



The Australian Law Reform Commission (ALRC)

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14 June 2024

Re: Inquiry into justice responses to sexual violence in Australia Issues Paper

Dear Commissioners Kudelka and Neave,

Thank you for the opportunity to participate in this important inquiry. Sexual Assault Services Victoria (SASVic) is the peak body for specialist sexual assault and harmful sexual behaviour services (SSAS) in Victoria. We work to promote rights, recovery and respect for victim survivors and other people impacted by sexual violence and harm. We seek to achieve this by working collectively to change the attitudes, systems and structures that enable sexual violence to occur. SASVic members bring over 30 years of feminist practice and specialist expertise to the task of reforming system responses to sexual violence and harmful sexual behaviour.

In seeking to contribute to the work of the inquiry, we note the groundswell of public concern about sexual, family and other gendered violence against women and children, including murders. We welcome the government's focus on reforming the criminal justice system to better respond to sexual violence, and, as part of this, the Commission's work on this inquiry. We will not end sexual violence while the criminal justice system continues to be seen and too often experienced by survivors as failing to uphold their rights.

All forms of men's violence against women are deplorable, and sexual violence is a profoundly harmful tool used by men to control women and girls. This inquiry should be looking to recommend, within the scope of the terms of reference, the types of transformative, effective measures, which match the political will being articulated at this significant moment to end men's violence. We urge you to boldly say what needs to change, and what investments are required, for our justice system to play its role in ending sexual violence.

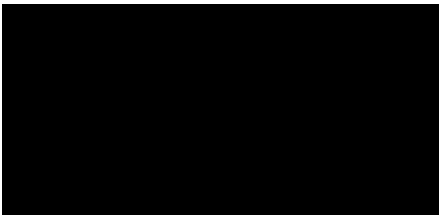
In making our submission to the inquiry, we hope to highlight the important role played by the specialist sexual assault sector, and our colleagues in the specialist family violence sector, in strengthening survivors' capacity to engage with the criminal justice system. Any reforms to the criminal justice system must have at their heart better resourcing of the specialist sexual assault and family violence sectors, including strengthening the sectors' capacity to develop innovative programs to progress justice for survivors and accountability for perpetrators.

We hope this will also be reflected in the way the Commission conducts this inquiry. We understand that this is the first of at least two issues papers to be released as part of this inquiry. It is critically important that future issues papers recognise the role of SSAS in



supporting victim survivors through justice processes and beyond, within the scope of term of reference 1(e). You will see in our current submission that our services have, for decades, played a critical role in supporting victim survivors through justice processes. Thank you again for the opportunity to make this submission. Change to the criminal justice system to protect the rights of survivors of sexual assault and hold perpetrators to account cannot come too soon.

Yours sincerely,



Kathleen Maltzahn
CEO
Sexual Assault Services Victoria



Background

Our sector's expertise

This submission is informed by the expertise of our members with whom we conducted a specific consultation in preparing this submission. SASVic is the peak body for 18 SSAS across Victoria, from Horsham to Bairnsdale, and Wodonga to Warrnambool. Our reference to 'specialist sexual assault services' includes all Victorian SSAS funded by Victoria Government's 'sexual assault support' and Sexually Abusive Behaviour Treatment Services (SABTS). This includes, but is broader than, centres against sexual assault (known throughout Victoria as 'CASAs').

Together, our member services provide a free specialist response to victim survivors and other people impacted by sexual violence and harm. This includes 24/7 crisis support for people who have been subjected to a recent sexual assault or are disclosing past sexual assault for the first time; counselling and advocacy for victim survivors and others impacted by sexual assault; and assessment, support and intervention for children and young people exhibiting harmful sexual behaviour (HSB). Our members' response work is complemented by community education and other prevention activities, systems advocacy and training and support for other professionals.

Our current members are the Australian Childhood Foundation, Ballarat Centre Against Sexual Assault (CASA), Bass Coast Health, CASA House, CASA Central Victoria, Centre Against Violence, Eastern CASA, Gatehouse Centre, Gippsland CASA, Goulburn Valley CASA, Kids First, Mallee Sexual Assault Unit, Northern CASA, The Sexual Violence and Family Violence Centre, South Eastern CASA, South Western CASA, West CASA and the Sexual Assault Crisis Line.

Our members are funded through the Victorian Department of Families, Fairness and Housing, specialist sexual assault support fund. Last year, our member services provided support to close to 20, 000 victim survivors. However, in the 2023-2024 financial year, SSAS are funded to work with only 15, 115 individuals.

The work of our sector is underpinned by a feminist analysis which recognises that sexual violence is predominantly perpetrated by men; both child and adult sexual abuse is widespread; victim survivors frequently face shame, denial and blame if they expose the violence against them; and individuals and institutions in positions of power have historically frequently enabled sexual abusers to act with impunity. Situating sexual violence as a social problem supports victim survivors to understand that sexual violence is not their fault and that their responses to the abuse are not personal failures. Our members aim to strengthen the rights, options, and control of victim survivors of sexual assault to support recovery. The sector's staff are highly skilled practitioners. Specialist sexual assault practitioners, commonly called Counsellor Advocates in Victoria, are degree-qualified and are then, when they enter the specialist sexual assault sector, provided bespoke training, both through training sessions and specialist

therapeutic supervision, to ensure they have the highly specialist skills needed to support victim survivors safely, sensitively, and appropriately.

Members use an intersectional lens to support victim survivors. This approach recognises that experiences of sexual abuse intersect with multiple forms of discrimination and inequality, including colonialism, ableism and ageism. Members of diverse communities, such as Aboriginal people, lesbian, gay, bisexual, trans and gender diverse, intersex, queer and asexual (LGBTIQ+) people, and people with disability experience disproportionately higher rates of sexual violence, and experience barriers to accessing support. Having an intersectional lens allows services to have a more robust understanding of victim survivor experiences and provide targeted supports for recovery and healing.

Our sector's longstanding role in supporting victim survivors through justice processes and leading law reform advocacy

In Victoria, SSAS has provided sexual violence trauma-informed support to victim survivors navigating the criminal justice system for many decades. This includes:

- practical support, including helping victim survivors to understand what to expect when making a statement to police, accessing the subpoena defence fund or attending forensic medical examinations
- explaining the complexities of the legal system and how to navigate processes such as Video and Audio Recorded Evidence (VARE) and Victims of Crime Assistance Tribunal (VOCAT) applications
- identifying if victim survivors have additional requirements and support needs
- telephone debriefing and crisis counselling support after court appearances
- helping victim survivors make sense of disempowering experiences, for example, when victim survivors learn that they essentially act as a witness to the crime committed against them, rather than being a represented party to the proceedings; as well as the often-low levels of transparency and communication received about police and prosecution decisions
- supporting victim survivors to access services, such as legal support.

This specialist sexual violence trauma-informed response contrasts with the adversarial nature of the criminal justice system, which can be limited in its understanding of the nature of sexual assault, often minimises its impact and pathologises victim survivors' responses. Our sector plays a critical role in helping victim survivors understand the criminal justice system, which can help to reduce the negative impacts of engagement with the criminal justice system that they often experience.

Alongside our work supporting victim survivors through justice processes, the Victorian specialist sexual assault sector has an accomplished history of informing legal reform,

work we undertook before most others were engaged on these issues. We continue this work today.

Why a justice approach is important to addressing sexual violence

Addressing sexual violence requires a range of public policy interventions and an effective justice response is critical among these for the following reasons:

- Justice for individual victim survivors: While not all survivors will wish to pursue a formal justice response to the violence against them, survivors must have this right. Many survivors are motivated by a desire to stop perpetrators harming others, as well as wanting formal acknowledgement of the wrong done to them and look to the justice system to do this. Individual survivors are entitled to confidence that the justice system will respond fairly to the crime/s against them.
- Important declarative effect: Clearly articulated laws on sexual violence and holding perpetrators to account through the justice system together have a declarative effect by reinforcing as a social norm, the unacceptability and harmful nature of sexual violence.
- Avoiding effective decriminalisation: If our justice system fails to hold perpetrators to account, in effect, sexual violence becomes decriminalised. Put another way, even if laws prohibit sexual violence, if those laws are not readily enforced, including due to weaknesses in our justice processes, then sexual violence is effectively decriminalised.

Key principles underlying our recommendations for improving the justice system

There are well-recognised impacts that many victim survivors of sexual violence experience. These include shame and self-blame, a fear of judgement, a fear of not being believed and, importantly for the purpose of this submission, a profound sense of disempowerment and loss of agency. Participation in the criminal justice system can lead to and exacerbate all these impacts in damaging ways. Our recommendations recognise these impacts and attempt to address them to the extent that is possible within the context of an adversarial system of justice.

Given the profound sense of disempowerment that can be caused by being subjected to sexual violence, recovery from sexual violence necessitates that victim survivors have as much control as possible over how to proceed and what is best for them in dealing with their significant trauma.¹ We note that:

¹ Haley Clark, "What is the justice system willing to offer?" *Understanding sexual assault victim/survivors' criminal justice needs*, (2010) 85 Family Matters 28, page 34; VLRC, *Improving the Justice System Response to Sexual Offences: Report September 2021*, [12.87], page 258; Denise Lievore, *No Longer Silent: A Study of*

- The Victoria Police *Code of Practice for the Investigation of Sexual Crime* directs investigators to '[a]llow the victim as much control as possible over their situation' and that '[t]he victim should be reassured that they do not have to make an immediate decision about their involvement with a police investigation'.²
- The Victorian Law Reform Commission (VLRC) recognises that '[p]eople should have choice and control, and for many people the criminal justice system will not be the right path'.³
- A report prepared by the Australian Institute of Criminology for the Australian Government's Office for Women states that '[t]he right of sexual assault victims to 'be given relevant options, have control over choices and have these choices respected' is a fundamental principle of sexual assault services'.⁴ That report concludes, based on its qualitative research, that '[i]t is crucial for women to regain control and make their own decisions about what steps are necessary to advance their personal well-being...'.⁵

Our recommendations and responses are aimed at enhancing both the rights and capacity of victim survivors to exercise as much choice and agency as possible throughout a criminal justice process and ALRC recommendations should do the same. We require urgent sexual violence reform, including public transparency and accountability about criminal justice processes and outcomes. In Victoria, we are campaigning for the progression of a sexual assault strategy, which the Victorian State Government committed to, consulted on, and then not progressed. We support a recent recommendation made by the Victims of Crime Commissioner (VOCC) in Victoria regarding Victorian Government public reporting on the implementation of all relevant Victorian and Commonwealth reports and inquiries from the past decade, and the tabling of these reports in Parliament.⁶

While our submission speaks from the Victorian context, SASVic is a member of the National Association of Services Against Sexual Violence (NASASV).

Women's Help-Seeking Decisions and Service Responses to Sexual Assault (Report, Australian Institute of Criminology (Cth), June 2005), page VI and page 2.

² Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (2016), [7.3.8], p.24.

³ VLRC, *Improving the justice response system to sexual offences: report* (Melbourne: VLRC, 2021), p.258 [12.87]. Available: <<https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report>>

⁴ Denise Lievore, *No Longer Silent: A Study of Women's Help-Seeking Decisions and Service Responses to Sexual Assault* (Report, Australian Institute of Criminology (Cth), June 2005), page 2, citing Dean Hardiman & Draper 1998: vii.

⁵ Denise Lievore, *No Longer Silent: A Study of Women's Help-Seeking Decisions and Service Responses to Sexual Assault* (Report, Australian Institute of Criminology (Cth), June 2005), page VI.

⁶ VOCC, *Silenced and Sideline: Systemic inquiry into victim participation in the justice system*, recommendation 52.

Our key recommendation – Justice Navigators

Victim survivors are central to the prosecution of sexual violence in Australia. Indeed, without the participation of victim survivors, the prosecution of sexual violence could not (for the most part) go ahead. Problematically, victim survivors are left to perform a central role in an incredibly complex and often retraumatising process, without anywhere near the level of support commensurate to their role as complainant. The time to recognise and address this is well overdue. There is widespread support for victim survivor independent advocates in Victoria⁷ and other Australian jurisdictions. As well as providing a summary below, we will refer to the anticipated role of Justice Navigators throughout our responses to the ALRC issues paper questions.

On 30 May 2024, the Victorian State Government released an overview of a policy package titled *Changing Laws and Culture to Save Women's Lives*,⁸ which included a commitment to implement a Justice Navigator pilot. The full details of this pilot have yet to be released but we understand it to be a three-year pilot with the positions based in SSAS. Justice Navigators will not be counselling roles; rather, they will provide practical support to victim survivors of sexual violence to 'navigate' their support, recovery and justice options.⁹

Prior to this announcement, in November 2021, the VLRC delivered a comprehensive proposal to improve justice system responses to sexual violence. VLRC recommendation 45 is that the Victorian Government should consult on and co- design an independent advocate model. According to the VLRC:

- 'In England and Wales, independent sexual violence advisers [ISVAs] have been available since 2007. They are usually social workers or counsellors who provide practical and emotional support to people who have experienced sexual violence'.¹⁰ 'These advisers mostly sit within sexual assault referral centres (similar to Victoria's multi-disciplinary centres, a co-located set of services including police) and voluntary rape crisis centres (similar to our CASAs)'.¹¹
- 'A person does not have to make a police report to access an adviser. However, if a person chooses to report, the adviser supports them through and beyond the criminal justice process. The adviser's role is broad and includes advocating for,

⁷ VLRC, *Improving the justice response system to sexual offences: report*, pp.256–258.

⁸ Premier of Victoria, Hon Jacinta Allan MP, *Changing laws and culture to save women's lives*, 30 May 2024. Available: <<https://www.premier.vic.gov.au/changing-laws-and-culture-save-womens-lives>> [accessed 30 May 2024].

⁹ Premier of Victoria, Hon Jacinta Allan MP, *Changing laws and culture to save women's lives*, 30 May 2024. Available: <<https://www.premier.vic.gov.au/changing-laws-and-culture-save-womens-lives>> [accessed 30 May 2024].

¹⁰ VLRC, *Improving the justice response system to sexual offences: report*, p.250.

¹¹ VLRC, *Improving the justice response system to sexual offences: report*, p.251.

educating, liaising for and supporting victim survivors. For example, they can liaise with police and deal with housing issues.¹²

- In Victoria, says the VLRC, 'the simplest and most effective place to start would be to begin with counsellor advocates within CASAs. They are both counsellors and advocates, who already advocate for their clients across a broad range of services.'¹³
- The VLRC recognised that, with proper resourcing via independent advocates, the specialist sexual assault sector is in an excellent position to continue, and expand its advocacy for, victim survivors going through justice and other processes, given our longstanding expertise in this space.¹⁴
- An independent review found ISVAs are 'an example of a reform to a system that is effective, cost-effective and affordable, the establishment of [ISVAs] is hard to beat'.¹⁵
- 'A survey by the Victims' Commissioner for England and Wales also found a promising link between support and attrition, with 10 per cent of those receiving support choosing to take no further action or withdrawing support, compared to 20 per cent of those who did not have support. There is not enough research, however, to indicate that such support makes arrests, prosecutions or convictions more likely than in cases where a person does not receive support.'¹⁶

Importantly, while ISVAs in the United Kingdom (UK) provide support through the justice process, the support they provide is in many cases broader than this:

The UK Home Office states that the core principles of an ISVA are to:

- tailor support to the individual needs of the victim or survivor
- provide accurate and impartial information to victims and survivors of sexual violence
- provide emotional and practical support to meet the needs of the victim or survivor
- provide support before, during and after court
- act as a single point of contact
- ensure the safety of victims and survivors and their dependants
- provide a professional service.¹⁷

¹² VLRC, *Improving the justice response system to sexual offences: report*, p.251.

¹³ VLRC, *Improving the justice response system to sexual offences: report*, p.259.

¹⁴ VLRC, *Improving the justice response system to sexual offences: report*, p.259.

¹⁵ VLRC, *Improving the justice response system to sexual offences: report*, p.259.

¹⁶ VLRC, *Improving the justice response system to sexual offences: report*, p.254.

¹⁷ Home Office, *The Role of the Independent Sexual Violence Adviser: Essential Elements*, September 2017, p.3. Available:

<https://assets.publishing.service.gov.uk/media/5a823641ed915d74e3402543/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf>

The UK guidance for ISVAs states that:

ISVAs provide impartial information to the victim/survivor about all of their options, such as reporting to the police, accessing Sexual Assault Referral Centre (SARC) services, and specialist support such as pre-trial therapy and sexual violence counselling. ISVAs also provide information on other services that victims/survivors may require, for example in relation to health and social care, housing, or benefits.¹⁸

For the Victorian (and Australian) context, the scoping process for developing Justice Navigator roles would ideally consider the UK ISVA model and features appropriate for our local context.

As is the case with ISVAs in the UK, Justice Navigators would not discuss the sexual assault or abuse itself. Psychological therapy and counselling are outside the scope of the role, and many complainants would still access specialist sexual assault therapeutic support through our member services.

Examples of broader emotional support provided by Justice Navigators would include supporting victim survivors through challenges specific to their participation as a sexual assault complainant, including the sense of victim-blaming that can be experienced; when they need to be in the same room as a defendant; and in coping with stress associated with participation and trial delays.

- **Justice Navigator placement in SSAS**

The Australian specialist sexual assault sector has for many decades, provided sexual assault trauma-informed support to victim survivors navigating the criminal justice system and continues to do so. Due to growing service demand, under-resourcing and the nature of our funding model, our sector in Victoria today is constrained in its capacity to provide our desired level of support to victim survivors engaged in justice processes, that we would otherwise be well positioned to provide. The roll out of Justice Navigators within our services would ensure the capacity of our sector to undertake this critical function within the context of our specialist sexual assault expertise.

