

## SUBMISSION

### ALRC: Justice Responses to Sexual Violence

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## Acknowledgement of Country

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Women's Legal Service Victoria acknowledges and pays respect to the traditional custodians of the land on which we work, the Wurundjeri People of the Kulin Nation, and all Aboriginal and Torres Strait Islander people across Australia. We pay respect to Elders past and present.

We honour Aboriginal and Torres Strait Islander peoples' ongoing connection to Country, including land, sea and waterways.

We also recognise the strength and resilience of Aboriginal and Torres Strait Islander people, especially those who have been affected by domestic, family and sexual violence.

## About Women's Legal Service Victoria

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Women's Legal Service Victoria (Women's Legal) is a not-for-profit specialist organisation that has been providing free specialist legal services to women since 1982. We work with and for women and non-binary people to address legal issues arising from family violence and relationship breakdown.

Women's Legal exists to help build a gender equitable country. Our unique contribution to this vision – as lawyers, advocates and educators – is to work alongside women and non-binary people experiencing disadvantage to promote their rights to live free from violence and make informed choices about their relationships.

Women's Legal specialises in family violence, family law, migration law, child protection and victims of crime assistance – recognising the intersection between the jurisdictions. In March 2024 we received funding to partner with Victoria Legal Aid and Djirra to provide legal services to sexual assault victims as part of the Commonwealth-funded Sexual Assault Pilot Legal Service. We also established a small summary crime practice. We focus on women's safety, recovery from violence and economic security. We do this by:

- Providing legal advice and representation to women, with a wraparound model of service delivery where women are also supported by social workers and financial counsellors, depending on their needs.

- Advocating for law and policy that respects and promotes the rights of women and non-binary people.
- Building the capacity of other professionals and communities to identify and respond appropriately to legal need.

## Foundations of our submission

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Women's Legal puts women and non-binary people – individually and collectively – at the centre of everything we do. As specialists in family violence, we work across the spectrum from tertiary response to primary prevention of gendered violence. We provide cross jurisdictional legal assistance, advice and representation to victim-survivors of family violence, including sexual violence, in family law, family violence, migration and child protection. Our work also includes supporting victim-survivors of sexual violence through Victoria's Victim's Legal Service and the recently commenced Sexual Assault Pilot.

We integrate what we learn from our legal practice into our policy reform advocacy and training of hundreds of lawyers, family violence workers and financial counsellors. We undertake prevention work, including our Respect and Equality in the Legal Sector project, supported by WorkSafe Victoria's WorkWell Respect Fund.

Our submission is informed by research literature as well as practice-based evidence. In developing this submission, Women's Legal lawyers, social workers and financial counsellors were consulted, and their insights about client needs and experiences were collected. In addition to individual consultations with Women's Legal practitioners, two focus group sessions were held with Women's Legal practice teams to explore the specific questions and issues identified by the ALRC in its Issues Paper, and qualitative data was collected and thematically analysed.

## Executive Summary

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Women's Legal welcomes the opportunity to provide input into the ALRC's Inquiry into Justice Responses to Sexual Violence. Our submission focuses on questions in the ALRC's Issues Paper that relate directly to our areas of practice and where we can provide insight based on our clients' and practitioners' experience of the justice system.

Women's Legal considers improved access to legal assistance to be an overarching and urgent priority for system reform and government investment. It is critical that justice system responses to sexual violence acknowledge and appropriately consider the prevalence of sexual violence that is perpetrated in intimate partner contexts. Legal assistance and holistic, wrap-around support is required to assist victim-survivors of sexual violence to navigate the justice system and to assist with intersecting legal issues (such as family violence, family law, migration, criminal and civil justice responses like restorative justice and victim's compensation) from the time a victim-survivor is considering whether to report through to the resolution of their legal matters.

There is significant scope for reforming justice system responses to sexual violence to ensure they are trauma-informed and victim-centric. In our experience, many of our clients experience significant secondary trauma through their interactions with the justice system and this is unacceptable.

There are several barriers to reporting sexual violence that must be addressed. Criminal justice processes must be improved to better account for the needs of victim-survivors, to account for the significant trauma they have experienced, and to recognise their central role as participants in justice system processes in which they have a profoundly personal interest.

Specialisation is needed and training must be available for all professionals in the justice system who may engage with a victim-survivor of sexual violence to ensure a more trauma-informed approach. It is vital that justice system professionals are equipped with the skills to create a safe, empowering, and respectful environment that acknowledges the impact of trauma on victim-survivors, respects their rights, and involves them in decision-making processes.<sup>1</sup>

There are critical intersections with the civil justice system that need reforms to improve justice system responses to sexual violence. Women's Legal strongly supports efforts to strengthen safe restorative justice pathways as an option for victim-survivors of sexual violence. There are also critical intersections with experiences of sexual violence and other

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<sup>1</sup> See further: Chris Maylea, Esther Le Couteur, Laura Cashman, Rebecca Leon, Melanie Sherrin, Vrinda Edan, Damien Linnane, Ailsa Rayner, Panos Karanikolas & Piers Gooding (2023) With You Toolkit: Empowering Trauma-Informed Rights-Based Organisations. La Trobe University. Available at: [toolkit2.pdf \(nationallegalaid.org\)](#).

civil justice systems and processes that must be addressed including in the family law, family violence and child protection jurisdictions.

Victim's compensation is an important justice system response to sexual violence but must be designed to be trauma-informed and victim-centric. Cutting across most of these systems are victims charters, which are important mechanisms for ensuring victims' rights and entitlements are upheld. However, these are only effective when those actors with roles and responsibilities carry out their functions appropriately and can be held accountable when they fail.

## Recommendations

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### **Reporting the experience of sexual violence safely**

#### Recommendation 1:

Governments to ensure access to specialised legal assistance for victim-survivors, including legal assistance to navigate the criminal justice system and to assist with intersecting legal issues, from when a victim-survivor is considering whether to report through to the end of their legal matters.

#### Recommendation 2:

Governments should invest in legal assistance that is complemented by holistic wrap around support from sexual assault services, social workers and financial counsellors.

#### Recommendation 3:

Governments should prioritise and dedicate resources to a reform program to redress the structural, systemic and cultural barriers to disclosure, help-seeking and justice system recourse for women who experience sexual assault in the context of family violence.

#### Recommendation 4:

All legal professionals in jurisdictions where clients are likely to have experienced sexual assault should receive training so that they are adequately equipped to discuss sexual assault and support clients' access to justice and help services. Training should be developed in collaboration with the community legal sector, as providers of duty lawyer services at courts including criminal, family violence, family law, child protection, tenancy and mental health, for eventual broader roll-out to all legal practitioners.

#### Recommendation 5:

Governments should invest in collaboration and coordination across the justice system, and in strengthening the referral pathways between the legal assistance sector and specialist sexual assault services to improve family violence victim-survivors' access to therapeutic services.

### **Criminal justice responses to sexual violence**

#### Recommendation 6:

Support should be available for victim-survivors of sexual violence at the time of reporting sexual violence, including legal assistance.

#### Recommendation 7:

Victim-survivors should have access to a safe, therapeutic, trauma-informed, and culturally appropriate option to report/disclose sexual violence.

Recommendation 8:

All those working in the justice system, including police, who may come into contact with victim-survivors of sexual violence need specialised training to ensure they are skilled in responding to disclosures of sexual violence in a trauma-informed and culturally safe manner and that there is a system-wide shared understanding of family violence and sexual violence (including by implementing Recommendation 65 of the VLRC's Sexual Offences Report).

Recommendation 9:

A Police ombudsman in Victoria should be established to serve as a clear and independent avenue for victim-survivors to make a complaint about police conduct or response to their reporting of sexual violence.

Recommendation 10:

OPP intake processes should be improved to ensure victim-survivors' needs and presentation are understood, including planning and preparation about how to best work with that individual complainant in a trauma-informed and victim-centric way.

Recommendation 11:

Independent and specialised support and legal assistance should be provided for complainants throughout their engagement with the prosecution.

Recommendation 12:

Special measures that aim to minimise re-traumatisation should be adequately resourced, accessible, and available for complainants that need them.

Recommendation 13:

Supports/special measures should be evidence-based, therapeutic, client led, and be flexible and adaptable to what that person needs

Recommendation 14:

Complainants in sexual offence trials should be entitled to provide the whole of their evidence as pre-recorded evidence. Police capability needs to be strengthened to improve the quality of VARE recordings as a precursor to allowing use of VAREs as victim-survivor's evidence, in line with Recommendation 86 of the VLRC's Sexual Offences Report.

Recommendation 15:

Legal assistance should be provided to victim-survivors, including consideration of independent legal representation for victim-survivors to ensure their rights are identified and continue to be respected throughout criminal justice processes.

Recommendation 16:

Consideration should be given to increasing the availability of appropriately trained, trauma-informed, and culturally and linguistically appropriate interpreting services, with a particular focus on increasing the availability of women interpreters.



Recommendation 17:

Implement nation-wide specialist legal services for victim-survivors, including ongoing funding for the Victims Legal Service. This should include consideration of, and investment in, service coordination to deliver the benefits observed through Victoria's VLS.

Recommendation 18:

Expand the VLS to a more comprehensive, holistic service for victim-survivors, including legal advice and representation, as well as holistic wrap-around support services, to make sure victim-survivors can understand and exercise their rights in relation to confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice.

Recommendation 19:

Resources be dedicated to ensuring all professionals who might have contact with a victim-survivor have skills and knowledge to ensure responses are trauma-informed and there is a consistent quality of experience across the justice system.

Recommendation 20:

Cultural competency for justice agencies be strengthened, for example through compulsory anti-racism and cultural safety training provided by ACCOs.

Recommendation 21:

Training should be adequately funded on an ongoing basis.

## **Civil proceedings and other justice responses**

Recommendation 22:

Restorative justice schemes and traditional family violence civil justice systems must be mutually reinforcing, and any scheme should be designed with the whole system in view.

Recommendation 23:

The design and implementation of restorative justice schemes should be co-designed with specialist legal services such as Women's Legal, in order to capture the practice experience and expertise across intersecting legal jurisdictions such as family law, family violence, child protection and migration. This will ensure that the schemes are victim-centred, expert-informed, and contribute to the strengthening of the family violence response system.

Recommendation 24:

Legal assistance should be available for victim-survivors who wish to pursue a restorative justice pathway.

Recommendation 25:

To support cross-jurisdictional legal assistance, governments should implement the recommendation in the Independent Review of the National Legal Assistance Partnership review calling for an additional \$459 million for the legal assistance sector in 2025–26 and quarantined funding for Women's Legal Services that is separated from other funding streams under the NLAP.

In addition:

- Mandatory training for FCFCOA judges and lawyers in the family law jurisdiction to understand family violence including escalation of risk
- Consideration be given to processes to better align court orders, including removing the onus for victim-survivors to make application to update parenting orders.
- In order to protect mothers who have been victims of sexual violence, practice reforms should be introduced that minimise unnecessary contact with their ex-partner where possible, particularly when the mother has sole parental responsibility of the children.

Recommendation 26:

Provide additional and sustained investment in prevention and early intervention programs to identify and respond to family and sexual violence as early as possible and minimise the need for child protection involvement.

Recommendation 27:

Implement robust cultural change and compliance strategies to ensure child protection practice accords with best practice guidelines on family and sexual violence, such as the Victorian Multi-Agency Risk Assessment and Management Framework (MARAM).

Recommendation 28:

Review the permanency provisions in each jurisdiction to ensure the best interests of the child remain paramount.

Recommendation 29:

Consider legislative reforms to ensure children are only removed from the care of victim-survivor parent as a last resort.

Recommendation 30

Fully implement the Yoorrook Justice Commission Reforms to achieve self determination for First Nations children and families in the Victorian child protection system.

Recommendation 31:

*The Fair Work Act 2009 (Cth)* entitlement to family and domestic violence leave should be extended to victim-survivors of sexual violence.

Recommendation 32:

The requirement to make a police report and evidence injury should not apply to victims of family violence and sexual assault, as well as children exposed to these offences.

Recommendation 33:

Time limits for applications to compensation schemes should not apply in relation to sexual offences.

Recommendation 34:

Proof on injury should not be required for sexual offences.

Recommendation 35:

Compensation amounts should not impact a victim-survivor's ability to access other supports and services and should be protected from government debt recovery processes.

Recommendation 36:

Financial counselling should be made available to victim-survivors who receive compensation amounts, including family violence financial counselling if the sexual violence has occurred in the context of intimate partner violence.

Recommendation 37:

Robust and accessible complaints mechanisms must be available for victim-survivors to make a complaint about breaches to their rights and entitlements to ensure accountability.

Recommendation 38:

Legal assistance should be made available for victim-survivors to pursue complaints about breaches to their rights and entitlements.

## Introduction

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### Law reform in Victoria

In Victoria, there are a number of legislative and systemic reforms in place in relation to the justice response to sexual violence. The Victorian Law Reform Commission (VLRC) Inquiry into Improving the Justice System Response to Sexual Offences made 91 recommendations to address sexual violence and harm.

The *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* implemented just 13 of these recommendations, including adopting an affirmative consent model and clarifying that 'stealthing' is a crime.<sup>2</sup> These laws commenced on 30 July 2023 and as such it is too soon provide feedback on their operation or impact.

