



FEDERATION
OF COMMUNITY LEGAL CENTRES VIC

IMPROVING JUSTICE RESPONSES TO SEXUAL VIOLENCE

Submission to the Australian Law Reform Commission's Inquiry into
Justice Responses to Sexual Violence

June 2024

ABOUT THE FEDERATION

The Federation is the peak body for Victoria's Community Legal Centres (CLCs). Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 50 years CLCs have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy.

We pursue our vision of a fair, inclusive, thriving community through challenging injustice, defending rights and building the power of our members and communities.

WE WANT A COMMUNITY THAT IS FAIR, INCLUSIVE AND THRIVING: WHERE EVERY PERSON BELONGS AND CAN LEARN, GROW, HEAL, PARTICIPATE AND BE HEARD.

The Federation:

- ▼ Enables a strong collective voice for justice and equality;
- ▼ Mobilises and leads CLCs in strategic, well-coordinated advocacy and campaigns;
- ▼ Works with members to continuously improve the impact of community legal services;
- ▼ Drives creativity and excellence in the delivery of legal services to communities;
- ▼ Helps make justice more accessible.

Read our strategic plan online

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ACKNOWLEDGEMENT OF COUNTRY



The Federation of Community Legal Centres acknowledges the Traditional Custodians of the lands across Victoria and note that this document was developed on the lands of the Wurundjeri people of the Kulin Nations.

We recognise that the over-representation of Aboriginal and Torres Strait Islander families and children in the justice system, many of whom have experienced family violence, is in part a devastating consequence of colonisation, intergenerational trauma and ongoing experiences of systemic racism.

We pay our respects to the strength and resilience of Aboriginal and Torres Strait Islander peoples and cultures and to all Elders past, present and emerging and recognise their unceded sovereignty.

INTRODUCTION

Sexual violence is a widespread and gendered issue that has devastating and long-term impacts on those who experience it.¹ Many people who experience sexual violence do not report their experiences due to fear that they will not be believed, shame and stigma or lack of confidence or trust in the criminal justice system.² Too often the criminal process fails people who have experienced sexual violence; often leaving “them feeling alone, invisible, and as if they are the ones on trial”.³ While positive developments have been made in different jurisdictions across Australia, including Victoria, much more needs to be done to reform justice responses to sexual violence.⁴

The Victorian Law Reform Commission’s (VLRC) report, *Improving the Justice System Response to Sexual Offences*, (the **VLRC Report**) made valuable recommendations which we suggest the Australian Law Reform Commission (ALRC) considers as part of this Inquiry. In 2022, the Victorian Government implemented 13 recommendations of the VLRC Report (out of 91 recommendations).⁵ As these reforms have only recently come into effect, it is too early to assess their operation in practice.

Recently, the Victorian Government announced a Justice Navigator pilot to assist people who have experienced sexual violence through the criminal justice process. The Victorian Government is still considering the VLRC’s remaining recommendations and has not yet fulfilled their commitment to develop a sexual violence strategy.⁶ While we welcome the changes that have been introduced by the Victorian Government, there remains important reforms to be implemented in Victoria in response to the VLRC Report.

Strengthening legal and other supports

Increasing access to legal assistance from the time of disclosure, through the reporting and criminal process is a critical reform to improve justice response to sexual violence. Recognising that people who experience sexual violence often have a myriad of interrelated legal issues, it is crucial that they are also linked into legal services for other forms of assistance, including with victim’s compensation, civil options, restorative justice processes, family violence, tenancy and family law. The community legal sector has considerable expertise assisting people who have experienced family and sexual violence in trauma informed and holistic ways and have a key role to play as part of the reform

¹ Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences*, September 2021, p. 18 (the **VLRC Report**).

² Ibid, p.xxii.

³ Ibid.

⁴ Ibid.

⁵ This includes including introducing an affirmative consent model, criminalising stealthing, strengthening image based sexual abuse offences, improving jury directions in sexual offence trials, extending ‘ground rules hearings’ to apply to adult complainants in sexual offence cases and extending current confidential communication protection not ‘protected health information’. See Victorian Law Reform Commission, Implementation, available at <https://www.lawreform.vic.gov.au/all-projects/implementation/>.

⁶ Women’s Legal Service Victoria, *Submission to the Australian Law Reform Commission’s Inquiry into Justice Responses to Sexual Offences*, 2024, p.12.

agenda. Alongside increased access to legal assistance, it is important that governments strengthen therapeutic and practical supports for people who have experienced sexual violence.

Embedding a trauma informed and victim-centred approach across the system

It is important that a trauma informed and victim-centred approach is embedded across the criminal justice and support service systems. This involves expanding specialist training and capacity building to professionals working in the criminal justice system (including, police, prosecution, legal professionals and judicial officers), as well as frontline workers who work with people who have experienced sexual violence. To engender cultural and systemic change in police, it is crucial that there are stronger accountability mechanisms and transparency, including through the establishment of a Police Ombudsman.

Improving other justice responses to sexual violence

While reform to the prosecution and trial process is critical, it is equally important to strengthen civil justice options to sexual violence, including restorative justice processes and compensation schemes. This recognises that many people who experience sexual violence do not wish to pursue criminal proceedings, and for many this is not an option.

Other intersecting areas, including family violence, family law and child protection, must be part of the reform agenda to improve justice responses to sexual violence. This recognises that many people experience sexual violence in a family violence context.

First Nations justice

Recognising the systemic barriers for First Nations people in engaging with police and the criminal justice system, it is critical that First Nations people can access culturally safe, independent sexual assault services which are based on principles of self-determination. We stand by Aboriginal Community Controlled Organisations (ACCOs) in calling for the Victorian Government to implement the recommendations of the Yoorrook Justice Commission in full and give full effect to the right of First Nations people to self-determination in the Victorian criminal justice and child protection system, including through the Treaty process.⁷

Structure of our submission

In this submission we have focused on the following areas:

- reporting the experience of sexual violence safely
- improving police responses to sexual violence
- expanding legal and other supports for people who have experienced sexual violence
- expanding specialised training to frontline workers and those involved in the criminal justice system
- improving civil justice responses to sexual violence.

⁷ Yoorrook Justice Commission, [*Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*](#), 2023, p.26.

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While we support reforms being made to the prosecution process and trials, we have not focused on technical or procedural reforms in this submission.

We understand that the Inquiry is not focused on broader cultural change through public education and campaigns and have not address this in our submission. However, we wanted to highlight that justice reforms alone are not sufficient to engender cultural change. Alongside these reforms, it is critical that there is greater community understanding of sexual violence to prevent sexual violence from occurring and to effectively support people who have experienced sexual violence. This requires governments to invest in wide-spread public education, including respectful relationship and consent education in schools across Australia.

We endorse the submissions of Women's Legal Services Victoria, Djirra and WEstjustice.

RECOMMENDATIONS

Please see a summary of our recommendations below.

Reporting the experience of sexual violence safely

Early and holistic legal and other supports

- **Recommendation 1:** Governments increase access to early and holistic legal and other supports for people who have experienced sexual violence, including:
 - community legal assistance
 - independent advocates (i.e., Justice Navigators)
 - ongoing therapeutic support
 - practical support, including with immediate material needs
- **Recommendation 2:** Governments invest in strengthening collaboration and integration across different sectors to promote a multi-sectorial response, including across the legal assistance, family violence, sexual assault and community sectors.
- **Recommendation 3:** Governments invest further in the community legal sector to increase access to early, holistic and trauma informed legal assistance for people who have experienced sexual violence.

Specialist training for frontline workers

- **Recommendation 4:** Governments invest in specialist training to frontline workers to upskill them to respond in an effective, trauma informed and culturally safe way to disclosures of sexual violence.

Criminal justice responses to sexual violence

Police responses to reports of sexual violence

- **Recommendation 5:** Strengthen police training on responding to sexual and family violence, including trauma informed practice, and review police recruitment practices to create a more diverse police force.
- **Recommendation 6:** Establish an independent oversight system that investigates complaints against police in the form of a Police Ombudsman that has sufficient resources and powers to hold police to account when failures occur.

- **Recommendation 7:** Reform freedom of information laws to achieve greater accessibility to information held by police to enhance transparency and accountability of police, particularly where there are claims of police misconduct.
- **Recommendation 8:** Establish accountability mechanisms to ensure compliance with police procedures, including:
 - ensuring people who have experienced sexual violence receive adequate information during the police and prosecution process; and
 - establishing a receipt system where people receive a copy of the statement they made to police and a record of when and where the statement was made and the officers involved.

Prosecution responses and the trial process

- **Recommendation 9:** Governments fund the legal assistance sector (including, Community Legal Centres) to provide independent legal advice and representation to people who have experienced sexual violence at key stages of the police reporting and criminal legal process, as well as to link them into further legal assistance with related legal matters.
- **Recommendation 10:** In Victoria, expand the Victims Legal Service to a more comprehensive, holistic service for people who have experienced sexual violence which includes legal advice and representation in relation to police reporting, confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice.
- **Recommendation 11:** Governments:
 - establish Justice Navigators to support people who have experienced sexual violence from the point of disclosure, during any police or prosecution process and post-trial.
 - ensure collaboration between Justice Navigators and legal services to enable a more integrated response with ancillary resourcing
 - increase access to ongoing therapeutic supports for people who have experienced sexual violence.
- **Recommendation 12:** Governments establish culturally safe and independent sexual assault services run by ACCOs based on principles of self-determination.
- **Recommendation 13:** Ensure that people from migrant and refugee communities who have experienced sexual violence have access to cultural and language supports which allow them to feel safe to disclose sexual violence and to participate in the criminal justice process.