SSAS are a key entry point for victim survivors for both receiving help and for deciding whether to report what has happened to them to police. Therefore, the specialist sexual assault sector should be properly resourced to support victim survivors, who so wish, to report to police. Our envisaged model is that if a victim survivor were to express a desire to learn more about their justice options to their counsellor advocate, the victim survivor would receive support from the in-house Justice Navigator to learn about and progress

¹⁸ Home Office, *The Role of the Independent Sexual Violence Adviser: Essential Elements*, September 2017, p. 5. Available:

<https://assets.publishing.service.gov.uk/media/5a823641ed915d74e3402543/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf>

(if they choose) a justice response. This model is well-proven in the UK. For the Victorian (and Australian) context, the scoping process for Justice Navigator roles will need to consider the resourcing required for victim survivors who are not already clients of our sector's counselling services to receive support from Justice Navigators.

We emphasise that Justice Navigators would ideally support victim survivors to explore all relevant justice options beyond criminal justice processes and would potentially assist with broader advocacy needs. The ALRC issues paper focuses on the experiences and rights of victim survivors of sexual violence through criminal and civil justice system processes and therefore the information below focuses on such. In addition to the information provided below, reference to the role of Justice Navigators is made in response to individual questions, where applicable.

- **Reporting to police**

Many victim survivors of sexual assault feel 'daunted and overwhelmed by the prospect of having to walk into a police station to make a report'¹⁹ and evidence suggests that this is a significant barrier to reporting a crime.²⁰ Given the often-traumatic nature of sexual violence, many victim survivors want and need their own support person to help them navigate the process of reporting to police. Our member specialist sexual assault counsellor advocates currently help victim survivors emotionally prepare to give a statement to police but for the most part have limited capacity to assist further once an initial report to police is made. Justice Navigators would play an important role in seeking updates from police to victim survivors on the status of an investigation.

We anticipate that our proposed Justice Navigator roles would improve police responses. First, Justice Navigators would form ongoing working relationships with police and would reinforce, through their liaison work, appropriate ways that police can support victim survivors through an investigation. Secondly, because police will expect Justice Navigators to follow up the progress of an investigation and to hold them to account around Victims Charter rights, we expect this 'soft' or informal accountability will shift police practices for the better.

- **Engaging with the prosecution**

¹⁹ VOCC, submission 45 to the VLRC, p.42. Available: <<https://www.lawreform.vic.gov.au/wp-content/uploads/2022/05/Victims-of-Crime-Commissioner-submission-Improving-the-Response-of-the-Justice-System-to-Sexual-Offences-UPDATED-090522.pdf>>

²⁰ VOCC, submission 45 to the VLRC, p.42. Available: <<https://www.lawreform.vic.gov.au/wp-content/uploads/2022/05/Victims-of-Crime-Commissioner-submission-Improving-the-Response-of-the-Justice-System-to-Sexual-Offences-UPDATED-090522.pdf>>

In Victoria, the key support agencies available to complainants as they engage with the Office of Public Prosecutions (OPP) are the Child Witness Service and the Victims and Witness Assistance Service. These services support children and adult complainants respectively through the process of giving evidence and becoming familiar with court processes.²¹ While such services are important, they are limited to fulfilling specific tasks once victim survivors are engaged in a criminal trial and cease at or close to the conclusion of the trial. Victim survivors participating in a hugely complex and potentially retraumatising prosecution process need and deserve ongoing independent advocacy to minimise compounding harm and maximise their sense of justice before, during and after a trial.

Participating in a prosecution process can be an overwhelming and confusing experience. We know from practice-based experience and victim survivor feedback that the main frameworks for enhancing victim survivor experiences in justice processes, such as Victims' Charters, are often not well understood by victim survivors nor readily upheld by incredibly busy prosecution departments.

Justice Navigators would:

- be experts in their jurisdiction's Victims' Charter and advocate for a victim survivor's rights to be upheld during prosecution processes
- be independent from prosecution departments and other state-based justice system programs and would therefore be able to advocate effectively
- bring specialist sexual assault expertise and integration with specialist sexual assault therapeutic support services
- advocate for prosecution agencies to consult with victim survivors in a meaningful and respectful way²²
- advocate for victim survivor participatory rights to be upheld, including, for example, during plea processes and in submitting a victim impact statement (VIS)
- provide emotional and practical support in the aftermath of a prosecution decision that is personally disappointing to a complainant, including by identifying and arranging access to appropriate supports.

As is the case with police responses, we anticipate that Justice Navigators would improve prosecution dealings with victim survivors. Like with police, Justice Navigators would form ongoing working relationships with prosecutors and would reinforce through

²¹ VLRC, *Improving the justice response system to sexual offences: report*, p.243 [12.15]

²² VOCC, submission 45 to the VLRC, p.48. Available: <<https://www.lawreform.vic.gov.au/wp-content/uploads/2022/05/Victims-of-Crime-Commissioner-submission-Improving-the-Response-of-the-Justice-System-to-Sexual-Offences-UPDATED-090522.pdf>>

their liaison work, effective, sexual violence trauma-informed ways that prosecutors can work with victim survivors. Further, because prosecutors will expect Justice Navigators to hold them to account around Victims' Charter rights, we expect this 'soft' or informal accountability will shift practices for the better, among prosecutors and their departments.

- **Support through a criminal trial**

Participating in a criminal trial can take a profound emotional toll on victim survivors of sexual violence. This is because the adversarial system of justice is in many respects antithetical to the recovery needs of victim survivors. As one example, the core purpose of cross examination is to seed 'reasonable doubt' within the account given by a complainant, in circumstances where a key barrier to disclosure and recovery, and a perpetrator of trauma, is a fear and experience of not being believed. The adversarial system will always have the potential to further harm victim survivors. Given this reality, victim survivors need and deserve professional practical support during a trial process, in addition to the counselling support available through our SSAS.

Justice Navigators would provide practical support around the logistical matters associated with participating in a trial. This can include arranging relevant appointments and meetings; referrals to legal services available to complainants; accompanying victim survivors as appropriate to meetings with police, prosecutors, and pre-trial processes; and liaising with the prosecution to request special measures that victim survivors would like to pursue.²³

- **Post-trial support**

The completion of a criminal trial does not mark the end of a victim survivor's need for practical and emotional support. Even where an accused is found guilty and convicted, many victim survivors will face a new emotional reckoning around what was done to them. This includes, for example, where the perpetrator is given a sentence that the victim survivor feels is inadequate. Victim survivors may also require practical support around investigating the various compensation avenues available to them. Justice Navigators would assist with these practical and emotional processes.

Where a trial is discontinued or the accused is found not-guilty, this can be a profoundly distressing outcome for victim survivors. Given what victim survivors go through during a criminal trial, it is a significant failure of the system that they are left without support in

²³ Home Office, *The Role of the Independent Sexual Violence Adviser: Essential Elements*, September 2017, p. 12. Available:

<https://assets.publishing.service.gov.uk/media/5a823641ed915d74e3402543/The_Role_of_the_Independent_Sexual_Violence_Adviser_-_Essential_Elements_September_2017_Final.pdf>

its aftermath. Justice Navigators would facilitate this post-trial support and make sure that victim survivors do not feel like they are left to pick up the pieces alone, after playing such a critical part in seeking a justice response, including for the protection of the community.

- **Support participating in civil justice and other processes**

Justice Navigators would ensure that interested victim survivors are aware of the various compensation avenues that may be available to them and would identify where it can be useful to receive legal advice prior to deciding on the best course. In our discussions with plaintiff law firms, such preliminary information has been identified as a gap, as many victim survivors will accept one relatively low amount of compensation through a particular scheme, which can then preclude them from accepting a higher amount elsewhere. Information and practical support provided by Justice Navigators would be with respect to:

- Victims of Crime Assistance applications (or Financial Assistance Scheme (FAS) applications, once that scheme commences)
- private civil action
- compensation orders following a criminal conviction
- National Redress Scheme applications
- Restorative Justice Scheme processes (where available).

Justice Navigators would refer victim survivors to relevant supports that would help them to maximise the potential for any settlement or compensation received to assist in their long-term recovery. This could include a referral to financial counselling to reduce any debts and the potential for compensation to be garnered to pay debts off.

Key reforms recently implemented or progressed in Victoria

We note that the ALRC issues paper requests updates on applicable reforms implemented in each state and territory jurisdiction. Below is a summary of important reforms that have recently been implemented in Victoria, following VLRC recommendations:

- implementation of an affirmative consent model
- creation of a specific offence against stealthing
- image-based offences shifted from summary to indictable classification
- new jury directions for rape and sexual assault trials
- ground rules hearings mandatory for serious sexual offence matters
- the right for complainants to appear in applications to admit confidential communications in criminal proceedings

- strengthened procedural protections for children and complainants with a cognitive impairment
- strengthened procedures with respect to permitting pre-trial cross examination of complainants in sexual or family violence offences.²⁴

We refer to these reforms throughout our submission where appropriate.

Responses to the ALRC issues paper

In our responses, we frequently refer to the following reports:

- VLRC, *Improving the Justice System Responses to Sexual Offences*.
- VOCC, *Silenced and Sidelined: Systemic inquiry into victim participation in the justice system*.

We refer to these reports as ‘the VLRC report’ and ‘the VOCC report’, or otherwise refer to the ‘VLRC’ or ‘VOCC’ recommendations. We encourage the ALRC to consider both these reports for the purpose of term of reference 3 of the inquiry.

Acronyms and abbreviations

Below is a list of acronyms and abbreviations used in this submission.

- ALRC – Australian Law Reform Commission
- CASA – Centre Against Sexual Assault
- CCYP – Commission for Children and Young People
- CSAM – Child sexual abuse material
- DPP – Director of Public Prosecutions
- FAS – Financial Assistance Scheme
- HSB – harmful sexual behaviour
- ISVA – Independent Sexual Violence Advisers
- ITP – Independent Third Person programs
- LGBTIQA+ – Lesbian, Gay, Bisexual, Trans and Gender Diverse, Intersex, Queer and Asexual
- MARAM – Family Violence Multi-Agency Risk Assessment and Management Framework
- MDCs – Multi-Disciplinary Centres
- NAATI – National Accreditation Authority for Translators and Interpreters
- NASASV – National Association of Services Against Sexual Violence
- National Inquiry –
The National Inquiry into current and proposed sexual consent laws

²⁴ See the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* (Vic) and the second reading speech to the *Justice Legislation Amendment (Sexual Offences and Other Matters) Bill 2022* (Vic). Available: <<https://www.legislation.vic.gov.au/bills/justice-legislation-amendment-sexual-offences-and-other-matters-bill-2022>>

- New South Wales – NSW
- OPP – Office of Public Prosecutions
- ORP – Online Reporting Pathway
- Royal Commission – Royal Commission into Institutional Responses to Child Sexual Abuse
- SARC – Sexual Assault Referral Centre
- SASVic – Sexual Assault Services Victoria
- SOCIT – Sexual Offences and Child Abuse Investigation Team
- SSAS – Specialist Sexual Assault Services
- The Code – Victoria Police Code of Practice for the Investigation of Sexual Crime
- TTOs – Therapeutic Treatment Orders
- TTPO – Therapeutic Treatment Placement Order
- UK – United Kingdom
- VARE – Video and Audio Recorded Evidence
- VCAT – Victorian Civil and Administrative Tribunal
- VEOHRC – Victorian Equal Opportunity and Human Rights Commission
- VIFM – Victorian Institute of Forensic Medicine
- VIS – Victim Impact Statement
- VLRC – Victorian Law Reform Commission
- VOCAT – Victims of Crime Assistance Tribunal
- VOCC – Victims of Crime Commissioner

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: a particular support service; the police; a health professional, a teacher, an employer; or 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.

As part of the VLRC and VOCC inquiries, victim survivors identified a lack of information about their rights, options, and processes at various stages of the criminal justice system.²⁵ They describe difficulties receiving the right information, and identifying appropriate support and being referred to agencies ‘in circles’.²⁶ We encourage the ALRC to review victim survivor testimony contained in the VLRC and VOCC reports.

Information about sexual assault in Victoria is available on a few websites, including those of SASVic, SSAS, Victoria Police and Victoria Legal Aid. At the national level, information and reporting options include those of 1800 RESPECT, Full Stop Australia, Bravehearts, Australian Centre to Counter Child Sexual Exploitation, the eSafety Commissioner and With you, we can. The variety of information available online can be overwhelming for victim survivors to navigate. The VLRC identified a need for a central and comprehensive source of information, advice, and support. We refer to this recommendation and others in our response to question two.

Our proposed Justice Navigator roles would assist victim survivors to access relevant information, discuss reporting options and processes, and support victim survivors to report to police, if they choose.

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?

The VLRC made the following recommendations (in summary).

²⁵ VLRC *Improving the justice response system to sexual offences: report*, p.141-159; VOCC, *Silenced and sidelined: systemic inquiry into victim participation in the justice system* (Melbourne: VOCC, 2023), <https://victimsofcrimecommissioner.vic.gov.au/recent-activity/current-inquiry>, pp.352-365. Note that the VOCC report considers all victims of crime and the VLRC report considers victims of sexual offences. In this paper, we use ‘victim survivors’ to refer to victim survivors of sexual assault and ‘victims’ to refer to victims of crime.

²⁶ VOCC, *Silenced and sidelined*, p.352.

VLRC Recommendation 18: *The establishment of a central website to provide practical information on sexual violence and options for support.*

The recommendation specified that information should be targeted towards victim survivors and secondary victim survivors (such as non-offending family members), including members from communities experiencing additional barriers. This recommendation is tied to:

VLRC Recommendation 19: *The resourcing of the sexual assault sector to receive and respond to disclosures online or through a central website; and*

VLRC Recommendation 20: *The establishment of an online pathway for reporting sexual offences to police (established by Victoria Police in partnership with sexual assault services).*

Recommendations 18 and 19 have not yet been implemented. Recommendation 20 is in progress though not fully implemented. The 2022–23 Budget provided \$1.33m over two years to scope and design an alternative online reporting pathway ('ORP') to make it easier to report sexual violence offences. At this stage, funding has been provided for scoping and design, including the development of an IT platform, only. Implementation funding has not been provided. We note that there remain unanswered questions raised by Victoria Police about its capacity to properly respond to online reporting, and that survivors should not be seen as 'reporting' to SSAS. SASVic's priority is for Recommendations 18 and 19 to be implemented, given the uncertainty about the model for Recommendation 20.

While we support improving reporting options, it is critically important to properly resource SSAS to support victim survivors who wish to report to police, as our sector is a key entry point for victim survivors. We also note that police reporting rates should not be used as an indicator for victim survivor confidence in police response, or the prevalence of sexual violence.

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.

Our proposed Justice Navigator role, detailed above, is our key recommendation to this inquiry. We know that victim survivors often want and need their own professional support person who holds expertise in the justice system to help them navigate the process of reporting to police.

In addition to independent advocacy, victim survivors should have the appropriate information to facilitate their participation at key points in the criminal justice process. We support the National Inquiry into current and proposed sexual consent laws

(‘National Inquiry’) recommendation 7 to develop and publish materials that provide victim survivors guidance,²⁷ which complements VOCC recommendation 7 about revising the Victim’s Guide to provide comprehensive guidance about victim participation.

As stated, a key barrier to disclosing is the lack of accessible information, resources and reporting options for victim survivors. Recommendations made by the VLRC and others to improve accessibility include:

- improved resourcing of independent third person (‘ITP’) programs²⁸
- ensuring police processes support notification of ITP program for victim survivors, witnesses, or the accused and that they are given a chance to confirm eligibility²⁹
- implementing communication access accreditation for police stations that specialise in sexual offences³⁰
- information in community languages about services, as well as how to access them, including engaging interpreters, especially in regional and rural areas.³¹

These recommendations should be applied across jurisdictions.

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?

Urgent resourcing of agencies that respond to sexual violence

The VLRC identified that the Victorian system for responding to sexual violence is under strain and that the ‘first and most urgent step in improving the system’s response is to invest in the services that respond to sexual violence’.³² In addition to VLRC recommendation 45 on independent advocates (discussed above), the VLRC made the following recommendations, which SASVic supports:

VLRC Recommendation 5. *The Victorian Government should:*

- address as a priority the need for resourcing of key partners responding to sexual violence, including specialist sexual assault services, the police, and prosecution*

²⁷ The Senate Legal and Constitutional Affairs References Committee, *Current and proposed sexual consent laws in Australia* (Canberra: Commonwealth of Australia, 2023), p.viii. Available: <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/sexualcontentlaws>

²⁸ See VLRC recommendation 60.

²⁹ See VLRC recommendation 59.

³⁰ See VLRC recommendation 63.

³¹ Multicultural Centre for Women’s Health (MCWH), *Making the links project learnings report* (Melbourne: MCWH, 2022), <https://www.mcwh.com.au/project/making-the-links/>, p.13.

³² VLRC, *Improving the justice response system to sexual offences: report*, p.54.

- b) *review the role of health and human services in Victoria's response to sexual violence, including the capacity of specialist sexual assault services and forensic services to play their role as key partners in the system.*

VLRC Recommendation 43. *The Victorian Government should invest in strengthening the support available to people who have experienced sexual violence, including supporting any decision making about their justice options or interactions with the justice system. This investment should include:*

- a) *significant increases in resourcing centres against sexual assault to meet demand*
- b) *funding training, secondary consultation and other supports needed to extend the capacity of other parts of the service system to respond to sexual violence.*

SSAS are a key entry point for victim survivors for both receiving help and for deciding whether to report what has happened to them to police. Therefore, SSAS should be properly resourced to support victim survivors, who so wish, to report to police. Our proposed Justice Navigator roles would meet this pressing need.

