

# Victorian Law Reform Commission

## Improving the Response of the Justice System to Sexual Offences: Questions

**These responses were prepared by Dr. Patrick Tidmarsh and Dr. Gemma Hamilton.**

We are currently writing a book together that examines the intersections of family violence and sexual offending, due to be published in 2021. We have also published a number of recent articles in which we draw upon for our responses:

Tidmarsh, P., & Hamilton, G. (2020). Misconceptions of sexual crimes against adult victims: Barriers to justice. *Trends and Issues in Crime and Criminal Justice*, (611), 1.

Tidmarsh, P., Hamilton, G., & Sharman, S. J. (2020). Changing Police Officers' Attitudes in Sexual Offense Cases: A 12-Month Follow-Up Study. *Criminal Justice and Behavior*, 0093854820921201.

Tidmarsh, P., Sharman, S., & Hamilton, G. (2019). Police officers' perceptions of specialist training, skills and qualities needed to investigate sexual crime. *Police Practice and Research*, 1-16.

Dr. Patrick Tidmarsh is a leading authority on sexual offending, and the investigation of sexual crime. He trains and lectures all over the world, helping police and other professionals to understand sexual offending and improve their response to both victims and offenders. He is the author of 'The Whole Story: Investigating Sexual Crime - Truth, Lies and the Path to Justice.'

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## ***Issues Paper A***

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

- 1. What would make it easier for people who have been sexually harmed to get the supports and services they need, so they can decide whether to report the sexual harm?**

The most significant issue we face regarding sexual offending is the reluctance of victims to report harm and abuse. This is most evident where we work, in the higher education sector, where reporting rates are half what they are in the general population, despite the strong presence of high-risk age groups. Reporting rates are low for several reasons that may be hard to shift, including fear of the perpetrator and self-blame, but there are still many we may influence. Again, in the higher education sector, where one might expect a well-informed population, it is notable how little is still understood of what constitutes sexual offending, what avenues of reporting are available, and what the processes and consequences of reporting may be. In particular, understanding of what happens when offences are reported to police is minimal. It should also be noted that, at present, victims have little recourse to alternative avenues of justice in Victoria.

Myths and misconceptions of sexual offending abound within our community, mostly centred on a misunderstanding of victims' behaviour and the dynamics of relationship-based crime created by offenders. The focus on victim behaviour shows both a lack of information, but also a tendency to blame victims, a phenomenon all too present in our culture.

We suggest public information campaigns should be undertaken. Recent focus has been on family violence which, while important, has led to a reduced focus on sexual offending, and may have also created confusion as to the difference and similarities between the two. It would also be beneficial to develop an information line, independent of police, perhaps linked to the Sexual Assault Crisis Line (which currently suffers from both a low profile and poor funding). Please note, 1800 Respect does not have the capacity, currently, to meet such a need, as staff have no specialist training, nor required background in sexual assault counselling.

It needs to be routine for family violence practitioners to ask victim-survivors about sexual harm. If they do not ask, victims will not immediately and freely offer this information.

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

Many elements of the justice system have improved since the last VLRC report was published in 2004. SOCITs are the most obvious example, as the damning findings of 2004 were replaced by the 2015 Victim Support Agency report showing victims of sexual crime as the most satisfied of all victim groups with their experience of police. This improvement, and the subsequent improved connections between CASA and Victoria Police is important. However, despite rises in reporting rates over the last ten years, most victims still do not report.

Rises in reporting have not led to changes to the attrition rate nor to increases in convictions, both of which have fallen in recent years, an issue felt across the developed world. Most attrition still occurs in the early stages of investigation, although this is subject to the phenomenon of downstream orientation, where predictions of prosecutorial and jury decisions are made, rather than on the credibility of the complaint and breadth of evidence. We suggest several areas which may improve collaboration and begin to affect these statistics:

- All areas of the CJS should receive training in understanding sexual crime, with a focus on countering myths and misconceptions. This has proved successful within Victoria Police, where police prosecutors receive similar training to investigators, albeit in truncated form. (See Tidmarsh & Hamilton, 2020 above for key myths and misconceptions to be addressed).
- The prosecutorial criteria of 'A reasonable prospect of conviction' and 'In the public interest' should have clear guidelines established, as they are currently open to wide interpretation.
- Victoria Police should undertake a review of brief authorization practices, including modelling independent panels for cases that may present prosecutorial challenges. Panels should comprise independent subject matter experts alongside police and prosecutors.
- Victoria Police should publish annual statistics on attrition, as should the OPP. This will necessitate all cases having a *written statement of closure*, including the rationale for any decision and, where possible, a statement from the complainant. Current practice makes interpretation of case file data extremely difficult.