Specialisation and training of judges and counsel

- **Recommendation 14:** Governments fund programs to increase specialisation for judges and legal professionals and provide specialist training to those involved in conducting sexual offence cases.

Civil proceedings and other justice responses

Restorative justice

- **Recommendation 15:** Governments:
 - establish a restorative justice scheme in legislation in line with best practice standards, and
 - adequately resource restorative justice schemes to ensure that those involved have specialist skills and expertise and participants have access to independent legal advice and professional support throughout the process.
- **Recommendation 16:** Restorative justice schemes for First Nations people are developed and led by First Nations communities and ACCOs.

Civil litigation

- **Recommendation 17:** Embed a whole-of-system approach to respond effectively to people who have experienced sexual violence in a family violence context and reduce silos between different sectors, including the family violence, sexual assault, legal and justice sectors.
- **Recommendation 18:** Governments increase funding to strengthen collaboration between the family violence, sexual assault and legal assistance sectors (including, the community legal sector) and to enable these sectors to meet increased demand for support from people who have experienced family and sexual violence.
- **Recommendation 19:** Reform the child protection system to improve justice responses to sexual violence, including by:
 - embedding a strength-based and trauma informed framework across the child protection system
 - expanding early intervention programs, including early access to legal assistance, to keep children with their families
 - removing the permanency provisions which compound challenges for families
 - implementing the Yoorrook Justice Commission's call for transformative change to the child protection system for First Nations families.

Compensation schemes

- **Recommendation 20:** Ensure compensation schemes provide meaningful redress to people who have experienced sexual violence and are trauma informed and victim-centred.
- **Recommendation 21:** Implement the following reforms to improve Victoria's compensation scheme:
 - remove the requirement to report the violent act to the police or to engage with prosecution

RECOMMENDATIONS

- remove the mandatory ground for refusal based on character and past criminal activity
- include exemptions for having to prove injury for people who have experienced family or sexual violence and child victim survivors
- remove the time limit for applications for sexual violence
- improve the level and structure of financial assistance provided to victim survivors
- adequately resource Community Legal Centres to assist victim survivors with their applications, including increasing and extending the funding for the Victims' Legal Service in Victoria.

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

Question 3: How can accessing the justice system and reporting be made easier for victim survivors? What would make the process of seeking information and help, and reporting, better?

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?

To create safe pathways for reporting sexual violence, it is crucial that the significant barriers to reporting faced by people who have experienced sexual violence are minimised. People who experience sexual violence can experience a deep sense of shame, stigma and trauma and may fear the consequences of disclosing sexual violence that has occurred. Many people who have experienced sexual violence mistrust or have low confidence in the police and the legal system. The Victims of Crime Commissioner (VOCC) in a recent report, *Silenced and sidelined: Systemic inquiry in victim participation in the justice system*, found that almost half of the victim survivors surveyed (45 per cent) indicated that they would not wish to engage in the justice process again because the system caused further trauma, they did not feel safe participating and lacked confidence in the justice system.⁸

People who have experienced sexual violence may fear not being believed or being blamed by authorities and may have had past negative interactions with the police, legal system, child protection and other services which deters them from reengaging. They may fear that reporting will result in being flagged with child protection leading to the removal of their children from their care.

Some people who have experienced sexual violence may have normalised sexual assault by an intimate partner, may lack knowledge of Australian laws or be unaware of supports available. They may fear or have experienced poor responses from family, friend and services or fear retaliation from the person who perpetrated the violence and that person's community.

These barriers are compounded for victim survivors who face marginalisation, discrimination and structural disadvantage. The VOCC observed that First Nations people, people with disability, people from migrant and refugee communities, children, older people and LGBTIQ+ people often experience systemic barriers to the justice system.⁹

⁸ Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, p 18.

⁹ Ibid. p.9.

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In this section, we have addressed the following key reforms to enable people to report sexual violence safely:

- access to early and holistic legal and other supports
- training and capacity building to upskill services to respond to disclosures of sexual violence in an effective and trauma informed way.

Sexual violence is a deeply traumatic experience which can take many people years to speak about. The Royal Commission into Institutional Responses to Child Sexual Abuse found that people “frequently do not disclose child sexual abuse until many years after it occurred” with it taking people engaging with the Royal Commission an average of 23.9 years to tell someone about the abuse.¹⁰ This underscores the importance of broader cultural change and community understanding (including, dispelling misconceptions around sexual violence), to create an environment where people feel safe to talk about these deeply personal and traumatic experiences.

Culturally safe avenues for reporting sexual violence for First Nations people and people from migrant and refugee communities is also essential. To support people to report sexual violence safely, it is critical that reforms to the child protection and family violence systems occur in tandem with improvements in justice responses to sexual violence given the intersection between these areas. These aspects are addressed in sections 2.2 and 3.2 below.

1.1 Early and holistic legal and other supports

Strengthening integration and collaboration

Many people who have experienced sexual violence feel “daunted and overwhelmed by the prospect of having to walk into a police station to make a report”.¹¹ People need support to make an informed decision whether they wish to report sexual violence they have experienced and assistance to take this step (should they wish to proceed).

At the same time, they may be facing various other life challenges, including trauma, health issues, family violence, legal problems and other immediate material needs. Reporting sexual violence may be deprioritised where they are focusing on other pressing issues, such as securing affordable housing, dealing with other legal problems, working out childcare and trying to make ends meet where affording rent, food, transport and medical care is a daily challenge.¹² There can be additional complexity where sexual violence has occurred in a family violence context. Supports to help people navigate other life challenges need to be in place to allow them to consider engaging with criminal justice processes and to fully understand all their options.

Service systems can be disconnected and difficult to navigate, particularly for someone who is overwhelmed and is experiencing distress and trauma. It is important that a victim-centred approach is taken where services wrap-around the victim survivor. This requires increased collaboration

¹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report - Preface and executive summary*, Commonwealth of Australia, 2017, pp.15, 23.

¹¹ Victims of Crime Commissioner, *Submission 45 to the VLRC Report*, 2022 p.42.

¹² Women’s Legal Service Victoria, *Submission to the Australian Law Reform Commission’s Inquiry into Justice Responses to Sexual Offences*, 2024, p.15.

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between multidisciplinary services, including legal, family violence, sexual violence, mental health, housing and community sectors, and increased resourcing from governments to strengthen collaboration. As highlighted in the VLRC Report, “the history of reform of the law relating to sex offences has taught us that effective change requires attention to many parts of the system which deal with sexual violence at the same time” and [t]hat system is only as good as its weakest part”.¹³

The importance of access to early legal assistance

People who have experienced sexual violence require access to early legal assistance to understand their options, to make informed decisions about whether to report and alternate avenues, as well as to support them to make a report safely and with the police process (e.g., to ensure compliance with procedures and accountability).

People who have experienced sexual violence also require legal assistance with related legal problems. Evidence indicates that there is a strong correlation between victimisation arising from crime and legal need.¹⁴ Studies have identified that victim survivors often had a wide range of unmet legal needs beyond the criminal legal process, which can snowball if not addressed.¹⁵ Research has shown that access to legal advice at an early stage can reduce escalation of legal issues and have a ‘preventative effect’ in terms of minimising compounding harms for people experiencing vulnerability.¹⁶ This can include advice on the criminal legal process, family violence, child protection, family law and options for compensation and redress.¹⁷

An integrated approach for early and holistic support

To assist with reporting safely, victim survivors need the following early and holistic support:

- community legal assistance – to inform decisions about engaging with police and prosecution process and other avenues available (such as, victim compensation schemes and restorative justice processes). To assist with other related legal matters, particularly where sexual violence has occurred in a family violence context, such as:
 - family law (e.g, parenting arrangements for children and dividing joint property)
 - family violence intervention orders
 - migration (e.g, where a victim survivor is dependent on an abusive partner’s visa to remain in Australia)
 - employment advice (e.g., due to work disruptions or workplace sexual harassment)
 - tenancy advice (e.g., where they have a joint lease with an abusive partner).
- independent advocates (e.g., Justice Navigators) – can provide people who have experienced sexual violence with information about the reporting and prosecution process and assist with liaising with police and prosecution, as well as linking them into other practical and

¹³ VLRC Report, p.xiv.

¹⁴ Centre for Innovative Justice, RMIT University, [*Strengthening Victoria’s Victim Support System: Victim Services Review - Final Report*](#), November 2020, p.149.

¹⁵ Ibid, p.17.

¹⁶ Ibid. p.149.

¹⁷ Ibid.

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therapeutic supports. Integrating Justice Navigators service with legal services will enhance outcomes for people who have experienced sexual violence.

- ongoing therapeutic support – there is insufficient access to ongoing therapeutic supports for victim survivors, limited grants of counselling sessions and often long waiting lists.
- practical support, including with immediate material needs, particularly where the sexual violence has occurred in a family violence context, such as:
 - safety planning
 - support with finding secure and affordable housing
 - assistance with childcare
 - financial help

For people that decide to engage with the criminal justice system, it is important that this holistic legal and other support is available throughout the process, including after a prosecution process may have ended. Specific elements of this holistic support model are addressed in further detail in section 2.2 below.

Community Legal Centres are leaders in providing integrated legal responses to victim survivors

The community legal sector is uniquely placed to deliver legal services to people who have sexual violence as Community Legal Centres:

- have considerable expertise providing legal services to victim survivors in a trauma-informed and culturally safe way.
- are leaders in providing integrated service delivery models and health justice partnerships.
- are embedded in their local communities and possess an in-depth understanding of the needs of their local communities.
- are best placed to reach the most marginalised communities and are linked in with their local network of support services.
- have existing expertise, infrastructure and partnerships in place to provide quality wrap-around legal support to victim survivors.

