within families and within their communities. 'Making the private more public' is a challenge for these times.

There needs to be greater investment in building the capacity of the universal service systems to respond earlier to suspected abuse and to families in crisis – through Maternal & Health Services, in early years settings and in schools.

There is a need for increased screening for sexual assault by family violence agencies, and improved information and referrals between systems given the frequency of sexual assault within intimate partner relationships.

The role and contact details for the Victorian Sexual Assault Crisis Line (SACL<sup>1</sup>) needs to be more broadly advertised, and the community made aware that they can call this number not just to access counselling and support, but to get information (anonymously if they wish) in relation to the legal process.

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<sup>1</sup> SACL is a state-wide, after-hours, confidential telephone crisis counselling service for people who have experienced both past and recent sexual assault. It is the central after-hours coordination centre for all recent sexual assaults and provides immediate crisis responses throughout Victoria. SACL operates between 5pm weeknights through to 9am the next day and throughout weekends and public holidays. During Business hours, calls to SACL are diverted to a local Centre Against Sexual Assault.

There is a need for increased investment, information and access to justice and support services particularly in regional, rural and remote areas.

### **Cultural change and increased specialisation within the justice system**

From first report, to investigation and through the legal process once a case proceeds to court, VS have the right to and need coordinated trauma informed responses and victim centred specialist support, and options.

Cultural change across the justice system requires a commitment to building shared understandings of the prevalence, nature and dynamics of sexual assault and harm, and how it impacts VS. It also requires strategies to address ways that the system reinforces myths and negative community attitudes about sexual assault.

Given the largely gendered nature of sexual offending, we submit that VS should be able to choose the gender of the interviewing SOCIT member, and of the VIFM FMO. We would urge VicPol and VIFM to consider and address gender in recruitment policies and practices to ensure a greater number of women are available to work within the sexual assault service system.

Education and training programs are required to target and dispel the myths around sexual abuse; raise awareness about issues of consent; and facilitate the evolution of a legal system that is trauma-informed and that eschews victim blaming. As in the broader community, education about gender inequality, sexual assault and the impact of trauma is required for those working within the justice system, and in particular is needed to target police, lawyers, and judges.

We also support the specialisation of sexual offences prosecutions at the Office of Public Prosecutions.

From first report, to investigation and through the legal process once a case proceeds to court, VS have the right to and need coordinated trauma informed responses and specialist support from partner agencies within the sexual assault service system. Responses must also be inclusive of and targeted to diverse groups. VS need information about the progress of a case once it has entered the legal system.

### **Sexual Offences and Child Abuse Investigation Teams (SOCIT)**

As acknowledged in the Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)<sup>2</sup> *'police are the 'gatekeepers' to the criminal justice system..'*

Despite specialisation through the SOCITs, and the Victoria Police Code of Practice for the Investigation of Sexual Crime (2016), police responses continue to be experienced by VS as inconsistent, insensitive, dismissive and disbelieving. Police responses to intimate partner sexual violence also need to be strengthened.

SOCIT officers need initial and ongoing training to ensure their approach is trauma informed and victim centred. We also support the need for advanced tertiary level training for SOCIT police officers, similar to standards demanded of other human service professionals.

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<sup>2</sup> Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)

It is essential, especially when dealing with sexual assault victims at the point of crisis care that SOCIT ensure that VS are consistently linked in with specialist sexual assault services for counselling and support as they navigate legal and other systems, and for recovery. There needs to be greater investment in sexual assault services, to ensure VS are able to access support in a timely way.

SOCIT should consider offering internships for CALD, Indigenous and LGBTQI officers to increase responsiveness to these communities.

### **Victorian Institute of Forensic Medicine (VIFM)**

We propose that all VS of recent sexual assault be offered a forensic medical examination as a matter of course: 'Just In Case' Forensic Medical Examinations (JICS). The VS would retain ownership of the evidence for a period of time ( eg 6 months ) and/or would thus retain the right to choose whether or not to proceed with a police report and investigation.

Current limitations of forensic medical availability require urgent review, especially across regional Victoria. The current contracting model, with police contracting forensic medical services to VIFM is not working.

Changes introduced by VIFM in 2020 are deterring VS from seeking assistance and are impacting on VS options, to pursue formal prosecution further in their recovery journey. Forensic medical examination currently remains dependent on the victim survivor pursuing criminal prosecution. All victim survivors should have the right to a forensic medical examination regardless of police referral, location or institution in the context of COVID-19.

### **Victorian Forensic Paediatric Medical Service ((VFPMS)**

Children and young people need greater access to paediatric FME, particularly in regional areas. Being unable to access FME in their local adds to stress for children and young people who must travel to metro areas for a FME.

### **Visual and Audio Recorded Evidence (VARE)**

We recommend extending the use of VARE statements to people currently ineligible but who are highly traumatised by the idea of spending so long preparing a written statement. VARE generally offers a kinder court experience for VS without precluding cross-examination.

### **Specialist courts and hearings**

Court system responses to sexual offences need to be strengthened through awareness and training of court officers and increased specialisation of courts, and reforms to ensure juries are informed and do not subscribe to common myths about sexual assault. Strategies for avoiding 'burn out' of staff needs to be built into the system.

Establishing a specialist sexual assault court is necessary to improve the legal process; avoid further traumatising VS; reduce the pervasiveness of myths and misconceptions about sexual assault within the legal system; and reduce barriers and delays.

Provisions to protect 'confidential communications' records have been unsuccessful and further action is required.



We support more joint hearings where there are multiple VS of the same offender, to enable patterns of offending by a perpetrator to be known by the court. A perpetrator's offending history should be available to the jury.

We support a Model Bill that would change the test on tendency and coincidence in Victoria, as adopted in NSW.

SAS Vic supports a communicative consent model which requires parties to demonstrate that they took steps to ensure that the other party was consenting.

### **Supporting victims through the legal process**

SAS Vic urges the VLRC to consider the most effective ways to ensure that VS have access to independent advisors throughout their engagement with the legal system. This may include the option of introducing Independent Sexual Violence Advisors in Victoria.

### **Therapeutic Treatment Orders**

There is a need for lawyers, Child Protection and SOCIT to receive further education and familiarisation regarding the efficacy and process for Therapeutic Treatment Orders (TTOs) for young people. This will ensure they are applied for consistently across the state giving all young people the same opportunity to engage in supervised treatment. TTOs are an early intervention therapeutic program with the aim of ceasing the behaviours from occurring, aiding recovery and preventing young people from reoffending and ending up in the adult criminal justice system.

### **Governance and collaboration**

SAS Vic believes this inquiry offers an opportunity for a 're-boot' of the systems and protocols that were developed as a result of the 2004 VLRC Sexual Offences Inquiry, with a view to ensuring that these become a mandatory part of Victoria's response to sexual offences rather than optional guidance as is reported currently.

While regional integration governance arrangements are in place in relation to family violence, there is no parallel requirement for this in relation to sexual assault in regions where MDCs have not yet been established.

There is a need for a governance framework that builds and regulates partnerships between agencies such as Victoria Police, VIFM, Child Protection and SAS, to work together on behalf of victim survivors. Under such a framework, any service delivery changes proposed by any partner in the sexual assault service system would need to be negotiated and endorsed prior to implementation. Collaborative arrangements and partnership agreements need to be systematised, and not personality, relationship or geography dependent.

There is a need to strengthen collaborative partnerships between CASA/ SAS, police and Child Protection to support shared understandings of the developmental complexities and impacts of trauma on children and young people, and how trauma can affect their ability to make clear disclosures or to meet the required threshold of evidence.

If police do not proceed with an investigation because of challenges in gathering evidence, joint planning needs to occur to ensure the safety of the affected child and other children

who may come into contact with the alleged perpetrator. Lack of charges and a conviction does not necessarily negate possible future harm.

When police attend a family violence incident they are mandated to make L17 referrals to relevant specialist services. There is no similar process for sexual assault. We would support exploration of an equivalent referral system to improve the consistency of police referrals in relation to sexual assault.

There needs to be better coordination and communication between police, clients, counsellors and other support services to ensure victim-centred system responses. Strategies for improving coordination between support services could include funding for case management roles to keep people updated regarding criminal processes and supporting them through the legal system.

With the introduction of The Orange Door model across Victoria, there is work to be done to reconcile the two different multiagency models, and consider whether additional service partnerships would be beneficial as part of the MDC model. Consideration of partnerships with for example the OPP; and with mental health and AOD services would be worthwhile.

### Data, research and evaluation

Australian (and to a lesser extent international) research to date has generally focused on describing the problem of sexual assault rather than evaluating what is effective to achieve its eradication.<sup>3</sup> The concept of measuring 'success' in any human service field is a complex undertaking. In the sexual assault prevention field, determining indicators of 'successful' approaches is further complicated by how the 'problem' of sexual assault is conceptualised and understood.<sup>4</sup> Alongside this is acknowledgement that sexual assault is one of the most difficult crimes to detect, deter and punish.<sup>5</sup>

The development of a Statewide Sexual Assault Strategy from prevention to tertiary responses across all ages and settings (inclusive of justice) is essential to capture the impact of and responses to sexual assault in Victoria. Consolidating data and evidence to measure impact, manage responses and measure outcomes across all jurisdictions is required to develop (and inform) comprehensive responses to sexual violence within our community.

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<sup>3</sup> World Health Organization/London School of Hygiene and Tropical Medicine. Preventing intimate partner and sexual violence against women: taking action and generating evidence. Geneva, World Health Organization, 2010.

<sup>4</sup> Walden, I and Wall, (2014) Reflecting on primary prevention of violence against women: The public health approach

<sup>5</sup> Quadara and Wall (2012) What is effective primary prevention in sexual assault? Translating the evidence for action.

## Introduction

SAS Victoria welcomes the Victorian Law Reform Commission review: *Improving the Response of the Justice System to Sexual Offences*.

Our member services met with Counsellor Advocates (CAs) and team leaders; attended numerous sector consultation sessions with the VLRC inquiry team; worked through the VLRC Issues papers; and contributed to this submission by providing records of those discussions.

Victim survivors of sexual offences experience multiple barriers to reporting, and many choose not to report sexual assault to police or to pursue a formal complaint.

For VS, these barriers can include feelings of shame, overwhelm, fear of the perpetrator and repercussions; feeling unable to cope with the additional stress of legal processes while being impacted by and recovering from trauma. A common response after recent sexual assault is “I just want to forget”.

Our services express concern that intimate partner sexual violence is perceived in the community as less serious than other sexual crimes, posing additional barriers for VS to reporting sexual assault perpetrated by current or former partners. The intimate partner relationship context is often seen as ‘too hard’ to criminally pursue, by VS and police.

Additionally, a lack of awareness in relation to coercive control and IPSV means that it is often not recognised by FV workers, and thus there are missed opportunities to make appropriate referrals to a CASA / SAS for support and advocacy, and as a consequence, to reporting and legal options.