Systems-wide approach to coordinating responses to sexual violence

We refer to the instruction contained in term of reference 2 for the ALRC to take 'a trauma-informed, holistic, whole-of systems and transformative approach'. The VLRC identified that there is an urgent need for Victoria to adopt a systems-wide approach to enhance our response to sexual violence and how we support victim survivors (to be achieved via a statewide sexual assault strategy). According to the VLRC, this systems-wide approach should include a clear governance structure for coordinating responses to sexual violence, including ministerial responsibility for sexual violence; and a high-level statewide body responsible for developing a multi-agency protocol for responding to sexual violence.³³ The VLRC recognised that

improving the way the system works as a whole will make the responses to sexual violence more consistent, collaborative and supportive. This should reduce the trauma that people experience and make it more likely that people will stay engaged with the system.³⁴

SASVic agrees with this analysis. Our understanding is that the VLRC recommendations on creating a system-wide response to sexual violence have yet to be progressed. We encourage the ALRC to identify the need for and potential elements of system-wide approaches to addressing sexual violence and supporting victim survivors, which could be adopted by states and territories, as well as at the national level.

³³ See VLRC recommendations 6–8.

³⁴ VLRC, *Improving the justice response system to sexual offences: report*, p.55 [4.5].

Funding of permanent Aboriginal SSAS

We refer the ALRC to submissions made by Aboriginal community-controlled organisations participating in this inquiry, including Djirra. SASVic member services are available to First Nations peoples, and we support victim survivors to access Aboriginal controlled SSAS should they choose to do so. There are pilot Aboriginal SSAS operating across Victoria and the VLRC recommended that these services be funded permanently to respond to the different needs of Aboriginal women, children and men.³⁵ We encourage the ALRC to report on the needs and preferences of First Nations peoples in responding to sexual violence and supporting victim survivors.

Awareness, visibility and accessibility of SSAS

There are many settings where the availability of SSAS could be given better visibility. This includes:

- first point of contact services such as 1800RESPECT, hospitals, and police stations
- community and other settings such as: disability services, aged care, juvenile detention, homelessness services, sexual health services, early childhood centres and school wellbeing services, bar/nightclub/festival and events management.

The above recommendation complements VLRC recommendations to:

- strengthen the role of community organisations to prioritise sexual violence responses³⁶
- review SASVic funding arrangements to provide ongoing training to community organisations to identify and respond to sexual violence.³⁷

Improved engagement with communities facing additional barriers

SASVic member services support people from all communities and cultures and aim to be as inclusive and accessible as possible. While numbers vary across our sector, rates of access to our services by communities facing additional barriers are lower than what we would expect based on population levels. This risks flow on impacts in terms of people not receiving support to (or when) engaging with police. This is an issue our sector wishes to address.

The VLRC recommended that Victoria Police engage with priority communities to identify and put in place measures to strengthen community engagement.³⁸ This

³⁵ See VLRC recommendation 23.

³⁶ See VLRC recommendation 21.

³⁷ See VLRC recommendation 22.

³⁸ VLRC recommendation 27.

recommendation stems from the appreciation that fostering genuine understanding and trust of police is critical to supporting disclosures and reporting of sexual assault. We recognise that some individuals and communities may not wish to engage with police for many reasons, including fear of authorities, prior traumatic experiences with police, and not understanding the role of police and processes. We recognise that our justice system should meet these needs but often fails to do so and in fact perpetuates overt and insidious racism, including systemically. For this reason, we suggest that this work is undertaken in partnership with community organisations and SSAS. We strongly encourage the ALRC to report on the variety of barriers faced by communities in accessing police and the justice system more broadly.

Forensic medical examinations

The ALRC should consider issues associated with forensic medical examinations under term of reference 2's instruction that: 'In the context of the significant under-reporting of sexual violence and the limited prosecution of reported cases, the ALRC should take a trauma-informed, holistic, whole-of systems and transformative approach'. Given the key role that forensic medical evidence can play in successfully investigating and prosecuting sexual offences, we suggest that the ALRC terms of references will not be fully fulfilled unless forensic medical examination issues are investigated.

Many victim survivors of a recent sexual assault will undertake a forensic medical examination as part of a police investigation, or before deciding whether to report to police (as a 'just in case' procedure). Evidence from forensic medical examinations can be important for a variety of purposes in the context of a recent sexual assault, including that it can help identify, cross identify or rule out potential suspects; establish if force was used or if someone physically resisted; and provide evidence that sexual penetration likely took place.³⁹

In Victoria, forensic medical examinations for adults are undertaken by the clinical forensic medical team within the Victorian Institute of Forensic Medicine (VIFM) and the Victorian Forensic Paediatric Medical Service (VFPMS) for children.

The VFPMS is based at two Melbourne sites, the Royal Children's and Monash Children's hospitals, and operates out of major hospitals and health services in regional Victoria.⁴⁰ It operates as a Centre of Excellence for Child Abuse and Forensic Paediatric Medicine.

The service:

- operates as a tertiary hospital referral centre
- provides 24/7 advice and secondary consultations for Victorian Health professionals, Police and Child Protection Practitioners

³⁹ VLRC, *Improving the justice response system to sexual offences: report*, p.340 [16.22].

⁴⁰ The Royal Children's Hospital Melbourne, *Victorian Forensic Paediatric Medical Service*. Available: <[Victorian Forensic Paediatric Medical Service : About VFPMS \(rch.org.au\)](http://rch.org.au)>

- has a leadership role in establishing standards, protocols, and guidelines in relation to forensic paediatric medicine in Victoria
- serves as central point for data collection and funding of fee-for-service consultations and
- is a leading Victorian centre for teaching and research in the medical aspects of child maltreatment.⁴¹

Forensic medical examinations undertaken by VIFM take place at examination sites located across Victoria, including Multi-Disciplinary Centres (see our response to question 6) and Crisis Care Units situated within hospital emergency departments. VIFM aims to make forensic medical examinations available within two hours of request, within metropolitan Melbourne; and within four hours of request, within regional Victoria. The key issues associated with the delivery of forensic medical examinations include:

- the limited pool of qualified personnel to undertake forensic medical examinations
- limited accessibility and availability, which affect timely responses, particularly in regional areas⁴²
- use of a medical model that does not always align with a victim survivor-centric approach of holistic support
- the importance of victim survivors being able to choose the gender of the forensic medical officer undertaking the examination⁴³
- limited availability (at least in Victoria) of ‘just in case’ examinations, which are currently only available through one Crisis Care Unit at Monash Hospital.⁴⁴

The VLRC recommended that the Victorian Government should develop measures to extend access to forensic medical examinations across Victoria, including by increasing the use of forensic nurses; and offering ‘just in case’ examinations more broadly, as occurs in other Australian jurisdictions and overseas.⁴⁵ SASVic supports this recommendation.

The Victorian Government is currently progressing a range of improvements to the provision of forensic medical examinations by VIFM, including adopting a stronger victim-centred approach, which SASVic strongly welcomes. The Victorian Government’s approach is strongly collaborative with the specialist sexual assault sector. However, further reform is needed in Victoria, including services for children.

⁴¹ The Royal Children’s Hospital Melbourne, *Victorian Forensic Paediatric Medical Service*. Available: <[Victorian Forensic Paediatric Medical Service : About VFPM \(rch.org.au\)](http://www.vfpm.org.au/about-vfpm)>

⁴² VLRC, *Improving the justice response system to sexual offences: report*, pp. 341–342 [16.27].

⁴³ VLRC, *Improving the justice response system to sexual offences: report*, pp 344–345 [16.46]–16.50].

⁴⁴ VIFM website: <https://www.vifm.org/forensic-services/#clinical-forensic-medicine> and VLRC:343– p.345.

⁴⁵ See VLRC recommendation 62.

Criminal Justice Response to Sexual Violence

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?

Victoria Police has specialist sexual assault units, known as 'SOCIT' (Sexual Offences and Child Abuse Investigation Team). These teams are staffed by detectives who are trained to respond to and investigate sexual offences and child abuse. SASVic strongly believes that specialisation amongst police is critical, particularly given low levels of reporting. Only eight percent of women who experience sexual assault by a male reported the most recent incident to police.⁴⁶ More women disclose sexual assault to our member services.

SASVic member experiences of police responses, including SOCIT members, vary. Members advised us that police experiences are positive when they have close working relationships and referral pathways, especially with SOCIT members, and when they provide trauma-informed responses.

Examples of negative experiences provided by our members include:

- being told inaccurate or no information, e.g. about SOCIT or reporting options
- hearing victim-blaming comments, e.g. 'children lie [about child sexual abuse] to get attention'
- not referring cases to SOCIT
- delayed or no communication to victim survivors after they report
- delays in getting VARE statements recorded
- lack of professional development incentives for longer serving police officers to maintain best practice in responding to sexual assault
- victim survivors retelling their experiences because police did not inform them that not all conversations with police are recorded as evidence.

Members note that police may be experiencing resourcing issues, including SOCIT members who may not be receiving SOCIT training due to a high case load. However, our members suggest that victim survivor negative experiences with police such as those outlined above leave many victim survivors feeling 'what's the point' in reporting the sexual violence committed against them.

Member experiences align with victim survivor experiences detailed as part of the VLRC and VOCC inquiries, where victim survivors identified the need for:

⁴⁶ Australian Bureau of Statistics, Sexual Violence, 2021-22 financial year. Available:
<<https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>>

- more flexible and trauma-informed approaches to reporting and taking statements e.g. normalising the practice of victim survivors taking breaks when needed
- increasing regular and effective communications with victim survivors, for example, about court dates or follow up after initial report
- more information, for example, about relevant support services
- increased access to justice for communities facing additional barriers
- options to choose gender of interviewers
- improved use of intervention orders
- improved interviews with children e.g. careful planning and trauma-informed approach.⁴⁷

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?

Multi-Disciplinary Centres (MDCs)

In Victoria, we have a number of MDCs which are single centres that host SOCIT police, SASVic member counsellor advocates, child protection officers and community health nurses.⁴⁸ As the VLRC explained, MDCs ‘have counselling and clinic rooms, evidence recording facilities and, in some cases, forensic medical suites’.⁴⁹

MDCs seek to provide ‘a collaborative, wrap-around service that is trauma informed and best practice, which offers an efficient and effective pathway’ for people experiencing sexual violence to access counselling, support and justice’.⁵⁰ MDCs aim to ‘reduce the need for people to re-tell their stories and to navigate complex systems. They also aim to improve how people who respond to violence share information, skills and relationships’.⁵¹

The VLRC reviewed evaluations that indicate that MDCs are achieving their stated aims. The VLRC summarised: ‘[p]eople who had attended a centre were positive about their experience. MDCs were seen to offer more privacy and easy access to a range of

⁴⁷ VLRC, *Improving the justice response system to sexual offences*, pp.348–381 and VOCC, *Silenced and sidelined*, pp.336–349.

⁴⁸ VLRC, *Improving the justice response system to sexual offences*, pp. 92 [5.23].

⁴⁹ VLRC, *Improving the justice response system to sexual offences*, pp 92 [5.22].

⁵⁰ VLRC, *Improving the justice response system to sexual offences*, pp 92 [5.21] quoting submission 17 from SASVic.

⁵¹ VLRC, *Improving the justice response system to sexual offences*, pp. 93 [5.23].

services’.⁵² The VLRC recommended that the Victorian State Government commit to and fund the expansion of MDCs.⁵³

We encourage the ALRC to consider the role and impacts of MDCs and like service models.

Systemic initiatives to support police responses to sexual violence

The VLRC and VOCC made recommendations, including across the following areas, which we broadly support:

- the imperative for Victoria Police to review its programs, policies and initiatives aimed at engaging with members of diverse communities and building their confidence to report sexual violence⁵⁴
- the introduction of alternative, culturally safe ways for Aboriginal and Torres Strait Islander victim survivors to report crimes⁵⁵
- developing a protocol for child sexual abuse which forms the basis of evidence-informed practices in child interviewing, as well as ways to measure and improve the quality of interviews⁵⁶
- strengthening resources and training for SOCIT.⁵⁷ Our position is that our sector should be developing and delivering this program not only for SOCIT, but also a tailored package for non-SOCIT police officers. Members advised that they used to be invited as guest speakers for a longer than current duration of 45 minutes as part of SOCIT trainings. Members advised that a longer guest speaking time would be beneficial, as it allows them to share expertise, build positive working relationships and strengthen referral pathways. We recommend that SSAS are invited as guest speakers for an agreed duration at SOCIT trainings.
- an independent review panel for police and prosecution decisions with a view to consider the Philadelphia model (which we discuss further below in response to question 10)⁵⁸

⁵² VLRC, *Improving the justice response system to sexual offences*, pp 93 [5.33].

⁵³ See VLRC recommendation 11.

⁵⁴ See VLRC recommendations 27 and 63 and VOCC recommendation 8.

⁵⁵ See VOCC recommendation 11.

⁵⁶ See VLRC recommendation 64.

⁵⁷ See VLRC recommendation 65.

⁵⁸ See VLRC recommendation 66 and VOCC recommendation 4. The Philadelphia model allows organisational representatives examine the files to identify opportunities for systems improvement by considering if investigations were thorough and unbiased, like if all evidence was collected and tested, or relevant witnesses were interviewed. The has since been implemented in other jurisdictions in the United States and Canada.

- appropriate, safe and accessible spaces for victim survivors to disclose, ensuring police ask about a person's needs, safety and comfort and take steps to ensure victims are aware that they can request access to safe spaces.⁵⁹

We do not know the implementation status of some of these recommendations at this time.

We add that particular cohorts that are targeted for sexual abuse or assault at higher levels need appropriate police and justice responses, including, in particular, children in out of home care. It is also crucial that the criminal justice system work for those who experience the most violence and human rights violations, including children subjected to child sexual exploitation and people subjected to trafficking and sexual slavery.

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

Justice Navigators

We anticipate that our proposed Justice Navigator roles would improve police responses. First, Justice Navigators would form ongoing working relationships with police and would reinforce through their liaison work, effective, sexual violence trauma-informed ways that police can support victim survivors through an investigation. Secondly, because police will expect Justice Navigators to follow up the progress of an investigation and to hold them to account around Victims Charter rights, we expect this 'soft' or informal accountability will shift police practices for the better.

Codes of Practice

Victoria Police has a Code of Practice for the Investigation of Sexual Crime (the Code).⁶⁰ At the time of development, the Code was considered a leading document in this space. Since its publication, the VLRC and VOCC Inquiries have taken place and the Victorian Government enacted some changes, including affirmative consent legislation, that the Code and any associated audio and visual materials should be updated to reflect. Victoria Police has been in early conversation with SASVic about reviewing the Code and we look forward to further consultation, including with members.

SASVic recommends that all police officers, including as part of induction and refresher trainings, should be familiar and have buy-in with the applicable Code within their state or territory. We also recommend that SSAS are resourced to design and develop training

⁵⁹ See VOCC recommendation 9. VOCC, *Silenced and sidelined*, p.27.

⁶⁰ Victoria Police, *Code of Practice for the investigation of sexual crime* (Docklands: Victoria Police, 2016), <https://www.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>.

that embeds topics, including responding to disclosures, sexual violence trauma-informed practice, and addressing rape myths.

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?

The VOCC report includes useful feedback from victim survivors. While there were examples of positive experiences of participation during the prosecution process, other themes were:

- prosecutors failing to keep victims informed.
- victims experiencing confusion about their role.
- victims not always being treated with dignity and respect.⁶¹

We encourage the ALRC to review the VOCC report in full.

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?

The VOCC and VLRC reports detail current arrangements in Victoria for supporting victim survivors participation in prosecution processes and provide an assessment of such.

Arrangements in place for supporting complainants include the following:

- Victims Assistance Program, run through various individual non-profit services with availability in certain geographic locations. These services can provide assistance such as risk assessments and referrals, support communicating with police and seeking compensation.
- The Child Witness Service and the Victims and Witness Assistance Service, which support victims through the process of giving evidence and becoming familiar with court processes.
- The Court Network, which has trained volunteers who inform and support people going to court. The Court Network can provide referrals to legal support and other services.⁶²

While such services are important, the provision of distinct and varying available services do not provide the support required by victim survivors of sexual violence related offences. We emphasise that Justice Navigators would support complainants to

⁶¹ VOCC, *Silenced and sidelined*, p. 212.

⁶² VLRC, *Improving the justice response system to sexual offences*, p.243 [12.15].

access and get the most out of the individual services available to them during the prosecution process.

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

Justice Navigators

As is the case with police responses, we anticipate that our proposed Justice Navigator roles would improve prosecution dealings with victim survivors. Like with police, Justice Navigators would form ongoing working relationships with prosecutors and would reinforce through their liaison work, effective, trauma-informed ways that prosecutors can work with victim survivors. Further, because prosecutors will expect Justice Navigators to hold them to account around Victims Charter rights, we expect this 'soft' or informal accountability will shift practices for the better, among prosecutors and their departments.

Independent review panels

The VLRC made the following recommendation:

VLRC Recommendation 66. *The Victorian Government should establish an independent and high-level panel that includes multi-disciplinary expertise to review police and prosecution decisions.*

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 after any internal review.