Community Legal Centres assist people with complex issues and overlapping causes of hardship, such as family violence, family law, housing insecurity and visa issues. Community Legal Centres are part of a strong state-wide network in each jurisdiction (such as, 47 Community Legal Centres in Victoria), and nearly 180 Community Legal Centres nationally, which means that the relationships and learning exchanges are already in place across the sector.

Community Legal Centres are experienced in providing holistic and trauma-informed integrated legal services to victim survivors and have been at the forefront of developing best practice integrated legal models.¹⁸ Many Community Legal Centres have integrated legal practice models

¹⁸ See, for example, Eastern Community Legal Centre, *Integrated Practice: Better Practice Principles*.

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consisting of lawyers and community service professionals within their legal organisation. Community Legal Centres also operate in partnership with a range of community organisations that assist victim survivors, such as sexual assault services, family violence services, health centres, schools and community hubs.¹⁹ This helps people to understand and identify their legal need earlier, reach people before their legal issues escalate and provide more wrap-around support. The focus on early intervention has a preventative effect in terms of reducing compounding harms for vulnerable groups and can reduce pressures on the justice system and other parts of the service systems down the track, including mental health, child protection and the criminal justice system.²⁰

Community Legal Centres have long-standing relationships with their local community organisations. These existing partnerships have developed organically over time in response to the particular needs of the community. The benefit of capitalising on these relationships is that they are based on strong principles of collaboration, mutual respect and trust to ensure that multiple organisations can work together effectively to deliver best practice services to victim survivors. These partnerships also ensure that victim survivors are connected with legal services wherever they seek help, including at schools, hospitals, maternal health clinics, youth centres, alcohol and drug programs and family violence services. This multi-disciplinary support model reduces the need for victim survivors to re-tell their stories to multiple service providers, reducing the risk of re-traumatisation.

Recommendation 1:

Governments increase access to early and holistic legal and other supports for people who have experienced sexual violence, including:

- community legal assistance
- independent advocates (i.e., Justice Navigators)
- ongoing therapeutic support
- practical support, including with immediate material needs.

Recommendation 2:

Governments invest in strengthening collaboration and integration across different sectors to promote a multi-sectorial response, including across the legal assistance, family violence, sexual assault and community sectors.

Recommendation 3:

Governments invest further in the community legal sector to increase access to early, holistic and trauma informed legal assistance for people who have experienced sexual violence.

¹⁹ Federation of Community Legal Centres, *Meeting People Where They Are: Delivering Integrated Community Legal Services*, June 2020, p 10.

²⁰ Centre for Innovative Justice, RMIT University, *Strengthening Victoria's Victim Support System: Victim Services Review - Final Report*, November 2020, p. 149; Victorian Government, Department of Justice and Regulation Victoria, Access to Justice Review, 2016, p.7.

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1.2 Specialist training for frontline workers

To enable people to report sexual violence safely, it is critical that services that are likely to work with people who have experienced sexual violence are able to respond in a trauma informed way and to link them in with the support they need. Speaking about sexual violence with a frontline worker can be a critical point which can shape a victim survivors' future trajectory and willingness to engage with the justice system and other services, as well as their social and emotional wellbeing.

It is important that there is specialist training for frontline workers that are likely to work with people who experience sexual violence across diverse areas, such as, justice, legal, health, community and education sectors.

Training should address a broad range of topics and skills, including:

- understanding the prevalence, nature and dynamics of sexual violence, barriers to reporting, myths and misconceptions about sexual violence and impacts of sexual violence (including, trauma and effects on cognition and memory)²¹
- how to respond empathetically and in a trauma informed way to disclosures of sexual violence²²
- understanding the range of options for people who have experienced sexual violence, sexual assault laws and how to effectively link them into a range of further supports (e.g., legal, therapeutic, specialist services)
- understanding intersecting areas, in particularly sexual violence that occurs in a family violence context.

Frontline workers require capacity building to assist people who have experienced sexual violence to overcome their shame and self-blame to support them to speak about these traumatic experiences. For people who do not recognise their experiences as sexual violence by an intimate partner, to sensitively help them identify this as sexual violence.²³ It is important that all frontline workers who may come into contact with people who have experienced sexual violence have an understanding of the role of different services in the system to ensure a more integrated response.²⁴

Training needs to occur regularly as one-off training is unlikely to be as impactful. Training should be designed in partnership with people with lived experience, specialist sexual assault services and specialist family violence services (including, women's legal services and other Community Legal Centres that work in this area).

We support Djirra's recommendation that frontline workers who come into contact with First Nations women who have experienced sexual violence require specialised training that is designed and delivered by ACCOs in close consultation with First Nations women with lived experience. As

²¹ VLRC Report, p.373.

²² Ibid.

²³ Djirra, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence*, 2024, p.5.

²⁴ Women's Legal Service Victoria, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Offences*, 2024, p.28.

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highlighted by Djirra, working effectively with First Nations women and children who have experienced sexual violence require sensitivity to the long-term impacts of colonisation and intergenerational trauma.²⁵

Recommendation 4:

Governments invest in specialist training to frontline workers to upskill them to respond in an effective, trauma informed and culturally safe way to disclosures of sexual violence.

²⁵ Djirra, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence*, 2024, p.5.

SECTION 2 – CRIMINAL JUSTICE RESPONSES TO SEXUAL VIOLENCE

2.1 Police responses to reports of sexual violence

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

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

The police are essentially the ‘gatekeepers’ to the criminal justice system and their response can directly impact victim survivors’ willingness to engage with the criminal justice system.²⁶ While there have been reforms to police responses to family and sexual violence in Victoria, police responses need to be further strengthened.

The VOCC found that 38 per cent of victim survivors surveyed who did not report the crime to the police indicated that “they did not feel safe talking to police, or they thought they would not be taken seriously”.²⁷ Many felt that the police reporting and investigation process was not trauma informed. While some victim survivors had positive experiences, most victim survivors surveyed indicated that “they did not receive any, or enough, information to participate in the justice process”. Just under 70 per cent of victim survivors (68 per cent) surveyed “stated that they either did not get any useful information (33 per cent) or not enough information (35 per cent), from police to participate”.²⁸ This caused many victim survivors additional stress, anxiety and mental health issues.²⁹ This was exacerbated for people who experienced structural barriers, including First Nations people, people from migrant and refugee communities, people with disability, children, older people and LGBTIQ+ people.³⁰

We support strengthening police training and reviewing recruitment practices to create a more diverse police force. It is critical that these initiatives occur alongside strengthening independent police accountability and oversight mechanisms, including through the establishment of a Police Ombudsman, to engender much needed cultural change.

Other measures to improve police responses to sexual violence, include:

- increasing access to legal assistance during the police and prosecution process

²⁶ VLRC Report, p.372

²⁷ Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, p 9.

²⁸ Ibid, p.192.

²⁹ Ibid, p.196.

³⁰ Ibid, p.9, 114.

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- implementing an independent advocates program (i.e., Justice Navigators) to support victim survivors of sexual violence in their engagement with police and prosecution
- strengthening cultural safety in police responses.

These other measures relate both to police responses and the criminal justice process as a whole and are addressed in section 2.2 below.

Police training and recruitment

In Victoria, there are specialist units which deal with sexual offences, including the Sexual Offences and Child Abuse Investigation Teams (**SOCITs**), as well as seven Multi-Disciplinary Centres which combine various agencies in a hub to provide an integrated response to people who have experienced sexual assault and child abuse. We support the use of specialist units to respond to reports of sexual offences as these police receive specialist training. However, these specialist units are not always necessarily the first point of contact for people who have experienced sexual violence.³¹

We support the VLRC recommendations in relation to strengthening training for specialist units and general officers. The VLRC Report recommended enhancing training in various skilled based areas for specialist units, including interviewing of children and the recording of Visual and Audio Recording of Evidence (VARE), the appropriate use of interpreters, understanding image-based sexual abuse and the quality of evidence gathering and police prosecutions.³²

The VLRC Report found that training in understanding trauma and its impact was still required across general officers and specialised units and supported additional training in trauma informed practice.³³ The VLRC Report also considered that there was a need for capacity building and training for police in responding to groups that can face structural barriers with reporting, including First Nations, migrant and refugee and LGBTIQ+ communities, as well as people with disability.³⁴ Given the high rate of sexual violence occurring in a family violence context, this training should be applicable to both areas.

In addition to police training, we also support initiatives to review police recruitment practices to create a more diverse police force.³⁵ This may assist in recruiting police officers with more diverse skills and experiences and where possible will allow a victim survivor to speak to a police officer who may have more understanding of their background and context.³⁶

Recommendation 5:

Strengthen police training on responding to sexual and family violence, including trauma informed practice, and review police recruitment practices to create a more diverse police force.

³¹ Women's Legal Service Victoria, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Offences*, 2024, p.28.

³² VLRC Report, Recommendation 65, p.374.

³³ Ibid, p.370.

³⁴ Ibid, p.371.

³⁵ Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence, [Issues Paper](#), 2024, p.7.

³⁶ Ibid.

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Police accountability and oversight

Police training alone is not sufficient to rectify low levels of confidence in the system and inadequate police responses. To engender cultural and systemic change in police, it is crucial that there are stronger accountability mechanisms and transparency, including through the establishment of a Police Ombudsman.