On 30 May 2024 the Victorian Government announced a package of measures intended to improve women's safety, including a new Justice Navigator pilot to 'make sure survivors of sexual assault can easily navigate support, recovery and justice options.'<sup>3</sup>

The Victorian Government is still considering the VLRC's remaining recommendations and is yet to deliver its Sexual Violence Strategy, which has been a longstanding commitment. Women's Legal emphasises the importance of finalising the strategy with development to involve stakeholder consultation and engagement with lived experience groups.

### Sexual violence in the context of family violence

It is critical that justice system responses to sexual violence acknowledge and appropriately consider the prevalence of sexual violence that is perpetrated in intimate partner contexts. Around 39% of women in Victoria have experienced physical or sexual violence since the age of 15.<sup>4</sup> According to the Australian Bureau of Statistics (ABS) Personal Safety Survey, women are most likely to experience physical and sexual violence in their own home, perpetrated by a male current or ex-partner.<sup>5</sup>

Women experiencing sexual violence and abuse within an intimate partner relationship do not necessarily identify their experience as sexual violence or want the perpetrator to be publicly held to account. In many cases, they simply want the violence to end. Broader patterns of coercive and controlling behaviour that underpin family violence isolate victim-survivors, contribute to financial and emotional dependence on the perpetrator

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<sup>2</sup> Hon Jacinta Allen MP, Media release: [Affirmative Consent Model Now Law In Victoria](#) | Premier of Victoria, 31 August 2022.

<sup>3</sup> Hon Jacinta Allen MP, Media Release: [Changing Laws And Culture To Save Women's Lives](#) | Premier of Victoria, 30 May 2024.

<sup>4</sup> Respect Victoria, [New data shows women continue to experience high rates of violence, pointing to a need for cultural change](#) | Respect Victoria, 15 March 2023.

<sup>5</sup> Australian Bureau of Statistics, 2021-22 Personal Safety Survey: Sexual Violence Release. Available at: [Sexual violence, 2021-22 financial year](#) | Australian Bureau of Statistics ([abs.gov.au](https://abs.gov.au))

and limit help-seeking. These barriers are reinforced by social and cultural attitudes that normalise sexual violence in intimate partner relationships.

Having access to early advice and information from a lawyer can help a victim-survivor understand what avenues are available to them, to make an informed decision in a supportive setting about how they wish to move forward.

In addition to helping victim-survivors understand what is involved in a criminal investigation and prosecution, legal advice can help victim-survivors understand what the various options are for a civil justice response. For example, options to ensure their safety through an application for Intervention Order, for restorative justice, options for compensation through a civil claim or under the various compensation schemes (for example the Redress Scheme, and other victim's compensation schemes), what their rights are under the Victim's Charter, and what other support options there are to aid in recovery.

In this way, early access to legal advice can help a victim-survivor determine the course of action that best meets their needs and circumstances and prevent further traumatisation through unexpected and/or unwanted interactions with the justice system.

### Sue's story

Sue\* was referred to Women's Legal by another women's legal service after Sue fled to Melbourne due to family violence. Sue had been in a violent relationship with her partner. Together, they had a young child.

Sue wanted to depart Australia to return to her home country with her child but was unable to leave the country because the Office of Public Prosecutions required her to give evidence at the criminal hearing for the perpetrator. The perpetrator was charged with serious offences against Sue which included rape and strangulation.

Sue had no option but to remain in Australia on a bridging visa E until the criminal proceedings against the perpetrator were completed. Sue was not eligible to apply for or hold any other visa and her bridging visa E had to be renewed every 3 months.

During this period of significant stress and trauma, Sue had primary care of their young child and had no work rights or access to Centrelink or Medicare on her visa. Even if Sue had rights to work, Sue wouldn't have been able to work because of the violence she had experienced, care giving responsibilities and requirement to engage in a criminal legal process.

Sue was completely reliant on family violence and support services while she was unable to leave Australia. The trauma Sue and her child experienced in Australia was further exacerbated by her lack of visa options, obligations to regularly engage with Home Affairs to renew her bridging visa and inability to access mainstream services.

Sue is also subject to a 3-year re-entry ban as she is departing Australia on a Bridging Visa E, although she has no other options.

We supported Sue until she was able to depart Australia. Our social workers applied for family violence funding to help cover Sue's airfares to return home.

\*Not her real name

## Reporting the experience of sexual violence safely

**Question 1** *If you are a victim-survivor, did you decide to tell someone about your experience? If you did tell someone, did you contact: y a particular support service; y the police; y a health professional, a teacher, an employer; or y a family member, friend, or some other person? Was there sufficient information available to you to help you decide who to tell and what to do? Where did you find that information? Was the response you received adequate? What supports did you need at that time? Were the supports adequate? How could they be improved? If you decided not to tell someone about your experience, you may wish to share with us the reason(s) why.*

**Question 2** *What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?*

**Question 3** *How can accessing the justice system and reporting be made easier for victim-survivors? What would make the process of seeking information and help, and reporting, better? You might consider the kind of information given to victim-survivors, the confidentiality of the process, and the requirements of particular groups in the community.*

**Question 4** *Do you have other ideas for what needs to be done to ensure that victim-survivors have a safe opportunity to tell someone about their experience and get appropriate support and information?*

## Barriers to disclosure of sexual violence

It is "very common" for our clients to experience sexual assault, however there are significant barriers to disclosure and help-seeking. The common barriers to disclosure for our clients include:

- Clients not identifying their experience as sexual violence.

- Fear of adverse consequences of disclosing sexual violence, including child protection intervention.
- Lack of trust in authorities.
- Not wanting or having confidence in the criminal justice response to sexual violence.
- Immediate safety needs are prioritised and sexual violence is de-prioritised while our clients organise safe housing, income support and access to any necessary services for them and their children.

### **Clients not identifying their experience as sexual violence**

Our lawyers describe that women we work with can find it difficult to name or even identify their experiences as sexual violence. Often, our clients have endured many years of sexual coercion and sexual assault, to the extent that the perpetrators' use of sexual violence has become "normalised". This is particularly the case when sexual violence has been one of many interconnected forms of coercive and controlling abuse perpetrated against them over time, as is the typical dynamic of family violence. Some clients, including those from culturally diverse backgrounds, may be unaware that what they have experienced is a sexual offence under Australian law.

*A woman I'm supporting may not say to me 'I have been raped', but the reality is she has been subjected to significant coercive control in a family violence context and has not been in a position to give affirmative consent - she has been terrified of what he would do if she said no. – Women's Legal Service Social Worker*

This can present complexities for lawyers in their ethical and professional decision-making about communicating to clients that their experience constitutes sexual assault. Ideally, clients should be able to unpack their experience in their own time and in a therapeutic setting. The reality is that our lawyers may only meet with some Women's Legal clients once. To discharge their professional duties, our lawyers advise them of relevant options and any limitation periods for bringing any legal action. For example, making a personal injury claim because they have been the victim of sexual violence.

Our duty lawyers appear for clients in the family violence list at Melbourne Magistrates Court daily. In their advice they explain the definition of violence, and typically give plain language examples of different forms of family violence. Sometimes it is not until our lawyers explain what sexual abuse is that a client actually recognises it for what it is. It is an incredibly challenging conversation to have.

*Clients don't necessarily recognise it as sexual assault, particularly if they have not yet separated. Is it the role of the lawyer to name the sexual assault as such? This may be disempowering for the woman. [Intervention Orders] are a prompt for having the conversation. But it is*

*a difficult conversation to have. There is not much training around this. –  
Women's Legal Lawyer*

Training for legal professionals, and any staff in client-facing roles that support legal professionals and others working in the justice system, should specifically include the issue of 'reverse disclosures' to ensure situations such as this are handled in an appropriate and trauma-informed way.

### **Fear of adverse consequences, compounded by disadvantage**

Women are often fearful there may be adverse consequences if they report sexual assault to authorities. Many of our clients are unwilling to disclose sexual violence due to well-founded fears of homelessness, fear of child protection intervention (discussed in more detail below), and fear of escalating physical violence by the perpetrator.

### **Distrust of authorities and the justice system**

Disclosure and help-seeking for sexual violence requires a very high level of trust and confidence in authorities by women that they will be believed, and their safety and wellbeing needs will be met. It is not uncommon for our clients to have a high level of distrust of authorities and the justice system, as well as low confidence that professionals within the justice system and beyond will support them. Our lawyers emphasised that this is especially the case when women have witnessed authorities colluding with the abuser, as illustrated in this example:

*Clients don't feel protected when police come to the house. For example, one of my clients said the police officers had a cigarette with the perpetrator when they came to the house. So clients think 'what's the point' and feel hopeless reporting sexual assault to authorities. –  
Women's Legal Lawyer*

Previous experience with the justice system may cause victim-survivors to question whether they would be believed if they were to report their experience of sexual violence, whether that be by police or a Magistrate. For example, victim-survivors that have a criminal record themselves may be fearful of how this information would be used by the defence within the context of a contested hearing – including being cross examined about their own criminal record. Women who have been misidentified as the predominant aggressor by police are particularly likely to distrust police and broader justice system responses.

In our experience working with clients with mental illness, a fear of how their health information might be received and/or used is also a barrier to reporting or going through a prosecution. Our clients have expressed feeling fearful that they would not be believed if they reported their experience of sexual violence or abuse due to their mental health, and/or be fearful about how their mental health diagnosis may be used by the defence or in cross examination. In some cases, clients have been fearful of seeking treatment even



when their mental health is spiraling. Where clients have a history of alcohol or drug abuse, this fear is further magnified.

### **Not wanting to engage with or low confidence in criminal justice response**

Our lawyers report that what women escaping and recovering from family violence commonly want from the justice system are solutions that support them to put an end to the abuse and enable them to move on with their lives. They describe that clients commonly see the criminal justice system as poorly equipped to support their safety and recovery. Factors identified as contributing to this viewpoint include that many victim-survivors experience a deep sense of shame and failure for having been sexually abused by an intimate partner, the potential for criminal proceedings to be disempowering and re-traumatising, and lack of confidence in the criminal justice system. One lawyer observed:

*If she reports to police, she feels it's out of her control. This is a deterrent. What does a guilty verdict actually achieve for her? Women don't want to relive their story fifty times in public or be cross-examined about their experience. – Women's Legal Lawyer*

Low confidence in the justice system response extends to all levels, including police, prosecutors and the judiciary. Recent media reporting of high-profile sexual offences has exacerbated this. Victim-survivors have witnessed cases play out in the media where women have not been believed, have experienced significant re-traumatisation through engagement with the criminal justice process and been left in a worse position than if a justice system response had not been pursued.

The Victorian Victims of Crime Commissioner (VOCC) noted in their 2024 report 'Silenced and Sidelined: Systemic inquiry into victim participation in the justice system' ('Silenced and Sidelined'), (2024), that:

*While the justice system is reliant on victims to report crime and give evidence, I heard that many victims are deterred from participating in the justice process due to the extent of trauma they see other victims experience or because they do not have enough trust in the system to report a crime. Around half of victims surveyed in this inquiry would not participate in the justice system again if they had a choice. Many victims told us they made the decision not to participate by not reporting a crime in the first place.<sup>6</sup>*

The findings from this report are consistent with the experiences of our clients at Women's Legal. Many victims feel excluded from processes and that they do not have a voice. They

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<sup>6</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 9. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined-systemic-inquiry-into-victim-participation.pdf) ([victimsofcrimecommissioner.vic.gov.au](https://www.victimsofcrimecommissioner.vic.gov.au))

struggle to get information and understand the systems they are participating in. As the VOCC noted, many victims also express concerns about not being recognised as a party in criminal proceedings and having a role in the court process. Ultimately “losing choice and agency through the justice process”.<sup>7</sup>

Regardless of how desirable it might be for police or the broader community that victim-survivors pursue criminal repercussions for sexual violence, a system response that provides victim-survivors with choice and options is needed. Early legal advice can assist in mitigating fear of an unwanted criminal response being a barrier to engaging with authorities.

*When it comes to reporting sexual offences, I think there is a responsibility women sometimes feel to protect everyone else by reporting an offender to police so that maybe he won't offend again, but we need to acknowledge that they do this at their own expense and suffer significant re-traumatisation through their interactions with the criminal justice system. For a lot of women, there is very little personal benefit for them in a criminal process, but they do it for the benefit of the community with very little help or support. – Women's Legal Social Worker*

### **Fear of involvement with the child protection system**

Our lawyers who work with women involved with child protection find that a fear of statutory intervention, fear of blame for the actions of the perpetrator, a lack of understanding and/or trust as to what child protection will do with that information and where it may end up, and negative past experiences of reporting sexual assault to child protection impact their willingness to disclose sexual assault.

Many women do not report family violence (including sexual violence and abuse) to police or reach out to services for help because they understand that this will trigger child protection involvement and have adverse consequences. Information about sexual assault is commonly used as evidence that a victim-survivor mother is placing her children at risk, particularly if she has not yet left the relationship. This is particularly the experience of First Nations women, women from migrant and refugee backgrounds, and women with disabilities.