VS can be deterred by Sexual Offences and Child Abuse Investigation Team members (SOCIT) in pursuing a report, being told that it’s ‘hard’ to get evidence to support an investigation. They report feeling like police are dismissive, lack time, and don’t believe their complaint. There is reported inconsistency of approach by SOCIT members – depending on levels of experience and the values that officers hold. VS report that they can experience judgement from one officer yet feel believed and heard by another.

VS also tell our services they feel disrespected by police when they choose not to pursue charges; pressured by police to make a statement before they are ready or well, and being asked to repeat their story, which exacerbates the trauma. Some say they feel as if the legal process is more important to police than their wellbeing and are referred to CASAs by police “so you can make your statement” rather than for support.

There is reported concern and awareness of no guarantee of charges being laid when VS do participate in FMEs, or report; awareness of low sexual assault conviction rates, and VS feeling that “it is just not worth it”. The justice system is experienced as retraumatising, often victim blaming, and diminishing for VS. Understanding that there can be lengthy delays in the legal process can contribute to VS decision not to report.

In cases of drug and alcohol facilitated sexual assault, VS report concerns about telling police about their substance use at the time of the sexual assault. They may be unsure if in fact they were sexually assaulted. Some find the requirement to commit to reporting the offence

before being able to access an FME problematic; and commented “if a doctor just looks me over and says I have been then I might report”.

Different service user groups experience additional barriers to support and justice. Many aspects of a VS identity and life experience intersect with how they experience discrimination and access to services (eg disability, ethnicity, sexuality, gender identity, class etc). They require targeted solutions to increase agency, support, reporting and access to justice. We address some possible solutions throughout this submission.

### **Aboriginal and Torres Strait Islander communities**

People from Aboriginal and Torres Strait Islander communities are less likely to report sexual assault or proceed through the legal system for a range of reasons. The ongoing impacts of colonisation contribute to a lack of trust of the system in general for first nations people.

They already face barriers to support and justice and are seriously overrepresented in the prison system. Children are also removed from families by Child Protection at rates that outstrip removals in the non-Indigenous community. Fear of losing family and community members to these systems can deter reporting of sexual assault for sound reasons. For some, lack of reporting can also be due to the perpetrator being in a position of power in the community, increasing fear around their privacy and confidentiality.

### **Women and people with disabilities**

For women and people with disabilities, numerous studies have highlighted particular barriers to accessing justice, and case studies gathered from member services in the preparation of our submission to the Royal Commission into Violence, Abuse, Neglect & Exploitation of People with a Disability<sup>6</sup> confirmed the findings of these studies.

A 2018 ANROWS funded project, *Women, disability and violence: barriers to accessing justice*<sup>7</sup> Monash University Gender and Family Violence Prevention Centre described:

- a culture of normalisation of violence within service systems
- a culture of victim blaming and disbelief within policing response
- lack of awareness within the criminal justice system
- limited resources in the community legal sector, lack of accessible services
- lack of access to, and knowledge of, legal rights for women with disability
- fear of reprisal for both women with disability and workers

The Monash study also confirmed the findings of previous research by the Australian Human Rights Commission (2014)<sup>8</sup> and the Victorian Human Rights and Equal Opportunity Commission (Beyond Doubt Report, 2014)<sup>9</sup>.

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<sup>6</sup> CASA Forum submission to the Royal Commission into Violence, Abuse, Neglect & Exploitation of People with a Disability. May 2020.

<sup>7</sup> Maher, J. Spivakovsky, C. McCulloch, J., McGowan, J., Beavis, K., Lea, M., Cadwallader, J., Sands, T. (2018).

<sup>8</sup> Australian Human Rights Commission (2014). *Equal Before the Law: Towards Disability Justice Strategies*. Sydney, Australia.

<sup>9</sup> VHREOC (2014). *Beyond Doubt: the experience of people with disabilities reporting crime*

### **LGBTIQ people**

People in LGBTIQ communities experience additional and particular barriers both to reporting sexual violence, and to accessing support. Sexual violence can be perpetrated as a form of hate crime, by non-LGBTQ people, as well as by other LGBTQ people.

Additional barriers faced by LGBTQ communities to reporting or getting help include:

- reluctance to disclose their sexual orientation or gender identity to service providers, and fear that disclosure may lead to discrimination or being refused a service
- fear that it will reflect badly on their community
- fear of having their sexual orientation or gender identity revealed without their consent, or of being outed.
- risk of further violence or discrimination by others who are not supportive of their identity
- lack of access to resources – can be particularly true for transgender survivors because service systems cater only to women

### **Non-English speaking/ CALD / new arrivals**

Additional cultural and related factors affect the ability of women and people from CALD communities to report sexual assault, and to seek help. These can include:

- cultural norms about sexual assault and rape in marriage
- lack of access to information about laws, support, options in relevant community languages
- repercussions of reporting from within their community

### **Children and Young People :**

Few sexual abuse cases relating to children and young people ever get to court. These cases make up approximately 3-4% of SAS Vic cases. Many cases are reported to Police but do not proceed due to the child's age, the evidence available and judgements made that the report will not succeed in Court.

Children and young people are often discouraged by the protracted nature of the criminal justice system from even reporting the offence they've experienced.

# A: Working Together to Respond to Sexual Offences: Systems

## Pathways to justice – the role of support and services

*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?*

### **Improved awareness of sexual assault support services and access points**

Improving awareness of how to access services and the justice system is a priority. There is a need for clearer communication and awareness of the role of the Victorian Sexual Assault Crisis Line (SACL<sup>10</sup>). The 1800 SACL number needs to be more broadly advertised, and the community made aware that they can call this number not just to access counselling and support, but to get information (anonymously if they wish) re the legal process.

Sexual assault and family violence disclosures need to be met with a ‘no wrong door’ approach by any service – universal family and child welfare services, education. This is what facilitates greater reporting. Improved competencies in recognising and responding to disclosures across sectors would lead to greater reporting if sexual assault wasn’t such a stigmatised issue.

### **Cultural and attitudinal change is required across the community**

There is also a need for macro level cultural change and ‘making the private more public’. Improved community understanding of the dynamics, prevalence and impacts of sexual assault perpetrated both inside and outside the home would reduce barriers to reporting. Unfortunately for many VS the current system discourages them from coming forward due to fear of being cross examined, not believed or further traumatised through the legal process.

There needs to be greater investment in building the capacity of the universal service systems to respond earlier to suspected abuse and to families in crisis – through Maternal & Health Services, in early years settings and in primary schools. All of these services engage with families in neutral settings and can be conduits for information, awareness, assistance seeking and referral.

The coordination of long-term programs delivered by trained sexual assault specialists/ subject matter experts about communicative consent, respectful relationships, children and young people’s access to pornography across school settings is essential, as is community capacity building regarding sexual assault and its impacts.

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<sup>10</sup> SACL is a state-wide, after-hours, confidential telephone crisis counselling service for people who have experienced both past and recent sexual assault. It is the central after-hours coordination centre for all recent sexual assaults and provides immediate crisis responses throughout Victoria. SACL operates between 5pm weeknights through to 9am the next day and throughout weekends and public holidays. During Business hours, calls to SACL are diverted to a local Centre Against Sexual Assault.

Improving information in the community so that people know there are supports and services available, for example by ensuring information is translated into relevant community languages, and accessible and relevant to different cohorts and ages. Community education about sexual assault and the supports and pathways for reporting are vital, and can be actioned via billboards, television ads, and social media. This should include delivery of consent and sexual assault psycho-education workshops in schools. Many schools do not provide consent information, students therefore have inconsistent access to consent information.

### **Consistent access to Information and support**

CASAs / SAS provide 24-hour crisis care support to recent VS of sexual assault. Crisis care operates within an established therapeutic model consistent with the Victims' Rights Model and the principles of crisis intervention.

Given the significant barriers to reporting cited by VS, it is vital that they are able to access specialist sexual assault counselling and support before they are asked to make decisions about proceeding with legal options. With adequate support and information, more victims may choose to report. Members say that referrals from police to SAS are more likely to occur with recent sexual assaults. They are less likely to occur with reports of past sexual assault, where police referrals to SAS can be "sporadic."

Clients who attend at Crisis Care Units operated by CASAs / SAS are offered an options talk, and support for forensic medical examinations; for police interviews and making police statements<sup>11</sup>. CAs are able to liaise with other key agencies, including:

- Victorian Institute of Forensic Medicine nursing staff
- Emergency Department medical staff within hospitals
- Police Sexual Offences and Child Sexual Abuse Investigation Teams (SOCITS)
- Victorian Forensic Paediatric Medical Service
- DHS Child Protection.

Victims' rights are also acknowledged in the Victoria Police Code of Practice for the Investigation of Sexual Crime (2016) (the Code)<sup>12</sup>. The police Code includes reference to the role of CASAs / SAS at the point of crisis in hospital emergency departments, Crisis Care Units, and MDC's in providing support and information to victims about their medical and legal options and other support.

*'All victims of a sexual crime have the right of access to sexual crime support services. In all cases, whether recent or historical, police should provide victims with information regarding such centres and the services offered'*

Victoria Police Code of Practice for the Investigation of Sexual Crime (2016)

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<sup>11</sup> The victims right to specialist support and information is also embedded in the CASA Forum Standards of practice. <https://www.sasvic.org.au/for-members>

<sup>12</sup> Victoria Police Code of Practice for the Investigation of Sexual Crime (2016)



In practice however sexual assault services report inconsistent adherence to the Code by police. VS are not always informed of their right to have a CASA CA present to offer support, and advice and referral to a CASA for follow-up support is inconsistent.

This contrasts with police protocols and practice in relation to family violence incidents. When police attend a family violence incident they are mandated to make L17 referrals to relevant specialist services. There is no similar process for sexual assault. We would support exploration of an equivalent referral system to improve the consistency of all police referrals in relation to sexual assault.

### **Sexual Offences & Child Abuse Investigation Teams (SOCITs) - practice and training**

SOCIT officers need ongoing training and skill development in relation to understanding the impact of sexual assault, and trauma informed liaison and care. Key issues identified by the Victorian Law Reform Commission (VLRC) in its Sexual Offences Final Report (2004)<sup>13</sup> continue to hold true for VS of sexual assault.

*Because police are the 'gate-keepers' to the criminal justice system, the way they respond to people who report sexual assault is vitally important*

While training has developed for SOCIT officers, they need ongoing training, to address and deepen their knowledge, attitudes and skills. A 2016 Deakin University study<sup>14</sup> looked into the effects of specialist sexual crime investigator training. Despite improvements to practice, without regular refresher training 'training fade' occurs, and can lead to skill loss and poor attitudes.