Numerous reports have recognised the lack of independent oversight mechanisms for victim survivors and made recommendations to rectify this. The VOCC in its recent report recommended that the Victorian Government establish an “independent review mechanism enabling victims to seek a review of certain police and prosecution decisions once internal review mechanisms have been exhausted”.³⁷ The VLRC recommended the Victorian Government “establish an independent and high-level panel that includes multi-disciplinary expertise to review police and prosecution decisions”.³⁸ While the VLRC recommendation related specifically to sexual offences, the VLRC noted that there may be merit in extending its scope to other offences.³⁹ The VLRC highlighted the importance of independent review mechanisms to improve the quality of decision-making among police and prosecution, transparency and accountability and ensuring that people can provide their views before decisions are made.⁴⁰

We support the establishment of independent review mechanisms as recommended by previous reports. However, this needs to occur alongside wholesale reform to improve police accountability. The Yoorrook Justice Commission highlighted evidence that many First Nations people do not report crime or seek help due to high levels of distrust and fear of police. This is fuelled by the impacts of colonisation, intergenerational trauma and ongoing racism, recognising that some of the most significant harm to First Nations people were at the hands of the State, including the police.⁴¹ The Yoorrook Justice Commission found that mistrust of the police is made worse by a structurally flawed police oversight system which routinely justifies or denies police misconduct and fails to hold police officers to account.⁴²

In Victoria, the Independent Broad-based Anti-Corruption Commission (IBAC) is responsible for investigating complaints about the police, but in practice their independent oversight role of police is limited. Only a handful of the most serious matters of police misconduct are independently investigated by IBAC with nearly all complaints about duty failures by police being investigated by the police themselves.⁴³ For example, in 2018, a Parliamentary committee inquiry into police oversight in Victoria found that IBAC only investigated around two per cent of complaints that it determined warranted investigation and referred the remainder of matters back to the police.⁴⁴ These complaints

³⁷ Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, Recommendation 4, p 26.

³⁸ VLRC Report, Recommendation 66, p.385.

³⁹ Ibid, p.384.

⁴⁰ Ibid, p.381.

⁴¹ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, 2023, p.261.

⁴² Ibid, p.270.

⁴³ Ibid.

⁴⁴ Ibid.

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of police misconduct are frequently found by police to be “unsubstantiated”, “unable to be determined” or “unfounded”.⁴⁵ While much of the problem appears to stem from police investigating police,⁴⁶ there are also difficulties in obtaining evidential material to support these claims through delays in freedom of information.

The Yoorrook Justice Commission found that the level of mistrust of police among First Nations people can only begin to be reset through the establishment of an independent and culturally safe system of police accountability and oversight.⁴⁷

To improve justice response to sexual violence, substantial cultural change is needed in how First Nations people, women and people who have experienced family and sexual violence are treated. Systemic change to police culture will only occur if there is more transparency through access to an independent oversight body in charge of investigating complaints of duty failures and misconduct.

Alana's story

Alana* was let down by police who did not take the violence that she endured from her ex-partner seriously, while they chose to assist her violent ex-partner. Her complaints about police misconduct were not substantiated which meant that no changes to police practice occurred. Her interaction with police was retraumatising and even risked criminalisation.

Alana is a survivor of extensive family violence perpetrated by her ex-partner which included threats to kill her and her dog on numerous occasions. Alana continues to live in constant fear.

The Victoria Police refused to support Alana when she applied for an extension of her family violence intervention order beyond a duration of two years and withdrew from her case. Alana took over her own matter and obtained a 10-year family violence intervention order without police assistance.

Alana has little confidence in the legal system and the police's capacity to protect her, based on multiple previous failures. An example of this includes Alana being told by a police informant (who failed to investigate her initial reports), that she “could have put the bruises there herself...”

When Alana discovered her ex-partner had been near her residence in breach of the family violence intervention order, she posted in a closed group seeking the help of her neighbours to alert the

⁴⁵ Figures from the Police Accountability Project police complaints clinic indicate that 98 per cent of complaints made to police from the clinic – people complaining with the assistance of lawyers – were returned ‘unsubstantiated’. The Police Accountability Project closed the dedicated complaint clinic due to ineffectiveness of the oversight system and have been since calling for reform: Hopkins, T., & McDonald, J, *Police Accountability and Human Rights Clinic: Report on the first year of operation*, 2015, Melbourne, Australia: Flemington and Kensington Community Legal Centre.

⁴⁶ When the Independent Broad-based Anti-corruption audited police complaints made by Aboriginal people it disagreed with the police determination in 32 per cent of the cases where findings of ‘no complaint’, ‘not substantiated’ and ‘unable to determine’ had been made. See Independent Broad-based Anti-corruption, *Victoria Police Handling of complaints made by Aboriginal People*, 2022. p60.

⁴⁷ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, 2023, p.277.

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police if they saw him. After her ex-partner found out about the post, he reported this to the police and Alana deleted the post as instructed by them. Dissatisfied with this outcome, her ex-partner went to another police station where the police agreed to apply for a family violence intervention order against Alana on his behalf, more than two weeks after Alana's had removed her post.

The Police Accountability Project assisted Alana in court to successfully have the family violence order against her withdrawn, despite errors by police in applying for the family violence intervention order to be reinstated by the court without informing her lawyer.

The Police Accountability Project assisted Alana to make a formal police complaint about the numerous police duty failures. However, Victoria Police found most of the allegations to be unsubstantiated, including due to the officer being unable to be identified, the officer no longer working at Victoria Police and an officer denying the allegations.

Alana's experience with Victoria Police through every stage of the process - from the initial reporting to the conclusion of her complaint - has resulted in her distrust of the institution. Her case revealed numerous failures that contributed to her not getting justice against the perpetrator and being consistently undermined as a victim. This included: failures to investigate on the basis of objective evidence available to police, and victim-blaming.

She described her experience of the formal complaints process as "little more than a glorified PR exercise on behalf of Victoria Police", and "incredibly re-traumatising".

Alana was re-traumatised by the police's mishandling of her matter. She still has no trust in the police and does not feel adequately able to protect herself as a victim survivor of violence.

** The client's name has been changed.*

Recommendation 6:

Establish an independent oversight system that investigates complaints against police in the form of a Police Ombudsman that has sufficient resources and powers to hold police to account when failures occur.

Recommendation 7:

Reform freedom of information laws to achieve greater accessibility to information held by police to enhance transparency and accountability of police, particularly where there are claims of police misconduct.

Improving compliance with police procedures

There needs to be improvements in police procedures to rectify failures in the police and prosecution process and greater accountability in complying with existing procedures.

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This includes ensuring that:

- officers provide adequate information to people who have experienced sexual violence during the police and prosecution process
- reports of sexual violence and other crimes are recorded and retained by police.

The Police Accountability Project is a specialist project of Inner Melbourne Community Legal, which focuses on policing. In partnership with Flat Out, a victim support network organisation (through the Beyond Survival Project), they found that many of their clients have experienced duty failure by Victoria Police where matters of sexual violence reported are not properly dealt with. For example, lawyers have found that records of statements made to police are often lost. It was unclear whether a statement was never taken, or it was filed incorrectly. To create a culture of accountability and to ensure statements are properly taken and recorded, all people who make statements to police should receive a receipt that provides details of when, where, and who they made the statement to. The provision of a receipt linked to the police database would help ensure the statement is uploaded and appropriately filed to prevent loss of records.

The impact of duties failures can have lasting impact on people who have experienced sexual violence, particularly given that it takes significant courage to report sexual offences. This can often lead to sexual violence matters not being investigated and where this has occurred in a family violence context, can result in violence escalating. These issues are exacerbated where sexual violence occurs by a police officer as there are insufficient processes to protect and support victim survivors in these circumstances.

Recommendation 8:

Establish accountability mechanisms to ensure compliance with police procedures, including:

- ensuring people who have experienced sexual violence receive adequate information during the police and prosecution process
- establishing a receipt system where people receive a copy of the statement they made to police and a record of when and where the statement was made and the officers involved.

2.2 Prosecution responses and the trial process

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

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

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?

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

Recognising “the devastating impact the justice process” can have on victim survivors,⁴⁸ it is crucial that people who have experienced sexual violence are supported, heard, have a voice and “see the person responsible held to account”.⁴⁹

There are a range measures to improve the prosecution and trial process. In our submission, we focus on:

- the need for independent legal representation during the police and prosecution process
- expanding the role of independent advocates (i.e., Justice Navigators) during the police and prosecution process, coupled with ongoing therapeutic support
- increasing specialisation for those involved in conducting sexual offence cases
- independent and culturally safe services for First Nations people who have experienced sexual violence
- culturally safe support for people from migrant and refugee communities.

Independent legal representation

Victim survivors have traditionally been treated as witnesses for prosecution and do not generally have access to independent legal representation.⁵⁰ We support people who have experienced sexual violence having independent legal advice at key stages of the criminal justice process to ensure that their rights and interests are protected.⁵¹

The VLRC Report highlighted a number of benefits of independent legal representation for people who have experienced sexual violence. This includes enabling them to be more involved in the criminal legal process and giving them a greater sense of having “rights, legitimacy and identity” in the process.⁵² Legal representation can also improve the quality of testimony through more support during cross-examination and safeguard against inadmissible and inappropriate questions.⁵³ This is likely to reduce distress associated with the criminal legal process, potentially encourage more reporting and minimise attrition during criminal proceedings.⁵⁴

There are examples internationally of independent legal representation for victim survivors during criminal proceedings for sexual offences. For example, in a pilot program in Northumbria, England, lawyers:

⁴⁸ Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, p 9.

⁴⁹ VLRC Report, p.xxii.

⁵⁰ Women’s Legal Service Australia, *Submission to the Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.9.