Family violence remains a significant factor in child protection intervention and child removals across Australia, including removals at birth. Mothers are commonly held responsible for being unable to protect their children and blamed for having contact with perpetrators. Insufficient attention is given to supporting mother victim-survivors of family

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<sup>7</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 82. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined-systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

violence including sexual violence. Children are sometimes removed because of complex issues related to the violence itself (for example homelessness or drug use), without assistance being provided to the victim-survivor to properly support her recovery and thereby enable reunification with her children to occur. Intersections between sexual violence issues and the child protection system are discussed further below.

### **Clients focus on immediate safety needs and sexual violence de-prioritised**

There is a lot going on for women when they are escaping a perpetrator's abuse, and separation is the point at which women are at highest risk of serious violence and death. At the point at which women escaping violence first engage with their lawyer, they commonly prioritise their own and their children's immediate safety needs, recovery from recent trauma, and basic living needs including secure shelter.

Accessing safe and secure housing can take months at best, if not years, if you are on a waitlist for social housing. Arranging income support through Centrelink or continuing employment is another barrier. Migrant women sometimes have no access to work rights or ongoing income support.

Improving justice system responses for victims of sexual violence is not enough on its own. Further investment in health, housing and income support is desperately needed to support the recovery of victims of sexual violence. Without this whole-of-system response, reporting an experience of sexual violence, or engaging with a criminal justice response in relation to that violence, will always be de-prioritised by women.

*There is so much going on. I have a number of clients who wouldn't even think that disclosing sexual assault is something to do in this context.* – Women's Legal Lawyer

Ensuring victim-survivors have access to early and ongoing legal advice and holistic wrap-around support from lawyers, social workers and financial counsellors can facilitate a trauma-informed approach to working through all the legal and non-legal issues associated with their experience of abuse and trauma, including sexual violence.

### **Better responses to disclosures of sexual violence**

When women are escaping family violence and seeking protection from the justice system, their lawyer may be the first person to whom they disclose sexual violence and abuse. In some cases, disclosure to a lawyer is the only time the sexual violence is divulged unless they later engage in therapeutic counselling.

There are several reasons why women may disclose sexual violence only to a lawyer, and not to other professionals and authorities. Fears women might have about mandatory reporting may be allayed by the knowledge that information shared with a lawyer is bound by legal professional privilege. Further, disclosure of sexual violence can occur out of necessity, where it is relevant to court proceedings.

Lawyers and clients who work together over a long period build a trusting relationship, resulting in clients feeling safe to make disclosures of sexual violence after a considerable amount of time has passed. However, there are various capacity building and place-based solutions that would improve the way lawyers respond to sexual harm in family violence, family law and child protection jurisdictions.

### **Trauma-informed client-centred training**

Despite the prevalence of sexual violence that occurs within family violence, these issues are not adequately covered in core legal or other training.

We believe that lawyers and other practitioners who are properly trained to discuss and respond to disclosures of sexual violence have the potential to make a profound difference to the lives of sexual assault victim-survivors, especially, as they may never otherwise engage with the justice system or other services. Without adequate training and support, these disclosures may cause further harm for the victim-survivor.

*Clients generally do not have therapeutic supports already in place and the wait times for appropriate counselling services are long, particularly if the offending is not recent. When dealing with disclosures time can be a critical factor and we can't wait for therapeutic supports to be in place. I had a really bad experience as a junior lawyer where a client disclosed she had been violently sexually assaulted by her former partner during their relationship as we drafted her affidavit. She was seeking the urgent return of her children from him and we had to really hone in and focus on the risk to the children, which meant highlighting her worst experiences of family and sexual violence. It was really rushed, and I did not know how impacted she was by this. She later self-harmed and I still reflect on this many years later. – Women's Legal Lawyer*

Women's Legal intake staff and practitioners participated in training with Sexual Assault Services Victoria (SASVic) as part of the Sexual Assault pilot here in Victoria. This training equipped our staff with the skills and knowledge to respond to disclosures of sexual violence and provide trauma informed services.

Feedback from participants attending the training was overwhelmingly positive, with many reporting that it improved their understanding and practical approach to dealing with disclosures of sexual assault:

*The training highlighted how a therapeutic response is really needed, particularly if it is the first time that a client has disclosed that they have been sexually assaulted or where they are just coming to grips with the fact that they have been sexually assaulted. We often cannot organise this response, and so we need to better understand how we as lawyers*

*can support our clients as they make these disclosures.* – Women's  
Legal Lawyer

We strongly encourage the prioritisation of training all professionals who might have contact with a victim-survivor to ensure a consistent and quality experience regardless of where they may disclose. The training should help a practitioner facilitate access to therapeutic and other assistance for clients, help clients to understand sexual assault laws, and support clients' ability to access the range of options that are or will be available for justice system recourse, including criminal justice, victims of crime financial assistance, civil litigation and restorative justice.

### **Specialisation across the justice system**

Training should be inclusive of the range of professionals that engage with potential victim-survivors, to build capacity across the system to identify sexual violence, ask appropriate questions, respond to disclosures, identify a range of legal and non-legal issues, and connect with services. This should be extended to any roles that involve direct client contact (for example at Women's Legal all intake staff are trained in dealing with disclosures). The need for specialisation within the justice system is discussed further below.

### **Safer Families training program**

Women's Legal has led sector-wide family violence workforce development initiatives in Victoria for more than twenty years, and increasingly so since Victoria's Royal Commission into Family Violence.

Victoria's community legal workforce is the main provider of legal assistance to family violence victim-survivors in Victoria. For almost a decade, Women's Legal has delivered Safer Families, a competency-based training program that builds community sector lawyers' skills to provide best practice family violence legal assistance. Safer Families is evidence-based and aligned with Victoria's Family Violence Multi-Agency Risk Assessment and Management (MARAM) Framework. It is a proven model for legal sector workforce development with potential to be expanded to enhance workforce capability in relation to sexual violence.

### **Health justice partnerships**

Health justice partnerships provide an example of a system response that can help overcome barriers to reporting sexual violence, and support victim-survivors to recover.

Women's Legal and Monash Health are delivering a Health Justice Partnership (HJP) which embeds legal assistance in healthcare services for women experiencing family violence who attend Monash Health for antenatal care and are at risk of child protection intervention. It is the first early intervention/prevention Child Protection HJP of its kind in Victoria.

The HJP creates space and time to develop rapport with our clients without the pressure of court deadlines or being at court. By engaging regularly with these women, it is conducive to relationships of depth and trust and in turn disclosures. It also allows our practitioners to seek advice and guidance on how to best support the client, including integrated practice support (for example from social workers or financial counsellors).

Women's Legal lawyers have reported that they have established relationships of trust and confidence with their clients while they receive antenatal care that enable them to understand that client's experience of family violence and particularly sexual violence. If there has been child protection intervention after their child is born, our lawyers are able to effectively represent the client in the Children's Court. They will understand their client's experiences of family violence, what steps that they have taken to mitigate risk and support them to retain or regain care of their child.

Through the HJP, our lawyers also have relationships with key support staff in the woman's life. This provides invaluable information to present to the court about that woman's efforts to address protective concerns.

In comparison, first-time mothers who have had their children removed only receive legal advice when they get to court and only from a duty lawyer. At that point it is too late to meaningfully respond to any concerns by child protection or resolve any issues to ensure mothers and their children stay together.

### **Gaps and silos in legal assistance available to victim-survivors**

There are significant gaps in the legal assistance available to victim-survivors of sexual violence that entrench the other barriers and disadvantages they face and discourage disclosure.

### **Personal Safety Intervention Orders**

Most community legal centres (CLCs) are not funded or equipped to provide advice or assistance with personal safety intervention orders (PSIOs) for victims of sexual violence where the offender did not have an intimate personal/family relationship with the victim.

Victoria Legal Aid does not provide a duty lawyer service (unless potentially the person has a disability), and there are no grants of legal assistance available for adult applicants. Dedicated funding to CLCs to assist victims of sexual violence with all the legal problems that stem from their experiences, would ensure that we can bridge these gaps.

*I had a case where my client made a statement to Police about a sexual assault, but she did not want to go ahead with any criminal prosecution. She was supportive of a police application for PSIO, because the offender was a work colleague. She wanted the offender to be excluded from her workplace because her employer would not*

*terminate his employment, and he wanted to be able to return to work. We had to go through a number of mentions, before we could get the PSIO finalised. She was from a CALD background and had not even disclosed the sexual assaults to her husband because of the shame she felt. Fortunately, I was able to assist her because I was already assisting her with a victim's compensation claim. Without that legal support, she could have abandoned the entire process and would have had to resign from her job. - Women's Legal Lawyer*

## **Victim Impact Statements**

In Victoria, victim-survivors have participatory entitlements under the *Victims' Charter Act 2006* (Vic) to make a Victim Impact Statement (VIS) and for that VIS to be considered by the court in determining the sentence of the offender.<sup>8</sup> While the experience of providing a VIS can be an important mechanism to make victim-survivors feel heard and recognised, the VOCC's report *Silent and Sidelined* found that many victim-survivors reported that providing a VIS was a negative experience and could be re-traumatising, including through 'a lack of independent legal advice and assistance for victims when drafting their VIS'.<sup>9</sup>

## **Culturally safe services for Aboriginal and Torres Strait Islander victim-survivors**

Significant gaps exist in holistic, culturally safe services for Aboriginal women and children who experience sexual assault. Remedying this must be a focus of system-wide reform efforts. Aboriginal Community Controlled Organisations (ACCOs) must be adequately funded to provide culturally safe services, and mainstream organisations should continue to build capacity to serve as an alternative for clients who are conflicted out of an ACCO or may prefer to go to another service. Here in Victoria, Djirra has received funding as part of the Sexual Assault pilot to assist Aboriginal women to make reports to Police. Funding must be extended to ACCOs like Djirra to assist Aboriginal women through the entire process, and with all related legal problems.

## **Legal assistance to participate in the justice system process**

Comprehensive mapping/auditing of the specific gaps in legal assistance available to victim-survivors of sexual violence would help identify where legal assistance services should be bolstered to ensure victim-survivors are not left to navigate complex justice system processes alone.

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<sup>8</sup> *Victims' Charter Act 2006* (Vic) s 13.

<sup>9</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 261. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) ([victimsofcrimecommissioner.vic.gov.au](https://www.victimsofcrimecommissioner.vic.gov.au))

Victim-survivors of sexual violence need recognition and support as key participants in justice system processes, including legal assistance to participate in criminal justice processes in which they have an inherent personal interest.

*The criminal justice system is so difficult for our clients. Defence gets a defence lawyer, the prosecution take action on behalf of the community, but the actual victim-survivor gets very little. The whole system is heavily weighted towards the rights of the accused – potential imprisonment is seen as being so much more severe than having to live with the trauma of rape. – Women's Legal Social Worker*

There is increasing recognition that a justice system approach that views victims-survivors merely as witnesses for the prosecution is insufficient, and that victims have rights and entitlements that must be recognised. Key to this is ensuring that specialist legal assistance is available to victim-survivors to ensure that their substantive legal entitlements, such as rights to be consulted by police or the prosecution, rights to privacy, and rights to respectful and dignified treatment, are upheld.

*The criminal justice system is adversarial and quite formal, and if it moves to prosecution the victim-survivor effectively becomes a 'piece of evidence' and is treated accordingly. This can be really confronting for a person who is traumatised. If I was a victim-survivor of sexual violence I would want my own lawyer – even just to understand the process and to act as a legal interpreter. – Women's Legal Lawyer*

The Victorian Law Reform Commission has recommended the Victorian Government should fund legal advice and, where necessary, representation until the point of trial and in related hearings, to ensure victim-survivors can exercise their rights and protect their interests, including:

- a) their rights and privileges in relation to evidence (for example, the confidential communication privilege, alternative arrangements and special protections, access to intermediaries)
- b) their rights to privacy in relation to disclosures of personal information (for example, information about their sexual history, the nature of cross-examination, or suppression orders)
- c) their options for compensation, including under the *Sentencing Act 1991* (Vic), victims of crime compensation, and civil or other compensation schemes
- d) the implications of taking part in restorative justice and referrals to restorative justice when applying for compensation or restitution orders.<sup>10</sup>

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<sup>10</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021, Recommendation 46. Available at: [Improving the Response of the Justice System to Sexual Offences – Victorian Law Reform Commission](#)



The Victims of Crime Commissioner (VOCC), in their recent report 'Silenced and Sidelined', has also made recommendations about expanding legal representation for victim-survivors of sexual offences. The VOCC's inquiry found that victims in sexual offence cases are subject to some of the most invasive and traumatic aspects of our adversarial trial process. This includes rigorous cross-examination, applications to access private or confidential records (including medical and counselling records) and applications to introduce sexual history evidence. The VOCC found that leaving protection of victims' rights up to prosecutors or judicial officers in sexual offence cases is not working well enough to protect victims' rights and protect victims from secondary victimisation. It noted that a targeted approach to legal representation for sexual offence victims would provide an effective way to uphold victims' entitlements without impinging on the rights of the accused.<sup>11</sup>

As part of the Sexual Assault Pilot, Women's Legal is now funded to advise victims on their rights and privileges in relation to evidence (confidential communication privilege and other subpoenas). The scope of the pilot would need to be broadened so that we can also advise on alternative arrangements and special protections, access to intermediaries, their rights to privacy in relation to disclosures of personal information, the nature of cross-examination, and suppression orders. We can advise victims of their compensation options as part of the Victims Legal Service, but both services must be truly integrated for this to work optimally.