This panel should have the power to make recommendations, based on its review of these decisions, to:

- a) the police and prosecution about if and how they should continue individual cases, after any internal review process has been completed*
- b) the police and prosecution about how to improve the quality of their decision making*
- c) the Victorian Government to address barriers to progressing sexual offence cases.*

The VOCC made a similar recommendation.⁶³ SASVic supports the establishment of independent panels that review and make recommendations on certain police and prosecution decisions as well as perform systemic review functions.

We suggest the following be considered during the development of panels:

⁶³ See VOCC recommendation 4.

- Whether independent panels should initially review all police and prosecution decisions to discontinue investigations or prosecutions. This approach would take the burden off victim survivors to lodge a review request and would also ensure that all matters with potential prosecution merit are reviewed, regardless of whether a review request is made. The preference of the victim survivor would be central to recommendations. If it is the preference of a victim survivor not to proceed, any systemic failings behind this preference could be identified and reported on. After a certain period (and once the panel has encouraged widespread positive practice changes), the panel could transition to reviewing decisions only upon the request of victim survivors.
- The specialist sexual assault sector should be represented on such panels. This aligns with contemporary research that recommends sexual violence experts be part of an independent review panel.⁶⁴ To avoid potential conflicts of interest and other issues, representatives from the sector could sit on panels within other jurisdictions to their own.
- If enacted, this recommendation should be appropriately resourced, including the provision of training and guidance.
- To perform its systemic function, the panels must be able to request data from agencies, and there should be statutory timeframes within which the data must be provided.

Both the panels and the responding agencies should be required to report and respond within statutory timeframes, given that their decisions will often be dealing with potentially live and ongoing circumstances where the safety of (mostly) women and children are at stake. We note that work in the UK on Operation Soteria⁶⁵ may be of interest to this inquiry. Operation Soteria is a Home Office-funded National Police Chiefs Council-led research and change programme that aims to improve procedural justice and outcomes radically and sustainably for rape and other sexual offences across England and Wales. Researchers have been given unfettered access to thousands of police files related to sexual offending, allowing them to see the systemic factors influencing outcomes in sexual offences cases. Some findings from this work are likely to be of relevance in the Australian context. If the inquiry does not have contacts with those involved in this work, we can refer Commissioners to SASVic partners in the UK who are part of the Operation Soteria research team.

⁶⁴ Dr Rachael Burgin and Jacqui Tassone, *Beyond reasonable doubt? Understanding police attrition of reported sexual offences in the ACT* (Hawthorn: Swinburne University of Technology, 2024). Available: <<https://researchbank.swinburne.edu.au/items/3faae18e-b608-4f7b-9f14-ed70aa90ab79/1/>>

⁶⁵ National Police Chief's Council (UK), *Op Soteria rolled out across England and Wales*, (10 July 2023). Available: <<https://news.npcc.police.uk/releases/victims-rights-and-needs-at-centre-of-transformative-new-approach-to-rape-investigations-and-prosecutions>>

Independent legal advice

The VLRC and VOCC recognise the need for complainants to have access to independent legal advice for certain purposes and make recommendations for such.⁶⁶ SASVic supports the availability of independent legal advice for victim survivors up until the point of trial and for the defined instances where complainants have standing during a trial (that exist now, and in future following reforms).

It is our view that Justice Navigators are the appropriate role for holistically supporting victim survivors through the entirety of their journey: from exploring their justice options through to participating in them and beyond. Justice Navigators would take a broad, survivor-led approach to justice, which could include helping victim survivors to pursue an apology, compensation, restorative justice options, as well as a criminal justice response.

For points at which legal matters bearing on certain complainant rights are at issue, it is appropriate and important that complainants have access to legal advice. Points at which legal advice may be warranted (now and following relevant reforms) include the following:

- when responding to subpoenas for confidential communications (the right to legal representation exists in Victoria in this context, see our response to question 17)
- to seek special measures and protections, for example, access to an intermediary, and alternative arrangements (such as pre-recording evidence)⁶⁷
- to appear in response to applications to admit evidence and ask questions regarding sexual history evidence (see also our response to question 18)
- to receive advice on their options for compensation, including under sentencing laws, victims of crime compensation and civil schemes⁶⁸
- during a sentencing hearing if a complainant is to be cross examined on their victim impact statement⁶⁹
- the implications of taking part in a restorative justice scheme.⁷⁰

The trial process

- ***'Special Measures': procedural changes***

⁶⁶ See VLRC recommendation 46 and VOCC recommendation 22.

⁶⁷ See generally, VLRC recommendation 46.

⁶⁸ See VLRC recommendation 46(c).

⁶⁹ See VOCC recommendation 44.

⁷⁰ See VLRC recommendation 46(d).

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

The VOCC report includes useful feedback from victim survivors who have gone through the trial process. We encourage the ALRC to review this report.

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?

The ALRC report lists the following special measures for our consideration:

- a closed court during the complainant's evidence;
- the use of a one-way screen to shield the complainant from a view of the accused during the complainant's evidence, if the complainant chooses to give evidence in the courtroom;
- the use of closed-circuit television to enable complainants to give their evidence outside the courtroom from a dedicated room within the court precinct;
- the use of facilities outside the court precinct from which complainants may give their evidence. Some jurisdictions have specially designed facilities for children and young people which may be visited by the child before giving their evidence;
- complainants may be accompanied during their evidence by a support person, have a canine companion present, or both; and
- changes to the design of courts to limit the complainant's interactions with the accused as far as possible.

We support all the measures listed above, with the key principle being that victim survivors are given as much choice and agency to adopt the special measures that they wish to. Our understanding is that most of these measures exist in Victoria, except for extensive court re-design measures. There are also limitations on which support people can be present during the delivery of evidence.

The VLRC and VOCC made recommendations regarding court design, accessibility and safety, which should be considered by the ALRC.⁷¹

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

There may be some victim survivors who wish to give evidence in court and face the defendant. There may be other complainants who wish to give evidence in court and feel a part of the process, but in the absence of the defendant. Being in the presence of

⁷¹ See VLRC recommendation 85 and VOCC recommendation 26.

the defendant, and re-living a traumatic experience in their presence, can be traumatic for many victim survivors.

The ALRC should consider whether, at the request of a complainant, the defendant should be removed from the courtroom and observe the evidence live from a remote room. The County Court of Victoria and Victims of Crime Commissioner recommended this during the VLRC inquiry.⁷² We believe that concerns of ‘presumptive guilt’ around removal from a courtroom are limited and could be addressed, including potentially via a jury direction.

- **‘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?

We encourage the ALRC to review existing reports for victim survivor experiences of prerecording evidence.

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?

In Victorian matters before the County Court, children and people with a cognitive impairment give their evidence:

- via a VARE (or Video and Audio Recorded Evidence) for their evidence in chief; and
- via a special hearing for their cross examination, which is recorded.

The VLRC recommended that special hearings be extended for children and people with a cognitive impairment involved in Magistrates Court matters.⁷³ We support this recommendation.

For adult sexual violence complainants who do not have a cognitive impairment, there is currently no stand-alone right to pre-record evidence in Victoria. It is up to the

⁷² VLRC, *Improving the justice response system to sexual offences*, p 471 [21.107].

⁷³ See VLRC recommendation 86(a).

prosecution or defence to seek leave of the court to request an order for taking evidence from a witness before trial.⁷⁴ Our understanding is that these provisions are relied on in cases such as when a complainant or witness is expected to be overseas at the time of trial or is expected to give birth. Orders to pre-record are generally not sought on the basis that the complainant is too traumatised to, or would have trauma compounded if, they were to deliver evidence in court or remotely at the time of the trial.

The VLRC recommended that amendments be made so that all adult complainants⁷⁵ in sexual offence trials in the County Court and for contested hearings in the Magistrates Court be entitled to provide the whole of their evidence as pre-recorded evidence.⁷⁶ SASVic strongly supports this recommendation.

Our firm position is that all victim survivors of sexual violence should have the right to either opt to appear at trial or pre-record all their evidence. Reliance on the discretion of individual judges to grant leave to pre-record evidence raises unnecessary barriers and complexities, including (among others) reliance on the prosecution to action an application and the subjective perspectives and level of understanding held by judges regarding the impacts of sexual violence. These complexities should be removed. Under a stand-alone right to pre-record, complainants would be advised of the potential benefits and downsides to pre-recording evidence and could make their own decisions accordingly. The important thing is that they are given the choice. We note here that our proposed Justice Navigators would ensure that complainants are aware of this choice and relevant considerations.

As noted by the Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission'), '[w]e are satisfied that states and territories should ensure that the relevant legislative provisions and physical resources are in place to allow for the pre-recording of the entirety of a witness's evidence in child sexual abuse matters tried on indictment'.⁷⁷ In our view, this finding applies equally to survivors of adult sexual abuse.

If a complainant wishes to pre-record their evidence, this should be arranged even if there are challenging logistics involved. The often profound, distressing and life-shifting experience of giving evidence and being cross-examined regarding a sexual violence-related offence warrants all logistical arrangements being made to support pre-recording of evidence. Given the central role of victim survivors in the prosecution of sexual violence crimes and the compounding trauma that can be experienced in

⁷⁴ *Criminal Procedure Act 2009* (Vic) s 198.

⁷⁵ Without a 'cognitive impairment'. Adult complainants with a cognitive impairment already have special measures available to them.

⁷⁶ See VLRC recommendation 86(b).

⁷⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report, Executive Summary and Parts I to II, page 78.

participating in a prosecution, the time for allowing complainants choice over whether to pre-record their evidence is well overdue.

Further, as outlined clearly in the Royal Commission, allowing all complainants (who so choose) to pre-record their evidence, enhances the capacity of complainants to give their best evidence, which is critical to the successful prosecution of sexual offending.⁷⁸ A member service reported to us that they had a client who was unable to articulate her evidence due to dissociation, and that if the option of pre-recording of evidence been available, this may have provided a better opportunity to provide evidence.

Apart from respecting the agency and choice of victim survivors, pre-recording evidence has the key benefit of removing a key source of major stress for victim survivors: trial delay. Pre-recording evidence allows victim survivors to put the stressful experience of giving evidence behind them. While there is a chance that a victim survivor may be recalled to give further evidence at the time of the trial, this would be limited to a small number of questions and could be recorded as well. Victim survivors opting to pre-record would be informed of this possibility at the outset.

- ***‘Special measures’: intermediaries and ground rules hearings***

Question 16. If you are a victim survivor, was an intermediary involved to assist with communication? If so, we would like to hear your feedback. If an intermediary was not involved, do you think an intermediary would have been helpful? If so, in what way?

The VOCC report noted that ‘[i]ntermediaries are only available in limited circumstances, so victim experiences of the Intermediary Program were unable to be covered in detail during VOCC’s engagement with victims. However, the VOCC notes that the Intermediaries Program was widely supported by stakeholders and highly praised by one victim the VOCC spoke with.’⁷⁹

Question 17. Has an intermediary scheme been implemented in your state or territory?
How is it working in practice? What is working well? What is not working well? How could it be improved? Have any of the issues described above arisen? If an intermediary scheme has not been implemented in your state or territory, do you know why? Do you think such a scheme would be helpful? If so, what do you think the scheme should involve? Do you have any ideas generally about the use of intermediaries in the criminal justice system?

⁷⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, Criminal Justice Report, Parts VII to X and appendices, page 5.

⁷⁹ VOCC, *Silenced and sidelined*, p.394

Intermediary schemes

Victoria's intermediary scheme is available to children, young people and people with a cognitive impairment who are witnesses or complainants in homicide or sexual offence matters. Intermediaries are currently only available in certain geographic locations. The challenges highlighted in the ALRC issues paper apply in Victoria, including that we require more intermediaries than are currently available and the limited availability based on geographic location. Problematically, many people with communication difficulties who do not fit the criteria of 'cognitive impairment' are ineligible for the scheme.

The VLRC and VOCC made the following recommendations:

VLRC Recommendation 58. *The Victorian Government should expand the availability and accessibility of the Intermediary Pilot Program by:*

- a) amending the Criminal Procedure Act 2009 (Vic) to ensure that all witnesses and accused persons with communication difficulties have access to the intermediary scheme*
- b) expanding its availability to all venues of the County Court of Victoria, including providing the funding and resources to support an expansion.*

VOCC Recommendation 24. *The Victorian Government should ensure equity in the availability of the intermediary scheme by expanding its availability across all Victorian courts.*

SASVic supports these recommendations, emphasising intermediaries should be available to all court users, across all courts. People with communication difficulties have the right to fully and fairly participate in court processes and all investments should be made for this to be realised.

Ground rules hearings

In Victoria, Ground rules hearings are available to:

- people under 18
- people with a cognitive impairment and
- all adult complainants in sexual offence related matters (more recently, following implementation of VLRC recommendations).⁸⁰

Practice-based feedback is that ground rules hearings work well when an intermediary is involved. It has been fed-back to us that reports and advice of intermediaries are generally respected and applied by lawyers and judges.

For other adult complainants who do not have access to an intermediary, the relevant reports for the purpose of the ground rules hearings are initially prepared by Victoria Police, with oversight by the OPP. Practice-based feedback is that reports prepared by

⁸⁰ See VLRC recommendation 84.

Victoria Police can be of lower quality and are generally implemented with less discipline by lawyers and judges.

We question whether Victoria Police are the appropriate personnel for preparing a report on the communication needs and style of questioning appropriate for victim survivors of sexual assault who may be experiencing trauma. We envisage potential roles for other experts in completing the report on behalf of complainants for the purpose of a ground rules hearing. Independent legal advice is warranted because a ground rules hearing agreement could cover procedural issues including questioning on sexual history. Other experts such as appropriately trained Justice Navigators or senior clinicians in the specialist sexual assault sector could provide input regarding the emotional wellbeing needs of the complainant.

- ***Assessment of the credibility and reliability of complainants***

Question 18. Are you aware of the research about memory and responsive behaviour in the context of sexual violence trauma? Do you have views about that research? Do you have views about whether prosecutors should call expert evidence about that research (that is, about how people recall traumatic events and/ or about how victim survivors of sexual violence typically respond)? Is that expert evidence being called in your jurisdiction? If so, how is it working? If it is not being called, do you know why not?

We have not undertaken a literature review about memory and responsive behaviour for this submission, but our practice-based expertise bears out that victim survivors can outwardly respond to trauma in a variety of ways following a recent or historical sexual assault.

There are various matters to consider with respect to expert evidence:

- One view is that the use of appropriate jury directions should provide the context required by jurors to understand a range of issues associated with sexual violence. The benefit of jury directions is that they must be followed. Expert evidence, on the other hand, can be weighed up (and potentially discounted) by jurors.
- Potential benefits of using expert evidence (in addition to jury directions) is that jurors might benefit from receiving information from an expert in the field.

The VLRC recommended that the Victorian Government should set up and maintain an independent expert panel for sexual offence trials to be used by the prosecution, defence and the court.⁸¹ We generally support this recommendation and the imperative for experts to be specialists in sexual assault with a comprehensive understanding of the

⁸¹ See VLRC recommendation 80.

neurobiology of trauma. We also emphasise that the use of expert evidence in conjunction with jury directions should be monitored and evaluated.

Question 19. What is your view about the usefulness of jury directions in countering myths and misconceptions described by the research discussed above? Do you have a view on whether the jury directions in your jurisdiction are sufficient? Could they be more extensive? How are the directions in Victoria under the *Jury Directions Act 2015* (Vic) working in practice? Can they be improved?

The relevant jury directions in Victoria have been implemented recently in Victoria. SASVic supports these jury directions, which were developed following the VLRC inquiry and its recommendations.⁸² We are unaware of evaluations undertaken to date and have no anecdotal or practice-based feedback to share on their operation at this stage. The implementation and effectiveness of jury directions relevant to sexual offence matters should be monitored and evaluated to gauge whether improvements are necessary.

Question 20. Do you have a view about the other recommendations that have been made (educative videos, mixed juries, judge-alone trials, and education and training)? Do you have other ideas for reform based on research which suggests the evidence of complainants is assessed according to myths and misconceptions about memory and responsive behaviour?

We discuss the importance of judicial and justice sector-wide education and training in response to question 33.

- **Judge-alone trials**

Question 21. What is your view about a trial by judge alone in relation to sexual offending?

There are potential benefits and drawbacks to both judge-alone and jury trials in sexual offence matters. We have no specific feedback on whether judge alone trials are preferable to jury trials at this stage of the consultation.

- **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?

⁸² See VLRC recommendations 78–83.

Cross examination is widely recognised for its potential to be incredibly harmful to victim survivors of sexual violence. The VLRC provides victim survivor feedback regarding experiences of giving evidence as a complainant in a sexual violence related criminal trial, including:

- ‘the barrister who cross-examined me was quite brutal and old school. His questioning was aggressive and confrontational’⁸³
- ‘The court experience replicated my experience as a child victim almost exactly. Once again I felt non-existent as though there was no-one on my side’ and ‘I felt done over all over again, this time by strangers. I left the court feeling devastated, I wanted to die. There was no follow up. No one cared if I was dead or alive’.⁸⁴

We note here that our recommended Justice Navigator roles would play a critical role in both helping complainants to emotionally prepare for giving evidence and to support them in the aftermath.

Victim survivors and witnesses have independently given accounts of their experience in giving evidence and being cross examined during a criminal trial. We refer the ALRC to a story prepared by journalist Annika Blau regarding Meagan’s story;⁸⁵ and Louise Milligan’s book, *Witness, an investigation into the brutal cost of seeking justice*.