⁵¹ VLRC Report, p.265.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

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- advise on the police reporting process
- support victim survivors during police interviews to ensure that police follow procedures and victim survivors are made aware of their options
- protect victim survivor's privacy rights during the investigation and disclosure
- act in the best interests of victim survivors in relation to cross-examination on sexual history.⁵⁵

In Northern Ireland, a pilot scheme has commenced to implement the Gillen Review. This review recommended a scheme for legal advocates to provide legal advice from the time the incident was first reported to police up until trial. This includes appearances at cross-examination discussions to allow the legal advocate to challenge the appropriateness of proposed questioning and uphold the victim survivors' rights to respectful and dignified treatment.⁵⁶

The VLRC Report recommended that Victoria set up a pilot scheme of independent lawyers which would focus on the "substantive legal entitlements" of victim survivors, and "their rights to privacy and dignified treatment".⁵⁷ The VLRC Report recommendations aimed to strike a balance between ensuring a fair trial and protecting the rights of victim survivors.⁵⁸ The VLRC recommended that the Victorian Government fund legal advice and representation until the trial to ensure victim survivors can exercise their rights and protect their interests during criminal proceedings for sexual offences, including:

- "their rights and privileges in relation to evidence (for example, the confidential communication privilege, alternative arrangements and special protections, access to intermediaries)
- their rights to privacy in relation to disclosures of personal information (for example, information about their sexual history, the nature of cross-examination, or suppression orders)
- their options for compensation, including under the *Sentencing Act 1991* (Vic), victims of crime compensation, and civil or other compensation schemes
- the implications of taking part in restorative justice and referrals to restorative justice when applying for compensation or restitution orders."⁵⁹

The VOCC also recommended independent legal representation for victim survivors in Victoria, including expanding specialist, state-funded legal assistance in relation to the comprehensive range of legal issues that victim survivors face, as well as funding a sexual offences legal representation scheme.⁶⁰ This would involve introducing legislative amendments to enable people who have experienced sexual violence to have standing to appear and to fund representation at specific stages

⁵⁵ Ibid, p.266.

⁵⁶ Ibid, p.267.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid, Recommendation 46, p.268.

⁶⁰ Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, Recommendations 21 and 23, p.29-30.

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of the proceedings.⁶¹ We support the VLRC and VOCC's recommendations and consider that this approach should be adopted nationally.

The Victorian Government established the Victims Legal Service in Victoria which commenced in March 2023 and is provided by Victoria Legal Aid and several Community Legal Centres. The Victims Legal Service focuses on assisting victim survivors with the victims of crime financial assistance scheme. In March 2024, the Victims Legal Service was expanded under a Commonwealth funded pilot to provide legal advice to people who have experienced sexual violence seeking to protect their confidential communications and health information, such as medical or counselling records, during court proceedings. Victoria Legal Aid and two Community Legal Centres are involved in this pilot.

While we welcome the funding for these initiatives, they are limited to specific areas. We support the expansion of the Victims Legal Service to a more comprehensive, holistic service for victim survivors, which includes legal advice and representation in relation to police reporting, confidential communications, access to intermediaries, right to privacy, options for compensation and restorative justice. For more information on expanding the Victims Legal Service, please refer to the joint submission to this Inquiry from partners in the Victims Legal Service.

Recommendation 9:

Governments fund the legal assistance sector (including, Community Legal Centres) to provide independent legal advice and representation to people who have experienced sexual violence at key stages of the police reporting and criminal legal process, as well as to link them into further legal assistance with related legal matters.

Recommendation 10:

In Victoria, expand the Victims Legal Service to a more comprehensive, holistic service for people who have experienced sexual violence which includes legal advice and representation in relation to police reporting, confidential communications, access to intermediaries, right to privacy, option for compensation and restorative justice.

Independent advocates and ongoing therapeutic support

Alongside access to independent legal representation, it is important that there is greater access to therapeutic and practical supports for people who have experienced sexual violence to help them navigate the criminal justice process and other service systems (including, with police reporting).

The VLRC recommended funding independent advocates to “provide continuous support to people who have experienced sexual violence across services and legal systems”.⁶² The VLRC indicated that independent advocates could:

- provide information about justice options

⁶¹ Ibid, Recommendation 23, p.30.

⁶² VLRC Report, Recommendation 45, p.262.

SECTION 2: CRIMINAL JUSTICE RESPONSES TO SEXUAL VIOLENCE

- support people who have experienced sexual violence to understand and exercise their rights, including under the Victims Charter
- support their individual needs, including through referrals to services
- liaise with, and advocate for people who have experienced sexual violence, to services and legal systems.⁶³

The VLRC recommended that the model should aim to empower those who have experienced sexual violence, provide holistic and specialist support and give priority to those who face significant barriers engaging with services and systems. Support should not be contingent on a person's engagement with the criminal justice process, should not end once the criminal process has finished and not be dependent on the court which the person is attending.⁶⁴ Independent advocates would also play an important role in increasing accountability of police and prosecution through relationship building and advocacy on behalf people who have experienced sexual violence.

In May 2024, the Victorian Government announced that it would implement a Justice Navigator pilot (i.e., independent advocates). We support the establishment of Justice Navigators who would be placed in specialist sexual assault services which are key entry points for people who have experienced sexual violence. As Justice Navigators do not have legal expertise, we envisage that they could play a key role working with independent legal services to ensure people who have experienced sexual violence can access independent legal advice and representation. Integrating Justice Navigator services with legal services will enhance outcomes for people who have experienced sexual violence.

Recommendation 11:

Governments:

- establish Justice Navigators to support people who have experienced sexual violence from the point of disclosure, during any police or prosecution process and post-trial.
- ensure collaboration between Justice Navigators and legal services to enable a more integrated response with ancillary resourcing
- increase access to ongoing therapeutic supports for people who have experienced sexual violence.

Independent sexual assault services for First Nations people who have experienced sexual violence

Sexual violence against Aboriginal women often goes unreported, with studies indicating that around 90 percent of violence against First Nations women not being reported.⁶⁵ There remains significant

⁶³ Ibid.

⁶⁴ Ibid, p.258, 262.

⁶⁵ Willis M, 2011, '[Non-disclosure of violence in Australian Indigenous communities](#)', *Trends & Issues in crime and criminal justice* no.405. Canberra: Australian Institute of Criminology.

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gaps in culturally safe services for First Nations women and children who experience sexual violence.⁶⁶

First Nations women experience the same barriers to reporting sexual violence highlighted above in section 1. However, there are additional complexities for First Nations women, including racism, fear and distrust that engagement with systems will lead to adverse consequences, such as removal of children, misidentification as the person using violence and inadequate responses from police and the justice system.⁶⁷ This is exacerbated for First Nations women who have been involved in the criminal justice system who not only fear dismissal, but punitive responses, such as arrest and remand in custody.⁶⁸ This is despite the well-established nexus between women's experience of family and sexual violence and imprisonment, with around 70 to 90 per cent of women in custody reported to have previously experienced violence.⁶⁹

As highlighted by Djirra in their submission, it is critical that First Nations women have access to culturally safe, independent sexual assault services which are based on principles of self-determination. This requires services run by ACCOs for Aboriginal women which provide a safe place for women to speak about experiences of sexual violence and to receive therapeutic, legal and other supports they need at any point in time.⁷⁰ This service would include a diverse range of culturally safe services which are not limited to engagement with the criminal justice process and are based on First Nations healing approaches.⁷¹ This is in line with the VLRC Report which recommended that the government develop First Nations sexual assault services which can respond to the different needs of First Nations women, children and men.

Services that provide assistance to First Nations people must ensure their service is culturally safe, that their staff have undertaken cultural safety training delivered by ACCOs and that they are culturally competent. This includes frontline services working with people who have experienced sexual violence, as well as those involved in the criminal justice process, such as judicial officers, legal professionals, police and prosecution.

Recommendation 12:

Governments establish culturally safe and independent sexual assault services run by ACCOs based on principles of self-determination.

⁶⁶ VLRC Report, p. 173.

⁶⁷ Djirra, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence*, 2024.

⁶⁸ Ibid.

⁶⁹ Australia's National Research Organisation for Women's Safety, 2020. [*Women's imprisonment and domestic, family and sexual violence: Research synthesis*](#). ANROWS Insights, Sydney, NSW: ANROWS, p.2.

⁷⁰ Djirra, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence*, 2024.

⁷¹ Ibid, p.1 and 4.

SECTION 2: CRIMINAL JUSTICE RESPONSES TO SEXUAL VIOLENCE

Cultural and language supports

Consistent with previous research, the VOCC found in its Victims' Survey that people from migrant and refugee communities experienced several structural and systemic issues relating to their participation in the justice system.⁷² Key issues included difficulty navigating the justice system due to language barriers and limitations to culturally safe participation, particularly where there were intersecting barriers. For example, one victim survivor who responded to the survey described her difficulties understanding the process and legal system as a newly arrived migrant woman with limited English. She commented that she "felt intimidated dealing with the police and the court system as in my culture they are the authority and mainly male figures".⁷³

This highlights the importance of cultural and language support for people from migrant and refugee communities to ensure they feel comfortable and safe to report sexual violence and to do this in their language of choice. There needs to be ongoing cultural and language support throughout the police and prosecution process. This underscores the importance of specialist services which assist women from migrant and refugee communities who have experienced family and sexual violence.

Recommendation 13:

Ensure that people from migrant and refugee communities who have experienced sexual violence have access to cultural and language supports which allow them to feel safe to disclose sexual violence and to participate in the criminal justice process.

2.3 Specialisation and training of judges and counsel

Question 33: Do you have views about the creation of specialist courts, sections, or lists? Do you support specialised training for judges who conduct sexual offence cases? What issues should that training address?

Do you support some form of special accreditation for lawyers who appear in sexual offence cases? Would this reduce the number of lawyers available to appear in such cases and contribute to delays in hearing such cases?