### Holistic, wrap-around support for victim-survivors

In addition to legal assistance, holistic wrap-around support from social workers and financial counsellors is critical to ensuring support for victim-survivors is trauma-informed. It is also important that this support is culturally safe.

*Early and ongoing legal advice and integrated support - that's the piece of the puzzle that's missing. From the minute a woman reports through until the end of the trial she should be supported by a lawyer and a social worker. That's what we need and best practice. - Women's Legal Social Worker*

Victim-survivors need a holistic service response for sexual assault that encompasses both legal and non-legal issues, and that connects them with other therapeutic supports such as counselling. Recognising where sexual violence occurs in the context of domestic and family violence, we need responses that are tailored to this. It's important that supports are client-led, flexible and adaptable to the victim-survivor's individual needs.

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<sup>11</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 21. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

We note there are a range of legal and non-legal problems associated with sexual violence that could be addressed by community legal services depending on their areas of practice. These issues include intersecting legal issues that are likely to co-occur such as intervention orders, family law, child protection, victims of crime compensation, migration law (often partner visas), employment law, housing, stalking/ personal safety, criminal matters, fines, and social security. Integrated support including social work and financial counselling support is an important component of this to address other non-legal needs, ensure that the system response is not fragmented and that victims/survivors are effectively supported and not re-traumatised.

In Victoria, current funding agreements provide for limited legal assistance for survivors of sexual violence through the Victim's Legal Service, however the full scope of supports clients require and receive (across other areas of law and for non-legal supports such as social work and financial counselling) are not currently funded as part of the Victim's Legal Service.

There is also a need for strengthened referral pathways between legal and specialist help services. It is important that adequate funding is committed to coordination and collaboration – this could enable services like ours to establish partnerships with Centres Against Sexual Assault, Multi-Disciplinary Centres and health justice partnerships with hospitals conducting forensic testing, maternity and health services to provide this much needed assistance and support.

## Recommendations

- Governments to ensure access to specialised legal assistance for victim-survivors, including legal assistance to navigate the criminal justice system and to assist with intersecting legal issues, from when a victim-survivor is considering whether to report through to the end of their legal matters.
- Governments should invest in legal assistance that is complemented by holistic wrap around support from sexual assault services, social workers and financial counsellors.
- Governments should prioritise and dedicate resources to a reform program to redress the structural, systemic and cultural barriers to disclosure, help-seeking and justice system recourse for women who experience sexual assault in the context of family violence.
- All legal professionals in jurisdictions where clients are likely to have experienced sexual assault should receive training so that they are adequately equipped to discuss sexual assault and support clients' access to justice and help services. Training should be developed in collaboration with the community legal sector, as providers of duty lawyer services at courts including criminal, family violence, family law, child protection, tenancy and mental health, for eventual broader roll-out to all legal practitioners.

- Governments should invest in collaboration and coordination across the justice system, and in strengthening the referral pathways between the legal assistance sector and specialist sexual assault services to improve family violence victim-survivors' access to therapeutic services.

## Criminal justice responses to sexual violence

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### Police responses to reports of sexual violence

**Question 5** *If you are a victim-survivor, did you contact the police? If so, how? What was your experience of the police response?*

**Question 6** *What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?*

**Question 7** *What are your ideas for improving police responses to reports of sexual violence? What can be done?*

To make the experience of reporting to police safer for victim-survivors, support should be available at the time of reporting sexual violence, within a therapeutic and trauma-informed reporting environment. As outlined above, there are a range of reasons that victim-survivors may be fearful of reporting to police, including a fear of not being believed, fear of repercussions from the perpetrator, mistrust of the justice system, or fear of being mis-identified as the predominant aggressor in a family violence context.

These reasons can be compounded for victim-survivors who are Aboriginal or Torres Strait Islander, have a disability, are a young person or are from a culturally or linguistically diverse background. For example, hesitations about reporting to police can be exacerbated by a victim-survivor's experience of disproportionate or racialised policing.

Legal assistance services can support victim-survivors throughout their engagement with police, including explaining the process, assistance during police interviews, support with preparation of statements, advocacy on behalf of victim-survivors for any additional support needs to be met, and follow up with police after engagement to improve accountability and making enquiries about whether police are following appropriate processes for investigation.

Victim-survivors should have access to a safe, therapeutic, trauma-informed, and culturally appropriate option to report/disclose sexual violence.

*I know from the women I support that it's really scary to make a complaint. The majority of women would be alone or maybe with a friend when they first report to police. Victim-survivors really need*

*support at the time of reporting. Vicpol do employ social workers but there are nowhere near enough. – Women's Legal Social Worker*

In Victoria, there are Sexual Offences and Child Abuse Investigation Teams (SOCITs) within Victoria Police, made up of specialist detectives trained to respond to and investigate child abuse and sexual crimes. There are also seven Multi-disciplinary Centres (MDCs) across Victoria, which combine a range of agencies in the one building and aim to provide victim-centred, integrated services to victims and/or survivors of sexual assault, child abuse and, in some locations, family violence. While the Code of Practice instructs that sexual assault cases should be directly referred to the SOCITs, for the most part, these highly trained police are not the first point of contact for our clients, and don't attend family violence incidents.

We look forward to further detail about the role that Justice Navigators will play in supporting victim-survivors to report to police in Victoria's newly announced pilot,<sup>12</sup> and note the valuable work already being done by specialist sexual assault counsellor advocates in Victoria. The Justice Navigators pilot is aiming to better support victim-survivors navigate a complicated system however proper integration with legal services will be key to achieving better outcomes.

### **Police training**

Given the prevalence of family violence in the community, and of sexual violence within the family violence context, ensuring all police are appropriately equipped to respond to reports of family and sexual violence is critical to making the justice system safer for victim-survivors. Professionals within the justice system need to be highly skilled in responding to disclosures of sexual violence in a trauma-informed and culturally safe manner including being able to identify sexual violence, ask appropriate questions, respond to disclosures, identify the range of intersecting legal and non-legal issues, and connect with services. All those working in the justice system, including police, who may come into contact with victim-survivors of sexual violence need specialised training to ensure there is a system-wide shared understanding of family violence and sexual violence, and an understanding of the respective roles of professionals in the system to ensure a joined-up response.

The VLRC has recommended that Victoria Police should review and strengthen its training and resources to ensure regular and ongoing professional development for specialised police dealing with sexual offences, including:

- a) responses to children (particularly children in out-of-home care), people in contact with the justice system and people working in the sex industry
- b) interviewing of children and the recording of VAREs

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<sup>12</sup> Hon Jacinta Allen MP, Media Release: [Changing Laws And Culture To Save Women's Lives | Premier of Victoria](#), 30 May 2024.

- c) the appropriate use of interpreters
- d) its understanding of image-based sexual abuse
- e) the quality of evidence gathering  
the quality of police prosecutions.<sup>13</sup>

## Police accountability and oversight

Adequate training needs to be complemented with appropriate accountability measures and clear avenues for victim-survivors to make a complaint if they are unhappy about justice system responses, including police responses, to their report of sexual violence. The VLRC has recommended the Victorian Government establish an independent and high-level panel that includes multi-disciplinary expertise to review police and prosecution decisions.<sup>14</sup> Under the VLRC's proposed model, a complainant, or a person acting on the complainant's behalf, should have the right to request a review by this panel, of decisions to discontinue or not file charges or indictments in sexual offence cases.

Women's Legal supports calls for the creation of a Police Ombudsman in Victoria to independently investigate all complaints about police misconduct and systemic failings, and that puts people who experience police misconduct at the centre.<sup>15</sup>

We emphasise that any independent accountability that is adopted should be:

- Independent of the Police—hierarchically, practically, culturally and politically.
- Resourced and capable of conducting an adequate investigation.
- Prompt.
- Open to public scrutiny.
- Victim-centred, to enable the victim to participate in the investigation.<sup>16</sup>

## Recommendations

- Support should be available for victim-survivors of sexual violence at the time of reporting sexual violence, including legal assistance.
- Victim-survivors should have access to a safe, therapeutic, trauma-informed, and culturally appropriate option to report/disclose sexual violence.
- All those working in the justice system, including police, who may come into contact with victim-survivors of sexual violence need specialised training to ensure

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<sup>13</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021, Recommendation 65. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#)

<sup>14</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021, Recommendation 66. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#)

<sup>15</sup> Further detail about the campaign calling for an Independent Victorian Police Ombudsman is available here: [Home - Police Ombudsman Now](#)

<sup>16</sup> Police Accountability Project, 'Effective and impartial investigation of complaints against police', 2017. Available at: [Effective and impartial investigation of complaints against police: 2017 - Police Accountability Project](#)

they are skilled in responding to disclosures of sexual violence in a trauma-informed and culturally safe manner and that there is a system-wide shared understanding of family violence and sexual violence (including by implementing Recommendation 65 of the VLRC's Sexual Offences Report).

- A Police ombudsman in Victoria should be established to serve as a clear and independent avenue for victim-survivors to make a complaint about police conduct or response to their reporting of sexual violence.

## Prosecution responses

**Question 8** If you are a victim-survivor, did you have contact with the ODPP? What was your experience of the ODPP response? What support, if any, was provided to you?

**Question 9** What reforms or recommendations have been implemented in your state or territory? How are they working in practice? What is working well? What is not working well?

**Question 10** Do you have ideas for improving ODPP responses to the prosecution of sexual violence?

Our clients have reported that their experience of interacting with the OPP can be overwhelming and re-traumatising. This is echoed in the VOCC's 'Silenced and Sidelined' report, which found that victim-survivors did not always feel they were treated with dignity and respect by the prosecution and that 'prosecutors did not always appreciate that victims may lack knowledge of the justice system and may be traumatised.'<sup>17</sup>

*For our clients, interacting with the OPP can feel very re-traumatising. The process is confusing if they don't have representation to guide them through it all. Everyone is dressed very formally, the process itself is very formal and for lots of victim-survivors that can be confronting and intimidating. Even all the language used is very confusing and assumes so much knowledge. The level of formality can feel like it's there to stop you from using the system. – Women's Legal Social Worker*

Our clients have reported feeling there is a disconnect between messaging and practice about how they will be treated as a victim-survivor of sexual violence – they often are not treated by the prosecution as a participant in the criminal justice process with an inherent personal interest in the outcome but rather as a 'piece of evidence'. For example, the process of the OPP preparing a client to give their evidence and for cross-examination

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<sup>17</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 216-217. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

can be isolating and re-traumatising. While the OPP is trying to prepare a complainant for defence questioning they seemingly step into an adversarial role and the client may feel there is nobody who is 'on their side'.

In our experience, there is scope for the OPP to embed a more trauma-informed approach to interactions with victim-survivors of sexual violence. This includes better processes to ensure victims' particular needs and presentation are understood, including planning and preparation about how to best work with that individual complainant.

A tailored approach is needed to account for the trauma that has been experienced by the individual complainant, as well as intersecting factors such as disability, culture and language. Specialist legal assistance services are well-placed to advocate on behalf of victim-survivors to support their engagement with prosecutors and monitor compliance with obligations in relation to victim-survivors' rights and entitlements.

*It's important to balance the rights of the defendant to have a fair trial with being trauma-informed about taking evidence from a victim. –  
Women's Legal Lawyer*

## Recommendations

- OPP intake processes should be improved to ensure victim-survivors' needs and presentation are understood, including planning and preparation about how to best work with that individual complainant in a trauma-informed and victim-centric way.
- Independent and specialised support and legal assistance should be provided for complainants throughout their engagement with the prosecution.

## The trial process

**Question 11** *If you are a victim-survivor, did you experience any of the measures described above? If so, what was your experience?*

**Question 12** *Do you have views about the measures listed above? Have the measures reduced the trauma of giving evidence? Could they be improved? Have things changed? What is working well? What is not working well? Are there other measures which have been implemented and are not listed above?*

**Question 13** *Do you have other ideas for improving court processes for complainants when they are giving their evidence?*

As discussed above, Women's Legal strongly supports greater access to legal assistance, advice, and representation, as well as holistic wrap-around support, for victim-survivors of sexual violence including during the trial process.

In our experience, the availability of measures that aim to minimise re-traumatisation for complainants throughout the trial process can be a significant factor in a victim-survivor's decision-making about participating in that process. For a victim-survivor of sexual violence, the knowledge that they will have access to special measures such as a support person and/or a support dog and will not have to see or be in the same room as a perpetrator, are key factors in determining whether they feel they can go through with the process of giving their evidence.

However, it is critical that these measures are adequately resourced, accessible, and available for complainants that need them. In our experience, when a client's expectations about being able to access special measures are not able to be met, that in itself can be re-traumatising.

Supports/special measures should be evidence-based, therapeutic, client led, and be flexible and adaptable to what that person needs. To meet best practice, complainants should have the opportunity to decide what they want and need in terms of support to be able to participate in the trial process. For example, while some complainants may want the support of a social worker throughout the process, others may need only the opportunity to debrief.