### **3. How can the relationship between family violence services and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?**

The two fields are currently quite separate, despite many connections. There has been a lack of policy work on the similarities and differences, leading to much confusion in the sector and a lack of connection in service delivery. We are currently conducting research and writing a book on this area.

There needs to be a focus on language and definitions, as there is currently a lack of clarity. This must include explanations of similarities and differences between the two (e.g., family violence, sexual violence, grooming, coercive control).

If services for family violence and sexual offending are to be integrated, much thought must be given to the differing needs of victims, as services for FV and SO are not interchangeable, despite many intersections. In policing, for example, SOCIT investigators have a simple, forensic mandate. FV investigators have a wider mandate, including referral and alternative response pathways. We would like to see the development of a Relationship-based crime Command, with seamless training of FV and SO investigators, but there are several hurdles to such a move (see later commentary on policing).

Crucially, children are missing in many of the discussions of FV, despite the clear links between child sexual abuse and family violence. FV models have traditionally concentrated on violence perpetrated against adult women, with children seen as part of that issue, rather than victims in their own right. Whilst SOCIT investigators are trained to look for CSA, for example, FV investigators may neglect to delve into wider offending, focusing on the most pressing safety issues and obvious offences. It should be noted here too, that the relative difficulty of prosecuting sexual offences may reduce enthusiasm for both investigation and prosecution, particularly where easier pathways exist in prosecuting violence.

To date, our research suggests that family violence and sexual assault services require cross-pollination, particularly as a significant amount of sexual offending occurs within the family context. Cross-pollination will involve educational training and personal development amongst practitioners in both sectors, as well as regular collaboration, potentially via a co-located model.

Separate sexual assault services with ample funding will always be needed, particularly for victim-survivors of sexual harm that occurs outside of family contexts. In other words, sexual assault cannot be completely subsumed under family violence services; it requires specialisation and cannot just be tacked onto the portfolio of family violence. The volume of sexual assaults outside of family contexts is too high for family violence services to deal with, and the drivers and dynamics of these sexual assaults are markedly different from familial sexual offending.

See research by Macy and colleagues for further details regarding the services provided by sexual assault and domestic violence agencies in the United States.

Macy, R. J., Giattina, M. C., Montijo, N. J., & Ermentrout, D. M. (2010). Domestic violence and sexual assault agency directors' perspectives on services that help survivors. *Violence Against Women, 16*(10), 1138–1161.

Macy, R. J., Giattina, M. C., Parish, S. L., & Crosby, C. (2010). Domestic violence and sexual assault services: Historical concerns and contemporary challenges. *Journal of Interpersonal Violence, 25*(1), 3–32.

Macy, R. J., Giattina, M., Sangster, T. H., Crosby, C., & Montijo, N. J. (2009). Domestic violence and sexual assault services: Inside the black box. *Aggression and Violent Behavior, 14*(5), 359–373.

Macy, R. J., Johns, N., Rizo, C. F., Martin, S. L., & Giattina, M. (2011). Domestic violence and sexual assault service goal priorities. *Journal of Interpersonal Violence, 26*(16), 3361–3382.

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

See previous answer.

Studies suggest that where there is adult-to-adult violence, approximately 50% of children are also physically abused. Research also suggests that, in such circumstances, sexual abuse of children is also far more likely.<sup>1</sup>

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

Aside from the comments we have already made about public information, better language and policy, the problem in this area is that the choices are between an adversarial justice process and and/or a therapeutic service. There isn't anything else. Most police and lawyers say they would not advise family members to use adversarial justice, should anything happen to them,<sup>2</sup> so how can we expect the public to do so? We need to improve both the current adversarial system and to provide alternative justice models.