*It is clear therefore, that any future training methodology should include greater emphasis on regular, compulsory, practice and supervision. This will necessitate more flexible training options, development of improved supervision practices, and an increased use of online training processes.*

SAS Vic would welcome further opportunities to work with VicPol in relation to SOCIT training, to ensure a victim-centred, trauma informed lens is incorporated more fully. This has occurred in the past. We also support the need for advanced tertiary level training for SOCIT police officers to reflect their specialisation, similar to standards demanded of other human service professionals.

SOCIT members need to be supported to deal with vicarious and secondary trauma in order to avoid replicating a power over culture that they then re-enact with clients.

### **Clear communication re the investigation**

VS often report feeling in the dark about the investigation process and whether SOCIT will proceed with an investigation. If an investigation proceeds, they can then feel under informed about the process, causing increased anxiety. VS need clear and timely communication from SOCIT as to whether an investigation is proceeding or not; and if not, why not. They also need information about options and rights to be provided to VS in a timely manner by SOCIT.

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<sup>13</sup> Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004) xxii

<sup>14</sup> <http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>



## **Strategies to address diverse needs of VS**

*Recruitment to reflect the gendered nature of sexual assault:* Given the largely gendered nature of sexual offending, we would also urge VicPol and VIFM to consider and address this in recruitment policies and practices. VS should be able to choose the gender of the interviewing SOCIT member, and of the VIFM FMO.

An unintended consequence of the VLRC Sexual Offences Final Report (2004)<sup>15</sup> recommendation to move from the SOCA to the SOCIT model, has been a significant shift in gender representation within the SOCIT workforce. SOCIT is now heavily male dominated, and VS often have no option than to provide details about their experience of sexual assault to a male officer. Additionally, SOCIT recruitment needs to be inclusive of diverse communities to support access to justice.

Strategies should also include diversity training, person centred approaches, targeted consultation, and building of networks and collaborative partnerships across dedicated specialist services and sectors.

Also see our comments in relation to VIFM and gender in section D of this submission.

*Women and people with a disability:* SOCIT, CASAs and VAP need disability specialists and training to work with clients, families and schools to better support VS with an intellectual disability to access a justice response. Case studies<sup>16</sup> revealed mixed experiences of interaction with SOCIT members, with some clients saying they felt disbelieved. There was frustration with long delays in investigations and the lack of information sharing about the progress of cases was distressing. Only one service user case study resulted in a criminal conviction - that outcome was experienced as validating, but the court process was experienced as very difficult and distressing. Two service users had not reported to police- one expressed that she felt it would be worse for her than it would be for the offender if she did so.

When communication is difficult, SOCIT officers can see a case as difficult to prosecute and therefore can dissuade the VS off from pursuing the case. This submission speaks to system responses that can mitigate barriers for people with a disability in section D: Sexual Offences: Report to Charge.

Additionally, a service initiative such as the Making Rights Reality<sup>17</sup> program (MRR) provides an excellent practice example of how a service can tailor its responses to people with disability who have experienced sexual assault. This program provides enhanced legal advocacy and counselling services to victims/survivors with cognitive impairments. It addresses cross-sector collaboration in a number of ways:

- disability training for sexual assault service staff

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<sup>15</sup> Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)

<sup>16</sup> CASA Forum submission to the Royal Commission into Violence, Abuse, Neglect & Exploitation of People with a Disability. May 2020.

<sup>17</sup> MRR was piloted by South Eastern Centre Against Sexual Assault (SECASA) with support from the Federation of Community Legal Services, the Office of the Public Advocate, Victoria Police, Springvale Monash Legal Service, and Women with Disabilities Victoria.

- engaging with the disability sector to develop Easy English resources about sexual assault, and
- involvement of the disability project worker on advisory groups for projects involving women with disabilities.

#### *Aboriginal and Torres Strait Islander communities*

In one region, Safe Pathways to Healing focuses on bridging the gap between sexual assault services and the Aboriginal community by educating both parties to increase reporting choices and encourage help-seeking support.

All services working in the sexual violence space need to deepen understandings of just how difficult it is for Aboriginal people to take the step to disclose sexual assault and abuse. Family Safety Victoria has been working with Aboriginal communities around establishing an Aboriginal-led sexual assault service, however we do not have information about progress at this stage. Advice should be sought from FSV.

#### *CALD:*

There is the need for targeted community education with CALD communities and diverse cultures to support increased understanding of sexual harm, VS rights and how to access support. More effective dissemination of information about the criminal justice system and how it deals with sexual assault cases is needed, as well as efforts to address attitudes and beliefs about sexual assault within communities. Materials in community languages and access to interpreters across the service system, are essential. There is a need to engage with specialist CALD organisations and communities to develop solutions that will enhance CALD community access to support and justice.

#### *LGBTIQ community*

LGBTQ survivors of sexual violence need access to support that is affirming of their identities and adequately addresses their needs. Agencies within the sexual assault service system need to increase awareness, build networks and collaborative partnerships, and address service gaps and issues via robust and inclusive governance mechanisms.

#### **‘Just In Case’ Forensic Medical Examinations (JICs)**

A number of issues in relation to the provision of forensic medical services are addressed later in this submission.

A key area of reform required relates to the provision of ‘Just in Case’ (JIC) FM examinations. Forensic medical examination remains dependent on the victim survivor pursuing criminal charges. JICs give victim survivors the option of deferring a decision whether to report to police. Many VS report that it is difficult to make a decision regarding a formal police report in the hours immediately following a sexual assault. When there is so much pressure and trauma proximate to the harm, VS need to know their options and have some control over how they choose to proceed. JICs are crucial in terms of expanding VS options at times when they are likely to be overwhelmed.

To date, JICs have only been offered at one location in Victoria, the Monash Medical Centre. With the advent of COVID-19, and restrictions implemented by VIFM in relation to their service provision, these have all but ceased for all VS.

We propose that all VS of recent sexual assault be offered a forensic medical examination as a matter of course. In an arrangement similar to the Just in Case FME, the VS would retain ownership of the evidence for a period of time ( eg 6 months ) and/or would thus retain the right to choose whether or not to proceed with a police report and investigation. This would remove the concept of a JIC and make routine/business as usual that all VS of recent sexual assault have the option of an FME and have several months in which to make a decision about whether or not to proceed with a formal complaint.

The Scottish Forensic Medical Services Bill, which passed unanimously through the Scottish Parliament in December 2020<sup>18</sup>, enshrines the rights of victims of sexual offences to request a forensic medical examination without having to report a crime:

*Victims of rape, sexual assault and child sexual abuse have suffered a grave violation of their human rights. This law will make it easier for adults to request an examination without reporting a crime, giving them a sense of control over what's happening to them at a time when it has been taken away.*

The Bill<sup>19</sup> also ensures :

*... that victims are informed about what will happen to any evidence taken from them and the circumstances under which it will be shared with the police. In self-referral cases where no police report is made, victims can request the destruction of evidence and the return of certain items such as clothing.*

We urge the VLRC to examine the Scottish Bill when considering recommendations in this regard.

### **Children and young people**

Several of our member services work exclusively with children and young people under 18 who have disclosed sexual abuse, and/ or those who have engaged in harmful sexual behaviour. They report the need for greater access to paediatric FME, given the impact on children and young people living in regional areas. If a paediatrician is not available locally, children and young people are required to travel to the Royal Children's Hospital or Monash Children's Hospital for an FME. At a time when they are already under stress, this can heighten distress for them and their family members/carers.

When a child makes a disclosure of sexual abuse, and then CP or SOCIT are notified, they and their families need user friendly and developmentally appropriate information that outlines their choices and the process of the system.

Services report that children and young people often go through the traumatic process of disclosing their abuse only to be met by a police response that they are unable to proceed with the investigation due to a lack of evidence. Children and families need information that

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<sup>18</sup> <https://www.gov.scot/news/forensic-medical-services-bill-passes-unanimously/>

<sup>19</sup> <https://www.gov.scot/policies/violence-against-women-and-girls/forensic-medical-services-for-rape-victims/>

allows them to make informed decisions about whether they would like to proceed with a VARE.

Strong collaborative partnerships between CASA/ SAS, police and Child Protection can support a greater understanding of the developmental complexities and impacts of trauma on children and young people and how this can affect their ability to make clear disclosures or to meet the required threshold of evidence.

Children and young people require expert interviewers who are trained in child development, trauma and its impact on the child or young person. This expertise is not available in the current Child Protection and Police services. It is suggested that an Independent Child Expert supervised, trained and evaluated could fill this role.

If police do not proceed with an investigation because of challenges in gathering evidence, planning needs to occur to ensure the safety of the affected child and other children who may come into contact with the alleged perpetrator. The absence of charges and a conviction does not negate possible future harm.

### Collaboration within the sexual assault system

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

The development of more collaborative and coordinated responses to sexual assault has been occurring in Victoria over the past two decades. The Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004) proposed legislative reform relating to sexual offences, and educational programs to ensure the effectiveness of those reforms.

Despite many positive changes, our members continue to flag some of the same concerns that were raised in that inquiry some 16 years earlier, in particular in relation to police collaboration with CASAs in supporting VS. The Victoria Police Code of Practice for the Investigation of Sexual Crime (2016) was revised in 2016 to document procedures and strengthen collaborative practice between SOCIT, CASAs, VFM/ VPFMS, and Child Protection, yet CAs continue to report inconsistency in application of the Code, and inadequate communication between partner agencies regarding practice.

SAS Vic believes this inquiry offers an opportunity for a 're-boot' of the systems and protocols that were developed as a result of the 2004 inquiry report, with a view to ensuring that these become a mandatory part of Victoria's response to sexual offences rather than optional guidance as is reported currently.

While regional integration governance arrangements are in place in relation to family violence, there is no parallel requirement for this in relation to sexual assault in regions where MDCs have not yet been established. This should be explored to ensure regular multi-agency governance mechanisms to encourage collaboration between CASAs, SOCITs, VIFM/ VPFMS and Child Protection, and a consistent systems response.

## Family violence

*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?*

In 2019, SAS Vic and Domestic Violence Victoria (DV Vic) were jointly funded by Family Safety Victoria to conduct the Progressing Recommendation 31 Project. The Project focus was on the potential for improving and increasing collaboration between the sectors, as proposed in Recommendations 31 and 32 of the 2016 Victorian Royal Commission into Family Violence Report.

Janice Watt was employed as a consultant to conduct the Project, and in the final report, she found that:

*Victoria's specialist family violence services and specialist sexual assault services are highly complementary and frequently interconnected. They provide different specialist services to a similar client group and, at times, the same client. There is a high level of respect for the specialist skills and expertise that each sector brings, and for the range of service elements provided by each sector...*

*A high level of collaboration across sectors and a range of integrated approaches are in operation, and there is a willingness to explore further collaboration to improve outcomes for clients<sup>20</sup>.*

Further, the findings highlighted that the distinct specialisation of each sector should continue to be recognised and sustained in practice, policy and funding, along with support for greater collaboration into the future, and made twenty recommendations for improving collaboration between the sectors. Implementation of these recommendations is on hold pending a commitment of resources by FSV.