While recognising the progress that has been made within Victoria's justice system in relation to supporting victim-survivors, there is more that could be done to embed a trauma-informed approach, including:

- A supported intake process for complainants prior to the trial process to better understand that person's needs, current levels of support, and how to work with them. Comprehensive planning and preparation by those working with a victim-survivor is required to create a therapeutic space and minimise risk of re-traumatisation. This should include developing an understanding of the mental health that person presents with, a plan to avoid heightening a complainant during the process (for example building in mandatory breaks, or avoiding certain words or triggers, and consideration of the physical environment including being aware of the setting and how the room is set up.)
- Funding for therapeutic wraparound support for victim-survivors that can support them throughout the entire process and through their recovery. Many victim-survivors can no longer access support from a CASA, because it is time limited and the Centres have significant resource constraints. They may then only be able to access counselling through Medicare and there is a limited number of sessions that they can access and they also have to pay out of pocket costs which they often cannot afford. Failing that, they can get assistance with counselling expenses through compensation schemes, but it also may not be enough to provide the recommended amount of therapeutic counselling that is needed for victim-survivors over many years. For example, while the Victim's Legal Service in Victoria has been funded to provide limited legal assistance for victim-survivors of sexual



violence, the therapeutic supports that would better enable that complainant to safely go through with a trial process have not.

## Recommendations

- Special measures that aim to minimise re-traumatisation should be adequately resourced, accessible, and available for complainants that need them.
- Supports/special measures should be evidence-based, therapeutic, client led, and be flexible and adaptable to what that person needs.

## 'Special Measures': evidence in the form of audio-visual recordings

**Question 14** *If you are a victim-survivor, was your interview (or interviews if more than one) with the police recorded? Was your evidence recorded in court at a pre-trial hearing? What was your experience of the recording process? Did you see the recording(s) before they were presented by the prosecution at trial? How did you feel about not giving evidence in person at the trial?*

**Question 15** *Has the use of recorded evidence been implemented in your jurisdiction? If so, to what extent? How is this working in practice? What is working well? What is not working well? What could be improved? Do any of the matters discussed when the recommendations were made (some of which are outlined above) need further discussion in the context of the reforms having been implemented? Are there any other issues? What do you see as the advantages and disadvantages of using recordings of the complainant's evidence at trial?*

The process of having to re-tell their experience of sexual violence multiple times is re-traumatising for victim-survivors of sexual violence. Women's Legal supports enhanced measures to minimise the number of times victim-survivors have to retell their story, including by allowing victim-survivors to use pre-recorded evidence as their evidence in chief, provide additional evidence (such as a written statement) to supplement the recording and rely on pre-recorded cross-examination and re-examination.

*It's truly awful for a victim-survivor to have to give their evidence over and over, we all know how retraumatising it is to relive their most painful experiences again and again. We need to have a serious look at how we improve this. For example, what are the benefits of having a committal? What is the point? To me it seems like a waste of everyone's time and just another painful and arduous process for the victim-survivor who may then still have to withstand successful appeals and retrials. –  
Women's Legal Lawyer*

In Victoria, certain witnesses in sexual offence proceedings are allowed to give evidence in chief (wholly or partly) in the form of an audio or audiovisual recording of the witness

answering questions put to them by a person prescribed (the VARE procedure). This applies only to persons under 18 years and persons with a cognitive impairment – not all victim-survivors of sexual offences.<sup>18</sup> Witnesses can still be cross-examined by the defendant's counsel.

The VLRC has recommended more flexible arrangements for taking evidence. The VLRC recommended amendments to the *Criminal Procedure Act 2009* (Vic) so that special hearings under Part 8.2 Division 6 for children and people with a cognitive impairment are available in the Magistrates' Court of Victoria and enable all other complainants in sexual offence trials in the County Court of Victoria and contested hearings in the Magistrates' Court of Victoria to provide the whole of their evidence as pre-recorded evidence.<sup>19</sup>

However, VLRC did not recommend expanding Victoria Police's video and audio recorded evidence (VAREs) to complainants / victim-survivors in sexual offence cases at this stage, due to concerns about quality. Instead, they recommended that Victoria Police consider professional development to improve the quality of VAREs before the issue of expanding VAREs is considered again.

## Recommendations

- Complainants in sexual offence trials should be entitled to provide the whole of their evidence as pre-recorded evidence. Police capability needs to be strengthened to improve the quality of VARE recordings as a precursor to allowing use of VAREs as victim-survivor's evidence, in line with Recommendation 86 of the VLRC's Sexual Offences Report.

## Cross-examination and the law of evidence

**Question 22** *If you are a victim-survivor, what was your experience of cross-examination? Did the prosecution object to questions asked by defence counsel? Did the judge intervene to stop defence counsel asking questions?*

**Question 23** *Are the legislative provisions adequate to protect complainants during cross-examination? If not, how could they be improved? Should they be harmonised?*

**Question 24** *Should cross-examination that reflects myths and misconceptions about sexual violence, such as the belief that a 'rape victim' would be expected to complain at the first reasonable opportunity be restricted on the ground that it is irrelevant or on any other ground?*

<sup>18</sup> Section 366 (2) *Criminal Procedure Act 2009* (Vic)

<sup>19</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021, Recommendation 86. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#)

Research has found cross-examination to be humiliating, distressing, brutal, traumatising, offensive, aggressive, insensitive and confusing for victims of crime.<sup>20</sup> It can be particularly re-traumatising for victim-survivors subjected to cross-examination multiple times (for example in a committal hearing, in addition to at trial and any retrials).

*The impact of trauma on memory needs to be taken into consideration every single time – especially in cross examination. Victims must be allowed not to remember absolutely everything, and in a linear and organised fashion. It's completely unrealistic.* – Women's Legal Social Worker

In Victoria, the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* included amendments to require the court to have regard to additional considerations when determining whether to allow pre-trial cross-examination of a witness who has a cognitive impairment or is a complainant in a proceeding that relates to a charge for a sexual or family violence offence.<sup>21</sup> These amendments also included a requirement for Magistrates to provide reasons for granting leave to cross-examine a witness and identify each issue on which the witness may be cross-examined.<sup>22</sup> As these are recent reforms, their practical implementation and effect is still being monitored.

Victoria's VOCC made further recommendations about cross examinations including at committal. Women's Legal supports the VOCC's recommendation that for victim-survivors of sexual offences, legal assistance and representation should be available to:

- assist the court in weighing up factors for consideration under the *Criminal Procedure Act 2009 (Vic)* in relation to granting leave to cross-examine at committal
- assist the court in determining special protections required when giving evidence at committal
- assist victims to understand the reasons provided by the court as to why a leave to cross-examine at committal is granted
- assist a complainant to better prepare for giving evidence at committal.<sup>23</sup>

This is assistance that independent legal representation could provide to victim-survivors.

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<sup>20</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 404. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined-systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

<sup>21</sup> Implementing Recommendations 45-46 of the Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](https://www.vic.gov.au/improving-the-response-of-the-justice-system-to-sexual-offences-victorian-law-reform-commission).

<sup>22</sup> This amendment implements recommendation 46, of the Victorian Law Reform Commission 'Committals: Report', 2020. Available at: [Committals and pre-trial procedures - Victorian Law Reform Commission](https://www.vic.gov.au/committals-and-pre-trial-procedures-victorian-law-reform-commission)

<sup>23</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 405. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

We note that the VOCC went further to recommend that committal hearings be abolished for certain cohorts, commencing with sexual offence and family violence cases as a priority.<sup>24</sup>

### Improper questioning

Women's Legal considers there is scope to better protect the rights of victim-survivors of sexual violence from inappropriate, improper and aggressive questioning and better balance the rights of the defendant to have a fair trial with being trauma-informed about taking evidence from victim-survivors.

While protections exist, these protections are not consistently applied. It is common for defence counsel to pursue inappropriate, improper or aggressive questioning as a tactic. They may ask lengthy questions of a victim about the nature of their relationship with an accused, and incidents surrounding a sexual assault, which further prolongs the time a victim spends giving evidence. This is aimed at discrediting their evidence and may seem perfectly legitimate but it is incredibly damaging and is often not adequately controlled by the prosecution or the presiding judicial officer.

*I don't think you have to be as aggressive as police and lawyers can be. There is a way to get that evidence without ruining someone on the stand. You have to be a better lawyer, and remember your duty is to the court and to the administration of justice above all else. – Women's Legal Lawyer*

### Recommendations

- Legal assistance should be provided to victim-survivors, including consideration of independent legal representation for victim-survivors to ensure their rights are identified and continue to be respected throughout criminal justice processes.

### Interpreters

**Question 25** *If you are a victim-survivor, did you need an interpreter in the court room? Was one made available? We would like to hear your feedback.*

**Question 26** *Have changes been made to interpreting services for complainants over the last five years? Does there continue to be a problem with availability, training and accreditation? Are there problems in regional areas? Are the available interpreters culturally and linguistically appropriate and diverse, particularly for complainants who are Aboriginal and Torres Strait Islander people? Is the unavailability of interpreting causing difficulties and challenges for courts to ensure pre-trial recordings and trials*

<sup>24</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 406. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)

*commence as listed?*

It is critical that interpreter services for victim-survivors of family and sexual violence are accessible, trauma-informed, and that cultural and religious factors that impact power dynamics are appropriately considered. In our experience working with victim-survivors of family and sexual violence who require the use of an interpreter, the influence of power and cultural dynamics can be a barrier to legal help.

There is frequently limited availability of suitable interpreters, and sessions can be cut short due to restrictions on time, which is particularly challenging when victim-survivors are relaying complex experiences of family or sexual violence. In particular, there is a shortage of women interpreters.. This can influence power and cultural dynamics that effect how comfortable a victim-survivor is to tell their story.

Issues relating to availability of interpreters also arise in relation to small communities and First Nations communities where there is a high likelihood of there being a personal, family or community connection between the victim-survivor and the interpreter. Some victim-survivors are reluctant to speak about their experience because they might be known to the interpreter or they are fearful that their confidential information will be relayed to others by the interpreter.

*I've had clients that have refused interpreters because they are from a small community where everybody knows each other or is connected in some way – it makes things really hard. – Women's Legal Social Worker*

One impact of the lack of availability of interpreters is that a client may feel an adult child is the safest and most accurate interpreter, however this gives rise to particular dilemmas and is most often inappropriate due to the sensitive nature of information being discussed.

Women's Legal social workers and lawyers have reported a number of cases where interpreting services provided have been inadequate or inappropriate. Examples include:

- Victim-survivors who have an understanding of English but prefer an interpreter in their first language advising Women's Legal staff that what has been interpreted was not what was being asked of them (for example inaccurate questions or answers).
- Interpreters adding inappropriate commentary or gratuitous advice (for example advising a victim-survivor escaping violence that they should return to their husband who was perpetrating that violence).

Women's Legal supports the Victorian Law Reform Commission's recommendation that the Victorian Government should review arrangements to improve access to safe language services. This should include investing in training for language services in family and sexual violence and extending the pool of trained interpreters, through:

- a) funding and encouraging training through relevant community services
- b) identifying ways to extend the pool of trained interpreters across Australia to address privacy concerns.<sup>25</sup>

## Recommendations

- Consideration should be given to increasing the availability of appropriately trained, trauma-informed, and culturally and linguistically appropriate interpreting services, with a particular focus on increasing the availability of women interpreters.

## Personal information

**Question 27** *If you are a victim-survivor, were the records of your counselling or other therapeutic interventions sought prior to or during trial?*

**Question 28** *Are the legislative provisions adequate to protect the disclosure and use of a complainant's personal information obtained during counselling or other therapeutic intervention? How are they working in practice? Should they be harmonised? Is there a need for complainants to be separately legally represented in court when submissions are made about the disclosure of the material and the application of the legislative provisions?*

In Victoria, stronger protections for victim-survivors commenced in July 2023 in relation to confidential communications made to health and counselling professionals. These changes implement VLRC recommendations. The VLRC also recommended funding for 'legal advice and, where necessary, representation until the point of trial and in related hearings, to ensure victim-survivors can exercise their rights and protect their interests' including in relation to confidential communications.

Women's Legal is part of a Commonwealth funded pilot<sup>26</sup> to provide legal information, advice, and referrals for victim-survivors of sexual violence on confidential communications and protected health information matters. ;'[ The pilot has only been operating for three months, and it is too early at this stage to comment on how effective the confidential communications provisions are.

Victim-survivors seeking to protect confidential communications made to health and counselling professionals and protected health information can receive targeted advice, representation and casework delivered by Victoria Legal Aid and Women's Legal.. Tailored

<sup>25</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021. Recommendation 61. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#).

<sup>26</sup> Minister for Social Services; Attorney-General, 'Media Release: Supporting victims and survivors of sexual violence - piloting new legal services models', 20 September 2023. Available at: [Supporting victims and survivors of sexual violence - piloting new legal services models | Our ministers - Attorney-General's portfolio \(ag.gov.au\)](#)

support is provided by Djirra for Aboriginal and Torres Strait Islander victim-survivors to provide support for women seeking to report sexual assaults to police. Grants of aid are also available to private practitioners and/or Community Legal Centres for confidential communications matters.

This pilot is the result of collaboration across the Victim's Legal Service in Victoria and key partners and stakeholders, resulting in a trauma informed and victim focused service model. The pilot is intended to operate alongside Victoria's Victim's Legal Service, building on the foundations and using the existing Victim's Legal Service framework. This includes using the Victim's Legal Service Helpline to triage enquiries related to the pilot service, as well as provide legal assistance, advice, and referrals for victim-survivors on confidential communications matters.