**6. Is there a need for a stronger focus on governance or shared outcomes in the response of the justice system to sexual harm? If so, what should this look like?**

There are *no shared outcomes* in an adversarial system. It is set up for the system's benefit, primarily. For example, once cases reach court, both victims and investigators become merely witnesses for the prosecution.

We favour a theoretical approach described by UK researchers as "Kaleidoscopic justice",<sup>3</sup> which prioritises victim needs. This includes a choice of pathways for justice outcomes, as well as therapeutic services. The focus is on restoration and wellbeing, harm reduction, and community protection.

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

As described previously case attrition, despite remaining stubbornly high, is poorly understood. Brief authorisation and prosecutorial decision-making must be examined, as we know what is happening, but not *why* it is happening.

Recidivism is also poorly understood by the community. Many misconceptions still exist, which has led to some costly mistakes, like the set-up of the sex offender register, for example.

As also described previously, clearer research on the similarities and differences between SO and FV.

Meta-analyses on research into the origins of sexual offending may also guide a focus on primary prevention strategies.

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

CASA B+

SOCIT B

Adversarial system D-

Public understanding of SO poor

Public info poor

## ***Issues Paper B***

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

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

Yes, there is a need to improve attitudes towards sexual assault victim-survivors within the CJS, particularly as perceptions of victims is a key factor in police decisions to refer cases for further legal processing. It is a clear finding that rape myths influence police perceptions of victim credibility.

One way to help improve police attitudes is through intensive training. Our research found that a 4-week interactive training program that focused on the dynamics of sexual offending had a lasting impact on police attitudes. Following training, investigators became more confident in case approvals and guilty verdicts, less likely to attribute responsibility to victims, and demonstrated better understanding of sexual offense dynamics. Ratings of victim responsibility and guilty verdicts were maintained 9 to 12 months post-training; however, confidence in case approvals decreased after working in the field (See Tidmarsh, Hamilton, & Sharman, 2020- attached paper).

The 4-consecutive-week interactive training totals approximately 98 hr and involves a range of different components: presentations, question-and-answer sessions with adult victim-survivors of sexual abuse, analysis of court and interview transcripts, and practice interviews with role-playing actors and real children regarding innocuous events. The underlying premise of the Whole Story training is that specialist sexual offense investigators must understand the dynamics of sexually abusive relationships, and the psychology and behaviour of individuals convicted of (or charged with) a sex offense. This is particularly important in countering any myths and misconceptions they may hold about sexual offending and explaining victim behaviour that may be interpreted as “counter-intuitive,” such as delay of complaint, a lack of injury, or a continued relationship with the alleged perpetrator. Whole Story also trains investigators to incorporate “relationship” information into the evidence presented to fact-finders, ultimately to help legal professionals and jurors better understand victims’ behaviours and the context that led to the offending.

Attitudes towards victims within the criminal justice system have improved considerably in recent times. Improvements in policing have been noted and the introduction of intermediaries is a significant step. More still needs to be done, particularly with regard to Indigenous complainants and migrant communities. Whilst improvements have not led to better outcomes, and adversarial justice provides little comfort, the process of investigation is much less harmful now. In the wider community, however, it appears little has changed, despite #MeToo and rises in reporting of some kinds of offending. Myths and misconceptions, as documented by VicHealth, Our Watch and others, appear to be as widespread as ever. Addressing community attitudes is important for 2 key reasons: (i) community members may be or become professionals within the CJS, and (ii) community members may become jurors in a sexual assault case.

We also know that certain inter-related personal and professional factors (e.g., gender, education, age, years of experience, rank) can influence officers' attitudes about rape, and such attitudes can be resistant to change. Individual factors and pre-conceived attitudes could be considered at the investigator selection process.

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

Yes, we do. Relationship crime is not best dealt with by adversarial justice. If it is to remain the fundamental justice process, it must adapt to the unique needs of this crime type. Training for court officials, investigators, prosecutors and jurors is needed, along with a raft of legislative and procedural changes (see later answers).