The report highlights a range of service models within and across the two sectors, including 'integrated specialist sexual assault and family violence services' (ISSAFVS), that are funded to provide a full suite of specialist sexual assault and family violence responses. We would encourage the Commission to review that report for further information and detail of the recommendations.

Increasing awareness of the co-occurrence of family violence with intra-familial and intimate partner sexual assault points to the need to also examine the way the legal system deals with this reality. There is a need for increased screening for sexual assault by family violence agencies, and improved information and referrals between systems given the frequency of sexual assault within intimate partner relationships. There are opportunities to develop guidelines and protocols to ensure shared approaches lead to safety and access to justice for VS. The implementation of MARAMIS across sectors and settings in Victoria provides opportunities to refine these approaches.

In their discussions, our members flagged a range of areas that could warrant further exploration. Some of these were also raised in the Rec 31 report. They include:

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<sup>20</sup> Watt, Janice 2020. Progressing Recommendation 31: Phase 1 Project Final Report, for DV Vic & SAS Vic

- Better coordination and communication between police, clients and CAs. Police to collaborate with CAs prior to giving the client the options talk to ensure the way information is delivered is trauma informed.
- Integrated police units to deal with intimate partner violence, child sexual abuse, family violence and non-familial sexual assault.
- Further development of the MDC model to include co-location SAS, FV, CP, SOCIT and FV investigation teams, and VAP – with the aim of strengthening investigations, referral pathways and reporting. This would require resolving tensions between multi-agencies such as The Orange Door and MDCs.
- The development of MOU's between SAS, FV, VAP, SOCIT, CP to improve responsiveness.
- Training for FV services about indicators of CSA/SA, with a focus on sexual coercion and assault.
- Better coordination and communication between FV services and CASA/ SAS re who is working with a family and when they cease to do so.
- Police to regularly receive training regarding young people who display harmful sexual behaviours (HSB) to support a culture of confidence in referring young people who display harmful sexual behaviours as an early intervention program.

### Child protection

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

Consistency in approaches by CP practitioners and approaches is essential. Currently CP response is individual and idiosyncratic - responses vary considerably between workers. There is a lack of consistency within CP of workers' knowledge of trauma and its impacts, child development, child behaviours, de-escalation, working with complex families, impacts of sexual harm, assessing risk and protective factors. When children are at risk, CAs concerns need to be heard by DHHS; and SAS workers able to contribute more fully to influence and ensure a child's safety.

The best collaboration seems to come from having personal/direct knowledge of individual workers in other services (CASA, SOCIT, CP, FV and VAP) – this connection can then change or disappear when personnel move on. Systems cannot rely on personal connections: they must be 'systematised' through protocols and codes of practice.

Members stress that a strong relationship with CP is critical, as CP can support a family with knowledge of the system and help to ensure safety if police are unable to arrest and apprehend the alleged perpetrator. Focus must shift away from children being forced to manage their own safety (eg referral request from CP for protective behavior education for children), and high levels of responsibility being placed on the non-offending parent, and onto perpetrator responsibility.

Other recommendations by our members in relation to Child Protection included:

- Increased accessible referral pathways to CP - an online referral form would be helpful so we can provide basic client information to CP. This could be completed while waiting on hold to make a notification.

- Consistent understanding of mandatory reporting by universal services – schools do not have consistent approaches to identifying risk/harm and notifying.
- Regular meetings to discuss complex cases between CP and SAS/ CASAs (and other services) would be beneficial.
- An overhaul of the CP system – of targets, systems, processes and response to notifications – to make it more transparent and effective.
- Increased collaborative case planning on CP closure is needed to ensure children’s safety is maintained in a sustained way. This would involve a range of services – Family services, schools and other specialists.
- CP needs a complete overhaul – CP workers lack skill and knowledge. Workers churn and burn out. The system does not measure or respond to risk well.
- Relevant and purposeful information sharing for risk/safety between services.
- Child Protection can close cases prematurely and then re-open when a crisis or when perpetrator may seek access to child. This limits time to gather relevant information and evidence, safety planning and risk assessment for access considerations.
- That the VLRC explore the possibility of introducing Expert Interviewers who are trained, supervised and employed (possibly by the Courts), independent of Child Protection. This would enable skilled and independent experts to interview children and young people to hear their voices so that their evidence can go before the court.

### Working with other services and systems

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

SAS Vic has welcomed the commitment by the Victorian Government in its Family Violence Reform Rolling Action Plan 2020-2023<sup>21</sup> to the development of a sexual assault strategy for Victoria. The RAP commits to the strategy:

*In recognition of the range of forms that sexual assault manifests, and the complex service system interrelationships, a comprehensive sexual assault strategy will be developed. It will be informed by victim survivors and developed in partnership with the sexual assault and family violence sector.*

This will be an opportunity to develop scaffolding for a more robust system that is clearly and firmly founded on trauma informed, victim centred principles and practice, where access to justice is assured.

The strategy will enable an integrated state-wide approach to prevention, training and advocacy; and opportunity to build a recovery model for and with VS, rather than just responding to crisis and case management.

### Governance and outcomes

*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?*

There is an urgent need for a governance framework that builds and regulates partnerships between agencies such as Victoria Police, VIFM and SAS, to work together on behalf of victim

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<sup>21</sup> <https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023>



survivors. This would ensure, for example, that service delivery changes would need to be negotiated and brought before a governance group for endorsement prior to implementation.

### Data, research and evaluation

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

The current data collection system used by SAS has significant limitations. IRIS as a system is inadequate and does not provide meaningful data to inform research and evaluation of services and client outcomes.

There is urgent need for a coordinated system for data collection that enables information sharing between SAS, FV Services, CP, SOCIT and VAP.

SAS need a data system that captures the nature of the work we do, client needs, outcomes and pathways to recovery for clients.

In addition to local research initiatives, and national and statewide research agendas, areas for research focus might include:

- Focus on children and young people displaying harmful sexual behaviours and the connection with family violence
- Victims experience of the service system
- What determines successful outcomes for VS
- Trauma-informed approaches within legal and criminal systems.

### Other issues

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

SAS / CASAs as providers of advocacy, support and therapeutic interventions work extremely well. Within the broader sexual assault service system however, SAS are not included in or able to adequately influence cross government planning and policy development. SAS are currently filling gaps in the system.

The Sexual Assault Response Team (SART) toolkit<sup>22</sup>, developed by the National Sexual Violence Resource Centre in the US provides resources to guide the development of effective coordinated and integrated sexual assault systems. The Toolkit supports processes for continuous evaluation of how systems are working.

SART systems often include quarterly meetings between police, courts (judges, lawyers), hospitals, Sexual Assault Forensic Examiners (the US equivalent of VIFM), sexual assault services peaks and members, Family Violence sector and Mental Health representatives, to look at case studies and initiate continuous quality improvement processes. This supports ongoing and responsive change.

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<sup>22</sup> [Sexual Assault Response Team Toolkit](#)



Just as development of the family violence service system has been influenced by the Duluth<sup>23</sup> model in the US, Victoria's sexual assault service system could benefit from looking to formalise governance and processes to embed integrated system responses.

Funding to sexual assault services is predominantly for therapeutic service delivery. There is a requirement at a peak body and agency level for funding to implement in a systemic way education, advocacy, system and community awareness building, and continuous quality improvement.

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<sup>23</sup> <https://www.theduluthmodel.org/>

## B: Sexual Offences: Key Issues in the Criminal Justice System

### Attitudes and understanding

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

As noted in our responses to Issues Paper A, we believe there needs to be improved knowledge and awareness about sexual assault and harm across the community, and subsequent improvement of attitudes towards VS. This holds true for those working within the criminal justice system.

Education and training programs are required to target and dispel the myths around sexual abuse; raise awareness about issues of consent; and facilitate the evolution of a legal system that is trauma-informed and that eschews victim blaming. As in the broader community, education about gender inequality, sexual assault and the impact of trauma is required for those working within the justice system, and in particular is needed to target police, lawyers, and judges.

Victim-blaming myths are still present in the community which can lead to prejudice amongst jurors. Introducing expert evidence to educate the jurors about trauma, impacts of sexual assault, context and patterns of sexual harm are required to address this.

### A specialist sexual offences court

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

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

SAS Vic supports the establishment of a specialist court for sexual offences, founded on shared understanding of sexual harm and the experience of complainants in court. This would help ensure the process was emotionally and psychologically safe for VS.

*An adult client who had experienced significant child sexual abuse had her matter at the OPP allocated to a Barrister who according to his biography on the Victorian Bar website indicated that he specialised in 'gang-land' type criminal offences. He would not make himself available for my client prior to the trial or for a pre-trial conference. On the day of the trial, he finally agreed to meet with her, where he bluntly informed her that her matter was on the reserve list and did not explain what this meant. He then informed my client that providing her evidence in chief about her trauma might be a 'bit embarrassing', but he has heard it all before. He asked my client if she had any questions as he was reaching for his phone and leaving the room. She reports this experience being highly traumatising and invalidating.*

Counsellor/Advocate

In line with the NZ evaluation, we believe this would result in improved and more expedient and consistent outcomes for VS; avoid further traumatising VS; reduce the pervasiveness of myths and misconceptions about sexual assault within the legal system; and reduce barriers and delays to reporting.

Strategies for avoiding 'burn out' of staff would need to be built into the system, including debriefing, supervision and reflective opportunities .

We support the establishment of a specialist sexual offences court with its own rules and procedures, as per the New Zealand specialist sexual assault pilot; rather than just continuing specialist lists in Victoria. Key features would need to include :

- Specialist judges, police, and both prosecution and defence lawyers, trained about sexual harm and how VS/ complainants experience the court
- Specialist staff with an understanding of trauma, impacts, and complexities around disclosures including by children and young people.
- Rigorous recruitment processes to ensure staff understand the gendered nature of most sexual offences
- Support for court staff: including access to debriefing and counselling to counter vicarious trauma
- Case management to deal with and minimise delays
- Environmental considerations: including separate entrances, waiting areas, bathrooms & facilities for victim survivors and their supports so they don't have to "run into" the perpetrator or the perpetrator's family. This happens frequently at regional court houses as they can be quite small compared to metro courts
- More adequate space in video conference/remote witness rooms, to ensure they are comfortable and suitable for witness; flexibility in relation to accommodating suitable supports for VS - eg therapy dog.

### Alternatives to jury trials

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

SAS Vic considers that the introduction of professional jurors with appropriate background and training in sexual harm and offending is a model that should be trialled in Victoria.