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

Improper questioning

In Victoria, certain lines of questioning are prohibited, with it being up to the court to not allow an improper question. If one is asked, the court must tell the complainant that they do not have to answer the question. Improper questions are defined as one that:

- a) is misleading or confusing; or
- b) is unduly annoying, harassing, intimidating, offensive, oppressive, humiliating or repetitive; or
- c) is put to the witness in a manner or tone that is belittling, insulting or otherwise inappropriate; or

⁸³ VLRC, *Improving the justice response system to sexual offences*, p.455 [21.6].

⁸⁴ VLRC, *Improving the justice response system to sexual offences*, p. 455.

⁸⁵ Annika Blau, 12 August 2023, *Meagan set a challenge: a positive story about a rape trial. Two years on, here’s the verdict*. Available: <<https://www.abc.net.au/news/2023-08-12/how-a-rape-trial-can-be-empowering/102712108>>

- d) has no basis other than a stereotype (for example, a stereotype based on the witness's sex, race, culture, ethnicity, age or mental, intellectual or physical disability).

Unfortunately, even with these strong rules in place, questions which seem obviously 'improper' are still put to complainants, courts are not always disallowing them. Overall, cross examination often has the effect of harassing, humiliating, belittling and re-traumatising victim survivors. Below, we highlight the importance of cultural shifts among the judiciary and legal fraternity.

Admissibility of sexual reputation and history evidence

In Victoria, laws:

- prohibit questions and evidence concerning sexual reputation of the complainant;⁸⁶
- require leave of the court to cross examine or admit evidence about a complainant's sexual activities,⁸⁷ which cannot be granted unless a number of criteria are satisfied;⁸⁸
- render sexual history evidence inadmissible to support an inference that the complainant is the type of person who is more likely to have consented to the sexual activity to which the charge relates.⁸⁹

Even if an improper or prohibited question has been disallowed by the court and the complainant has not answered it, the jury has still heard the question and the complainant can still be harmed by it. Even the asking of the question (without an answer) can influence a jury in a way that procedural rules aim to prevent. This is problematic.

Procedural improvements – Ground rules hearing

The extension of ground rules hearings to all complainants in sexual assault matters (as has occurred in Victoria) would hopefully go some way in improving cross examination practices (we discuss our perspective on ground rules hearings under question 17).

Legal improvements – sexual reputation and history evidence

⁸⁶ *Criminal Procedure Act 2009* (Vic) s 341.

⁸⁷ *Criminal Procedure Act 2009* (Vic) s 342.

⁸⁸ *Criminal Procedure Act 2009* (Vic) s 349.

⁸⁹ *Criminal Procedure Act 2009* (Vic) s 343.

The ALRC should compare state and territory evidentiary laws around sexual reputation and history evidence and consider models that would (hopefully) most effectively prevent problematic questioning.

Another improvement could be to provide legal standing and representation for complainants regarding applications to question and admit evidence on sexual history. The VLRC and VOCC both recommended this approach⁹⁰ and recognised that such exists in other jurisdictions.⁹¹

The VOCC further recommended that the test for determining whether to grant an application to admit evidence and question on sexual history evidence be strengthened⁹² and that complainants have limited appeal rights regarding the admission of confidential communications and sexual history evidence (as exists in other Australian jurisdictions).⁹³

These recommendations have not yet been progressed in Victoria. SASVic broadly supports these recommendations and encourage the ALRC to report on these matters.

The importance of cultural shifts

Given the apparent ineffectiveness (at times) of procedural rules in addressing poor cross examination practices, what is absolutely required is a shift in attitude of the defence barristers who use these types of cross examination techniques and improved capacity across the judiciary to enforce procedural rules on improper questioning. This requires extensive education and training, which is monitored for take-up and effectiveness. We discuss our recommendations on education and training under question 33.

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?

Yes. It is well established that many victim survivors will not disclose or report sexual abuse or assault for some time. For children, they may not disclose to anybody until well into adulthood. The Royal Commission found that victim survivors take an average of 23.9 years to disclose their experiences, and that men often took longer than women to

⁹⁰ See VLRC recommendation 88 and VOCC recommendations 33 and 35.

⁹¹ VLRC, *Improving the justice response system to sexual offences*, pp266-267.

⁹² See VOCC, *Silenced and sidelined*, recommendation 33, and p. 417.

⁹³ See VOCC recommendation 35.

disclose.⁹⁴ This is due to the well-understood reasons relating to grooming, shame, embarrassment, fear, and the well-founded appreciation that engagement with the justice system may be traumatic and against a victim survivor's best-interests.

- **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.

We have no input to this question at this stage of the consultation.

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 commence as listed?

The Victorian Government implemented Royal Commission into Family Violence recommendation 157 to revise the Victorian Government's language services guidelines. The guidelines, *Using interpreting services*, outline considerations for critical contexts such as family violence or sexual health, including that:

- a National Accreditation Authority for Translators and Interpreters (NAATI) credentialed interpreter should be used
- the interpreter should have specialist training and experience in the specific context
- the client should be able to choose the interpreter's gender
- separate interpreters must be used for the alleged perpetrator and victim survivor
- the interpreter must not know the client. Clients should be asked if they would like to know the interpreter's name to resolve any conflicts of interests. Interstate interpreters should be used if anonymity is not possible, particularly in small communities
- interpreters should have a briefing and be offered debriefing to support interpreter wellbeing.⁹⁵

⁹⁴ National Royal Commission, "Identifying and disclosing child sexual abuse", accessed 31 May, 2024, <https://www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse#:~:text=Survivors%20who%20spoke%20with%20us,Some%20victims%20never%20disclose>

⁹⁵ Victorian Government, *Using interpreting services* (Melbourne: Victorian Government, 2019), <https://www.vic.gov.au/guidelines-using-interpreting-services>.

However, the VLRC identified issues including limited access, availability, and capability of language services in interpreting in the context of sexual violence. This results in the disjuncture between policy and practice, such as:

- use of family members or abusive partner as interpreters
- failure to use interpreters
- victim survivor concerns about privacy, particularly in small communities⁹⁶
- some interpreters are not comfortable working with LGBTIQ+ communities
- some languages do not have equivalent words to describe sexual violence.

The VLRC recommended that the Victorian Government review arrangements to improve access to safe language services, including with respect to training and increasing the available pool of trained interpreters.⁹⁷

The Disability Royal Commission also commissioned a report, which emphasises:

- strengthening access to language services for people with disability from migrant and refugee backgrounds
- training for translators and interpreters to increase their understanding of human rights including the human rights model of disability
- recognise and support inclusive bicultural workers.⁹⁸

SASVic's view is that, to ensure equity of access for all people impacted by sexual violence, it is critically important to address barriers related to cultural safety, accessibility and inclusion. This should include investing in training for language services in sexual violence, extending the pool of trained interpreters and strengthening the use of language services. We also recommend resourcing:

- training such as the NAATI *Interpreting for people who have experienced sexual assault* course, and topics like understanding the human rights model of disability, and working with LGBTIQ+ communities
- wellbeing support for interpreters

⁹⁶ We note that government funding for interpreting and translating scholarships in states and territories could address victim survivor privacy concerns. We also note that Victorian Government added Diploma and Advanced Diploma-level courses in Auslan to the free TAFE list. There is also the Northern Territory Auslan program.

⁹⁷ See VLRC recommendation 61.

⁹⁸ Shona Bates et al., *Towards best-practice access to services for culturally and linguistically diverse people with a disability* (Social Policy Research Centre and the National Ethnic Disability Alliance for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, 2023), <https://disability.royalcommission.gov.au/publications/towards-best-practice-access-services-culturally-and-linguistically-diverse-people-disability>. The Victorian Government guidelines state that language aides, e.g., a bilingual worker or multicultural education aide, 'should only assist with low-risk and non-critical communication... [and] must not interpret information that is legally binding or puts either the client or the organisation at risk'. Victorian Government, *Using interpreting services*, <https://www.vic.gov.au/guidelines-using-interpreting-services>, p.12.

- bicultural workers and translators placed in SSAS.

- **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?

It is widely recognised that having private and confidential records released as part of a court process can be traumatic for victim survivors and can be unfairly used by defence counsel to challenge a complainant's reliability. The VLRC⁹⁹ and VOCC¹⁰⁰ reports contain victim survivor accounts of having confidential records subpoenaed, which we encourage the ALRC to consider.

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?

Following a VLRC recommendation,¹⁰¹ Victoria's laws in this area were recently reformed so that victim survivors have standing to appear (with the support of legal representation) to object to a subpoena for confidential information. These reforms followed the VLRC inquiry and recommendations and we fully support them. We encourage the ALRC to consider Victoria's model for the purpose of its inquiry.

The VOCC reviewed these arrangements and recommended (in summary) that:

- additional legislative protections be introduced to require courts to ensure that the prosecution has met its obligations to notify victims of their rights and that complainants be provided specialised, state-funded legal representation when these matters are being determined.¹⁰²
- complainants be provided with limited appeal rights regarding decisions around applications for confidential communications, supported by state-funded legal assistance.¹⁰³ The VOCC noted that such appeal rights exist in New South Wales.¹⁰⁴

SASVic supports these recommendations also.

It is critical that complainants have the opportunity and appropriate support to address the court regarding the impact on them should their confidential information be

⁹⁹ See VLRC, *Improving the justice response system to sexual offences*, p.472.

¹⁰⁰ See VOCC, *Silenced and sidelined*, p.135.

¹⁰¹ See VLRC recommendation 46.

¹⁰² See VOCC recommendation 32.

¹⁰³ See VOCC recommendation 35.

¹⁰⁴ VOCC, *Silenced and sidelined*, p.419.

admitted as evidence. It is particularly important that complainants have such standing because there will be instances where the prosecution would like to admit such evidence, against the preferences of victim survivors. Protection of confidential information is important because any perception that counselling records can be easily admitted as evidence will deter many victim survivors of sexual violence from seeking support.

SSAS holding confidential information that receive a subpoena are similarly entitled to appear and the Victorian Government initiated a Subpoena Defence Fund accessible to the Victorian sexual assault sector. The ALRC should recommend that all states and territories provide a similar fund for SSAS to defend subpoena applications.

SASVic has not yet received practice-based feedback on these measures which may be because they have only recently been implemented. The Victims Legal Service in Victoria is supporting victim survivors with these matters (under a one-year pilot program) and we refer you to their submission and Djirra's, on this point.

- **Types of evidence**

Question 29. Have legislative reforms to the admissibility and use of complaint evidence been effective? Are there problems associated with that evidence? Is this an area in which the laws should be harmonised? If so, how should they be harmonised? Should evidence of more than one complaint be admissible? Should complaint evidence be admissible as evidence of what is asserted by the complainant and/or to assess credibility? Should complaint evidence be admissible at all? Does it perpetuate myths about responsive behaviour to sexual violence trauma (by expecting complainants of sexual violence to complain at some stage and placing weight on what was said)?

Our understanding of the Victorian law in this area is that evidence of a complaint made by the complainant to another person, regarding alleged sexual abuse or assault, is admissible as an exception to the hearsay rule if it is 'fresh in the memory' of the complainant when made or where the complainant was under 18 at the time they made the representation.¹⁰⁵

SASVic's view is that evidence of a complainant's disclosure or reporting of sexual abuse or assault could be relevant evidence in some cases. It is our view that relevant legislative provisions and associated common law principles be reviewed by the ALRC to

¹⁰⁵ See section 66 of the *Evidence Act 2008* (Vic) and the second reading speech to the Jury Directions and Other Acts Amendment Bill 2017, Victorian Hansard, 22 February 2017, available:

<https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+s+econd+time&IW_FIELD_IN_SpeechTitle=Jury+Directions+and+Other+Acts+Amendment+Bill+2017&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2017&IW_DATABASE=*>

ensure they reflect contemporary knowledge on disclosures of sexual abuse and assault.

One strength of the Victorian statutory provisions is that they recognise that many children will delay reporting sexual abuse to police, and indeed, can delay disclosing what happened to them to anyone, until well into adulthood.¹⁰⁶

With respect to judicial precedents, there may well be some common law principles that reflect what we know about disclosures of sexual abuse and assault. However, given this is an area of specialist expertise, consideration should be given as to whether it is still appropriate to broadly leave it to judges to follow precedents first enunciated years and even decades ago, on issues regarding sexual abuse or assault and memory. Instead, this area might warrant improved statutory guidance informed by contemporary knowledge on sexual abuse and assault disclosures.

Question 30. Should there be legislative reform to the admissibility and use of distress evidence? Is this an area which calls for legislative intervention and harmonisation? If so, how should they be harmonised? Should distress evidence be admissible at all?

Evidence of a complainant's distress regarding a sexual assault could be relevant evidence in some cases. However, the principles underlying and guiding the admissibility and relevance of distress evidence are now counter to what we know about the impacts of, and varying outward responses to, being subjected to sexual assault. The applicable common law principles could be reformed via statutory procedural rules reflecting contemporary knowledge, including trauma neurobiology. This should include measures that ensure that an absence of distress is not taken as an indication that a sexual assault did not take place.

Question 31. Are there further reforms to be considered to tendency and coincidence or discreditable conduct evidence in addition to the Evidence (Tendency and Coincidence) Model Provisions released by the Royal Commission into Institutional Responses to Child Sexual Abuse?

The Victorian State Government indicated its intention to implement the Model Provisions in 2021, but, at the time of writing this submission, has not progressed these

¹⁰⁶ Second reading speech to the Jury Directions and Other Acts Amendment Bill 2017, Victorian Hansard, 22 February 2017, available:

<https://hansard.parliament.vic.gov.au/search/?LDMS=Y&IW_FIELD_ADVANCE_PHRASE=be+now+read+a+s+econd+time&IW_FIELD_IN_SpeechTitle=Jury+Directions+and+Other+Acts+Amendment+Bill+2017&IW_FIELD_IN_HOUSENAME=ASSEMBLY&IW_FIELD_IN_ACTIVITYTYPE=Second+reading&IW_FIELD_IN_SittingYear=2017&IW_DATABASE=*>

reforms. SASVic strongly supports the implementation of the Model Provisions as well as VLRC recommendation 76 that:

Any reform in Victoria relating to tendency and coincidence evidence resulting from the adoption of the Council of Attorneys-General's Model Bill on this evidence should be evaluated by the government. The evaluation should assess whether the reforms are achieving their aims and working fairly, after three years from the reforms commencing.¹⁰⁷

Question 32. Are there any other evidence issues relating to sexual violence trials that we should consider, including whether there should be harmonisation?

In Victoria, recent reforms seek to control cross-examination more tightly at the committal stage. As summarised by the VOCC, these reforms are that:

- *'The court must have regard to additional considerations when determining whether to allow the pre-trial cross-examination of certain witnesses. These additional considerations apply to a child, 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. The court must consider the need to minimise the trauma that might be experienced by the witness in giving evidence and conduct a more detailed assessment of the importance of the witness's evidence in the case and the characteristics of the witness (e.g. age, culture, level of understanding).*
- *Magistrates must provide reasons for granting leave to cross-examine a witness and identify each issue on which the witness may be cross-examined. This reform requires a magistrate to consider the test for granting leave and explain why leave is justified if granted. This is intended to address concerns that some magistrates were granting leave almost automatically and without applying the statutory test for leave.¹⁰⁸*

The VOCC recommended that these reforms be reviewed to ensure they are achieving their objectives.¹⁰⁹ The ALRC could consider Victoria's arrangements for cross-examination during committal hearings for the purpose of its recommendations as well as VOCC's recommendations, which we support.

- **Specialisation and training of judges and counsel**

¹⁰⁷ See VLRC recommendations 76 and p.424.

¹⁰⁸ VOCC, *Silenced and sidelined*, p.405.

¹⁰⁹ See VOCC recommendation 27.

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?

Specialist courts and lists

There are potential benefits and drawbacks to both specialist courts and specialist lists. The VLRC considered these issues and took the view that in Victoria, we should strengthen our specialised response but do not require separate, specialist courts.¹¹⁰ The VLRC noted that ‘many of the benefits of a specialised court can be achieved without the great disruption and costs that would be caused by creating a stand-alone court’.¹¹¹ On balance, we support the findings of the VLRC and the continuation of specialist lists for the Victorian context currently. One reason being is that the creation of an entirely separate and new system would take extensive time and resources. We note that the ALRC’s terms of reference refer to the report, *Specialist Approaches to Managing Sexual Assault Proceedings: An Integrative Review*. We commend this report and agree with its analysis in this area.

Specialist training for judges

Education and training for all actors in the justice system, including police, lawyers and judges, is critically important and will hopefully prove to be one of the most significant interventions we can make to improve justice system experiences of victim survivors within the context of our adversarial system. Our sector’s practice-based expertise tells us that the understanding and approach of individual judges has a significant impact on a victim survivor’s experience during a criminal trial.

The VLRC made the following recommendations:

VLRC Recommendation 69. *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*

¹¹⁰ VLRC, *Improving the justice response system to sexual offences*, pp. 394–395.

¹¹¹ VLRC, *Improving the justice response system to sexual offences*, p. 394.

- 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*
- k) *any reforms implemented from this report. Funding for the program should be on an ongoing basis.*

VLRC Recommendation 70. *Data on the take up of the program in Recommendation 69 across each of these agencies should be published annually.*

We support VLRC Recommendations 69 and 70. These recommendations could be further supported by attitudinal and behavioural surveys/research that gauges perceptions and effectiveness of training.