We support increased specialisation for those involved in conducting sexual offence cases. We support the VLRC's recommendation that the Victorian Government fund the development and delivery of a program to educate and train judges, magistrates, prosecution and legal professionals on:

- the nature and prevalence of sexual violence in the community

⁷² Victorian Victims of Crime Commissioner, *Silenced and sidelined: Systemic inquiry into victim participation in the justice system*, 2023, p122.

⁷³ Ibid.

SECTION 2: CRIMINAL JUSTICE RESPONSES TO SEXUAL VIOLENCE

- the impacts of trauma and how to minimise the risk of re-traumatisation
- barriers to disclosing and reporting sexual violence
- identifying and dispelling misconceptions about sexual violence
- understanding and responding to diverse experiences and contexts of sexual violence
- effective communication with and questioning of victim survivors, including children
- procedures related to the role of intermediaries and ground rules hearings
- limits on improper questioning and judicial intervention
- alternative arrangements for giving evidence, as well as special hearings for children and people with a cognitive impairment
- the therapeutic treatment order system.⁷⁴

To make this training effective, the VLRC recommended that funding of the program be on an ongoing basis and there should be requirements for specialist training to be completed by those involved in sexual offence cases.⁷⁵

Recommendation 14:

Governments fund programs to increase specialisation for judges and legal professionals and provide specialist training to those involved in conducting sexual offence cases.

⁷⁴ VLRC Report, Recommendation 69, p.410.

⁷⁵ Ibid.

SECTION 3: CIVIL PROCEEDINGS AND OTHER JUSTICE RESPONSES

Only a small proportion of people report sexual offences to the police (13 per cent) and an even smaller proportion of these matters are prosecuted.⁷⁶ There are various other legal processes, beyond prosecution for sexual offences, that offer people who have experienced sexual violence some form of redress. This includes restorative justice options, victims of crime schemes and civil litigation against the person who perpetrated sexual violence and/or the institution where the sexual violence occurred. It is important that these civil redress options are trauma informed and lead to beneficial outcomes for people who have experienced sexual violence.

Sexual violence often occurs in the context of family violence and people may be involved in the family violence, child protection and family law system. It is critical that in improving justice responses to sexual violence, this extends to reforms in these related areas. This recognises that these systems are interconnected and mutually reinforcing and should not be treated in silos.⁷⁷

In this section, we have addressed:

- expanding restorative justice options
- improving responses to sexual violence in the family violence and child protection systems
- reforms to victims of crime compensation schemes.

We have not addressed reforms to the family law system for people who have experienced sexual and family violence. We support Women's Legal Service Victoria's recommendations on system changes required to improve the family law system in their submission to this Inquiry.

We have also not addressed the need to enhance protections and redress for people who have experienced sexual harassment and assault in the workplace. We endorse the recommendations made by WEstjustice in their submission to this Inquiry in relation workplace sexual harassment and assault.

3.1 Restorative justice

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

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

⁷⁶ Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Violence, [Issues Paper](#), 2024, p.7.

⁷⁷ Women's Legal Service Victoria, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Offences*, 2024, p.43.

SECTION 3: CIVIL PROCEEDINGS AND OTHER JUSTICE RESPONSES

Benefits of restorative justice

We support expanding restorative justice options for people who have experienced sexual violence to supplement other criminal or civil legal options.⁷⁸ While restorative justice processes may not be possible or appropriate for all victim survivors, it can support some victim survivors “to heal and put things as right as possible”.⁷⁹ It can be a forum for people who have been harmed to be heard and acknowledged and where the person who has used violence to be held accountable.⁸⁰

Evaluations indicate that restorative justice was “viewed by many victims of crime as ‘fairer, more satisfying, more respectful and more legitimate’ than what the criminal justice system offers”.⁸¹ Evaluations also found that restorative justice processes can assist people who use violence to understand the impact of the crime and provide an opportunity for them to “take responsibility and make amends”.⁸² There has also been some evidence that that restorative justice processes can reduce the likelihood of reoffending.¹¹⁷

In these evaluations, restorative justice was only beneficial where the person who had experienced sexual violence felt safe and their needs were met. In these positive evaluations, the person responsible for the violence was usually receiving some form of therapeutic treatment or independent support.⁸³

Minimising risks though best practice principles

There has been concern that restorative justice may imply that sexual violence is not a public matter of importance requiring action by the state in response. For this reason, it is important that restorative justice supplements existing criminal justice processes.⁸⁴

It is important that there are safeguards in place so the restorative justice process does not repeat the dynamics of the violence, thereby increasing the risk of retraumatisation. We support the guiding principles for restorative justice recommended by the VLRC.⁸⁵ These include:

- voluntary participation
- accountability – the person responsible for the harm must accept responsibility and agreements must be fair and reasonable.
- the needs of the person harmed must take priority
- safety and respect – safety measures are implemented, the process is flexible and responsive to diverse needs and communities, power imbalances are redressed, and the dignity and equality of participants is respected. The process must be supported by specialists and be well resourced.

⁷⁸ VLRC Report, p.184.

⁷⁹ Ibid.

⁸⁰ Ibid, p.191.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid, p.190.

⁸⁴ Ibid, p.194.

⁸⁵ Ibid, p.197.

SECTION 3: CIVIL PROCEEDINGS AND OTHER JUSTICE RESPONSES

- confidentiality – the process must be confidential, subject to certain exceptions.
- transparency – programs are evaluated and de-identified results are published for continuous improvement.
- an integrated justice response – other criminal and civil justice options are available, as well as therapeutic programs.
- clear governance – there is legislation which sets out the guiding principles, implementation and oversight mechanisms and addresses how restorative justice interacts with the justice process.

Participants must be screened before participating in a restorative justice process to ensure it is suitable and proper safeguards are in place.⁸⁶ Restorative justice processes must be adequately resourced to ensure that participants have access to independent legal advice and professional support throughout the process.⁸⁷ There should be additional screening measures and specialist support for children.⁸⁸

Restorative justice processes must be culturally safe, co-designed and developed in close consultation with people with lived experience of sexual violence, specialist sexual assault services and other experts (including, legal services). These processes should be integrated within the family violence response system given the high incidence of sexual violence that occurs in a family violence context.⁸⁹

The design and implementation of restorative justice processes involving First Nations communities must be community-led, victim-centred and responsive to that community.⁹⁰ The process must acknowledge the deep-seated trauma and complexities of sexual violence experienced by First Nations people to ensure accessibility and safety for First Nations people.⁹¹

Expansion of restorative justice processes

There have been a number of reviews that have recommended restorative justice processes, including the VLRC Report. In line with the VLRC Report, restorative justice should be available where a person who has been harmed does not wish to report the offence, where charges or prosecution do not proceed, after a guilty plea or conviction and any time after sentencing.⁹² While this submission focuses on people who have experienced sexual violence, we support restorative justice processes for a broader range of offences.

⁸⁶ Springvale Monash Legal Service Inc, *Submission to the Victorian Law Reform Commission, Improving the Response of the Justice System to Sexual Offences Review*, January 2021, p. 17-18.

⁸⁷ VLRC Report, p.211.

⁸⁸ Ibid.

⁸⁹ Women's Legal Service Victoria, *Submission to the Victorian Law Reform Commission: Improving the Response of the Justice System to Sexual Offences Review*, p. 8.

⁹⁰ The Victorian Aboriginal Legal Service, *Submission to the Victorian Law Reform Commission Inquiry: Improving the Response of the Justice System to Sexual Offences*, March 2021, p. 5.

⁹¹ Djirra, *Submission to the Victorian Law Reform Commission Inquiry: Improving the Response of the Justice System to Sexual Offences*, December 2020, p. 15.

⁹² VLRC Report, p.211.

SECTION 3: CIVIL PROCEEDINGS AND OTHER JUSTICE RESPONSES

While there are restorative justice programs run by the Department of Justice and Community Safety and Open Circle in Victoria, restorative justice programs need to be expanded and become a more well-established part of the justice response to sexual violence. Alongside this, it is critical that the government resources independent professional support for participants, including support services for people who have perpetrated sexual violence.

Recommendation 15:

Governments:

- establish a restorative justice scheme in legislation in line with best practice standards, and
- adequately resource restorative justice schemes to ensure that those involved have specialist skills and expertise and participants have access to independent legal advice and professional support throughout the process.

Recommendation 16:

Restorative justice schemes for First Nations people are developed and led by First Nations communities and ACCOs.

3.2 Civil litigation

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

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

Intersection between family and sexual violence

Sexual violence often occurs in the context of family violence and is part of a broader pattern of coercive control and intimate partner violence.⁹³ The 2016 Personal Safety Survey indicated that for 66 per cent of people who had experienced sexual violence in the last 12 months, this was perpetrated by a current or former intimate partner (including boyfriend/girlfriend and date).⁹⁴ As sexual violence often goes underreported, this is likely to be significantly higher.⁹⁵

Sexual violence that occurs in the context of intimate partner violence is often perpetrated alongside other forms of violence and abuse.⁹⁶ Intimate partner sexual violence is one of the many abusive and

⁹³ Women's Legal Service Australia, *Submission to the Inquiry into Current and Proposed Sexual Consent Laws in Australia*, 16 March 2023, p.6.

⁹⁴ Department of Premier and Cabinet, *Family Violence Reform Rolling Action Plan 2020-2023 - sexual assault and family violence*.

⁹⁵ State of Victoria, *Royal Commission into Family Violence: Report and Recommendations, Vol I*, 2014-2016, Parl Paper No 132, chapter 12, p.213.

⁹⁶ Australia's National Research Organisation for Women's Safety, *'Intimate partner sexual violence: Research synthesis'*, *ANROWS Insights*, 2nd Ed, August 2019, Sydney, NSW, p.2.