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

Primarily, a victim- focus. It should provide a range of options, including access to therapeutic and wellbeing services. The priority should be harm reduction and community protection, as well as punishment and deterrence. Avenues of justice should be explored, rather than a sole focus on adversarial processes.

There must be training for all court officials, particularly in myths and misconceptions and offender typology, and grooming/victim behaviour.

Compulsory consults on brief authorisation and prosecution should take place, with all complex cases referred to an independent panel.

Consideration should be given to creating a pool of specialist jurors, or paid jurors. Should this not be undertaken, then all juries must be provided with non-case specific education prior to sitting in judgment.

Intermediaries and court supports should be further developed.

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

See above.

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

Removal of committals was a good idea. The process caused delays and was open to abuse by defence counsel, looking to create prior inconsistency. Instructions for brief authorisation, and clarity about public interest and reasonable prospect of conviction as discussed earlier, are required. This should determine the impact of downstream orientation and create greater transparency and accountability in authorisation and prosecution decisions.

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

Intermediaries A+

Court supports A

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

The Royal Commission into Institutional Responses to Child Sexual Abuse noted that there was still too great a focus on the credibility of the complainant, rather than the credibility of the *complaint*. One commissioner also expressed the view that, despite recent advances in the system, the pendulum of justice had barely moved.

Recent research also shows that defence strategies, designed predominantly to damage the credibility of complainants, have barely changed between the 1950's and today.<sup>4</sup> With myths and misconceptions widespread, defence's job remains relatively easy.

Judith Hermann, an authority on trauma, notes that, if one were to design a system that provoked traumatic reactions in already traumatised people, adversarial courts would fit the bill.

The system is overly focused on four words: Reasonable, relevant, credible, and consent, all of which are open to broad interpretation, and about which little guidance is offered. Definitions and community understandings of consent provide significant problems. Most notable in current processes is the double chance of accused having formed "a reasonable view" that it was present. Consent needs to be re-thought, both conceptually and legally (see later answers for more detail).

## ***Issues Paper C***

### ***Defining Sexual Offences***

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

Cultural and legal changes to consent are required. We suggest Victoria examine changes to legislation made in Sweden and Iceland.<sup>5</sup> The premise is a move to affirmative consent, requiring all parties to establish consent prior to any sexual act/s. Legislation has been amended, in Sweden to provide the charges of "Negligent Rape" and "Negligent Sexual Assault", providing lesser penalties than traditional charges (which can still be brought). Changes have been accompanied by significant emphasis on education programmes, predominantly for young people, as well as public information campaigns.

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

It is not well publicised and is poorly understood. It appears to have made no difference to attrition or conviction rates. The onus of communication is still squarely on the victimised person, giving a continued patriarchal tone, and so little responsibility falls on alleged perpetrators. The continued 'double chance' defence also weakens any change considerably. For suggested changes, see previous answer.

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

There is a myriad of issues with developing technologies, so we can only focus on a few. It is common for law to be slow to react to community change. The rapid advance in technologies has made this more pronounced. For example, the nude selfie phenomenon, which gave rise to some teenagers being charged with transmitting child pornography, demonstrates how slow the system is to adapt.

Grooming charges, particularly online, was a good initiative, but it is yet to have the impact intended. Misunderstanding of offender behaviour and misconceptions of victim behaviour contribute to this.

The predominance of social media has also given rise to problems for investigators and prosecutors. As most offending happens in relationships, there is often a vast array of materials for investigators to trawl through, often providing confusing messages about the nature of the relationship between accused and complainant. Not only is training required to understand the complex dynamics of relationship crime, but limits should be placed on the amount of material investigators are required both to examine and declare to defence.

Many new technologies have provided opportunities for offenders to abuse them. Apps like Tinder, ride sharing services, even personal remote devices like Alexa, have all seen offences linked to their use. Whilst little may change in terms of charges, much can be done to pressure companies to minimise the risks of using their products and informing both the public and investigators of both the new technologies and their use by offenders.