VLRC Recommendation 71. *The Office of Public Prosecutions and Victoria Legal Aid, in consultation with relevant legal professional bodies, should take the lead on developing the requirements for specialised training based on the program in Recommendation 69. Only accredited counsel in sexual offences cases who meet the training requirements should be briefed to appear for the prosecution, or in legally aided cases.*

We support VLRC recommendation 71 but add that the specialist sexual assault sector must be a key partner in the development and delivery of education programs. Legal professional bodies do not hold the type of training and practice-based expertise to develop and deliver most aspects of the training outlined in recommendation 69. Expertise on many of the items listed in recommendation 69 is held by the specialist sexual assault sector.

VLRC Recommendation 72. *Victoria Legal Aid and the Office of Public Prosecutions should increase fees for accredited counsel in sexual offence cases who meet the training requirements developed in Recommendation 71, in consultation with the Victorian Bar. The Victorian Government should fund the increase in fees on an ongoing basis.*

VLRC Recommendation 73. *All judicial officers in the Magistrates' Court of Victoria, County Court of Victoria and the Victorian Court of Appeal who sit on criminal cases or appeals involving sexual offences should be required to complete education and training in areas covered in the program in Recommendation 69.*

VLRC Recommendation 74. *In making future judicial appointments, the Victorian Attorney-General should consider the potential appointees' suitability for hearing cases involving sexual offences.*

SASVic supports VLRC recommendations 72–74. The VOCC made similar and further recommendations on judicial education that should be considered by the ALRC.¹¹²

- **Delay**

Question 34. If you are a victim survivor, what were the delays you experienced? What was the impact of those delays upon you and/or your family and friends?

Delay is well recognised as a source of secondary-victimisation for victim survivors, who are often required to 'stay in that traumatic space' for years in preparation for a criminal trial.¹¹³ The VLRC and VOCC reports contain victim survivor accounts of the impact of delay on their wellbeing.¹¹⁴

Question 35. What are the causes of delay in your state or territory? Do you wish to comment on the past recommendations (as outlined above) and whether they have been or should be implemented in your state or territory? What are your ideas for reducing delays? Can there be a national approach to reducing some aspects of the delay?

Causes of criminal trial delay have been well canvassed by many inquiries over many years¹¹⁵ and reforms have been implemented along the way to reduce delays. We will not repeat those extensive recommendations here. The VLRC recommended that outstanding recommendations contained in its 2020 Committals report be implemented in Victoria.¹¹⁶ The VOCC recommended that committal hearings should be abolished for certain cohorts altogether, commencing with sexual offence and family violence cases as a priority.¹¹⁷ We encourage the ALRC to report on these recommendations, particularly whether committal hearings should be done away with altogether for sexual offence matters.

Guilty pleas

¹¹² See VOCC recommendations 53 and 54

¹¹³ VOCC, *Silenced and sidelined*, p.142.

¹¹⁴ See VOCC, *Silenced and sidelined*, pp. 142–146 and VLRC, *Improving the justice response system to sexual offences*, p.416.

¹¹⁵ See, for example, VLRC report, 2014, *Sexual Offences*, Report No 5, July 2004; VLRC Committals report, 2018; VLRC, *the role of Victims of Crime in the Criminal Trial process* 2016.

¹¹⁶ See VLRC recommendation 75.

¹¹⁷ See VOCC recommendation 27.

Question 36. If you are a victim survivor, did the offender plead guilty? Did the offender plead guilty as charged, or was there negotiation with the ODPP? We would like to hear about your experience of that process.

The VOCC report found a lack of consultation with victims on these issues. Only five percent of victims were consulted about the decision to stop a prosecution or accept a guilty plea to a lesser charge: most (63 percent) are not consulted.¹¹⁸ This can mean that victim survivors are not prepared if there are lesser or dropped charges. The difference is more pronounced between the Magistrates Court and the higher courts. A survey of professionals showed that almost half of them stated that victims in Magistrates Court proceedings receive ‘limited’ information to participate during the prosecution process, while a third of professionals stated that victims in the higher courts ‘mostly’ get the information they need to participate.¹¹⁹

Further, while a guilty plea can avoid the added trauma for victim survivors of going through a criminal trial, this may not be what all victim survivors want.¹²⁰ This is why we support VOCC recommendations about sentencing, which we discuss in the sentencing section.

VOCC also noted that when the court facilitated diversion programs, this precludes victim survivors from sharing the impact of the crime with the court.¹²¹

We note that our proposed Justice Navigator roles would advocate on behalf of complainants to ensure that their participation rights under the Victims Charter are upheld and would provide emotional support in the aftermath of a prosecution decision that is personally disappointing to a complainant.

Question 37. Have any recent changes in sentencing laws had an impact upon the preparedness of accused persons to plead guilty to sexual violence offences?

We refer the ALRC to reports prepared by the Victorian Sentencing Advisory Council.

Question 38. Are sentencing indication hearings (or their equivalent) effective in terms of resulting in guilty pleas? Can the process be improved? Are there other ways in which guilty pleas may be encouraged?

Our focus is on how the criminal justice system can improve victim survivors’ experiences. Sentence indication hearings can hinder victim survivors’ participation in the system, including:

¹¹⁸ VOCC, *Silenced and sidelined*, p.222.

¹¹⁹ VOCC, *Silenced and sidelined*, p.217.

¹²⁰ VOCC, *Silenced and sidelined*, p.224.

¹²¹ VOCC, *Silenced and sidelined*, p.271.

- that prosecutors are not required to obtain their views¹²²
- their entitlement to make a VIS and have it considered at sentencing,¹²³ especially since pleas and sentencing can happen on the same day at the Magistrates Court.¹²⁴ We acknowledge the difficulty about when VISs should be made, as, if they are made too early, they can be used in cross-examinations before a finding of guilt.

We support VOCC recommendations about sentence indications as we expect they will broaden victim participation, including amending the *Criminal Procedure Act 2009* and/or *Victim's Charter Act 2006* so:

- that the Director of Public Prosecutions must consult with victims about sentence indications in the higher courts, noting legislative review of the sentence indication scheme¹²⁵
- victims are told about sentence indication applications or the possibility that an indication may be given, and they have the chance to give earlier impact information that can be given at a sentence indication hearing¹²⁶
- prosecuting agencies must advise the court if there is enough, or insufficient, victim impact information available for a sentence indication¹²⁷
- the Sentencing Advisory Council should undertake a legislative review of sentence indications.¹²⁸

Sentencing

Question 39. Are there aspects of sentencing practices and outcomes which may be harmonised across jurisdictions?

We have no input to this question at this stage of the inquiry.

Question 40. If you are a victim survivor, what was your experience of the sentencing process? What aspect(s) of the sentencing process were important to you? Did you make a Victim Impact Statement? If so, how did you find that process? What could be improved?

In Victoria, victim survivors have entitlements under the Victim's Charter, including to make a VIS and apply for compensation from the perpetrator.

¹²² VOCC, *Silenced and sidelined*, p.425.

¹²³ VOCC, *Silenced and sidelined*, p.270

¹²⁴ VOCC, *Silenced and sidelined*, p.265

¹²⁵ See VOCC recommendation 36. VOCC, *Silenced and sidelined*, p.427.

¹²⁶ See VOCC recommendation 37. VOCC, *Silenced and sidelined*, p.428.

¹²⁷ See VOCC recommendation 38. VOCC, *Silenced and sidelined*, p.429.

¹²⁸ See VOCC recommendation 39. VOCC, *Silenced and sidelined*, p.431.

The VOCC report found that victims had overwhelmingly negative experiences of compensation, namely that they did not know compensation existed.¹²⁹ If they did know and applied for compensation, they found the process to be onerous.

While VISs can support victim participation, the majority (66 percent) of victim survivors surveyed by VOCC did not receive help to make a VIS.¹³⁰ Aboriginal and Torres Strait Islander peoples, migrant and refugee people, and people with disability are less likely to receive support.¹³¹

Victims raised many problems making a VIS, including:

- lack of guidance
- lack of safety when reading their VIS aloud
- dissatisfaction that the perpetrator does not have to respond to or acknowledge the VIS.¹³²

We emphasise here that our proposed Justice Navigator roles would support victim survivors through compensation and VIS processes and therefore address many of the problems identified by VOCC.

As noted, there is also an issue about timing and when to prepare a VIS. This is compounded by issues of admissibility, leading some victim survivors to feel censored when they realise parts or all their VIS may not be read aloud in court.¹³³ Victim survivors should be given enough time and support to prepare a VIS, including guidance about admissibility. We refer to recommendations in the following response.

Question 41. Have there been recent changes to the role of victims of sexual violence in the sentencing process in your jurisdiction? Are Victim Impact Statements given appropriate consideration by the sentencing judge? Are there further improvements to be made? Should victims have independent legal representation during sentencing submissions?

Many victims identified that the VIS is a ‘formality’ or ‘checkbox’ that does not impact the sentence.¹³⁴ SASVic supports VOCC recommendations about the preparation and protection of ‘early’ VIS with appropriate safeguards, so that:

- victims can prepare a VIS before a plea or finding of guilt and have their VIS quarantined until the court requires¹³⁵

¹²⁹ VOCC, *Silenced and sidelined*, p.257.

¹³⁰ VOCC, *Silenced and sidelined*, p.259.

¹³¹ VOCC, *Silenced and sidelined*, p.260

¹³² VOCC, *Silenced and sidelined*, p.261.

¹³³ VOCC, *Silenced and sidelined*, p.268.

¹³⁴ VOCC, *Silenced and sidelined*, p.261.

¹³⁵ See VOCC recommendation 40. VOCC, *Silenced and sidelined*, p.33.

- the court must ask the prosecution if the victim wishes to make a VIS. If the prosecution advises that the victim wishes to make a VIS, or the prosecution cannot give enough information about the victim's wishes, the court should adjourn the proceedings to allow the victim to prepare a VIS or allow the prosecutor to make enquiries unless it is not in the interests of justice to do so. The prosecution should be able to apply for an adjournment if the court does not adjourn the matter¹³⁶
- a court should only allow the questioning of a victim about their VIS if there is substantial probative value¹³⁷
- the perpetrator cannot cross-examine the victim about their VIS.¹³⁸

Question 42. Do you have ideas for improving the sentencing process in matters involving sexual violence offences?

Character references

SASVic opposes the use of character references as a mitigating factor in the sentencing of sexual violence-related offences. We submit that committing sexual offences is more telling of one's character than a perpetrator's work and reputation in the community. We also know that perpetrators, especially those of child sexual abuse, are skilled in grooming victim survivors, family members and community.¹³⁹ Grooming establishes the perpetrator's credibility in and service to the community and makes it hard for community members to believe that the perpetrator can commit such crimes.¹⁴⁰ We know that perpetrators of sexual assault intentionally target victim survivors, which workplaces and community are often unaware of. So, while they can speak to a perpetrator's character in those settings, they cannot speak to the perpetrator's actions towards the victim survivor.

Support for criminalised survivors of sexual violence

Victim survivors of sexual violence can end up on a trajectory to criminalisation. High rates of women in prison have experienced sexual, physical or emotional violence, with rates likely higher for Aboriginal women in prison.¹⁴¹ Many victim survivors of child sexual

¹³⁶ See VOCC recommendation 41. VOCC, *Silenced and sidelined*, p.34.

¹³⁷ See VOCC recommendation 42. VOCC, *Silenced and sidelined*, p.34.

¹³⁸ See VOCC recommendation 43. VOCC, *Silenced and sidelined*, p.34.

¹³⁹ Commonwealth of Australia, *Final report. Preface and executive summary. Royal Commission into Institutional Responses to Child Sexual Abuse* and SASVic, "Grooming & child sexual abuse", accessed May 16, 2024, <https://www.sasvic.org.au/csaresource1>.

¹⁴⁰ *Report of the Board of Inquiry into historical child sexual abuse in Beaumaris Primary School and certain other government schools* (Melbourne: Victorian Government, 2024), p.218.

¹⁴¹ VLRC, *Improving the justice response system to sexual offences*, p.175 [8.51].

abuse are in institutional care, including out of home care, at the time the sexual abuse was committed against them. Many children will act in ways that receive a police response when in out of home care; where similar behaviour from children living at home with parents, would not.

Between 2018 and 2019, ten percent of children who received child protection services experienced sexual abuse.¹⁴² Children and young people removed from home are vulnerable to sexual violence while in state care. The Commission for Children and Young People ('CCYP') highlights the 'alarming' scale of child sexual abuse, including child sexual exploitation, in residential care.¹⁴³ In Victoria, between July 2021 and end March 2023, 423 incidents of sexual exploitation in residential care were reported.¹⁴⁴ SASVic supports a justice response to victim survivors of sexual violence that avoids criminalisation in appropriate cases and that supports recovery. We recognise that many victim survivors, particularly those that were subjected to child sexual abuse, will not disclose for years, if not decades, and will therefore not receive support necessary to address their trauma and related trajectory towards criminalisation. Our justice and sentencing processes should recognise this.

The Magistrates Court of Victoria has a number of specialist, therapeutic lists that certain offenders can access for the purpose of determining an appropriate response, in place of a 'traditional' sentence. These lists are for people experiencing challenges such as drug addiction and/or mental illness. Participants in therapeutic lists receive supports and participate in programs aimed at addressing the underlying causes of their criminal behaviour. Should they reoffend while participating in a therapeutic list, some participants will have a sentence imposed on them. Many victim survivors of sexual abuse and assault participate in these specialist therapeutic lists.

A participant's experience of being subjected to sexual violence will often come up as part of discussions during a therapeutic list hearing and some participants are referred to SSAS. We believe that the specialist sexual assault sector should be specifically resourced to receive referrals from therapeutic court lists, so that we are appropriately resourced to provide the level of support participants require. This is particularly

¹⁴² AIHW, "CP Australia 2020-21", accessed June 5, 2023, <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/summary>.

¹⁴³ CCYP, "...as a good parent would...": *Inquiry into the adequacy of the provision of residential care services to Victorian CYP who have been subject to sexual abuse or sexual exploitation whilst residing in residential care* (Melbourne: CCYP, 2015), <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/as-a-good-parent-would/>, p.62, and Dr Gemma McKibbin et al., "We must act now to stop child sexual exploitation in residential care", accessed June 5, 2023, <https://pursuit.unimelb.edu.au/articles/we-must-act-now-to-stop-child-sexual-exploitation-in-residential-care>.

¹⁴⁴ CCYP, "Statewide action overdue amid new data showing continuing sexual exploitation of children in residential care", accessed June 5, 2023, <https://ccyp.vic.gov.au/news/statewide-action-overdue-amid-new-data-showing-continuing-sexual-exploitation-of-children-in-residential-care/>.

important, given such victim survivors enter therapeutic court programs because of drug and alcohol addiction and/or because they live with mental illness.

The VLRC recommended that the Victorian Government recognise the support and justice needs of women, children and young people in contact with the justice system who have experienced sexual violence.¹⁴⁵ We encourage the ALRC to do the same as part of its inquiry and extend its consideration to the needs of criminalised male victim survivors also.

Support for children and young people exhibiting HSB

HSB by children is different from adult sexual offending and requires an appropriate response from the justice system which, depending on the circumstances, may be a therapeutic response or prosecution. Impacts on victim survivors are still important and should be considered, in the context of HSB. Reasons behind HSB can include being subjected to family violence, child neglect, and sexual or other forms of assault.¹⁴⁶ As articulated by the VLRC, early intervention and treatment is key to supporting children exhibiting HSB. The VLRC recommended that the Victorian Government address the support and justice needs of children and young people exhibiting HSB and to fund therapeutic interventions.¹⁴⁷ We encourage the ALRC to consider these matters as part of its inquiry.

Victoria's approach to responding to HSB, which uses Therapeutic Treatment Orders ('TTOs'), provides a positive model. The *Children, Youth and Families Act 2005* (Vic) makes provision for reports about children aged 10 to 17 years of age who exhibit HSB and are believed to need therapeutic treatment.¹⁴⁸ A TTO is a therapeutic and diversionary pathway to prevent future offending. TTOs recognise that given children and young people's developmental stages, responses must be different from that required to address adult offending. Child Protection applies to the Children's Court for a TTO and if the court makes a TTO, there is a direction for the child to engage in HSB treatment for up to a year, with a possible extension, which Child Protection oversees. A therapeutic treatment placement order ('TTPO') can also be made, which requires a child be removed from home where it is necessary to ensure the child's participation in treatment and/or other children's safety. Our sector provides specialist responses to

¹⁴⁵ See VLRC recommendations 24(a) and 25.

¹⁴⁶ VLRC, *Improving the justice response system to sexual offences*, pp. 176–177 [8.57].

¹⁴⁷ See VLRC recommendations 24(b) and 26.

¹⁴⁸ Victorian Government, "Therapeutic treatment reports and orders – advice", accessed June 5, 2023, <https://www.cpmanual.vic.gov.au/advice-and-protocols/advice/children-specific-circumstances/therapeutic-treatment-reports-and->

children and young people who exhibit HSB through treatment programs.¹⁴⁹ In many cases, HSB programs, rather than youth custody, are a more appropriate method of early intervention and prevention.¹⁵⁰ Other referral pathways into HSB treatment programs include families, schools, and self-referrals for voluntary engagement without the need for a TTO.¹⁵¹ We recommend the ALRC consider Victoria's Therapeutic Treatment Orders approach for children and young people who exhibit HSB.

Appellate proceedings

Question 43. If you are a victim survivor, what was your experience of the appeal process? In responding, you may wish to consider the following: What information or support did you receive about the appeals process and its possible outcomes? If you received some information or support, how useful did you find it? What information or support did you receive about the decision made on the appeal? If you received some information or support, how useful did you find it? What impact did the appeals process have on you? If the appeal resulted in a re-trial, were you consulted about whether the prosecution should proceed with a re-trial?