This is a much needed and long overdue service that gives victim-survivors of sexual violence access to independent legal advice and representation in confidential communications matters. While the pilot is in its early days, there is already strong demand for the service and we have already seen significant outcomes achieved for clients that we have supported.

*Legal representation for victim-survivors in relation to their confidential communications is a really good change. It gives them understanding [about the process and their rights] and agency. Previously a complainant could be cross examined about something they thought had been said privately to a health professional and that would be the first time they would know that this information was even before the court. – Women's Legal Lawyer*

Current funding however does not provide for integrated support from social workers and financial counsellors. This gap needs to be addressed to ensure holistic wrap-around support to people who have experienced sexual violence.

From our experience supporting sexual assault victims more generally, we can say that questioning someone's mental health history (for example during committal and trial processes) can mean that they are then afraid to seek mental health support when it's really needed – they fear that this will be used to discredit them in court. We have seen this a lot in relation to child abuse civil claims – a victim-survivor won't get help because they were worried that civil lawyers would use this to discredit them in the process and then their mental health gets worse and worse. This demonstrates how critical it is for victim-survivors to have holistic wrap-around support.

Funding is also needed to extend the capacity of the service system to meet demand and to support effective collaboration within the service model, especially to assist with other related legal problems.

## Recommendations

- Implement nation-wide specialist legal services for victim-survivors, including ongoing funding for the Victims Legal Service. This should include consideration of, and investment in, service coordination to deliver the benefits observed through Victoria's VLS.
- Expand the VLS to a more comprehensive, holistic service for victim-survivors, including legal advice and representation, as well as holistic wrap-around support services, to make sure victim-survivors can understand and exercise their rights in relation to confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice.

## Specialisation and training of judges and counsel

**Question 33** *Do you have views about the creation of specialist courts, sections, or lists? Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address? Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?*

Women's Legal supports increasing the specialisation of the response system for sexual violence, including specialist judges, court staff, prosecutors, police, legal assistance, and support services. It is critical that all professionals who might have contact with a victim-survivor have skills and knowledge to ensure responses are trauma-informed and there is a consistent quality of experience across the justice system. We agree with our VLS partners that training is required to strengthen cultural competency, for example through compulsory anti-racism and cultural safety training for justice agencies.

Women's Legal considers multidisciplinary training to be a key dependency of effective specialisation and we support the VLRC's recommendation that the Victorian Government should fund the development and delivery of a program to educate and train police, lawyers, judges and magistrates on:

- a) the nature and prevalence of sexual violence in the community
- b) the effects of trauma and how to reduce the risk of further trauma
- c) barriers to disclosure and reporting sexual violence
- d) identifying and countering misconceptions about sexual violence
- e) how to respond to diverse experiences and contexts of sexual violence
- f) effective communication with and questioning of victim-survivors, including children
- g) procedures related to ground rules hearings and the role of intermediaries
- h) limits on improper questioning and judicial intervention



- i) alternative arrangements for giving evidence, and special hearings for children and people with a cognitive impairment
- j) the therapeutic treatment order system.

The VLRC recommendation stipulates that funding for the program should be on an ongoing basis.<sup>27</sup> It is critical that efforts to enhance specialisation through training are not ad hoc and are inclusive of the range of professionals that a victim-survivor might interact with within the justice system. It is critical that professionals are able to identify sexual violence, ask appropriate questions, respond effectively to disclosures, identify the range of legal and non-legal issues, and connect with services.

Possible approaches to ensuring that training is adequate to result in genuine specialisation include:

- Ensuring training is high quality and informed by appropriate expertise, including lived experience experts
- Including training at tertiary level education – for example as a component of law degrees, practical legal training, and the Bar Reader's course
- Making specialisation training a compulsory annual component of CPD for professionals working with victim-survivors
- Ensuring sufficient time and funding is dedicated to training (ie not be a one day course but be detailed enough to ensure sufficient understanding of the issues)
- Reviewing the effectiveness of judicial training and a national approach to improving judicial understanding of sexual violence and trauma.

A key component of any approach to the specialisation of the response system for sexual violence should be ensuring that those working in the system are equipped to deal with vicarious trauma including support to maintain their mental health and avoid compassion fatigue and burn out. The impacts of vicarious trauma can affect not only those individual professionals working within the system, but also the quality and consistency of service received by victim-survivors.

## Recommendations

- Resources be dedicated to ensuring all professionals who might have contact with a victim-survivor have skills and knowledge to ensure responses are trauma-informed and there is a consistent quality of experience across the justice system.
- Cultural competency for justice agencies be strengthened, for example through compulsory anti-racism and cultural safety training provided by ACCOs.
- Training should be adequately funded on an ongoing basis.

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<sup>27</sup> Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021. Recommendation 69. Available at: [Improving the Response of the Justice System to Sexual Offences – Victorian Law Reform Commission](#).

## Civil proceedings and other justice responses

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### Restorative justice

**Question 45** If you are a victim-survivor, how do you feel about restorative justice? Is it an important option to have? If so, what do you think should be the approach to restorative justice in responding to sexual violence?

**Question 46** What reforms have been implemented in your state or territory? How are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?

**Question 47** What are your ideas for implementing restorative justice as a way of responding to sexual violence?

Women who are subjected to sexual assault in the context of family violence may be more likely than others to seek restorative justice, because of historical or current familial relationships. A criminal justice response is seldom sought by, and is often inappropriate for, victim-survivors who have experienced sexual assault in the context of family violence.

*We often find that what victim-survivors of sexual violence want is an acknowledgement that something terrible has happened to them and to have ongoing access to the supports that they need. Counselling and options to receive an apology are really critical. – Women's Legal Lawyer*

The VLRC recommended the Victorian Government establish an adequately resourced restorative justice scheme<sup>28</sup> guided by the following principles for sexual violence:

- a) voluntary participation
- b) accountability
- c) the needs of the person harmed take priority
- d) safety and respect
- e) confidentiality
- f) transparency
- g) the process is part of an 'integrated justice response'
- h) clear governance.

Women's Legal supports the VLRC's recommendation that victim-survivors participating in a restorative justice process have independent, professional support, including access to independent legal advice.

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<sup>28</sup>Victorian Law Reform Commission, 'Improving the Justice System Response to Sexual Offences: Report', 2021. Recommendations 28-36. Available at: [Improving the Response of the Justice System to Sexual Offences - Victorian Law Reform Commission](#).

There are several restorative justice pathways in Victoria including the Department of Justice and Community Safety's Victim-Centred Restorative Justice Program and the Family Violence Restorative Justice Service. Women's Legal strongly supports the strengthening of restorative justice options for people seeking an alternative justice system response. We recommend that restorative justice models for sexual offences be well-integrated with the family violence response system, including the legal assistance sector.

The design process for restorative justice models should draw on the expertise of specialist victim-centred legal services that practice across the areas of law that commonly intersect with family and sexual violence, including Women's Legal, to ensure potential impacts on victim-survivors' safety and legal outcomes are appropriately considered.

### Interactions with other legal processes

Each part of the justice system response to sexual violence must be mutually reinforcing. It is crucial that system reform to improve responses to sexual offending does not inadvertently generate siloes, which creates safety risks and can adversely affect legal outcomes for family violence victim-survivors.

Implementing additional restorative justice schemes will likely have flow-on impacts on the broader family violence response system, including the "traditional" civil justice system. As such, design and implementation must have the whole system in view.

Participation in restorative justice must not compromise a victim-survivor's entitlement to use evidence of violence, including sexual violence, in family violence, family law, child protection and other non-criminal proceedings.

### Recommendations

- Restorative justice schemes and traditional family violence civil justice systems must be mutually reinforcing, and any scheme should be designed with the whole system in view.
- The design and implementation of restorative justice schemes should be co-designed with specialist legal services such as Women's Legal, in order to capture the practice experience and expertise across intersecting legal jurisdictions such as family law, family violence, child protection and migration. This will ensure that the schemes are victim-centred, expert-informed, and contribute to the strengthening of the family violence response system.
- Legal assistance should be available for victim-survivors who wish to pursue a restorative justice pathway.

### Civil litigation

**Question 48** Which of the measures listed above are likely to most improve civil justice responses to sexual violence?

**Question 49** *Apart from those listed above, are there other recent reforms and developments which the ALRC should consider? Are there further reforms that should be considered?*

## Intersections with family law and family violence

Women's legal services strongly supported the removal of the presumption of equal shared parental responsibility in the *Family Law Amendment Act 2023* and other amendments. The safety of children and adult victim-survivors of domestic, family and sexual violence and abuse must always be prioritised in family law matters and we will be closely monitoring the impact of these reforms on the safety of mothers and their children in relation to parenting arrangements.

Inconsistencies between the assessment of risk in family violence intervention orders and family court parenting orders continue to present legal and safety concerns for our clients including where sexual violence or abuse is a concern for mothers and/or their children. It is not uncommon for parents to comply with parenting orders they believe are unsafe, due to the risks associated with contravening a parenting order and allegations of parental alienation that can lead to a change in living arrangements.

Research conducted by ANROWS found that:

*"In 92 per cent of matters regarding breaches of parenting orders, case files included evidence or allegations of family violence, child abuse, child protection or safety concerns. In addition, half of all matters had a current or past protection order on file with mothers being the protected party in 79 per cent of cases".<sup>29</sup>*

Particular challenges arise for our clients in situations where a no contact family violence intervention order (FVIVO) is made, and separately the Federal Circuit and Family Law Court of Australia (FCFCOA) makes a parenting order permitting contact with a child. In this situation, the FCFCOA order overrides the FVIVO. The inconsistency between orders can be confusing and unsafe for clients to navigate, and in our experience specialist legal advice is needed as to how a client should proceed (for example to seek changes to parenting orders within relevant timeframes). Consideration should be given to how to better manage contravention and variation applications, where serious allegations of family violence and child abuse are made after final parenting orders are issued. . This should include improved information sharing processes between State and Territory

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<sup>29</sup> Carson, R., Kaspiew, R., Qu, L., De Maio, J., Rhoades, H., Stevens, E., Horsfall, B., Press, L., & Dimopoulos, G. (2022). Compliance with and enforcement of family law parenting orders: Final report (Research report, 20/2022). ANROWS. Available at: [System for enforcing parenting orders is ineffective and needs to align with children's best interests, ANROWS research finds - ANROWS - Australia's National Research Organisation for Women's Safety](#)

Courts exercising powers under section 68R of the *Family Law Act 1975* (Cth) to revive, vary, discharge or suspend family law orders.

### **Family law proceedings can escalate risk**

During family law proceedings, there is heightened risk of an escalation in the aggressive and violent behaviour of the perpetrator towards the victim-survivor and their children. When a victim-survivor seeks family law orders, this challenges the power and control of the perpetrator which can escalate family violence risk, including risk of sexual violence.

Where an intervention order is not already in place at the time family law proceedings commence, victim-survivors who genuinely fear for their safety may be reluctant to seek one. This can be due to concerns the timing of the application will adversely impact their credibility in their family law matter, due to the myth that victim-survivors make false allegations of violence (including sexual violence) to gain advantage in their family law matters.

Where an FVIO is in place, this is a relevant consideration for the FCFCOA. However, it is our experience that magistrates are sometimes reluctant to make interim FVIOs where family law proceedings are on foot, as they consider the issues as more appropriately dealt with by the FCFCOA. The challenge for victim-survivors who are at risk is that family law proceedings are more lengthy, and evidence of family violence has to be tested at trial which is months away, whereas the IVO process is faster.

### **Family law orders requiring unsafe or inappropriate parental involvement in decision-making about the child**

We continue to hold concerns that the law does not adequately protect mothers who have been the victim of sexual violence from their ex-partners, by requiring them to remain in contact with the perpetrator for the purposes of making parenting decisions for their children. For example, there is evidence that there are cases where sexual violence has occurred in a domestic relationship but that this has not been a barrier to the father being required to participate in decision-making about the child, such as providing his consent for medical treatment.

While there have been much needed reforms implemented as a result of the *Family Law Amendment Act 2023*, this does not immediately assist victim-survivors that have already been through the family law system and had final parenting orders made. In order for those matters to be re-litigated, an application to vary the parenting orders would need to be made. Victim-survivors would need to demonstrate that there has been a significant change in circumstances and that it is in the child's best interests that orders be changed. Unless there has been a recent family violence incident or other significant change, victim-survivors will not be able to take steps to secure their own safety and recovery.

*Batty & McKay* [2022] FedCFamC1F 369 is a recent case example where sexual violence was perpetrated against the mother, and inappropriate sexual behaviour was engaged in in front of the child, but notwithstanding that, the mother and father were ordered to consult each other and provide written consent prior to any non-urgent medical treatment, including counselling, being provided to the child. This order was made despite the mother having sole parental responsibility of the child. The Court accepted the evidence of the mother that the father had a history of sexual violence towards her, including non-consensual sex and inappropriate sexual conduct and comments towards the mother in the presence of the child, and that the child had at times displayed inappropriate sexual behaviour, mimicking the father's conduct.<sup>30</sup>

The outcome in this case is concerning for a number of reasons. The first is that the nature of the orders is such that the mother is required to communicate with the father with respect to the child's medical treatment, including counselling, which provides further opportunities for the father to perpetuate inappropriate sexual behaviours towards the mother. The Court noted that the mother had reported she felt anxiety and physical sickness at the idea of meeting the father again.<sup>31</sup> The Court found that the father showed minimal remorse, as well as minimal indication of real insight into the broader implications of his behaviour on both the mother and the child.<sup>32</sup> In these circumstances, it is concerning that the Court would make an order for an additional requirement of communication between the parents that is, arguably, unnecessary.