- 4. Are new offences or changes to offences needed to address existing or emerging forms of sexual harm? If so, what new offences or changes?**

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## ***Issues Paper D***

### ***Sexual Offences: Report to Charge***

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

The SOCIT reforms, effectively instigated by the 2004 VLRC report, have significantly improved the response of police to victims of sexual crime. SOCITs have a clear training strategy, including the use of Whole Story investigation methodology, which has impacted investigators attitudes, beliefs and practice. There is an improved victim focus, and the development of a specialism in sexual crime investigation, with an accompanying sense of identity and purpose. Police prosecutors (lower courts) have the same training (abridged form) as SOCIT members, which has led to better connection, and anecdotal improvements to 'case concepts' and court outcomes.

There are, however, some challenges to progress at SOCIT, including dilution of SOCIT training and unclear links with FV investigators in both training and practice. Brief authorisation also remains problematic, downstream orientation unchallenged, and both attrition and conviction rates are testament to this.

MDCs are also a significant advance, improving access to justice and demonstrating an understanding of connections in relationship-based crime. They are yet to move, however, from co-location to effective co-working. There is also suggestion that MDCs are seen as the solution to too many issues.

There are also some fundamentals in Victoria Police, as in any police service, that represent a constant risk to new initiatives like SOCIT. These are particularly apparent if the initiative involves specialisation. These include:

- Police use one model for all police recruits, irrespective of where they work after graduation.
- Policing has an excessive focus on flexibility of members, leading to a dislike of specialism.
- All police are required to work in general policing before advancing to other areas.
- Different skill sets required in relationship-based crime (see attached research paper, done with SOCIT investigators), so specialists need to be de-trained and re-trained to be effective in relationship-based crime investigation.
- There is no direct recruitment to SOCIT or FVIU, even for child interview specialists, for example.
- There is no clear policy on retention of members at SOCIT, irrespective of suitability to stay in the role, with preference for regular movement of investigators. Movement breeds mediocrity, with attendant loss of skills and knowledge. Regular movement of managerial level officers is particularly damaging, as there is no requirement to have worked as relationship-based crime investigators prior to the senior role.

- Many SOCITs are significantly over worked, leading to a reliance on temporary staff (Temps), who sometimes wait many months to attend training, if they go at all.
- Contrary to the RCIRCSA report, authorizing officers are still subject to costs awarded against Vic Pol, should cases they authorize (in the lower courts) result in a finding of not guilty. This damages the integrity of the charging process.

Some of these issues may be improved as more women and ex-SOCIT members reach senior roles. Yet, more proactive initiatives could bring change sooner.

While MDCs appear to facilitate service delivery to victim-survivors, it is integral that the co-location of various services is planned and managed carefully. For example, recent research by ANROWS (2020) suggests that Aboriginal and Torres Strait Islander women may be reluctant to seek help when family violence services are co-located with child protection services out of a fear their children may be removed. Our research on FV and sexual offending also uncovered the potential issue of FV perpetrators attending an MDC as a victim of sexual abuse; managers would need to be aware of potential conflicts and complexities of MDC clientele when they are both victims and perpetrators.

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

Key areas that require improvement are:

- Guidelines and training in ‘options talk’ processes, where complainants are advised of their choices. Whilst many of the worst practices have been challenged and/or eliminated, it remains an area requiring continuous improvement.
- Feeling believed is crucial for any victim-survivor of sexual assault. We know that the false allegation rate of SA is extremely low, yet some officers still subscribe to the misconception that many victims lie. Ensuring officers are aware of the data on false allegations is important, as well as training to understand complexities around why there may be inconsistencies in victims’ accounts. Communicating empathy and support is going to be key to retaining cooperation and avoiding withdrawals of complaints.
- Officers need to be given the time to offer continuity of case management and communication with victims, keeping them updated on important matters. Building trust and rapport with victim-survivors is crucial for their experience during the investigative stage. Strategies for rapport-building should be emphasised in police training.
- Brief authorisation requires attention, as previously discussed.
- Data, particularly on attrition, as previously discussed.
- Connection to prosecutors, including joint training, clear guidelines, and access to independent case analysis, as previously discussed.

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

Work with children has improved significantly over the last few decades. In particular, MDCs, SOCITS in separate spaces, embracing the use of intermediaries, and making interview areas less intimidating have all made a difference. Work with children and historical CSA improved more than any other area, including improvements to VAREs and the interviewing of children.