Our sector's practice-based expertise reinforces the well understood, distressing impacts that appeals can have on victim survivors of sexual violence. Appeals cause distress due to (among other reasons) the prolonging of criminal proceedings; the uncertainty over whether a conviction or sentence will stand; where there is a successful appeal by the defendant; and the ordering of a re-trial.

Question 44. What are your ideas for improving the appeals process in matters involving sexual violence offences?

The VLRC identified that there are 'many complex factors that may lead to different appeal outcomes', and that 'there is no easy way to identify what is going on without a close review of the reasons for the decisions'.¹⁵² The VLRC recommended that the Victorian Government review how appeals operating in sexual offences cases to identify legal or procedural issues needing reform.¹⁵³ We support this proposed process.

¹⁴⁹ NASASV, *Standards of practice manual for services against sexual violence* (3rd edition) (Mildura: NASASV, 2021), <https://www.nasasv.org.au/resources>, p.91.

¹⁵⁰ Quadara et al., *Good practice in responding to young people with HSBs*, Gemma McKibbin et al., *Power to kids: respecting sexual safety evaluation report* (Melbourne: Mackillop Family Services, 2020), https://www.mackillop.org.au/uploads/Service-documents/Institute/Power-to-Kids_Respecting-Sexual-Safety_Evaluation-Report.pdf.

¹⁵¹ In this instance, there is no oversight by child protection.

¹⁵² VLRC, *Improving the justice response system to sexual offences*, p. 427 [19.88].

¹⁵³ See VLRC recommendation 77.

It is within our practice-based expertise to recommend that the pre-recording of evidence of all complainants in sexual offence related matters in all courts should be a priority. This process will mean that victim survivors will avoid having to give the entirety of their evidence again.

Civil Proceedings and other justice responses

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?

We have no input to this question at this stage of the consultation.

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?

In Victoria, the RMIT Centre for Innovative Justice provides the *Open Circle* restorative justice service that brings people together 'to acknowledge and respond to experiences of harm'.¹⁵⁴ This is done in a victim survivor centred way. Currently, an Open Circle practitioner co-locates at one of our member services, CASA Central Victoria (CASACV,) to facilitate restorative justice with interested CASACV clients. The practitioner offers secondary consultations and training to CASACV staff about restorative justice process and referrals into the program. The practitioner has also explored working with HSB clients who are currently engaging with CASACV.

Otherwise, Victoria does not have a state-based restorative justice program. As the VLRC notes, restorative justice conferences can be part of treatment programs for children and young people displaying HSB. VLRC and VOCC made a range of recommendations relevant to restorative justice.¹⁵⁵ SASVic broadly supports the following:

- a restorative justice scheme for sexual violence guided by principles, including the priority of the victim survivor, accountability, transparency and that the process is part of an integrated justice response¹⁵⁶
- adequate resourcing for the restorative justice scheme¹⁵⁷

¹⁵⁴ RMIT Centre for Innovative Justice, "Open Circle", accessed 13 June 2024. Available: <<https://cij.org.au/opencircle>>

¹⁵⁵ See VLRC recommendations 28 to 36.

¹⁵⁶ See VLRC recommendation 28.

¹⁵⁷ See VLRC recommendation 29.

- The situations restorative justices should be available in include where a person harmed does not wish to report or pursue a criminal prosecution, where a harm is reported but there are insufficient grounds to file charges¹⁵⁸
- an overarching framework for 'alternative' or 'parallel' justice options and amendments to the *Victims' Charter Act 2006* to improve protections for victims about restorative justice programs¹⁵⁹
- making public any past evaluations of restorative justice programs and commit to an evaluation of the government's existing programs.¹⁶⁰

We note that our proposed Justice Navigator roles would provide information to victim survivors about restorative justice options, arrange legal advice where appropriate, and appropriately support them through a restorative justice process.

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

Victim survivors may wish to seek justice outcomes that differ from those in the criminal justice system, such as conviction and/or imprisonment. They may wish the perpetrator to understand the impact of their behaviour, acknowledge the crime and/or offer an apology.

SASVic supports additional justice options, including restorative justice, for victim survivors. This is particularly salient in Victoria. In a victims' survey about participation in the criminal justice system, almost half of the respondents stated they would not participate again.¹⁶¹ This is due to a lack of confidence and safety in the criminal justice system, as well as retraumatisation, where the system itself can lead to secondary victimisation. In many cases, the criminal justice process does not redress the wrong. SASVic views restorative justice as a supplement and not a replacement to traditional criminal justice options. Restorative justice enables a different participatory process for victim survivors, as evident in the following finding from a Victorian pilot program report:

SVs [survivor-victims] seem to transition from being in a world in which they feel fearful, to one in which their ability to enact some control is enhanced. This appears to be true whether the PR [person responsible for harm] agrees to take part in RJ or not.

Even when court processes were complete and perpetrators gaoled, SVs in this study were left feeling dissatisfied and bereft. SVs wished to speak to the perpetrator in a manner that was not circumscribed by the laws of evidence and have their

¹⁵⁸ See VLRC recommendation 31.

¹⁵⁹ See VOCC recommendation 46. VOCC, *Silenced and sidelined*, p.35.

¹⁶⁰ See VOCC recommendation 47. VOCC, *Silenced and sidelined*, p.35.

¹⁶¹ VOCC, *Silenced and sidelined*, p.18.

*questions answered. They wished to speak in a setting that was responsive and where their credit was not challenged. This speaks to the justice values of voice and participation.*¹⁶²

We do not support National Inquiry recommendation 9 for state and territory governments to consider establishing a restorative justice pilot program.¹⁶³ As stated, there was a pilot in Victoria.¹⁶⁴

Civil litigation

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

The ALRC issues paper lists the following measures for our consideration:

- *government funding for some applicants in civil proceedings;*
- *supporting applicants to apply for Intervention Orders; and*
- *government enforcement of orders to pay damages.*

And

- *trauma-informed court processes, support for victim survivors, and the availability of training and other measures to address the myths and misconceptions about sexual violence;*
- *excluding the admissibility of prejudicial evidence of little or no probative value;*
- *extending the available remedies; and*
- *the intersection of sexual violence issues with family violence matters, family law matters, and child protection matters.*

All of these measures are important to improving civil justice responses to sexual violence.

Government support for civil and enforcement proceedings

The VLRC made the following recommendations:

Recommendation 41. *The Victorian Government should provide funding for people who wish to bring civil proceedings against a non-institutional defendant (or defendants) for sexual assault where:*

- a) their case raises important systemic or legal issues, or*

¹⁶² A Community-Based Survivor-Victim Focussed Restorative Justice – A Pilot 2019, p. 51. Available: <<https://www.aic.gov.au/sites/default/files/2020-05/CRG-33-14-15-Final-Report.pdf>>

¹⁶³ The Senate Legal and Constitutional Affairs References Committee, *Current and proposed sexual consent laws in Australia*, p.viii.

¹⁶⁴ <https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report/9-restorative-justice-for-sexual-offences/#:~:text=9.6%20For%20people%20responsible%20for,harm%20asks%20to%20make%20amends.>

- b) they face multiple barriers to justice and their case has reasonable prospects of success.*

SASVic supports this recommendation. As explained by the VLRC, it is generally straightforward for individuals to receive no win/ no fee legal representation when suing an institution. Because individuals are less likely to be resourced enough to pay any compensation ordered by the court, it is more difficult to receive legal help in these cases.¹⁶⁵ Civil proceedings against individuals can be an important justice option, particularly in the common situations where (a) a person does not want to report to police; (b) the DPP has decided not to prosecute; and (c) where a criminal trial has resulted in a not-guilty verdict.¹⁶⁶

Recommendation 42. *The Victorian Government, or an agency or authority it authorises, should bring enforcement proceedings on behalf of a person who has experienced sexual violence, if they request it. This should be available if the individual responsible for sexual violence does not fulfil the terms of a civil settlement or court order to pay damages or compensation for injuries resulting from sexual violence.*

SASVic supports this recommendation. As articulated by the VLRC, '[w]ith it, there is public recognition that the state takes the violence seriously, and the practical assistance that comes with enforcement. It is a way of ensuring that people responsible for sexual violence are held financially accountable if they have the means to pay.'¹⁶⁷

The intersection of sexual violence issues with family violence matters, family law matters, and child protection matters.

The VLRC considered the ways in which child protection investigations on the one hand, and police investigations into child sexual abuse on the other, can impact each other in dysfunctional ways. We encourage the ALRC to consider this aspect of the VLRC report and note that the VLRC made the following recommendation:

VLRC recommendation 13. *The Victorian Government should, building on the Protocol between Child Protection and Victoria Police, develop a revised protocol for child sexual abuse to improve the interactions between the justice system and the child protection system. The revised protocol should move towards:*

- a) a partnership model across the state that includes as key partners those responsible for providing therapeutic services for children*
- b) clear and strong processes for joint case planning, joint training and collaborative practice*
- c) a strong component of advocacy for children*

¹⁶⁵ VLRC, *Improving the justice response system to sexual offences*, p.230.

¹⁶⁶ VLRC, *Improving the justice response system to sexual offences*, p.231 [11.4].

¹⁶⁷ VLRC, *Improving the justice response system to sexual offences*, p.236 [11.36].

- d) *improved governance and accountability*
- e) *an approach informed by evidence, including regular data analysis, evaluation and review*

Feedback from our member services on the tensions between family law and sexual violence

During our preparation of this submission, SASVic members raised concerning examples of the intersection of sexual violence issues with family violence matters, family law matters, and child protection matters. We summarise below.

- *Sexual violence as a lower priority for victim survivors experiencing family violence*

It is a common practice for perpetrators of family violence to use the family law court system as a form of coercive control. In many cases, the male partner will have greater resources compared to his female partner and will initiate and carry out family court proceedings because he knows that his partner will exhaust financial resources and be left destitute, by virtue of participating in family law/court proceedings. The flow on effect regarding sexual violence is that, if a woman has been sexually assaulted by a partner that is using the family court system in this way, the sexual assault will become a lower priority for her, because her focus will be on fighting to protect her children in the family courts.

- *Conflicting obligations under family court orders and intervention orders putting children at serious risk of harm*

SASVic members expressed significant concern regarding this issue. There are circumstances where a family court order has been made requiring access between a child and their father, and then after that order, a child discloses that their father has sexually abused them. Any attempt to have the court order reviewed in light of these disclosures takes a significant amount of time and is another significant expense. Our member services provided examples where police were not responsive or do not treat the matter with the sense of urgency it requires. In the meantime, it is left up to the mother to decide whether to (a) comply with the family court order; or, (b) not comply with the family court order in order to protect her child. This is the case, even where an intervention order is put in place.

Our members have had mothers reporting to them that their children have become incredibly distressed at the point of handover to their father. It sometimes becomes impossible to do a handover, once children are old enough to physically resist. This situation is very traumatic and unsafe for children, who are at risk of being subjected to further sexual abuse because of dysfunctional systemic intersections. This needs to be

addressed as a matter of urgency. Member services report having no choice but to work with children to manage risk if they are in their father's care, such as discussing safety plans, and how unfair, ineffective and dangerous it is to place the responsibility of safety on children.

- *Family court orders requiring consent from an alleged perpetrator of sexual abuse for a child to receive counselling*

Members hold significant concerns about this. Family court orders often require consent of both parents for a child to receive any treatment, including sexual assault counselling. This is even the case where the child has disclosed sexual abuse by one of their parents (usually, their father). This is an issue that needs to be addressed as a matter of urgency.

- *The ability of perpetrators of sexual abuse to access certain health records of their children under Freedom of Information requests.*

Members report instances of where fathers who have sexually abused their children have been able to access health records of their children via Freedom of Information requests. In this context, we note that some SASVic member services are hospital-based which makes concern about health records acute for them. This situation needs to be addressed as a matter of urgency.

- *Subpoenas issued for counselling records as part of family court matters*

Concern was expressed about the capacity of counselling records relating to sexual violence to be subpoenaed during family court matters, with limited legal protections over that information. As part of this inquiry, the ALRC should consider family law procedural protections applicable to confidential communications, including sexual assault counselling records. The ALRC could consider the subpoena regime applicable in Victoria under the Evidence (Miscellaneous Provisions) Act 1958, which, in summary, only permits confidential communications to be subpoenaed in certain circumstances, with leave of the court, with complainants in sexual assault matters having standing to appear to object to the subpoena.

Counselling records regarding a sexual assault are incredibly sensitive, regardless of whether they are subpoenaed for the purpose of a criminal trial or family court matter. The public interest in ensuring that victim survivors feel confident to seek counselling regarding sexual assault is the same across criminal and family court domains; and the law should therefore be the same across these areas.

- *Subpoenas revealing the location of victim survivors of family and sexual violence*

An additional key concern raised about subpoenas is that, subpoenas to sexual assault services, that are accessible to a violent ex-partner in the context of family law matters or defendant in the context of a criminal trial for sexual assault, reveal the geographic location of where the female ex-partner/victim survivor lives. This is because SSAS operate on a geographic catchment model. Thus, a violent ex-partner will be able to deduce, based on the location of the sexual assault service being subpoenaed, where their ex-partner and (in many cases) children are located. Member services report to us that this is particularly distressing for women who have purposefully moved to another location (including in some cases, to a much further away, regional location) to escape their ex-partner.

Regulatory responses for sexual violence within family violence

The VLRC made recommendations regarding the need for strengthened training and practice guidance on sexual violence under Victoria's Family Violence Multi-Agency Risk Assessment and Management ('MARAM') framework,¹⁶⁸ as well as the need for MARAM aligned training for Law Institute of Victoria and Victorian Bar members.¹⁶⁹

We propose including more questions about sexual violence in family violence risk assessments across all states and territories. At present, MARAM can capture data about sexual assault in the context of intimate partner sexual violence. MARAM does not adequately capture family violence outside of intimate partner violence, such as that between a parent and a child.

An example of a current screening question is 'has anyone in your family done something to make you or your children feel unsafe or afraid?' However, in many cases, particularly in child sexual abuse, perpetrators are highly skilled at manipulating children, as well as their family and friends to believe that they are respectable and trustworthy. The intent of manipulation is to:

- gain access to the child
- gain the child's trust or compliance
- instil fear and shame into the child
- discourage the child from telling others about the abuse.

As a result, child sexual abuse is not identified, as the threshold to meet family violence is not met and services may not conduct a comprehensive MARAM tool, placing child victim survivor safety at risk.

Another question about sexual violence in the current MARAM comprehensive tool is 'have they [the perpetrator] forced you to have sex or participate in sexual acts when you did not wish to do so?' There are however no questions about non-contact

¹⁶⁸ See VLRC recommendation 67.

¹⁶⁹ See VLRC recommendation 68.

offending, such as being forced to watch pornography, image-based sexual abuse, or the perpetrator masturbating in front of the victim survivor. Asking the right questions about sexual violence would support victim survivor safety.

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?

Compensation for survivors of child sexual abuse can be one important component of justice and recovery. However, recipients of compensation currently encounter a range of challenges that undermine the power of compensation in helping them recover. It is common for some victim survivors to lose significant amounts of their compensation or assets they have bought; plaintiff lawyers state that it is not uncommon for survivors to return to jail despite receiving compensation they had hoped would change their life.

Financial counselling prior to receiving a settlement or court-ordered compensation

Victim survivors of sexual violence, including child sexual abuse, often experience significant trauma. Many children who have been subjected to sexual abuse do not disclose for years or decades, and therefore, often do not receive the support they need to help with their recovery. Further, many victim survivors of childhood sexual abuse are in institutional care, including out of home care, at the time the abuse was committed against them. This combination of factors means that many victim survivors have a trajectory involving criminalisation, lack of employment prospects and financial hardship. In these circumstances, as adults, many victim survivors find themselves with debts and bills that are very difficult to pay off. Victim survivors of more recent sexual violence can have their lives de-railed and experience similar circumstances.

If victim survivors have existing debts at the time they receive compensation or a settlement amount, the compensation they receive is at risk of being subjected to debt collection and other legal processes. Knowmore Legal, a firm that assists clients with National Redress Scheme Claims, refers all clients as a matter of course to financial counselling, prior to a redress compensation amount being received, to reduce any existing debts as much as possible via financial hardship and other processes. We have met with multiple plaintiff law firms. Most plaintiff law firms do not currently refer their clients to financial counselling in advance of a settlement or compensation amount being received as part of a private civil claim. This needs to change as a matter of urgency.

Developing referral pathways to financial counselling for victim survivors of sexual violence will take careful consideration because many financial counsellors work within faith-affiliated community organisations. Many victim survivors will not feel comfortable being referred to these agencies since religious institutions were involved in the abuse

committed against them. The development of sexual violence trauma-informed referral pathways is therefore critical and will take specific effort.

We note that our proposed Justice Navigator roles would refer victim survivors to financial counselling where required.

Access to financial advice and planning upon receiving a settlement or compensation payment

Successful civil settlements and litigation outcomes have the potential to significantly help victim survivors of sexual violence in their recovery journey. However, many victim survivors do not have access to the type of support that would help them maximise the potential for any settlement or compensation received, to assist them in their long-term recovery journey. We know through victim survivor experience that even significant amounts of compensation may not necessarily aid in long-term recovery, in the absence of professional and personal supports around money management.