Training would need to include defining sexual assault, myths and misconceptions, understanding consent, grooming processes, common impacts and particular challenges and barriers to justice for different cohorts. All require an in-depth understanding of sexual assault and family violence, particularly for cases where the sexual assault occurred within the context of family or an intimate relationship. Debriefing for jurors would need to be included as part of this model.

We think this would sit best within a specialist sexual offences court model. Suitably trained jurors who are trauma-informed could sit on sexual offence trials with decreased reactivity, bias and judgement. We have reservations about judge only trials, where all the power is held by one individual. It can be difficult to control conscious and unconscious bias.

## Delay

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

The process from when a VS reports the sexual assault through until the matter being heard and finalised at court can take years. This delay can be a barrier for many even wanting to pursue the case through to court. The delays are then often used against a VS by defence lawyers questioning the VSs memories of an event that happened years earlier, without taking into account that trauma impacts on memories or therapeutic intervention that the victim survivor may have undertaken to help them process these memories.

Our member services report that reforms to avoid delays have not worked, particularly during COVID. Delays continue to be noted in stalling tactics by defence counsel through frequent adjournments between committal and trial; through Committal Mentions; when a case is held in another state; and in relation to time-limit setting for trial.

Police investigation processes are too lengthy and cause further delays in the legal system. This contributes to further re-traumatisation for clients. Services report significant delays arising from the SOCIT investigation of up to 18 months.

Even where serious child sexual abuse allegations have led to cases being included in the Magellan list of the Family Court, delays continue to be experienced for children and young people - from VARE to trial in state courts - which can also impact on the reliability of evidence and legal outcomes.

## Support for people who have experienced sexual harm

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

Sexual assault service are working well however when speaking with VS about the reality of court outcomes or timeframes in the court process, these supports can be seen to be colluding with the broken system.

Independent Third Parties have not always been available in particular during COVID and therefore VS have not had support whilst making a statement or VARE.

There needs to be better coordination of victim support services across the state and regionally. Discrete support services need to know each other's work and approach better, to know when and how to access and link in victims.

Strategies for improving coordination between support services could include funding for case management roles to keep people updated regarding criminal processes and supporting them through the legal system. There needs to be better coordination and communication between police, VS, counsellors and other support services to ensure victim-centred system responses.

## **Intermediaries**

SAS Vic also welcomed the announcement in the RAP<sup>24</sup> that following successful pilots, the Victorian Government had committed to continuing the Intermediaries Program that delivers assistance to people with a cognitive impairment who are complainants in sexual offences. We refer further to the Intermediaries Program in this submission, in section D: Sexual Offences: Report to Charge.

## **Child Witness Service (CWS)**

The Child Witness Service was specifically designed to meet the needs of children and young people who have been sexually abused (or experienced other crimes) who appear as witnesses in Court.

The service has contributed much to children young people and their families. It has assisted the Courts to be able to hear the voices of children and young people and it has challenged Judges and legal staff to consider children and young people as individuals who have specific needs and rights in our criminal justice system.

In 2019 as part of the wider review of Victoria's victim services the RMIT Centre for Innovative Justice was commissioned by DJCS to conduct a separate review of the Child Witness Service. The review found that the service was a highly committed and valued service, providing an support for young people to have their voices heard. It recommended that to meet future demand CWS increase capacity and capability of its services.

The CWS is currently really stretched with insufficient resources to meet the increasing demands. We support the continued function of the CWS.

## **Victims Support Agency (DJCS)**

SAS Vic is hopeful that the recent Review of Victim Service, 'Strengthening Victoria's Victim Support System' will result in improved consistency of VAP service delivery across the state.

## **Victims Assistance Program**

There would be benefits in strengthening VAPs role within a case management approach, to coordinate meetings of professionals at pivotal points of the court process, and ensuring greater consistency of support, information and advocacy. VAP is co located in at least one MDC and this has resulted in better outcomes for shared clients. The alignment of VAP case management, investigation, advocacy and therapeutic services works well for VS.

## **Victims & Witness Assistance Service (OPP)**

Child witnesses currently receive a higher level of support through the CWS than adult VS does through the OPP WAS.

There is a need to develop stream-lined service linkages between SAS/ CASAs and VWAS, to ensure that the VS has a relationship with a support service at court.

While some members have suggested that it might be better for the CA to be in the court in a witness support role, we recognise that this may pose difficulties within the prosecution process. We therefore recommend increased resourcing of the VWAS to ensure effective

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<sup>24</sup> <https://www.vic.gov.au/family-violence-reform-rolling-action-plan-2020-2023>

support and provision of information throughout the prolonged prosecution process. Members report positive experiences with VWAS, but they appear to be under resourced.

### **Court Network (CN)**

Our sector values the care and support which is often provided to VS of sexual assault and their friends and family members by Court Network volunteers.

CN work collaboratively and accept referrals from external agencies. That said, CN volunteers demonstrate considerable variability in their sensitivity and understanding of sexual assault and the issues which may be present for the VS while at court.

CN volunteers are commonly enlisted to provide support to VS of sexual assault when providing evidence in the Remote Witness Facility. While this support is often of value, SAS Vic believes that there are a large number of instances where the VS would have received a higher quality of professional support had an OPP VWAS Social Worker been present.

VWAS currently lack the staff resources to support all victims of sexual assault while providing evidence and have capacity to support only to the most high-risk and vulnerable witnesses while they are actually giving evidence .

SAS/ CASAs and other professional agencies who work with victims of crime appreciate the support offered by the Court Network volunteers but submit that VS court related trauma would be reduced, and the quality of evidence provided by the victim/witness would be improved if there was a trained professional providing court support.

### **Independent Sexual Violence Advisors**

This paper also raises questions about the need for Independent Sexual Violence Advisors as are funded in the UK.

In Victoria, the advocacy component of the CA role contains some similarities to the UK Advisor role. In performing their advocacy roles, CAs say that many VS experience the legal system as abusive, collusive and as a further betrayal of trust. Many say VS end up being further traumatized.

Some of our members believe that CASA's are best placed to offer this support given their therapeutic and advocacy role, and that it would be preferable to formalise this role and better resource CASA's. There is an alternative view that it can be challenging for CAs to try to provide neutral information about reporting options given SAS knowledge of how traumatising the justice system can be for clients.

SAS Vic would welcome further discussions about the role of Independent Sexual Violence Advisors positions: whether separate positions should be created; whether SAS should be better resourced to strengthen CAs legal advocacy role; or alternatively, whether SAS might be funded to employ Independent Advisors.

There are pros and cons to creating separate Independent Sexual Violence Advisor positions. Drawbacks include that VS would be required to get to know another person when SAS CAs often already focus on impacts of dealing with legal system as part of the counselling relationship. Benefits would include that the creation of separate Independent Sexual Violence Advisor positions would provide VS with additional specialist support and CAs would

be freed up to focus on trauma counselling and recovery goals. These roles could be co located within SAS or MDCs.

### Other issues

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

The current process is too slow and can be a deterrent for many people pursuing legal proceedings. As above a specialist court would assist in speeding up the process as a whole and ensuring that the process is more user friendly for the victim survivor.

Mandatory education around family violence, sexual assault and trauma for all court officials is also key to the process working effectively.

We also support the specialisation of sexual offences prosecutions at the Office of Public Prosecutions.

## C: Defining Sexual Offences

### What are sexual offences

*Is there a need to change any of Victoria's sexual offences, or their application? If so, what changes?*

This paper references the recent New South Wales Law Reform Commission consideration of introducing another offence with a lower maximum penalty. While we agree that such an offence may lead to more convictions, we would be concerned about the message this would send to the community, and the impact on clients.

Clients are already distressed when charges are dropped in plea negotiations. Often the charges that are dropped are those involving penetration related charges. Client experience of plea negotiations is often that perpetrators end up receiving 'a slap on the wrist'. The proposal to create another offence with a lower maximum penalty would likely have the same impact on VS as plea bargaining.

### Communicative consent model and reasonable belief in consent

*How well is Victoria's model of communicative consent working? Should there be any changes?*

SAS Vic supports a model which requires parties to demonstrate that they took steps to ensure that the other party was consenting.

The community needs significant and ongoing education about what is expected in terms of consensual sex, and what that means in practice. The following core elements must be included:

- Consent needs to be mutual (both people have to agree) and must be continuous.
- There needs to be widespread recognition that a person has the right to stop at any time or change their mind at any time, and just because someone has said yes to one thing doesn't mean they have consented to anything else.
- Enthusiastic consent should be obtained each and every time people have a sexual encounter, regardless of whether or not they have been intimate before.
- The important part of consent is regularly checking in with your partner to make sure that they are still wanting to proceed.

### Technology facilitated sexual offences

*Is there a need to change any of Victoria's technology-facilitated sexual offences, or their application? If so, what changes?*

While the E- Safety commissioner can currently remove content from the internet, this process is difficult and a complainant currently needs to find and provide a URL address themselves, leading to possible re-traumatisation and exposure.

SAS Vic would support responsibility for this to be shifted to investigators, and the process to be streamlined.



We refer the Commission to the Australian Institute of Criminology report on *Image-based sexual abuse: Victims and Perpetrators*<sup>25</sup> for further information.

Children and young people are particularly vulnerable in this area. Any recommendations must be mindful of child development, trauma and attachments issues.

### Are other sexual offences needed

*Are new offences or changes to offences needed to address existing or emerging forms of sexual harm? If so, what new offences or changes? ( eg sending unsolicited sexual images; non-consensual condom removal)*

SAS Vic would support further exploration and training in relation to stealthing offences- new offence requiring training and standardised response.

We would also support further exploration around law reform, accountability, standards and community guidelines around social media sites. Broader regulations need to be created about content that can be sent/received/shared.

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<sup>25</sup> <https://www.aic.gov.au/publications/tandi/tandi572>

## D: Sexual Offences: Report to Charge

### Specialist approaches to investigating sexual offences

*How well are Sexual Offence and Child Abuse Investigation Teams (SOCITs) and Multidisciplinary Centres (MDCs) working? How can they be improved?*

#### **Sexual Offence and Child Abuse Investigation Teams (SOCITs)**

Our members report some very good SOCIT responses to VS of recent sexual assault. Many SOCIT members are empathic, and victim focused.

However, VS experience is variable, and a common complaint is that they are not kept informed of what is happening with the reporting process. Many VS complain that they are not updated re the investigation and feel anxious about contacting police for fear of being seen as a nuisance.

The need for the practice of SOCIT officers to be trauma informed is essential, especially when dealing with sexual assault victims at the point of crisis care. Some SOCIT interviews occur in VS homes or at a service with the CA present and this is seen as a great option for helping VS feel safer. This approach could be offered more regularly rather than only when a CA has advocated for this to happen. SOCIT needs to connect people with support services – outside MDCs this is variable

VS (and those who are supporting them) need to be informed about investigation processes, including why some alleged offenders are arrested and brought in for questioning while others are asked in for questioning and can decline.