Moving forward, there needs to be greater focus on the relationship between child protection and police, including joint investigations, as these are not standardised and are reliant on ad hoc relationships in different areas. Improvements could be made to the connection between FV investigators, SOCIT, and child protection, particularly when adversarial prosecutions do not result from investigations.

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

- Continued focus on training in CSA issues and child interviewing for FV investigators.
- Consideration of direct entry and specialist child interviewers in SOCIT/FV investigation units.
- Consideration of a Relationship-based crime Command, with joint training and location of all SOCIT and FV investigation teams.

**5. Do you support access to alternative ways of reporting sexual harm? Why or why not?**

Yes, we do. Victoria continues to have low reporting rates for sexual offending (despite recent rises). Many victims do not want to report to police, however easy we may make it. They do, however, often want authority to know what happened to them.

Young people, who are amongst the highest risk groups, are adept with technology, and least likely to want to report to police. Online options or independent advice lines can offer invaluable support and information, as well as facilitating access to therapeutic services.

**6. If you support alternative ways of reporting sexual harm, what features should they have?**

There are potential issues with online reporting tools. These include:

- The need for significant staffing, so potential links to investigators may be made.
- Confidentiality of complainants is vital, but investigations can hinge on timely connection, where appropriate.

- Training of staff to deal with complex legal and forensic issues, as well as supporting traumatised people to access appropriate services.
- Fairness to the accused is an important factor, so confidentiality of data systems, and limits to accessibility are vital.

We favour systems that have 24/7 staffing, by trained staff (not 1800Respect in its current incarnation). It should maintain encrypted communication between staff and complainant, and offer online therapeutic advice, referral, and facilitate access to investigators where appropriate.

Any alternative measure that adopts a written-response option will need to ensure questions are in line with best-practice interview protocols (see Heydon & Powell, 2018 for more details). For example, questions will need to be open-ended in nature and encourage broad detail in victim's own words.

Heydon, G., & Powell, A. (2018). Written-response interview protocols: An innovative approach to confidential reporting and victim interviewing in sexual assault investigations. *Policing and Society, 28*(6), 631-646.

## ***Issues Paper E***

### ***Sexual Offences: The Trial Process***

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

Not well. See previous comments on downstream orientation, attrition, and conviction rates. See also previous comments on the need *written statement of closure* in all cases, with data collected on attrition, the need for research into brief authorisation, and trials of independent panels to decide on complex cases. See also previous comments on guidelines and training, for all authorizing officers and prosecutors (police and OPP), on reasonable prospect of conviction, myths and misconceptions, grooming, victim behaviour etc.

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

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

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#### **4. How well are jury directions for sexual offence trials working? How can they be improved?**

Changes to jury directions have made improvements. Some of the most egregious abuses are being checked (sexual history/children's memory etc.). However, the literature shows jurors can find them confusing. There is also doubt about the effect on juror attitudes and beliefs, particularly if they are delivered in the latter stages of trials. Non-case-specific educational programmes for jurors appears to offer much greater benefit.<sup>6</sup>

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

Whole Story investigation methodology was developed in order to better understand relevant evidence in sexual offence cases. The Uniform Evidence Act has made a significant difference to the capacity to argue relevance in sexual offence cases. The ability for relevant evidence to be adduced is dependent on investigator and prosecutor training in understanding the dynamics of relationship-based crime.

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

The recent judgment in the Pell case illustrates that, even at the highest levels of the judiciary, myths and misconceptions are present. Although it is hard to argue with the commentary that convictions on sole testimony present risk, it begs the question, "What will that mean for investigations and prosecutions of behaviour that typically occurs in secret with only the victim as a witness?" It is easier to criticise commentary that offending

is unlikely to take place where other people are in close proximity, as this is exceedingly common in child sexual abuse cases, as in adult sexual assault and rape.

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

The Children's Court has been a leader in finding alternative avenues of justice for young people with sexual offending behaviours. They requested training from the Male Adolescent Programme for Positive Sexuality (MAPPS) as far back as the late 90's and has been a supporter of crucial early intervention initiatives, such as Therapeutic Treatment Orders.