It is also concerning that the father is at liberty to contact the treating practitioner to discuss the matters regarding consultation, treatment and recommendations, which, in circumstances where his behaviour has caused the child to display similarly concerning behaviours, may impact the child's opportunity to receive treatment if the father deems it unnecessary.

Following the repeal of the presumption of equal shared parental responsibility, the court will no longer presume that it is in the best interests of the child for the child's parents to make joint decisions relating to major long-term issues (such as education, religious and cultural upbringing, health, name and significant changes to living arrangements). The removal of this presumption seeks to clarify that decisions about parental responsibility should be based on what is in the best interests of the child, with reference to the circumstances of the case. In theory, this should reduce the likelihood that consent is required from both parents regarding decisions about the child's medical / therapeutic treatment. Whether this will be the case in practice is yet to be seen, and Women's Legal will continue to closely monitor the impact of these changes.

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<sup>30</sup> *Batty & McKay* [2022] FedCFamC1F 369, [108].

<sup>31</sup> *Batty & McKay* [2022] FedCFamC1F 369, [61].

<sup>32</sup> *Batty & McKay* [2022] FedCFamC1F 369, [146].

Requiring mothers who have been the victim of sexual violence perpetrated by their ex-partners to remain in contact with them for the purposes of making decisions for their children, which may be very minor in nature, exposes the mother to anxiety, fear and re-traumatisation, as well as the risk of further sexual violence. While this is just one example, the law should operate to protect mothers who have been the victim of sexual violence from their ex-partners as a paramount consideration, such that unnecessary contact should be minimised and removed where possible, particularly where the mother has sole parental responsibility of the child.

### **Need for cross jurisdictional legal assistance**

It is overwhelming and difficult for victim-survivors of family and sexual violence to navigate multiple jurisdictions at once (such as family violence intervention orders or protection orders, the family law system, the criminal justice system and the child protection system). In our experience clients can find it confusing to distinguish between multiple courts, and it is re-traumatising to retell their story in different proceedings where similar information is needed for different purposes. This can be exhausting for victim-survivors, particularly if they are dealing with more than one lawyer, and it is even more difficult if a victim-survivor is self-represented.

Having a single legal representative can make the process less convoluted and enables relevant information to be shared in each jurisdiction. At Women's Legal, our cross jurisdictional model is critical to ensure clients can get support with multiple matters – for example seeking an FVIO where needed as well as support with their family law matter, while at the same time providing integrated support in terms of social work and/or financial counselling.

### **Recommendations**

To support cross-jurisdictional legal assistance, governments should implement the recommendation in the Independent Review of the National Legal Assistance Partnership review calling for an additional \$459 million for the legal assistance sector in 2025–26 and quarantined funding for Women's Legal Services that is separated from other funding streams under the NLAP.

In addition:

- Mandatory training for FCFCOA judges and lawyers in the family law jurisdiction to understand family violence including escalation of risk
- Consideration be given to processes to better align court orders, including removing the onus for victim-survivors to make application to update parenting orders.
- In order to protect mothers who have been victims of sexual violence, practice reforms should be introduced that minimise unnecessary contact with their ex-partner where possible, particularly when the mother has sole parental responsibility of the children.

## Intersections with the child protection system

Family and sexual violence remains a significant factor in child protection intervention and child removals across Australia, including removals at birth. Poor child protection responses to victim-survivors of sexual violence contribute to unsafe outcomes for both mothers and children at risk.

As our service works with women, this submission focuses primarily on mothers' experience of the child protection system. We recognise that children are victim-survivors in their own right and support holistic responses that address the unique and interconnected needs of all affected family members.

### **Mothers often conceal sexual violence due to fear of child protection intervention**

As noted earlier in our submission, many women do not report family violence, including sexual violence, to police or reach out to services for help, due to fear of child protection involvement. This is particularly the case for First Nations women, women from migrant and refugee backgrounds, and women with disabilities.

Mothers engaged with child protection often conceal their experiences of sexual violence and ongoing contact with the perpetrator knowing that disclosure may have adverse consequences.

The risk of involvement with, and intervention by child protection, is a significant deterrent to reporting sexual violence for women. Consequently, sexual violence perpetrated by intimate partners often remains invisible.

Family violence, including sexual violence, must be identified as early as possible to ensure that victim-survivors can access support services with minimal risk of child protection intervention. Greater investment in prevention and early intervention programs is needed to ensure that mothers experiencing disadvantage can access supports needed to leave abusive relationships and reduce the likelihood of further harm for women and children.

### **Perpetrators of family and sexual violence are not held to account.**

Child protection responses remain highly gendered, with women seen as having primary responsibility for child safety, wellbeing and development. Mothers who have experienced sexual violence and other forms of trauma are frequently deemed unsafe parents due to concerns around mental health or drug and alcohol issues while fathers with a documented history of family violence rarely face the same level of scrutiny. There have been cases where, when you consider the date of birth of the child relative to the mother's age, that the child was clearly conceived when the mother was under the age of consent. This is not always closely scrutinised by child protection and truly considered as sexual



violence. Children have then been placed in the care of their fathers, without any recognition that he had perpetrated sexual violence against the mother and conceived the child when she was under age.

Further, mothers are often held responsible for failing to protect their children from harm and blamed for having ongoing contact with the perpetrator. Information about sexual abuse of the mother is commonly used as evidence that the victim-survivor parent is placing her children at risk, despite acting protectively.

A mother that is a victim of family and sexual violence is a respondent in a child protection application. Even in the absence of any wrongdoing, if a protection order is made she may have a finding that a child has experienced harm in her care. When the reality is that the protective concerns relate to violence perpetrated against her. These findings, coupled with other inaccurate information, is shared by child protection and other service providers with mandatory reporting obligations and can follow women through multiple legal systems. This includes file notes that, for example, mutualise violence, misidentify the person in need of protection, minimise the risk posed by the perpetrator and paternal family members, or suggest a lack of engagement with the child protection worker when the issue is the worker's cultural competency.

Ensuring that child protection responses hold the perpetrator accountable for sexual violence and family violence is critical in addressing barriers to disclosure and promoting safety for mothers and children. There should be no onus on victim-survivors to manage risk; it is the perpetrators' behaviour that should be the focus of attention.

### Dianna's story

Dianna\* has survived a lifetime of family violence including as a child within her family of origin, in romantic relationships and from the father of her youngest child Jason.

The patterns of violence that Jason used to control Dianna included strangulations that rendered Dianna unconscious, letting himself into her property and severe economic abuse such as regularly taking all of Dianna's money and forcing her to take out pay day loans to give him cash.

When asked about the sexual violence she had experienced, Dianna describes waking up with Jason having sex with her and generally having sex with her without her consent. Dianna was diagnosed with Post Traumatic Stress Disorder (PTSD).

Jason was incarcerated for extreme acts of violence against others. This was indiscriminate and included attempted murder, assault of a taxi driver, and "stabbing and bashing people".

Dianna says the biggest challenge in recovering from the violence she experienced was with Child Protection who removed her child and mutualised the violence by holding both parents responsible for harm.

Jason - a high-risk perpetrator - had no regard for criminal sanctions, intervention orders were frequently breached and could not be managed by Dianna. Yet her protective capacity and parenting was heavily scrutinised in this light.

Child Protection required Dianna to engage in family violence counselling, a therapeutic response that forced her to revisit the trauma that caused her PTSD. She was not ready or able to do this.

The wrap around support that Women's Legal provided Dianna represents the complexity of her needs and severity of her risk. We offered initial social work support for safety planning and to make appropriate referrals. Our financial counsellors advocated on her behalf with Centrelink and debtors.

As a result, Dianna's fines and debts were waived. Safe Steps provided emergency accommodation and then high security safety changes to Dianna's home. The Orange Door provided family violence case management and family violence counselling, drug and alcohol referrals. A GP co-ordinated her mental health support. Dianna has remained sober and safe, and Jason is now deceased.

Our lawyers assisted Dianna to advocate for her child to be returned to her care and make an application for victims of crime compensation. Going through this legal process forced Dianna to recall and confront traumatic memories. Our Victims of Crime Assistance Tribunal lawyer spent time building rapport and slowly unravelling more of Dianna's story. The trust that Dianna had in Women's Legal is what made this next legal intervention possible.

As a result, Dianna will receive compensation for more therapeutic support, a holiday for her and her son and to repair her teeth, which were damaged during a violent assault.

\*Not her real name

### **Lack of trauma support for mothers who have been sexually abused**

The child protection system is geared towards risk identification and management rather than supporting victim-survivor parents to safely care for their children. Our practitioners emphasised the systemic failure of child protection services to provide appropriate supports and referrals for women and children who are victim-survivors of sexual assault.

*“Often the worker says: ‘here’s a [phone] number’ with no explanation. The message heard is ‘you’ve experienced this, you’re bad’ rather than ‘you’ve experienced trauma.’” – Women’s Legal Lawyer*

Requirements placed on victim-survivors by child protection are not always trauma-informed. This leads to unrealistic expectations being placed on mothers who have been sexually abused, for example to recognise and address inappropriate sexualised behavior in children whilst her own recovery needs are largely ignored.

Our practitioners find it challenging to identify practical solutions to address their clients’ needs. Accessing support for sexual assault victim-survivors that remain in a relationship with their perpetrator is particularly problematic because of the risk of child protection intervention.

A more cohesive, integrated response that provides clear pathways between legal services and specialised sexual assault services is required to address the needs of women and children experiencing sexual violence and disadvantage.

In addition, current efforts to promote trauma-informed practice must be strengthened to ensure child protection practitioners properly assess risk and provide necessary referrals for victim-survivors of sexual violence. A strengths-based approach is needed that mitigates child safety risks, builds parenting capacity and maintains the fundamental bond between adult and child victim-survivors, including where children cannot safely remain in, or be returned to, parental care.

### **Permanency timeframes contribute to poor outcomes**

The lack of support for women experiencing sexual assault is compounded by strict reunification timelines that require protective concerns to be addressed within 24 months of a child being removed from parental care. Where protective concerns cannot be addressed within these timeframes, the legislation in Victoria requires children to be permanently placed in out-of-home care.

Several reports and inquiries have recommended amendments to the reunification timeframes to enable the court to make decisions in the best interest of the child.<sup>33</sup> The Victorian Government has accepted in principle the Yoorrook Justice Commission

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<sup>33</sup> Yoorrook for Justice for Justice Report 2024; VLA Achieving safe and certain homes for children 2020; CCYP Safe and Wanted Report 2017. See also Sarah Wise et al, Certainty for Children, Fairness for Families? Synthesised Research Findings from the Permanency Amendments Longitudinal Study (University of Melbourne, Unpublished)

recommendation on permanency timeframes.<sup>34</sup> The permanency provisions in each jurisdiction should be reviewed, and where relevant, amended to ensure the best interests of the child remain paramount.

### **First Nations children and families experience system injustice and discrimination**

Women's Legal recognises that a genuine commitment to self-determination for First Nations people in the child protection system is fundamental to achieving better outcomes for Aboriginal children and parents, including those at risk of sexual violence.

First Nations children and their families are disproportionately impacted by systemic injustice, racism and ongoing policy failures in the child protection system. In Victoria Aboriginal and Torres Strait Islander children are 10.5 times more likely to be living in out-of-home care than non-Indigenous children.

The Yoorrook Justice Commission's landmark report calls for urgent and transformative change in the Victorian child protection system. The Victorian Government's response to the Yoorrook for Justice Report is deeply disappointing, with only two of the recommendations relating to child protection fully 'supported'. Women's Legal stands with Aboriginal organisations in calling for implementation of the Yoorrook recommendations in full.

### **Recommendations**

- Provide additional and sustained investment in prevention and early intervention programs to identify and respond to family and sexual violence as early as possible and minimise the need for child protection involvement.
- Implement robust cultural change and compliance strategies to ensure child protection practice accords with best practice guidelines on family and sexual violence, such as the Victorian Multi-Agency Risk Assessment and Management Framework (MARAM).
- Review the permanency provisions in each jurisdiction to ensure the best interests of the child remain paramount.
- Consider legislative reforms to ensure children are only removed from the care of victim-survivor parent as a last resort.

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<sup>34</sup> Yoorrook for Justice [for Justice Report 2024](#), See Recommendation 25

- Fully implement the Yoorrook Justice Commission Reforms to achieve self determination for First Nations children and families in the Victorian child protection system.

## Workplace laws

**Question 50** – *If you are a victim-survivor who experienced sexual violence in connection with a workplace, which factors led you to take legal action, or not take legal action, regarding the violence?*

The known barriers to reporting work-related gendered violence include:

- Role of power and privilege in exacerbating the barriers to reporting for some groups including women of colour, LGBTIQ+ people, and women with disabilities.
- Profile / status of perpetrator within the organisation
- Fear of not being believed
- Fear of repercussions, ostracism
- Perception that the behaviour is 'normal'
- Fear that action won't be taken and/or lack of confidence that anything will change if they reported
- Not knowing where or how to report.