Following a range of reforms following the 2004 VLRC report<sup>26</sup>, our members say that SOCITs appeared much more inclined to routinely interview persons named as perpetrators. As a result, even when the questioning process did not result in charges being laid VS at least felt their report had been taken seriously and that the perpetrator had experienced a level of being held to account.

SAS Vic is concerned that SOCIT practice has changed in relation to this over the last few years and that some investigations appear less thorough. Increasingly, VS (even pre-COVID), are being asked to write their own statements, often at home alone and unsupported, and email it to SOCIT.

We don't believe that this would occur with any other serious form of crime. Given SOCITs aim to follow 'a victim-led process', police must be aware of how traumatic that can be for someone who has been sexually assaulted. Currently VS commonly experience a lack of continuity of care in their contact with SOCIT.

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<sup>26</sup> Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)

VS will often receive a generic letter stating that the brief of evidence has not been authorised, without a phone call or explanation. This is experienced as insensitive and depersonalised and needs to be addressed and remedied by SOCIT.

SOCIT need more resources to deal with sexual assault as rates climb to pandemic levels in our community. VARE transcripts are not made available to VS due to costs; and sometimes VS even struggle to get copies of their statements.

We would recommend extending the use of VARE statements to people currently ineligible but who are highly traumatised by the idea of spending so long preparing a written statement. VARE generally offers a kinder court experience for VS without precluding cross-examination.

Other recommendations from our members in relation to SOCIT include:

- That VicPol offer internships within SOCITs for CALD and Indigenous officers to increase responsiveness to these communities
- SOCITs need to expand, communicate and display resources about safety for and openness to those from the LGBTIQ community

The needs of children and young people are often misunderstood or not taken into account. Child development and the impact of trauma must be incorporated into the SOCIT approached to V/S who are young.

This paper includes a note in relation to the 'options talk':

*'SOCIT investigators or CASA counsellors have an 'options talk' with the person who has reported the sexual harm'<sup>27</sup>.*

Common feedback from VS is that case updates are infrequent and they often feel left out or not a part of a process that should be about them. Many feel distressed by a lack of communication and find it isolating to not know what's happening. The SOCIT team role would benefit from the addition of client liaison officers with social work or other relevant professional backgrounds, who would be allocated to every case. This role could include holding the VS case, staying informed about the investigation, and ensuring communication protocols and standards in the police Code of Practice are followed.

Another option could be co-locating SAS reps at SOCITs across the state to maintain VS support options.

### **Multidisciplinary Centres**

MDCs aim to provide a collaborative, wrap-around service that is trauma-informed and best practice, that offers an efficient and effective pathway for VS to access counselling, support and justice. There are seven MDCs in Victoria, with another planned for Shepparton.

While the core partners in all MDCs are SOCITs, CASAs, Child Protection, and community health nurses, individual arrangements at different MDCs sees other services (including Family Violence Investigation Units and Victims Assistance Program) being co-located.

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<sup>27</sup> VLRC Issues Paper D: Sexual Offences: Report to Charge'. P4

MDCs seem to promote improved outcomes for clients, although legal and criminal outcomes continue to be frustrated by an aged and mostly patriarchal court system, that is largely resistant to changing beliefs about and attitudes towards victim survivors of sexual harm.

There are many advantages to the MDC model. Co-location has meant that core partners are able to develop local arrangements that enhance the VS experience. Some examples of benefits include:

- More opportunities for MDC partners to come together regularly and early re cases; clear roles in relation to FV police and SOCIT; and clear protocols and processes for planning – re who what takes what role and when
- Availability, ability to link client in the same building as other services
- Police learning from and incorporating CASAs trauma informed knowledge and approach
- Cross sector training, including CASAs providing training re our work; coming together around a composite case study
- Our services able to respond quickly when asked to by Police
- Some improvements in continuity for VS - consistent recording, handover, practices re victim/survivor

All MDCs have forensic suites, in principle allowing for a VIFM FMO to attend and conduct a forensic medical examination (FME) of a VS where emergency medical care is not required. In instances where injuries have occurred and medical treatment is required, a VS is taken to the emergency department of a hospital. In practice, this only occurs in some MDCs. In others, VIFM have yet to take advantage of the forensic suites.

With the introduction of The Orange Door model across Victoria, there is work to be done to reconcile the two different multiagency models, and consider whether additional service partnerships would be beneficial as part of the MDC model. Consideration of partnerships with for example the OPP; and with mental health and AOD services would be worthwhile.

Some gaps and issues remain in relation to the MDC model:

- Clear written information is still needed for clients regarding the investigation and legal process, in community languages.
- Some MDCs report continued ‘siloeing’ of approach and inadequate understanding of each other’s work and perspective.
- Delays and inadequate resources - eg SOCIT informing clients that there is no progress on their case, due to competing demands. Clients understand this to mean that other cases are more urgent, minimising their experience. This is not trauma informed or victim centric practice.
- Communication issues- SOCIT not getting back to clients in a timely way, and unable to follow the code of conduct potentially due to lack of resources
- Lack of stability in staffing – changes of staff in SOCIT roles, and undervaluing of roles.
- Continuity/handover of work with specific cultural cases not always handled sensitively or in good faith for the VS.
- Need for collaborative and purposeful induction processes for new members of an MDC in relation to other partner organisations. This requires more than a simple informal introduction.

- The structure of the current MDCs Statewide Operational Reference Group (SORG) is not conducive to collaboration, problem solving and innovative best practice. The current SORG representatives are not in the position to manage up the challenges and suggested best practice changes discussed in the meeting.

### The investigation process

*What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?*

*What other issues need to be addressed to improve the experience of the police investigation process for children who have been sexually harmed? How can they be addressed?*

*What other issues need to be addressed during the investigation process to support successful criminal prosecutions in sexual offence cases? How can they be addressed?*

### The initial police response

CASAs / SAS provide 24-hour crisis care support to recent VS of sexual assault. From the time of first report, VS have the right to access timely and consistent information and support. While this is embedded in the VicPol Code, there is a need for improved consistency and timeliness re police notifying CASAs rostered crisis workers, so they can be in attendance early in the CCU process, providing independent support and advocacy to VS.

The purpose of the ‘options talk’ provided by SAS/ CASA CA is different to the ‘options talk’ provided by police. It is important that these two conversations with VS not be conflated in discussions about responses to recent sexual assault. SAS/ CASAs and SOCITS have different mandates and roles in relation to responding to VS of RSA.

SAS Vic submits that the presence of a CA during the police options talk should be regarded as part of best practice support offered to VS. It should be considered as part of the forthcoming review of the Victoria Police Code of Practice for the Investigation of Sexual Crime (2016).

### Forensic medical examination (FME)

There are many issues of concern currently in relation to FMEs in Victoria. While some challenges already existed in relation to providing FMEs in a ‘victim-centric’ way, decisions by VIFM as COVID hit have severely limited VS options and choices in relation to reporting sexual assault and choosing to proceed with criminal charges.

The Victoria Police Code of Practice for the Investigation of Sexual Crime (2016)<sup>28</sup> details the roles of key partner agencies including CASAs, VIFM / VFPMS, and DHHS/ Child Protection; and other support agencies including the Child Witness Service (CWS), the Witness Assistance Service (WAS), Victim Support Agency (VSA), Court Network, and Victims of Crime Assistance Tribunal (VOCAT).

The Code describes the agreed process for conducting an FME, and principles in relation to the location that should apply in relation to FMEs:

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<sup>28</sup> Victoria Police Code of Practice for the Investigation of Sexual Crime (2016)

### 7.3.6 Which ED/CCU/MDC is the nearest?

When deciding on which examination location to use on behalf of the victim, the best interests of the victim must be the primary consideration. Priority will always be given to the victim's immediate medical requirements, which may dictate immediate transfer to a hospital ED, otherwise, the location decided upon should be the one that can provide continuity of care. Consideration should be given to the availability of disabled access and future access to counselling services. The decision should not be based on what is in the best interests of police, the FME or CASA.

In April 2020, VIFM made the decision to limit FMEs to three metro locations. This has created additional barriers and unwarranted stress for VS in relation to deciding whether or not to report and follow through with criminal charges. Under this new arrangement (at time of writing – unchanged by VIFM) a VS is required to travel across Melbourne to either the RWH or to Eastern Health for an FME.

We are concerned that the changes introduced by VIFM are deterring victim/ survivors from seeking assistance and are impacting on their options to pursue formal prosecution further in their recovery journey. We are also acutely aware that following the changes made in April 2020, forensic medical examination remains dependent on the victim survivor pursuing criminal prosecution. SAS Vic believes in the importance of all victim survivors having access to a forensic medical examination regardless of police referral or institution in the context of COVID-19.

Due to VIFMs restrictions on locations for FMEs, 'just in case' sexual assault examinations have also ceased since this time. Many victim survivors report the importance and value of keeping their options open regarding future police reporting and pursuit of criminal prosecution. It is difficult for many victim survivors to make the decision regarding a formal police report in the hours immediately following a sexual assault.

In recent months as Victoria has seen an easing of restrictions, sexual assault services have noted a significant increase in referrals and believe that this would be evident within CCU presentations were restrictions to the criteria and locations for Forensic Medical Examinations reviewed. Instead, reporting rates have dropped and VS options to pursue charges have been severely curtailed due to lack of timely evidence gathering.

Other recent changes to VIFM services have involved the increased recruitment of male FMOs. Given the strongly gendered nature of sexual assault, our members report that clients are being adversely impacted by this practice.

*A 32-year-old VS had been raped in her home 48 hours prior. She attended the CCU with a friend and Victoria Police SOCIT who had gathered evidence from her home before attending the hospital with the intention of receiving a Forensic Medical Examination (FME) and crisis counselling. During the options talk with the CA from CASA, the victim-survivor spoke about the deleterious impact of the rape on her sense of safety and wellbeing and her difficulty sleeping since the assault. Her distress was significantly heightened when she learned that the FMO was male. The victim-survivor then left the CCU without receiving an FME, despite having already reported the crime to police and permitting the collection of forensic evidence from her home, saying 'I'm not going to let a man touch me and get raped all over again'.*

Counsellor/Advocate

Additionally, the Victorian Forensic Paediatric Medical Service (VFPMS), the specialised paediatric (for children and young people) medical service, provides forensic clinical examinations and assessments for children under the age of 18. It operates at two sites in Melbourne: at Monash Health, and the Royal Children's Hospital.

In regional areas, if a paediatrician is available, an FME may be conducted at a local hospital. If not, children and young people requiring an FME must be transported to Melbourne to one of the two VFPMS sites. VFPMS staff are also not part of the MDC service so again families have to travel to get a forensic medical service even though they attend a metro MDC.