**8. What are other issues with the trial process for sexual offences, and how should they be addressed?**

We have addressed some of these issues previously, but it is important to reiterate that little has changed in the trial process in terms of defence strategy and practice. The role is to attack the credibility of the complainant and their narrative. Whatever advancements are put in place, adversarial court will remain a place of trauma for most complainants, irrespective of the result.

It is also important to reiterate that, over the last twenty years, whilst reporting has risen significantly, attrition has moved little, and conviction rates have gone down.

## ***Issues Paper F***

### ***People Who Have Committed Sexual Offences***

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

In following on from the previous question, it is notable that in a system used so infrequently by victims, where so few offenders are convicted, the most damaging element for our community is that most offenders go unreported, unchallenged, and unchecked. The prioritisation of punishment for offenders, whilst understandable, means that most interventions, for those that are convicted only come as a tertiary prevention strategy, when behaviour and antecedents may have been visible much earlier.

It is also important to note that the sex offender register is wasting resources on low-risk offenders, who may be better assisted with broader intervention and supervision strategies.

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

I don't know that there are any, really.

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

As stated previously, the Register, despite numerous improvements, continues to include offenders of all risk categories. As high-risk offenders generally attract supervision anyway, we suggest the register would be best used spending more time on medium risk offenders.

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

There are numerous examples, around the world, where communities take a more proactive approach to prevention, early intervention, and offender rehabilitation and community reintegration. For example, Germany's Dunkelfeld Project targets the 250,000 estimated men with interest in child molestation, attempting to draw them into therapeutic interventions before they offend. StopItNow programmes, originating in the US, target both those who have, and those who have not, already offended, again prioritising harm minimisation and future risk. Circles of Support and Accountability (COSAs), originating in Canada, use professionals and community members to both supervise and support offenders as they reintegrate into the community. None of these initiatives, with all the potential community safety benefits they bring, is present here, despite the efforts of many people and NGO's.

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

There are, as stated above, many programmes that have already been developed on these issues, including restorative justice programmes, so much of the preparatory work is available.

The principles of any such programme should be:

- Victim-focused and trauma-informed
- Prioritizing community safety
- Health and wellbeing of victims and community prioritized
- Offender accountability, including trauma-informed processes for intervention and community reintegration.
- Low risk offenders should be prioritized, necessitating a significant onus on risk assessment.

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

Victoria has done well, with significant interventions beginning as far back as 1993, with MAPPS. There are more intervention programmes in Victoria than anywhere else in Australia.

TTO's have also been a significant advance, particularly as they now include 15–18-year-olds, an issue felt to be politically unpalatable when TTOs were first created. Most children with sexual behaviour problems now go through the TTO process, rather than through the courts.

Improvements could be made with more focus on familial intervention and/or preventative work with families and children.

More work could also be done on the drivers of sexually abusive behaviour in children, including FV and pornography.

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

We would like to see this report set out a template for cultural and legal changes, including many of the initiatives we have addressed including, but not limited to:

- Changes to laws on consent, including new offence categories, education programmes and community awareness campaigns.
- Sex education for all Victorian children that addresses broader relationship issues, as well as pornography, consent, STI's etc.
- Addressing community myths and misconceptions.
- Coordinated training for all investigators, prosecutors, and court officials.
- Alternative justice pathways for complainants, including online reporting and restorative justice processes.

- Maintenance and development of SOCITs, including links with FV investigation units and possible relationship-based crime command and collaboration.
- Prevention and early intervention programmes for at risk youth and adults.

## ***Issues Paper G***

### ***Sexual Offences: Restorative and Alternative Justice Models***

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

Yes, we do.

- Adversarial systems are ineffective.
- RJ has a victim focus.
- RJ prioritises wellbeing and community safety/cohesion.
- Research literature is clear on potential benefits (see attached) including reduction of victim fear and anger. All sides perceive the processes as fair.
- RJ can include sanctions and consequences for perpetrators.<sup>7</sup>

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

See answer above.

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

There is little evidence that an inquisitorial model is better than adversarial justice. Research into judge-only trials suggest it may even be worse.

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

Yes. Such initiatives may help counter myths and misconceptions and lead to public awareness of the need for alternative justice pathways and more prevention and early intervention programmes.