Enablers of reporting include:

- Conditions of psychological safety and trauma informed practices in the workplace.
- Workplace education not just on policies and procedures but to bring about systemic change and awareness of gender inequality as a driver of gendered violence and sexual harassment.
- An organisation intolerant of the behaviours.
- A positive opinion of the effectiveness of the workplace's policies
- Digital activism and social movements challenging sexual harassment such as MeToo

As part of our Respect and Equality in the Legal Sector project, supported by WorkSafe Victoria's WorkWell Respect Fund, Women's Legal is undertaking research on the enablers and barriers to reporting in the Victorian legal sector. This research includes a survey, interviews and focus groups of people who have experienced or witnessed work-related gendered violence to find out how to improve reporting and prevention of this behaviour.

Women's Legal will share the findings of this research to contribute sector specific insights to the existing evidence base on barriers and enablers to reporting and to support evidence-based reforms to improve experiences of reporting.

**Question 51** – What provisions or processes would best facilitate the use of civil proceedings in this context

Victim-survivors need choice in the action, which may include civil action, they take after experiencing work-related gendered violence.

There are opportunities to improve community understanding of the options for reporting work-related gendered violence. Information should be accessible and available in a range of formats from websites and organisations that individuals trust to provide reliable information. Workplaces also have an important role in providing this information.

Information should include detail on the options available to victim-survivors including the process, timelines, possible outcomes, how their information may be used, and information on available legal assistance and support services.

Workforce development, including training and capacity building in trauma-informed approaches, is essential so that women reporting or taking action receive services and assistance that is trauma-informed.

### **Workplace leave entitlements**

Victim-survivors of sexual violence are likely to require time off work to deal with the impact and consequences of that sexual violence, including:

- Attendance at appropriate medical appointments for referral to other appropriate counselling or support services.
- Obtaining legal advice
- Attending counselling appointments.
- Seeking assistance from other relevant support services.
- Attending court proceedings.
- Attending prosecution appointments.
- Attending police appointments.

Workplaces have a role to play in supporting workers who have experienced sexual violence and shaping community attitudes to violence. In the same way that *Fair Work Act 2009 (Cth)* has enshrined family and domestic violence leave as a universal entitlement in the National Employment Standards, paid leave should be available to victim-survivors of sexual violence. The ACT Public Service provides a model for such leave,<sup>35</sup> with a comprehensive clause addressing Family, Domestic or Sexual Violence Leave included in ACT public sector enterprise agreements.

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<sup>35</sup> ACT Public Service Family Violence Toolkit. Available at: <https://www.cmtedd.act.gov.au/employment-framework/actps-domestic-family-and-sexual-violence-toolkit>

## Recommendations

- The *Fair Work Act 2009 (Cth)* entitlement to family and domestic violence leave should be extended to victim-survivors of sexual violence.

## Compensation schemes

**Question 52** *If you are a victim-survivor, did you apply for compensation? If not, why not? If so, how did you find the experience of applying for compensation?*

The Victorian Government has committed to introducing a new Financial Assistance Scheme (FAS) to replace the Victims of Crime Assistance Tribunal in 2024. The Victorian Department of Justice and Community Safety is in the process of developing the new scheme, the final details of which are not yet finalised.

It is our experience that victim-survivors are often unaware of the existence of compensation schemes. Our clients also express confusion about how the scheme differentiates from other supports such as the Flexible Family Violence Support package or Escaping Violence payment. Better, dedicated resources should be provided to ensure victim-survivors are aware of compensation schemes and their rights including through direct referrals from police. They also need to be provided with accurate information about eligibility.

*I have had a number of clients say “but I was told I was not eligible because the perpetrator wasn’t charged” or something to this effect, which is incorrect. This is particularly relevant in relation to sexual violence given there are so few charges or matters pursued in court. –*  
Women’s Legal Lawyer

Although the establishment of the Victim’s Legal Service has assisted with this in Victoria, more needs to be done to ensure victim-survivors are aware of the existence of compensation schemes and the processes involved in order to improve access to justice.

In addition to better information, compensation schemes need to ensure a victim-centric and trauma-informed approach. For example, in our experience working with victim-survivors of family and sexual violence, it is critical that the time limitations involved in applying for compensation appropriately account for and recognise the impacts of trauma, and how this may delay applications to a compensation scheme. Victim-survivors’ experience with other justice system processes can also be a barrier to accessing compensation schemes. For example, clients who have gone through a criminal justice process or trial without a successful outcome have expressed that they simply cannot fathom engaging with another process such as VOCAT and further re-living their experience.

Based on our work assisting victim-survivors to apply for compensation, we make the following observations about their experience of that process:

- The process can be lengthy and involve significant delays, and achieving outcomes takes a long time. This can draw out the trauma felt by a victim-survivor because applicants feel like they are still dealing with the matter relating to their victimisation well past its occurrence.
- There can be a lack of autonomy in how granted awards are able to be utilised by victim-survivors. Awards granted can be overly prescriptive (for example requiring formal approval by a Tribunal to swap psychologists for counselling). This is particularly significant for victims of sexual violence, as having agency taken away is an integral part of their victimisation experience.
- The process can be re-traumatising. For example, if a hearing is required to establish that the act of violence occurred this can mean the victim-survivor is again required to repeat their story and relive their experience. Where hearings are conducted in an adversarial fashion, many clients have expressed feeling like “they are on trial” throughout this process.

We emphasise that despite opportunities for making compensation schemes more victim-centric and trauma-informed, they are an important process for recovery for victim-survivors. Receiving recognition and acknowledgement of their victimisation can be a critical step towards healing for many victim-survivors – particularly if charges were not pursued by police and they otherwise did not have their “day in court” (for example the ability to prepare documents to put forward their story, outlining the impacts on the crime, and reflecting on interactions with other justice system processes can support victim-survivor’s empowerment).

For the benefits of compensation schemes to be realised, legal assistance for victim-survivors is key. Women’s Legal, through Victoria’s Victim’s Legal Service, provides free legal advice and support to people who have suffered injury or loss because of a crime, including sexual offences, and who need help to obtain financial assistance through the Victims of Crime Assistance Tribunal (VOCAT) (soon to be Financial Assistance Scheme (FAS)). Through our work with victim-survivors, we have seen the importance of financial compensation as part of the healing process, including the positive impact of the VLS and VOCAT scheme for victim-survivors whose matters do not proceed to a criminal prosecution (particularly considering the low conviction rate for sexual offences).<sup>36</sup> We do not have sufficient funding though to meet demand.

**Question 53** *What changes to compensation schemes would best promote just outcomes for victim-survivors of sexual violence?*

<sup>36</sup> This is further discussed in the submission to this inquiry made by the Victim’s Legal Service – including the impact of the VLS for victim-survivors and recommendations to further enhance this important service.



A reliance on police reports to determine eligibility for compensation for victim-survivors of sexual offences is inappropriate. As outlined above, there are unique barriers faced by many victim-survivors of sexual violence, particularly in the context of family violence, in reporting these acts of violence to police. Women's Legal recommends that victim-survivors of family violence and sexual assault, and children exposed to these offences, are not required to make a police report or assist the police/prosecution in order to meet the eligibility requirements for compensation schemes.

Mandatory reporting requirements also present a barrier to many victim-survivors in having their full experiences acknowledged through accessing a compensation scheme. For example, victim-survivors of family violence who have only reported one or two crimes may only have those two offences acknowledged, when they may have experienced more than ten years of unreported violence.

#### **Rosie's story\***

Rosie is an Aboriginal woman who has a criminal history. She had been removed from her home as a child, and because of experiences throughout her life felt significant distrust of police and government authorities. Rosie had experienced several assaults. She had also experienced rape, which she reported to medical staff and social workers. She did not feel comfortable to report the rape to police but did report one assault to police. The Victims of Crime Assistance Tribunal would not award her the maximum lump sum amount of compensation without her reporting the rape to the police.

\*Not her real name

Compensation schemes must also recognise and address the unique circumstances of victim-survivors who have experienced sexual offences in the context of family violence. For example, requirements to provide dates for each violent act do not account for the dynamics of family violence. Victim-survivors of sexual violence in the context of family violence, who have been subject to abuse over a long-term relationship, are unlikely to know the dates of each incident. This is similarly the case for adults who have experienced child abuse. It is important that compensation schemes account for these unique circumstances, for example by allowing victims to provide a best estimate of the time range.

As has been recommended by the VLRC, time limits for applications relating to sexual violence should also be removed from requirements for accessing compensation schemes. There are unique circumstances that make arbitrary timeframes for applications to be made inappropriate for victim-survivors of sexual offences. Victim-survivors of sexual crimes, including 'child victims' and people who have experienced

family violence – ‘may take much longer to recognise the violence and/or its effects on them, and/or to disclose or report it’ than victim-survivors of other crimes.<sup>37</sup>

Women’s Legal also considers that victim-survivors of sexual violence (and family violence), as well as children exposed to these offences, should be exempt from requirements for proof of injury. This was recommended by the VLRC who acknowledged the significant psychological harm suffered by victims of sexual assault and family violence, and the barriers that may prevent these victims from accessing support and collecting documentary evidence to prove they have suffered an injury.<sup>38</sup> There are other corroborating materials that can be relied upon to substantiate the occurrence of sexual crimes beyond the existence of a police report and proof of injury. These can include counsellor or psychologist notes and reports, disclosures made to social workers, and sworn statements.

In terms of compensation amounts received by victim-survivors of sexual violence, it is important that these do not impact their ability to access other supports or services (for example Centrelink, legal aid, housing). Compensation payments should also be protected from government debt recovery processes, unless the victim-survivor chooses to use it for this purpose. In addition to legal assistance for victim-survivors to access compensation schemes, Women’s Legal recommends that financial counselling should be made available to victim-survivors who receive compensation payments – advice from a financial counsellor can help ensure that there are no unintended consequences for a victim-survivor through receipt of compensation amounts, and assistance can be provided for victim-survivors to deal with any related financial issues (for example, compensation amounts under the National Redress Scheme have some legal protections<sup>39</sup> but require separate bank accounts – it is important that victim-survivors understand these requirements).

## Recommendations

- The requirement to make a police report and evidence injury should not apply to victims of family violence and sexual assault, as well as children exposed to these offences.
- Time limits for applications to compensation schemes should not apply in relation to sexual offences.
- Proof on injury should not be required for sexual offences.

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<sup>37</sup> P 223- VLRC\_Improving\_Justice\_System\_Response\_to\_Sex\_Offences\_Report\_web.docx (live.com)

<sup>38</sup> Victorian Law Reform Commission, Review of the Victims of Crime Assistance Act 1996, July 2018, Recommendation 31.

<sup>39</sup> See further – Knowmore, ‘Helping clients receiving a National Redress Scheme payment: a guide for financial counsellors, community lawyers and caseworkers’, 2023. Available at: [Helping-clients-receiving-a-National-Redress-Scheme-payment-knowmore-and-the-Financial-Rights-Legal-Centre.pdf](#)

- Compensation amounts should not impact a victim-survivor's ability to access other supports and services and should be protected from government debt recovery processes.
- Financial counselling should be made available to victim-survivors who receive compensation amounts, including family violence financial counselling if the sexual violence has occurred in the context of intimate partner violence.

## Victims' charters

**Question 54** *If you are a victim-survivor, how do you feel about Victims' Charters? Are they important to you? If so, what do you think should be included in the Charter?*

**Question 55** *Have reforms been implemented in your State or Territory? If so, how are they working in practice? How could they be improved? Have things changed? What is working well? What is not working well?*

**Question 56** *What are your ideas for ensuring victim-survivors' rights are identified and respected by the criminal justice system? What can be done?*

In our experience, victims' charters can be an important mechanism to set cultural and behavioural obligations for justice and victims' services agencies when they interact with victims of crime and to ensure that victim-survivors rights and entitlements are protected.

However, the ability of a victim's charter to protect the rights and entitlements of victims is only as valuable if it is enforceable both in principle and practice, and it is important that there are tangible consequence for breaches. Robust and accessible complaints mechanisms are needed, including legal assistance for victim-survivors to make a complaint and to ensure accountability. As noted by Victoria's VOCC:

*...legislative reforms aimed at improving victims' experiences do not always translate into tangible change. ...there continues to be a gap between the entitlements of victims 'on paper' and their actual experiences of victim participation in the justice system.<sup>40</sup>*

## Recommendations

- Robust and accessible complaints mechanisms must be available for victim-survivors to make a complaint about breaches to their rights and entitlements to ensure accountability.
- Legal assistance should be made available for victim-survivors to pursue complaints about breaches to their rights and entitlements.

<sup>40</sup> Victorian Victims of Crime Commissioner, 'Silenced and sidelined: Systemic inquiry into victim participation in the justice system', 2023, p 9. Available at: [silenced-and-sidelined\\_systemic-inquiry-into-victim-participation.pdf](https://www.victimsofcrimecommissioner.vic.gov.au/silenced-and-sidelined_systemic-inquiry-into-victim-participation.pdf) (victimsofcrimecommissioner.vic.gov.au)