Current limitations of forensic medical availability require urgent review, especially across regional Victoria. The current contracting model, with police contracting forensic medical services to VIFM is not working. VIFM currently operates autonomously and continue to initiate changes to their processes (locations, recruitment), in isolation from other sexual assault system partners. The relationship between all partners needs to be more collaborative and systematised to avoid an "us and them" dynamic. Consideration of building systems on a SART type model could assist.

There are ongoing issues with the availability of FMOs, with only one or two doctors on call per night per large catchment being patently inadequate. Waiting for a FMO for sometimes up to 10+ hours can lead to VS not wanting to go ahead and feeling re-traumatised.

As referenced earlier in this submission, Just in Case (JIC) medical exams should be a standard response option for all VS regardless of location. All VS should have the option of having a FME regardless of reporting to police, with evidence held for a minimum of 6 months so that VS have time to decide whether to exercise their legal options.

### **Taking a formal statement**

Taking of a formal statement must occur in a private setting. Appropriate supports need to be in place, including the use of interpreters for example, of intermediaries, or of therapy dogs where that would be of assistance to the VS.

Critically, there cannot be any judgement in relation to the VS remembering of information, or how they state that information. In relation to young people in particular, there needs to be an acknowledgment that remembering may occur over a period of time. The process must be victim centric

### **Visual and Audio Recorded Evidence VARE (see paper E)**

We would recommend extending the use of VARE statements to people currently ineligible but who are highly traumatised by the idea of spending so long preparing a written statement. VARE generally offers a kinder court experience for VS without precluding cross-examination.

### **Intermediaries and ITPs**

Being interviewed by Police can be frightening and confusing for anyone wanting to report a sexual assault, given the trauma they've experienced. For people with disabilities the level of fear and confusion can be magnified.

The Victorian Office of the Public Advocate (OPA) Independent Third Person program (ITP) trains volunteers to attend police interviews for adults and young people with a disability to ensure that they are not disadvantaged during the interview process.



The Victorian Intermediary Pilot Program, operating through DJCS since 2018, helps to reduce barriers to communication that children or people with cognitive impairment may experience in giving their evidence and being cross examined. As officers of the court, intermediaries provide an assessment and recommendations about communication needs to Sexual Assault and Child Abuse Investigation Teams prior to a statement being taken, and again to the court if the matter goes to trial.

The Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004) helped inform the development of the Making Rights Reality (MRR) program<sup>29</sup> that was launched in 2011. The 2004 VLRC report found that:

*'It is clear that the criminal justice system offers people with a cognitive impairment very limited protection against sexual assault,... However, with adequate assistance many people with a cognitive impairment can tell the police what has happened to them and can give evidence in court'.<sup>30</sup>*

An evaluation of MRR pointed to elements of system reform that can increase access to justice for people with disabilities who have experienced sexual assault. The MRR evaluation also recommended the establishment of a 24-hour advocacy service for people with cognitive impairment reporting sexual assault to the police.

Since that evaluation, MRR has focused more heavily on access to counselling through resourcing of counsellor/advocates; building of networks to increase referral pathways; advocacy regarding police reports; and supporting applications to Victoria's Victims of Crime Assistance Tribunal.

The OPA ITP program continues to run across Victoria, and the CASAs are actively involved in assisting with training volunteers.

### **Ongoing investigation and outcome**

For all VS, informing the SAS/ CASA worker of the progress of the investigation is critical.

Throughout the investigation, the treatment of young people needs to be considered differently to that of adults. Young people have specific developmental needs. They are not little adults and are impacted differently by the trauma of abuse and violence. Many of the young people we see have been exposed and impacted by Family Violence as well as sexual abuse.

Police need to inform children /young people and their parents of the details of the process and timeline. This is an essential process that is often lacking or non-existent. Children and young people are severely impacted in the delays the Courts impose on families. They often have put their lives on hold waiting for the Court case.

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<sup>29</sup> <https://www.secasa.org.au/programs-and-services/making-rights-reality>

<sup>30</sup> Victorian Law Reform Commission (VLRC) Sexual Offences Final Report (2004)



### **Discontinuing an investigation**

*Do you support access to alternative ways of reporting sexual harm? Why or why not? If you support alternative ways of reporting sexual harm, what features should they have?*

The views of the VS should be sought and their option to appeal to the OPP communicated.

### **Should there be other ways to report?**

Both QLD and NSW have schemes which allow victims to anonymously report sexual assault. The Victorian scheme, SARA which was implemented by SECASA is no longer available, partially due to lack of funding.

Our experience is that some VS found the SARA option helpful and it was often a first step to making an actual police report. SAS Vic would support VicPol implementing an online anonymous sexual assault reporting form and recommend that they seek input from SAS Vic in the development and design of this process. VicPol should also instigate discussions with other police jurisdictions regarding the potential for a national scheme.

## E: Sexual Offences: The Trial Process

### Charging and prosecution decisions

*How well are charging and prosecution decisions for sexual offence cases working? How can they be improved?*

While we appreciate that the VLRC recently completed an inquiry into committal proceedings and did not recommend abolishing committal hearings in sexual offence cases, SAS Vic remains concerned about the impact of a VS having to give evidence twice during the trial. If brief of evidence is strong enough to authorise charges, it should be considered strong enough to go straight to trial.

Paper E notes that the system is guided by the rule that 'charges must have a reasonable prospect of conviction'. However conviction rates are extremely low so the majority of cases do not proceed. This becomes a Catch 22: VS are often blamed when cases are dropped after committal, and clients are told they would not make good witnesses or that it would be too much for them if they continued.

We would argue that the OPP must seek VS views before deciding to discontinue, however this doesn't happen in practice. One SAS CA attended a court hearing where the client fought extremely hard to go to trial with no success. It was clear to the VS that the OPP had made the decision prior to meeting with her that they would not proceed with the case.

SAS Vic support the recommendation in the Committals report (not yet implemented) that Magistrates must consider the trauma impact on VS when approving cross-examination.

Magistrates and Judges need to actively monitor the language used by defence barristers to 'dehumanise' and discredit the victim, so that jury members will be less likely to relate to them. In the following recent example of 'troubling' questioning<sup>31</sup>, the defence barrister was criticised by a Magistrate for asking "inappropriate" questions of the female complainants.

*"On the issue of cross-examination, the court was not assisted in its task by questions put by defence counsel [...] such as the length of the average female labia majora, or whether a complainant was proud of her figure or other troubling and outdated stereotypes of sexual assault victims," she said. "Times have changed... It was perturbing that defence appeared unfamiliar with section 41 of the Evidence Act which prohibits such inappropriate questions."*

[Magistrate]

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<sup>31</sup> <https://www.abc.net.au/news/2020-12-16/magistrate-criticises-craig-mclachlan-lawyer-over-questioning/12985916>

In relation to charging and prosecution decisions, in 2016 the VLRC recommended giving VS the right to apply for an 'internal review of a decision'. We would support a review of the extent to which this is occurring, and steps that might be taken to ensure VS are aware that this is an option. we believe this needs to occur.

Our members report that clients are not being considered in the trial process, that they are treated as witnesses rather than as the victims of crime.

SAS Vic members report that there are numerous challenges with the prosecution process, including that clients are not being given adequate information by the police; and they aren't made aware that they have rights in the process. Nor are they made aware that they can apply for a review of the decision to prosecute or not; or that there is an internal complaints mechanism.

VS too frequently are the last to know or be informed about decisions such as why some charges are dropped or why plea bargaining is being considered; and often only being told at the same time as the court. Neither are VS told that they can request legal representation.

### Ground rules hearing

*How well are ground rules hearings for sexual offence cases working? How can they be improved?*

SAS Vic submits that there should be consideration of 'special hearings' for all vulnerable adults (in addition to children) 'who are likely to suffer severe emotional trauma'. We believe that this would apply to most VS of sexual assault, not a small cohort. This is exacerbated by the nature of the trial process where in practice cross examination is set up to discredit the VS/ witness. This is likely to be experienced as intimidating and distressing. The problem is with the system - not the vulnerability of the witness.

Further, intermediaries are not available in regional areas. This results in high financial costs for clients and often loss of emotional and personal supports available to them when they have to go to Melbourne.

### Special procedures and alternative arrangements for giving evidence

*How well are special procedures and alternative arrangements for giving evidence in sexual offence cases working? How can they be improved?*

SAS Vic recommends that special procedures should be available for all victims of sexual crimes and ensuring that clients are made aware of the options well before court day.

Other recommendations should include accommodating the use of therapeutic animals in the court.

During COVID, VS were able to give evidence at a SOCIT, not in the court. VS reported the process to be supportive and safe. Not having to be present physically at the court proved beneficial to recovery and healing. COVID showed that remote witness facilities could operate from a variety of settings, not only at the court building. Regional and rural victims would benefit from a range of other options.

The use of screens needs to be monitored more carefully, as some victims report that camera angles when not checked carefully has meant they could see the perpetrator.

### Laws about the trial process

*How well are jury directions for sexual offence trials working? How can they be improved? (re Consent / Delay / Credibility)*

Juries need to be educated. We know that myths and misconceptions about sexual assault are widespread in our community. If the current system is maintained, judges need to play a more active role in this. See our comment elsewhere in this submission in relation to introducing professional juries.

#### **Jury directions**

Jury directions tend to be either based on a law that is out of date or based on a judge's understanding of the nuances involved in sexual abuse. Juries currently are not provided appropriate information about the nature, prevalence and dynamics of sexual abuse, and so we can't assume that jury members don't buy into rape myths.

During jury selection processes, defence lawyers choose people who support those myths. Our services report that juries seem also to be gender weighted in favour of white males and older white women. This doesn't reflect or represent the community.

The perpetrator and defence lawyer currently wield a lot of power and control in the legal process. Not being required to give a reason for why jurors are challenged is part of that.

#### **Complainant's sexual history**

Reforms to sexual offence trials were supposed to restrict evidence and questioning about a complainant's sexual history. In reality this is not happening, Clients' sexual history is still being used to diminish their experience, discredit them or cast doubt on their statements and on what has happened.

#### **Joint trials and tendency and coincidence evidence**

Paper E notes that in Victoria there is a presumption in favour of joint trials for sexual offence cases. In practice however, separate trials are ordered 'more often than they need to be'.

SAS Vic believes that there should be more joint hearings where there are multiple victims of the same offender. Joint trials can be less traumatizing for victims where they feel supported by other complainants. Joint trials also enable patterns of offending by a perpetrator to be known by the court. Perpetrator's offending history needs to be available to the jury.

We would support a Model Bill that would change the test on tendency and coincidence in Victoria, as has happened in NSW.