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

Whole Story was designed with a focus on listening to the stories of complainants. Indigenous representatives at the RCIRCSA noted that such processes were culturally sensitive, as justice models are based on listening. This includes the possibility of a variety of justice outcomes, which we do not currently enjoy.

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

We would prioritise the creation of “kaleidoscopic processes” and practices, which could work with victims to determine the best outcomes, in each case, for healing, accountability, and community protection.

## ***Issues Paper H***

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

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

We would support the use of civil proceedings in sexual assault, rape, and sexual harassment cases. It is important to note, however, that civil proceedings are also susceptible to community myths and misconceptions. There is also the propensity for argument of comparative fault, which is anathema in this context.

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

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## References

1. Heather A. Turner, David Finkelhor, Richard Ormrod (2010). Poly-Victimization in a National Sample of Children and Youth. *American Journal of Preventive Medicine March 2010 Volume 38, Issue 3, Pages 323–330*.  
  
Australian Institute of Family Studies (2015). Children’s exposure to domestic and family violence. Key issues and responses. *CFCA Paper No.36 – December 2015*  
  
Sherry Hamby, David Finkelhor, Heather Turner, Richard Ormrod (2010) The overlap of witnessing partner violence with child maltreatment and other victimizations in a nationally representative sample of youth. *Child Abuse and Neglect 34 734-741*  
  
Anne E. Appel and George W. Holden (1998) The co-occurrence of spouse and physical abuse: A review and appraisal. *Journal of Family Psychology Vol 12, No.4, 578-599*  
  
Zelimar S. Bidarra, Genevieve Lessard, Anni Dumont (2016) Co-occurrence of intimate partner violence and sexual abuse: Prevalence, risk factors and related issues. *Child Abuse and Neglect 55, 10-21*  
  
Herrenkohl et al (2008). Intersection of Child Abuse and Children's Exposure to Domestic Violence. *Trauma, Violence and Abuse Volume 9 issue 2, page(s): 84-99*  
<https://doi.org/10.1177/1524838008314797>  
  
Bedi G, Goddard C (2007). Intimate partner violence: What are the impacts on children? *Australian Psychologist Volume 42, 2007 - Issue 1 pp. 66-77 online 17/1/2007*.
2. Christine Eastwood (2003). The Experiences of Child Complainants of Sexual Abuse in the Criminal Justice System. *Australian Institute of Criminology Trends and Issues No.250 May 2003*. ISSN 0817-8542 ISBN 0 642 24298 4
3. McGlynn C, Westmarland N ((2018). Kaleidoscopic justice: Sexual violence and victim-survivors’ perceptions of justice. *Social and Legal Studies 1-23*. DOI: 10.1177/0964663918761200
4. Sarah Zydervelt, Rachel Zajac, Andy Kaladelfos, Nina Westera (2017) Lawyers’ strategies for cross-examining rape complainants: Have we moved beyond the 1950’s? *British Journal of Criminology 57, 551-569*
5. Government offices of Sweden ([www.government.se](http://www.government.se)). Consent – the basic requirement of new sexual offence legislation – 26/4/18 – enacted into law 1/7/2018
6. Suzanne Blackwell and Fred Seymour (2014) Prediction of Jury Verdicts in Child Sexual assault Trials. *Psychiatry, Psychology and Law, 21:4, 567-576*
7. Kathleen Daly (2011). Conventional and innovative justice responses to sexual violence. Australian Centre for the Study of Sexual Assault. ACSSA issues N0.12 2011  
  
Kathleen Daly (2002). Restorative Justice. The real story. *Punishment and Society Vol 4 (1): 55-79*  
  
Koss, M. P. (2000). Blame, shame, and community: Justice responses to violence against women. *American Psychologist, 55(11), 1332-1343*. <http://dx.doi.org/10.1037/0003-066X.55.11.1332>  
  
Daly, Kathleen (2001) ‘Conferencing in Australia and New Zealand: Variations, research findings, and prospects’, in A. Morris and G. Maxwell (eds) *Restorative justice for juveniles: Conferencing, mediation, and circles*, pp.59-84. Oxford:Hart Publishing