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coercively controlling tactics that occur in a family violence context and can be “central to the violence dynamic in the relationship”.⁹⁷ There can be significant stigma and shame surrounding intimate partner sexual violence.⁹⁸ The Australia’s National Research Organisation for Women’s (ANROWS) reported that many women who had experienced sexual violence in an intimate partner context did not identify the incidents as sexual assault.⁹⁹

It is critical that all parts of the family violence, sexual assault and justice sectors work together to remove barriers to reporting family and sexual violence and ensure that responses are integrated, trauma-informed and victim-centred. This not only involves specialist training in family and sexual violence for frontline workers (as highlighted above), but a whole of system response which reduces silos between different sectors.

People who have experienced family and sexual violence need to be supported across the continuum, rather than being required to access disjointed services and re-tell their story multiple times. This requires government funding to strengthen collaboration between the family violence, sexual assault and justice sectors (which was recognised by the Royal Commission into Family Violence and in the VLRC Report).¹⁰⁰ To strengthen collaboration, this also involves increased funding for family violence, sexual assault and community legal assistance sector to meet significant demand.

Legal assistance needs to be an essential component of an integrated response to people who have experienced sexual violence in a family violence context. We highlight that Community Legal Centres play a critical role assisting people who have experienced sexual and family violence and should be key partners within an integrated and collaborative system. There also needs to be better collaboration between police who work within the family violence and sexual assault areas.

Recommendation 17:

Embed a whole-of-system approach to respond effectively to people who have experienced sexual violence in a family violence context and reduce silos between different sectors, including the family violence, sexual assault, legal and justice sectors.

Recommendation 18:

Governments increase funding to strengthen collaboration between the family violence, sexual assault and legal assistance sector (including, the community legal sector) and to enable these sectors to meet increased demand for support from people who have experienced family and sexual violence.

⁹⁷ State of Victoria, *Royal Commission into Family Violence: Report and Recommendations, Vol II*, 2014-2016, Parl Paper No 132, chapter 12, p.213.

⁹⁸ Ibid, p.217.

⁹⁹ Ibid.

¹⁰⁰ Ibid, Recommendations 31 and 32, p.237; VLRC Report, p.101.

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Reforms to the child protection system

As highlighted above, people who have experienced family and sexual violence may be scared to report the violence and seek support due to fear of child protection involvement, particularly for First Nations families. This can result in women and children remaining in high-risk situations with devastating consequences. Family violence (including, sexual violence) is often a key protective concern leading to child protection intervention. Where child protection authorities intervene, there is often inadequate supports for people who have experienced family and sexual violence, particularly mothers. It is critical that in improving justice responses to sexual violence, there is a focus on reforms to the child protection system.

Embedding a strength-based and trauma informed framework across the child protection system

Many mothers and children involved with child protection have experienced family and sexual violence and long-lasting trauma.¹⁰¹ As highlighted by Women's Legal Service Victoria, the child protection system is more focused on risk identification and management rather than supporting families to care for children in a safe and positive environment.¹⁰² Research has found that mothers are often held responsible for failing to protect their children from violence, while fathers remain largely invisible and are less likely to be held accountable even where they are using violence.¹⁰³ A strengths-based approach needs to be embedded across the child protection system which promotes trauma informed practice and understanding of family and sexual violence, while also holding fathers accountable for violence.¹⁰⁴ To strengthen accountability and drive cultural change across the child protection system, governments should monitor and publicly report on practice outcomes for family and sexual violence, including compliance with risk assessment frameworks (i.e., in Victoria, MARAM and the SAFER Children Framework).

Expanding early intervention initiatives to keep children with their families

It is critical to expand early intervention services for families at risk and provide proactive, integrated supports to promote family preservation and child safety. This must include access to early legal assistance to support parents to navigate a complex system and understand child protection's concerns. Intervening early can stop issues reaching crisis point, prevent the removal of children, and reduce complex litigation. Early intervention allows parents to access the support they need where they have experienced family and sexual violence, as well as to address other compounding issues, such as housing instability, unemployment, substance dependency or mental health issues.¹⁰⁵ As highlighted further below, early intervention models require Aboriginal-led solutions.

Removing the permanency provisions which compound challenges for families

¹⁰¹ Women's Legal Service Victoria, *Stronger Together: Strengthening family functioning to improve outcomes for children*, April 2022, p.20.

¹⁰² Women's Legal Service Victoria, *Submission to the Australian Law Reform Commission's Inquiry into Justice Responses to Sexual Offences*, 2024, p.50.

¹⁰³ Women's Legal Service Victoria, *Stronger Together: Strengthening family functioning to improve outcomes for children*, April 2022, p.53.

¹⁰⁴ Ibid, p.24.

¹⁰⁵ Ibid, p.55.

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Strict time limits under the permanency provisions under the *Children, Youth and Families Act 2005* (Vic) require parents to address protection concerns and achieve reunification with their child within two years of their child being removed from their care. Where this cannot be achieved, children are placed in permanent out of home care (subject to exceptional circumstances). These time limits have a detrimental impact on children and parents, particularly mothers experiencing trauma, family and sexual violence, substance dependency or mental illness, who are unable to access appropriate culturally safe support to promote timely reunification. Urgent changes are required to allow a child to return to their family beyond two years where this is in the child's best interests.

Implementing the Yoorrook Justice Commission's call for transformative change to the child protection system for First Nations families

A commitment to self-determination is critical in improving outcomes for First Nations families involved in the child protection system, including those who have experienced or, are at risk of, family and sexual violence. As highlighted by the Yoorrook Justice Commission, for First Nations people there is an "unbroken connection between their experiences with colonial child removal practices and their experiences with the current Victorian Child Protection System".¹⁰⁶ In Victoria, First Nations children are 22 times more likely to be in out of home care than non-First Nations children.¹⁰⁷

The Yoorrook Justice Commission called for the Victorian Government to transfer decision-making power, authority and resources to First Nations people to give full effect to self-determination in the Victorian child protection system.¹⁰⁸ This includes system design, allocation of resources and accountability and oversight functions. The Victorian Government only fully accepted two Yoorrook Justice Commission recommendations on the child protection system. In line with ACCOs, we call for full implementation of the Yoorrook Justice Commission's reforms to the child protection system.

Recommendation 19:

Reform the child protection system to improve justice responses to sexual violence, including by:

- embedding a strength-based and trauma informed framework across the child protection system
- expanding early intervention programs, including early access to legal assistance, to keep children with their families
- removing the permanency provisions which compound challenges for families
- implementing the Yoorrook Justice Commission's call for transformative change to the child protection system for First Nations families.

¹⁰⁶ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, 2023, p.108.

¹⁰⁷ Australian Institute of Health and Welfare, *Child protection Australia 2020-2021* (see table S5.10).

¹⁰⁸ Yoorrook Justice Commission, *Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems*, 2023, p.26.

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3.3 Compensation schemes

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

Compensation schemes are important for people who have experienced sexual violence as a way of acknowledging the harm caused and providing redress and financial assistance to support with the recovery process. As so few people who experience sexual violence engage with the criminal justice system, compensation schemes are often the primary form of recognition and redress for the harm caused by sexual violence. It is critical that compensation schemes not only provide meaningful redress, but that the process is trauma informed, victim-centred and beneficial. Compensation schemes should support the wellbeing and dignity of victim survivors, protect against further trauma and distress, ensure the needs of victim survivors are paramount and recognise that the needs of victim survivors vary.¹⁰⁹

Compensation schemes must be accessible and flexible and culturally safe for First Nations people and people from migrant and refugee communities. While most compensation schemes will require provision of available documentation and reports to support an application, these requirements should be flexibility applied having regard to the victim survivors' circumstances. The evidentiary burden should not be unduly onerous so as to deter victim survivors from engaging with the process and should not risk retraumatising victim survivors.

The Victorian Government has introduced reforms to the financial assistance scheme for victim survivors following the VLRC's Review of the Victims of Crime Assistance Act 1996 (the **VLRC Review**). The new victims of crime financial assistance scheme (referred to as the 'new scheme') has not yet been implemented, so we do not have any insight into how it will work in practice. The VLRC Review made valuable recommendations to improve Victoria's existing Victims of Crime Assistance Tribunal (**VOCAT**) scheme and we suggest that the ALRC consider the VLRC Review as part of this Inquiry. In this section, we have highlighted some of the key positive changes as part of the transition to the new scheme and areas that still require further reform (as not all key VLRC recommendations were implemented by the Victorian Government).

There are a number of changes to the Victorian scheme which we support, including:

- The shift from a more complicated and formal court-based scheme under VOCAT to an administrative scheme which introduced victim recognition statements and recognition meetings.
- Some increase in the levels of financial assistance available.
- The inclusion of more sexual offences, such as upskirting, grooming and image-based sexual offences.

¹⁰⁹ Victoria Law Reform Commission, [*Review of the Victims of Crime Assistance Act 1996 – Report*](#), July 2018, Recommendation 21.

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- The removal of considerations around whether the victim survivor provoked the violent act and whether the alleged offender will benefit from the award (which were in the previous legislation - *Victims of Crime Assistance Act 1996 (VOCAA)*).
- The removal of provisions which allowed the alleged offender to be notified about the application by VOCAT as this could deter victim survivors from engaging with VOCAT and increased the risk of re-traumatisation.

However, there were a number of VLRC recommendations which were not implemented by the Victorian Government in the transition to the new scheme which are important elements of a robust and victim-centred compensation scheme. These are set out below.