We believe that a specific network of trauma-informed financial advisors would help and empower victim survivors to maximise the potential of compensation/settlement amounts to assist them in their recovery journey long-term. This network should be supported by training and ongoing professional development regarding the signs, drivers and impacts of sexual violence as well as in responding to disclosures.

We note that our proposed Justice Navigator roles would support victim survivors to access sexual violence trauma-informed financial advice.

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?

We have no input to this question at this stage of the consultation.

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

The VLRC made the following recommendations:

Recommendation 3. *The Victorian Government should amend the Equal Opportunity Act 2010 (Vic) to give the Victorian Equal Opportunity and Human Rights Commission [VEOHRC] the power to enforce the duty in section 15 of that Act to take reasonable and proportionate measures to eliminate sexual harassment as far as possible.*

SASVic supports this recommendation. As articulated by the VLRC: '[g]iving VEOHRC stronger enforcement powers would be a clear signal that the Victorian Government takes sexual violence seriously. It would ensure there is community responsibility for the

problem. Enforcing compliance would encourage people and groups that are resistant towards positive action. Enforcement processes are public, so enforcement would expose and reject organisational cultures that allow sexual violence'.¹⁷⁰

Recommendation 4. *The Victorian Government should create an enforceable duty to take reasonable and proportionate measures to eliminate sexual violence as far as possible. The duty should apply to existing duty holders under section 15 of the Equal Opportunity Act 2010 (Vic).*

Victorian laws currently entail positive duties to eliminate, as far as possible, discrimination, sexual harassment and victimisation as far as possible. SASVic supports an additional enforceable duty to eliminate 'sexual violence'. As articulated by the VLRC:

*The new duty would require activities and training on issues such as the diverse forms of sexual violence, sexual offences and the meaning of 'consent', and common misconceptions. These topics are not usually covered by strategies to eliminate sexual harassment. Any dedicated disclosure officers or 'first responders' would need this special training too.*¹⁷¹

Placing positive duties on workplaces to undertake this educative work around sexual violence would be an effective way to contribute to the level of widespread cultural shift we need to end sexual violence in Australia. It signals that sexual violence is a widespread problem and that education is a shared responsibility.¹⁷²

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?

SASVic has good familiarity with the experiences of victim survivors in applying for compensation. Generally, there is a significant amount of administration involved in preparing an application for compensation via a state-based compensation scheme, and victim survivors have reported the arduous, confusing and stressful nature of these processes. Our proposed Justice Navigator roles would assist victim survivors in applying for compensation via state-based schemes and would alleviate much of the stress associated with doing so.

In Victoria, the experience of victim survivors in applying to the VOCAT has hinged on which tribunal member is considering their application. It is unfortunately the case that some tribunal members in Victoria have made poor decisions, demonstrating ignorance or dismissal of the impacts of sexual violence, with such decisions being overturned when re-heard at the Victorian Civil and Administrative Tribunal ('VCAT').

¹⁷⁰ VLRC, *Improving the justice response system to sexual offences*, p.50 [3.61].

¹⁷¹ VLRC, *Improving the justice response system to sexual offences*, p.51 [3.69].

¹⁷² VLRC, *Improving the justice response system to sexual offences*, p.51 [3.65].

Unfortunately, the initial poor decision making then requires victim survivors to expend the emotional energy of applying for a review by VCAT and attending that review tribunal in person. We know from direct observation that, while such a hearing might seem straightforward to tribunal members and lawyers, they can be incredibly stressful for victim survivors. In one matter that SASVic had permission to observe, a young person attending VCAT could barely speak, such was her distress at having her initial application rejected and then having to re-live her trauma in a formal environment. One issue is the expectation of some tribunal members that victim survivors, including children, will report to police within a reasonable time. Some tribunal members have ruled that special circumstances for not reporting within a reasonable time do not exist, even in circumstances where the applicant was under the age of 10 at the time of the sexual abuse. This causes profound, further harm to victim survivors and is unacceptable. Such cases again demonstrate the critical importance of judicial education on sexual violence and its impacts.

Victoria's VOCAT is set to be replaced by an administrative FAS by the end of 2024. The FAS website states that 'all employees of the scheme will be qualified, which means they will have a strong understanding of family violence, sexual assault and other violent crimes [and] be skilled at supporting victims in a culturally appropriate way'.¹⁷³

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

As noted above, VOCAT is set to be replaced by an administrative FAS by the end of 2024. This follows the VLRC inquiry and related recommendations.¹⁷⁴ SASVic supports the implementation of the FAS and has participated in consultations regarding its forthcoming guidelines.

As demonstrated by our response to question 52, a critical change required between VOCAT and FAS, is the removal of the requirement for victim survivors of sexual and/or family violence to report to police or participate in an investigation/prosecution, to be eligible for a compensation payment.

The FAS anticipates this, with the legislation enabling the creation of regulations that specify a 'special reporting category' of applicants who will be exempt from these requirements.¹⁷⁵ The second reading speech to the legislation creating the FAS makes clear that under the forthcoming regulations, victims of sexual assault and family violence are anticipated to fall within a 'special reporting category' that will still qualify for financial assistance even if they have not reported to police or participated in an

¹⁷³ Victorian State Government, *Victims of Crime Financial Assistance Scheme*. Available: <<https://www.vic.gov.au/victims-crime-financial-assistance-scheme>>

¹⁷⁴ See VLRC recommendations 37–40.

¹⁷⁵ See s 31(2)(b) of the *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) ('FAS Act')

investigation.¹⁷⁶ This special reporting category will not be required to demonstrate special circumstances.¹⁷⁷

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?

The ALRC inquiry should consider victim survivor feedback contained in the VOCC and VLRC reports. An overarching issue is that victim survivors do not know about the Victims' Charter. Seventy-five percent of participants in the VOCC's victims' survey said that agencies did not tell them about the Victims' Charter.¹⁷⁸ This means that victims did not know about their rights and entitlements as well as any breaches. We also note that specialist sexual assault counsellors were more likely than other practitioners to report limited change in victim treatment since amendment of Victims' Charter in 2018 to recognise victims as participants.¹⁷⁹

This is aligned with the VLRC findings of inconsistent practices in the following:

- police referrals to counsellor advocates
- police and prosecution consultation with victim survivors before ending cases
- communications with the victim survivor throughout the criminal justice process.

We support the VLRC recommendation to extend the specific rights of victim survivors as well as VOCC recommendations regarding the rights and entitlements of all victims in the Victims' Charter. See our response to Question 56.

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?

Reforms proposed by the VLRC and VOCC have not been implemented in Victoria. We reiterate the imperative for action on sexual violence reforms.

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

VLRC and VOCC recommendations

¹⁷⁶ Second reading speech to the Victims of Crime (Financial Assistance Scheme) Bill 2022 (Vic), The Hon Minister for Crime, Prevention Minister for Corrections, Minister for Youth Justice, Minister for Victim Support, Legislative Assembly Hansard, 7 April 2022, page 1420; *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 31(2)(b).

¹⁷⁷ *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 31(2)(b).

¹⁷⁸ VOCC, *Silenced and sidelined*, p.315.

¹⁷⁹ VOCC, *Silenced and sidelined*, p.101.

The VLRC made two specific recommendations regarding the Victorian Victims' Charter (in summary):

- Recommendation 9 to extend the rights of victim survivors in amending the Victims' Charter.
- Recommendation 45 for a co-designed model of victim support that uses single advocates. This recommendation is specific to our call for Justice Navigators.

The VOCC made the following two Victims' Charter related recommendations (in summary):

- Recommendation 1 to extend information and consultation requirements to the summary jurisdiction and to remove a specific consultation exception.
- Recommendation 2 to assess funding levels and arrangements for agencies with statutory obligations under the Victims Charter to ensure appropriate resourcing.
- Recommendation 3 to require courts to ensure that the prosecution meets its obligations concerning victims' participatory rights at key points in the criminal trial and hearing process.

We support VLRC and VOCC recommendations regarding the Victims' Charter. Any amendments to the Victims' Charter must be accompanied by training and education to ensure victim services are aware of changes.

We reiterate that victim survivors already report, and inquiries have found limited understanding among victim survivors regarding their Victims' Charter rights. Our proposed Justice Navigator roles, as is the case with independent advocates in the UK, would play a key role in informing victim survivors of their Victims' Charter rights and would liaise with police and prosecutors to ensure those rights are upheld. Professional, independent advocacy is critical to ensuring that the Victims' Charter rights are upheld.

Recognition of non-offending and affected family members

The ALRC must consider the justice system rights and role of non-offending partners and affected family members of perpetrators of child sexual abuse and child sexual abuse material (CSAM).

PartnerSPEAK is a not-for-profit organisation that provides advocacy and support for non-offending partners, family members, friends or anyone else who is affected by a person's involvement in child sexual abuse and child exploitation material.¹⁸⁰ We recognise the critical work and ongoing advocacy of PartnerSPEAK and draw on their expertise in providing the following information and recommendations.

In Victoria, non-offending partners and affected family members are not recognised as 'victims' within the meaning of the *Victims Charter Act 2006* (Vic) nor, often, secondary

¹⁸⁰ PartnerSPEAK: Available: <<https://www.partnerspeak.org.au/>>

victims' under VOCAT laws. This has significant implications, which we discuss below. Before discussing those important matters, we seek to articulate, drawing on PartnerSPEAK's work, the trauma and harm experienced by non-offending partners and affected family members, arising from child sexual abuse related crimes committed by their partner/ family member.

- *Experiences of non-offending partners and affected family members*

Partners of people engaged in any criminal behaviour can potentially experience distress at what their partner has done and what it means for their own life. However, sexual violence and child sexual abuse related crimes have a particularly profound traumatic impact on the partners and families of perpetrators. Many non-offending partners and affected family members suffer levels of trauma arising from the child sexual abuse related crimes committed by their partner/family member that clearly constitutes victimisation.

Our articulation here captures only a small sample of experiences to demonstrate this point:

- There are women who find out that their partner has been accessing or making CSAM who subsequently feel traumatised about their own intimate and sexual relationship with that person. These women articulate that they would never have consented to being intimate with a perpetrator who made and/or accessed CSAM, and thus experience strong trauma about their prior intimate or sexual relationship.
- When a person is being investigated for child sexual abuse related offences, child protection processes can lead to a distressing upheaval to the lives of their partners and children. Some women will be required to find temporary alternative accommodation while now relying on a single income. Women report to PartnerSPEAK of the huge stress this causes them and the significant distress and uncertainty it creates for their children.¹⁸¹
- Many women feel a huge sense of shame and guilt regarding their partner's behaviour and the fact that they did not know about it.¹⁸² They feel deeply judged

¹⁸¹ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, p. 22. Available here: https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf

¹⁸² Jones, C., Woodlock, D., & Salter, M. (2021). *Evaluation of PartnerSPEAK*. UNSW, Sydney.

Available:

https://www.partnerspeak.org.au/files/ugd/5a6ded_59805b0ebf504b09b53428083bb58bc3.pdf ; and PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp. 26. Available: https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf

and stigmatised and worry about their community perceiving them as being guilty by association.¹⁸³ These feelings can be overwhelming and debilitating.

- Many women whose partners have accessed and/or made CSAM face great difficulty in trusting anyone again. Because they fully trusted their partner and did not suspect that they were offending in this way, such women carry a sense that anyone could betray them in future. Many women will question their own judgement because they chose to partner with someone that turned out to use CSAM.¹⁸⁴
- Many non-offending partners experience the worry of friends and family minimising what their ex-partner has done and allowing access to children – even in circumstances where the perpetrator has served a term of imprisonment for their offending. Non-offending partners live with worry about the safety of nieces and nephews who continue to spend time with their offending ex-partner.¹⁸⁵
- Many non-offending partners will lose important extended family relationships and friendships as a result of their ex-partner's offending.¹⁸⁶ This can be due to self-isolation linked to shame;¹⁸⁷ as well as friends and family minimising what the offender has done and blaming the non-offending partner for “ruining” his life.¹⁸⁸
- Many women will first learn about their partner's offending at the moment police enter their home to conduct a raid. Raids often occur while children are home. Non-offending partners speak about the deep shock and fear arising from this

¹⁸³ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp 9 and 37. Available: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁸⁴ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, p.33. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁸⁵ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp. 41–43 Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁸⁶ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp. 8 and 39–41. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁸⁷ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp. 8 and 39–41. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁸⁸ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp. 41–43 Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

sudden intrusion to their home, the confiscation of technology, and learning about the offending in this way.¹⁸⁹

- When computers and other technology are seized as part of an investigation into CSAM, they are often returned some months later completely wiped. The taking of computers can cause huge logistical challenges for non-offending partners and affected family members, and many women experience grief once they learn that family photos and other important documents are now lost to them forever. Women report that they have 'lost their life' when memories became lost to them in this way.¹⁹⁰
- Non-offending partners are often told by police that they cannot discuss what has happened or the investigation with anyone. Many non-offending partners become isolated and do not seek counselling or support as a result. Where women do seek counselling, there is limited availability to counsellors with expertise in this area, outside of the specialist sexual assault sector.¹⁹¹

We recommend that the ALRC specifically call for non-offending partners and 'affected family members' (as appropriately defined in consultation with PartnerSPEAK) to be recognised as victims under Victims Charters and victims support and compensation schemes. We elaborate further below.

- *Recognition as a 'victim' within Victims' Charters*

In Victoria, non-offending partners and other affected family members of perpetrators of child sexual abuse related offences, including CSAM, are not recognised as 'victims' within the meaning of the *Victims Charter Act 2006* (Vic). This has significant implications for many reasons:

- It means that non-offending partners/ex-partners and family members are not afforded Charter rights to be consulted and updated in circumstances where such information is critical to their safety and wellbeing and that of their children (where present). For example, many women supported by PartnerSPEAK face negotiating a divorce, including parenting arrangements, without knowing the status of the criminal investigation. Some women who are forced to cohabit with

¹⁸⁹ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, pp 6; 25–26; 29–30. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁹⁰ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, p 5. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

¹⁹¹ PartnerSPEAK, *Women's experiences of learning about the involvement of a partner possessing child abuse material in Australia*, Dr Marg Liddell, Professor S Caroline Taylor AM, p 49. Available here: <https://www.partnerspeak.org.au/files/ugd/5a6ded_7730c4098259464ebeb282df076c2b74.pdf>

a perpetrator due to legal or financial constraints, do so with no information about the crimes of the perpetrator.

- Non-offending partners and family members often suffer significant, further trauma as a result of feeling unseen and unrecognised by police, prosecutors, and the justice system as a whole.
- The current lack of engagement with non-offending partners and affected family members has a deleterious effect on the pursuit of justice. Non-offending partners are often not given clear options to provide evidence and afforded the opportunity to provide a VIS, which can inform sentencing.
- The failure to recognise non-offending partners and affected family members as 'victims' under law means that they are not referred to or provided services by victims support services. This not only leaves non-offending partners and affected family members to navigate a distressing and complex scenario without support, but it also undermines their capacity to perform the critical role of ensuring law enforcement have all evidence and information related to the crimes committed.

SASVic encourages the ALRC to make recommendations on including non-offending partners and certain other affected family members as 'victims' for the purpose of state and territory Victims' Charters.

- *Recognition as a victim under victims support and compensation schemes*

In Victoria, non-offending partners and affected family members are not recognised as 'secondary victims' under VOCAT laws. Under the FAS set to take over VOCAT by 1 December 2024, this remains largely the same. However, children and young people who were under 18 years of age at the time of the commission of the offence, will also be considered a 'primary victim' where they are injured 'as a direct result of hearing or witnessing, or otherwise being exposed to the effects of, the act of violence'.¹⁹² We anticipate that this could in some circumstances cover children and young people of parents who have committed child sexual abuse related offences (including with respect to CSAM) not against them, but against or involving other children.

In Victoria, under both VOCAT and FAS arrangements, a person will be a 'secondary victim' if they are present at the scene of and who witness an act of violence, and where they are injured as a result; or where they are the parent or guardian of a primary victim that was under 18 when the act of violence occurred.¹⁹³ VOCAT has not generally interpreted 'secondary victim' to include non-offending partners of perpetrators of child

¹⁹² See the *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 9(3).

¹⁹³ See the *Victims of Crime Assistance Act 1996* (Vic) s 9 and *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 13(2).

sexual abuse related offences, including with respect to CSAM even where such offences have been committed from home via technology.

It is SASVic's view that every jurisdiction should adopt a definition of 'victim' that includes non-offending partners and affected family members where the relevant act of violence involved child sexual abuse related offending. This should be achieved via express legislative amendments, so it is clear to potential applicants that they can apply for compensation and to remove erroneous decision making. The upcoming FAS arrangements described above (where children and young people who were under 18 years of age at the time of the commission of the offence, will also be considered a 'primary victim' where they are injured 'as a direct result of hearing or witnessing, or otherwise being exposed to the effects of, the act of violence')¹⁹⁴ could be used as a model and extended to apply to non-offending partners.

As discussed above, non-offending partners and affected family members can suffer significant trauma because of the particularly distressing nature of child abuse related offending. Non-offending partners and affected family members need and deserve financial support to access counselling and other services to assist in their recovery. The introduction of CSAM into the home is an act of family violence and child abuse and the trauma suffered by partners and children is immense.

PartnerSPEAK supports many people who have formal post-traumatic stress disorder diagnoses or ongoing treatment for depression and anxiety. However, because non-offending partners are generally not recognised as secondary victims under Victoria's compensation scheme, the cost of counselling makes it inaccessible, including because non-offending partners end up supporting their family on one income. This reality calls for Australia wide recognition of this cohort under state-based compensation schemes.

¹⁹⁴ See the *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 9(3).