## Protection of Records

The 2015 VLRC Victims of Crime Consultation Paper<sup>32</sup> dealt with issues relating to ‘confidential communications’:

*Records of communications between sexual assault victims and the professionals counselling or treating them are referred to in Victorian law as ‘confidential communications’. Confidential communications may be sought by an accused in preparation for and for use throughout all stages of a criminal trial.*

*The confidential communications provisions in Victorian law provide for some degree of victim participation and recognise the need to protect the privacy of victims from unjustified interference and thereby encourage the use of counselling and the reporting of sexual offences to police...*

In practice, protections relating to a VSs confidential medical or counselling records are constantly overridden during sexual offence trials. SAS Vic members say that they are rarely able to stop a subpoena despite evidence of s32 being met. The judge can make a decision on what they think is relevant in the file to be shared, and that can include information that is irrelevant and/ or detrimental to the client. The protections are not working in practice.

It is noted that handing over documents (client files) to a court ‘can be a burden for complainants’ but this is also an issue for sexual assault support services who must engage legal representation to to firstly advise the court that the information being sought is subject to a section 32 and then request that the court protect this information. There is significant financial burden on the services to absorb this.

SAS Vic notes the VLRC finding in the 2015 paper that:

*Tasmania’s Evidence Act 2001 arguably provides the greatest degree of empowerment to victims in relation to confidential communications. It prohibits a ‘counselling communication’ from being produced to court, disclosed in any criminal proceedings or admitted into evidence. The only exception is where the victim consents.<sup>33</sup>*

Victoria could consider a similar initiative to the NSW funded independent legal service that assists VS to deal with legal proceedings when their counselling files are subpoenaed.

Further protections are needed to practice procedure regarding the protection of records, to prevent defence lawyers from continuing to undertake ‘fishing exercises’ in relation to gaining access to VS counselling records. This provision has not proved effective and further action is required.

This is particularly pertinent within health-based CASAs where it is common practice for defense lawyers to make a broad request to the health service for information in an attempt to secure CASA counselling information. Once again it should be noted that the sexual assault support service must engage legal representation to firstly advise the court that the information being sought is subject to a s32, and then request that the court protect this information. This places significant financial burden on the services to absorb costs.

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<sup>32</sup> <https://www.lawreform.vic.gov.au/content/victims-crime-consultation-paper-html-0>

<sup>33</sup> <https://www.lawreform.vic.gov.au/content/7-role-victims-pre-trial-proceedings>

*Is there a need to change any laws on evidence or procedure for sexual offences? If so, what should be changed?*

Consideration needs to be given to the option of first disclosure being used as evidence in specific cases, for example with children. Small children often only disclose to a close family member such as their mother, but what the mother then shares with police is not considered evidence, which must come directly from the child. It is developmentally unwise to expect that, say, a 4yo child will then disclose trauma to a stranger.

The high attrition rate for sexual assault in the adversarial system is clear evidence that the system is failing to deliver justice. A VS past mental health issues for example should not be able to be used to discredit them - this information is not only distressing for the VS but often draws erroneous links to the assault. Additionally, mental health issues can make someone more vulnerable to sexual assault.

There is a need for the VS to have their own advocate throughout the trial process. This role would work alongside the prosecution but could ensure that the VS has a voice in proceedings. As witnesses for the crown, VS often feel silenced by trial processes. Consideration could be given to introducing a state-appointed advocate/lawyer who can represent the VS throughout a trial, and interject if questioning is distressing for the VS

### Appeals

*What are some of the challenges with the appeals process for sexual offence cases? How can these be addressed?*

Appeals prevent VS moving on with their lives. Consideration should be given to limiting the right of appeal to where there is additional evidence rather than there being an automatic right.

### The Children's Court

*How well does the Children's Court of Victoria deal with sexual offence cases? What should be improved?*

The Children's Court needs to be properly funded to do what it is set up to do.

There is limited support for young people in court process, and little support available to assist them establish relationships and feel safe enough to actually talk about what has happened to them. There is also little acknowledgement or understanding of the impact of sexual abuse on children.

A lot of cases don't get to court, and so little else is available for young people to experience a sense of justice being done. Restorative justice approaches should be considered where safety and protection of the child or young person can be assured, and where perpetrators can be held accountable and kept in view.

## F: People Who Have Committed Sexual Offences

### Diverse needs

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

There is a need for a series of diverse interventions before offenders start to offend or are at the early stages of a sexual offending career. This needs to be uncoupled from the justice system but with powers to restrict the offenders behaviours.

### Responding to offending behaviour

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

There is a need to temper sentencing with high quality intervention programs and restorative justice programs in prison – as well as responses to intervene and interrupt in socially unacceptable behaviours [especially for males].

Rehabilitation is usually only available to high-risk recidivists whereas all offenders need rehabilitation and supports in addressing behaviours and the risks they pose to the community. Reintegration is poor and often offenders are left to their own devices. What is needed is assistance with safe and stable accommodation, violence prevention programs, mental health evaluation and care, education and employment.

Options for therapeutic diversion or mandatory intervention programs for offenders beyond the age of 18 should be explored further.

### Post sentence measures for sexual offending

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

Post sentence detention can work if an offender has the capacity to integrate back into an appropriate community; however often transitional housing can be degrading and foster further poor social interactions and deviant fantasies.

### Early intervention and diversion

*Is there a role for early intervention or diversion programs for adults responsible for sexual harm? Why or why not? If you support early intervention or diversion programs for adults responsible for sexual harm, what should be the features of the program?*

Early interventions need to include both offence-specific and offence-related programs.

This paper notes that most people who are responsible for sexual harm never enter the CJS and that other ways to change attitudes may be via school based and community education programs that aim to change public attitudes (primary prevention). This includes early school education and interventions.

Many SAS services are currently engaged in this kind of work via supporting Respectful Relationships Education programs in schools but are not funded to actually undertake this work.

We would encourage the VLRC to consult further with members of SAS Vic's Harmful Sexual Behaviours Network in relation to this.

### Children and young people engaging in harmful sexual behaviour

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

Therapeutic Treatment Orders (TTOs) provide options for intervening with children and young people who engage in harmful sexual behaviours. TTOs recognise that responses to young people must be different to that required to address adult offending.

They provide opportunities to support young people to understand their use of HSB and intervene to prevent further harm, via therapeutic support. It would however be important to understand more deeply the pathways into using HSB, and the critical points in time where intervention would prevent the onset of the behaviour.

There is a need for lawyers to receive further education about TTOs. Lawyers have been known to advocate to prevent their clients engaging in a TTO despite TTOs being informed by best practice and evidence.

### Other views

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

Alleged offenders are at times offered more support and protection than VS in investigations and during trials. The offender may not necessarily be arrested and has the right to say "no comment" in response to allegations. Many VS are distressed by how they perceive the perpetrator is protected by laws and processes.

Young people need therapeutic, non-judgmental interventions and restorative justice type programs. All punitive measures should be Judge dependent (i.e. Judge discretion) not mandatory Sex Offence Registration for young people.

HSB programs already embed a restorative process into therapeutic responses for intrafamilial HSB. SAS Vic has an upcoming workforce development training program planned with the STOP program in NZ who use a restorative model<sup>34</sup>.

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<sup>34</sup> <https://www.stop.org.nz/about/stop-overview/>



# G: Sexual Offences: Restorative and Alternative Justice Models

## Restorative justice

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

Justice looks different to different people. SAS Vic considers that options for Restorative Justice (RJ) should be available and promoted to clients. Often a VS may just want the perpetrator to understand the impacts of their behaviour, acknowledge the crime and / or offer an apology. They may not necessarily want the offender to serve jail time.

RJ can also assist in shifting the common negative core beliefs of VS that they bear: responsibility, shame, guilt, feeling that they are bad.

For many offenders, acknowledgement of guilt can be unlikely if the consequence of admission of guilt is jail. RJ options can encourage perpetrators to acknowledge what they've done. The paper asks whether a person responsible for sexual harm should or should not receive an incentive to participate in restorative justice, such as a reduced sentence.

We submit that the focus of an RJ model should be about healing and justice for VS. An offender's participation needs to be motivated by genuine victim empathy; reduced sentences should not be connected with participation.

## What should a restorative justice model look like?

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

SAS Vic supports the Best Practice principles outlined in Table 2 of Issues Paper G.

Fundamentally RJ must be safe, well structured, and include clear processes around what's discussed and safe for all parties (victim-survivor and the accused). It must also be acknowledged that RJ can take a long time.

It should under no circumstances be considered a 2nd tier system, where cases can be 'shuffled off' into the restorative justice system, thereby prioritising alleged offenders and leaving victim-survivors in the lurch.

Cases are sometimes (particularly where complainants with a disability are involved) shoved off to this system. Eligibility criteria needs to be very tight in relation to the types of cases and offences that might go into RJ. Services have reported case examples including where an offender wanted it to be acknowledged that his victim was involved and played a part and encouraged the assault.

RJ needs to be a standalone model. SAS/ CASAs can provide advocacy and referrals to RJ but are not the best fit in terms of hosting the RJ response. As counselling and advocacy services SAS/ CASAs are understandably biased towards victims.

RJ must also be well resourced, with well trained staff who are well supervised.

## Inquisitorial models

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

The current legal system has a part to play in dealing with sexual offences, however it can prompt more harm because of its adversarial nature, and be re-triggering, re-traumatising and drag on interminably. Outcomes in sexual offences trials are often not very satisfactory and rarely meet expectations.

An inquisitorial process can offer an alternative where clients can be heard and acknowledged; and should include diversional systems for assessment, education and support.

## Speaking and being heard

*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?*

This paper describes the option of Victim Impact Panels which exist in some other countries. These panels may have similar aims to the 'Outsider Witness Groups' utilised by some CASAs. These are a part of the narrative therapy approach devised to support people to share their story with others as a way of gaining acknowledgement of what they have survived. SAS Vic / CASAs may be able to assist with further exploration of Victim Impact Panels as an option for VSs when their case does not proceed.

VOCAT has always offered an opportunity for VS to be heard, through having a magistrate respond and acknowledge them and the harm they have experienced. This is often in contrast to the VS experience in a court and through a criminal trial.

## H: Sexual Offences: Civil Law and Other Non-Criminal Responses

### Civil law, responding to sexual harassment, VOCAT, redress schemes

*What aspects of other justice processes provide best practice examples for supporting people who have experienced sexual harm?*

*How can the interaction between other justice processes and the criminal justice system be improved?*

SAS/ CASA CAs frequently support VS to make complaints against police who did not conduct interviews in a trauma-informed manner

Increased visibility of perpetrator location/ address and their movements is required for VS. There are currently limits to the ability of FV and SA services to adequately safety plan if locations are not updated.

Sexual assault cases should remain at one police station - transfers and handovers between officers can complicate communication. Sexual assault cases should be exempt from current standards that the investigation remains in the catchment of the crime.