Police reporting requirement

Under the new scheme, the failure to report a violent act to the police within a reasonable time or to provide assistance with an investigation, arrest or prosecution can be a ground for refusal of an application.¹¹⁰ The VLRC recognised the significant barriers to reporting crimes, including sexual violence.¹¹¹ The VLRC Review considered that mandatory police reporting requirements can have an adverse impact on some victim survivors' recovery, place them at risk of further harm or violence from the person who used violence or expose them to police or prosecution processes that may not be aligned with their welfare and recovery.¹¹² We do not support mandatory reporting requirements in victim compensation schemes, particularly for people who have experienced sexual or family violence.

Grounds for refusal – character and past criminal activity

Similar to the VOCAT scheme, the new scheme allows for broad consideration of a victim survivor's character, behaviour (including, any past criminal activity or convictions) or attitude (at any time) in determining whether to grant financial assistance.¹¹³

The VLRC Review considered that these factors result in subjective assessments of whether victim survivors are innocent or deserving of assistance.¹¹⁴ The VLRC recommended that a decision-maker only consider a victim survivor's current or past criminal behaviour where there is a direct nexus with the relevant criminal act in the application (i.e., the victim survivor's activities were the primary reason for the criminal act occurring).¹¹⁵

This ground for refusal is concerning given the well-established nexus between criminalisation and victimisation which can be seen in the high rates of women in prison who have experienced family and sexual violence. It is also problematic in light of the high incidence of misidentification of victim survivors as perpetrators of family violence, including where sexual violence has occurred. In

¹¹⁰ Section 31(1), *Victims of Crime (Financial Assistance Scheme) Act 2022*.

¹¹¹ Victoria Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996 – Report*, July 2018, p.407.

¹¹² Ibid.

¹¹³ Section 33, *Victims of Crime (Financial Assistance Scheme) Act 2022*.

¹¹⁴ Victoria Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996 – Report*, July 2018, p.535.

¹¹⁵ Ibid, Recommendation 77, p.418.

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Community Legal Centres experience, this ground of refusal has led to inconsistent decision-making under the VOCAT scheme.

Proof of injury

The new scheme currently requires proof of injury for all violent acts. There can be exemptions under the regulations for certain categories of victim survivors.¹¹⁶ However, there are no exemptions at this stage. The VLRC recommended that victim survivors of sexual offences and family violence and children exposed to these criminal acts should be exempt from providing evidence of injury.¹¹⁷ It is important these exemptions are included in compensation schemes recognising the barriers faced by people who have experienced family and sexual violence in obtaining this type of evidence and the potential for re-traumatisation.

Time limits

In line with the VLRC Review, the Victorian Government increased time limits under the new scheme. This included removing any time limit for children who have experienced child abuse or family violence and extending the time limit to 10 years for adults who have experienced sexual offences or family violence.¹¹⁸ While we support the extension of these time limits, we consider that there should not be any time limit for making an application to a victims' compensation scheme for sexual violence. The VLRC in its later report on *Improving Justice Responses to Sexual Offences* recommended removing time limits for people who have experienced sexual violence.¹¹⁹ The VLRC recognised that this would reflect the reality of the considerable time it can take for people to disclose sexual violence and would preserve financial assistance as a justice option regardless of when sexual violence is reported.¹²⁰

Recovery and assistance framework

It is important that the assistance provided under compensation schemes are adequate as a form of recognition of the harm caused and to support the recovery process. The financial assistance should be flexible in the way it can be used to assist with recovery, recognising that the recovery process will be different for each victim survivor and needs to be tailored to their particular circumstances.

Different streams of assistance tailored to victim survivors' diverse needs

In line with the VLRC's recommendations, there should be a number of different streams of assistance available, including:

- immediate needs
- funeral expenses

¹¹⁶ Section 12, *Victims of Crime (Financial Assistance Scheme) Act 2022*

¹¹⁷ Victoria Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996 – Report*, July 2018, Recommendation 31.

¹¹⁸ *Ibid*, Recommendation 71.

¹¹⁹ VLRC Report, Recommendation 37, p.223-224.

¹²⁰ *Ibid*.

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- therapeutic support / counselling (e.g., an initial grant of 20 sessions and where required, options for further sessions)
- practical assistance
- recovery payments – a lump sum payment made having regard to the victim survivor's circumstances.
- recognition - statement, victim conference and pathway to restorative justice.¹²¹

Practical expenses should include a broad range of areas, such as:

- health-related expenses
- housing-related expenses, including relocation and resettlement expenses
- safety-related expenses
- financial support, including loss of earnings, dependency payments and financial counselling
- education, re-training and return-to-work expenses
- expenses for lost or damaged clothing worn
- other reasonable expenses to access the scheme, such as, travel and childcare expenses, and to attend justice-related appointments.

While some of these elements are incorporated under the new scheme in Victoria, we support further alignment with the VLRC Review, in particular:

- the inclusion of an expanded list of expenses covered under the category of practical assistance
- higher levels of financial assistance (i.e., a higher cap for practical assistance of \$80,000 as recommended by the VLRC)
- the replacement of special financial assistance payments which are calculated based on the category of offence with a lump sum recovery payment based on the victim survivor's circumstances
- the removal of the requirement to prove 'exceptional circumstances' to access recovery-related expenses as recovery is an essential part of any compensation scheme for victim survivors.

Recognition meetings and statements

We support the introduction of processes under the new scheme to recognise the harm caused to victim survivors through victim conferences and recognition statements. As highlighted in the VLRC Review, it is important that victim conferences:

- provide a respectful forum for victim survivors to be acknowledged and heard
- not be for the purpose of determining any application/award
- be held in private
- be trauma-informed and minimise the victim survivor's trauma (including in deciding the time, place, structure or format of the conference)

¹²¹ Victoria Law Reform Commission, [*Review of the Victims of Crime Assistance Act 1996 – Report*](#), July 2018,, Recommendation 33.

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- be in a culturally appropriate safe space
- allow victim survivors to discuss the impacts of the crime, read a Victim Impact Statement or other statement, have a support person and/or legal representative present
- at victim survivor's request, be permitted to have a single victim conference with multiple victim survivors in attendance.¹²²

The VLRC Review recognised the need for victim conferences to be conducted only by suitably qualified persons of sufficient standing and authority, to ensure they are victim-centred, trauma informed and viewed with appropriate importance.¹²³ The VLRC recommended that the scheme decision maker may delegate the power to conduct victim conferences and to provide recognition statements to deputy decision makers only (and not to all staff).¹²⁴ An advantage of the VOCAT scheme was that Magistrates had this level of authority and gravitas. At this stage, it is unclear how victim conferences will be run as the new scheme has not commenced yet, but it is important these elements are part of the process to ensure it is meaningful, beneficial and does not cause further harm or distress.

Repayment of interim assistance

Under the new scheme, interim assistance must be repaid where the final application is refused.¹²⁵ The VLRC recommended that payment of interim assistance should be final and not required to be refunded where an application for other streams is not successful.¹²⁶ This can result in a cycle of debt, particularly for victim survivors who are already experiencing disadvantage, and could exacerbate feelings of victimisation and trauma. If this requirement is part of a compensation scheme, then repayment should only be pursued in circumstances of fraud.

Variations for health-related expenses at anytime

Under the new scheme, variations of financial assistance are allowed for a longer period than under the previous scheme (which is now 10 years). While we welcome the extended timeframes for variations, in line with the VLRC recommendation, we would support variations still being allowed in exceptional circumstances for additional health-related expenses (without the need to re-establish eligibility) beyond the 10-year time limit.¹²⁷ This recognises the need for ongoing health-related, counselling and wellbeing support as part of a recovery process which can take years.

Legal representation

The new scheme recognises that applicants may be legally represented and there is a mechanism to grant reasonable legal costs for assistance with applications. It is important that victim survivors have an opportunity to receive legal assistance with their applications at no additional expense

¹²² Ibid, Recommendation 14.

¹²³ Ibid, p.177.

¹²⁴ Ibid, Recommendation 10.

¹²⁵ Section 37, *Victims of Crime (Financial Assistance Scheme) Act 2022*.

¹²⁶ Victoria Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996 – Report*, July 2018, Recommendation 34.

¹²⁷ Ibid, Recommendation 50.

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(otherwise, legal fees could exceed the grant of financial assistance). This is particularly important where a matter is complex or where the victim survivor is unable to navigate the process (even in its streamlined form) without legal assistance due to trauma, mental health issues, disability, homelessness, cultural and language barriers and other factors.

Legal practitioners not only play an integral role in assisting with applications, obtaining supporting material and preparing submissions, but also in understanding the intersection with other legal issues (such as, family violence intervention orders, family law, child protection and criminal law) and other avenues of redress (such as, personal injury claims and other redress schemes).

It is important that any guidelines for granting legal costs is commiserate with the work involved. Otherwise, this will create barriers for victim survivors in securing legal representation. As highlighted above, the Victorian Government has funded some legal assistance providers to assist with applications to VOCAT and the new scheme (once it begins) as part of the Victims Legal Service. While this funding is welcome, it is not sufficient to meet high demand for assistance and will lapse in a year. As highlighted above, we see considerable value in governments funding Community Legal Centres to assist people who have experienced sexual violence (and other victim survivors) with applications to compensations schemes.

Recommendation 20:

Ensure victims compensation schemes provide meaningful redress to people who have experienced sexual violence and are trauma informed and victim-centred.

Recommendation 21:

Implement the following reforms to improve Victoria's compensation scheme:

- remove the requirement to report the violent act to the police or engage with prosecution
- remove the mandatory ground for refusal based on character and past criminal activity
- include exemptions for having to prove injury for people who have experienced family or sexual violence and child victim survivors
- remove the time limit for applications for sexual violence
- improve the level and structure of financial assistance provided to victim survivors
- adequately resource Community Legal Centres to assist victim survivors with their applications, including increasing and extending the funding for the Victims' Legal Service in Victoria.