

**Submission to the Australian Law Reform Commission Inquiry
into Justice Responses to Sexual Violence # 2 –**

***Build it out or “burn it down”? Situating “justice” within
the wider systemic response to sexual offences***

Centre for Innovative Justice, RMIT University

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Acknowledgement of Country

The Centre for Innovative Justice (CIJ) acknowledges the people of the Woi wurrung and Boon wurrung language groups of the Eastern Kulin Nation on whose unceded lands we conduct our business. We acknowledge their Elders past, present and future, as well as the ongoing strength of the world's oldest continuing and living cultures. Always was, always will be.

We also acknowledge the ongoing impacts of colonisation, impacts which contribute to intergenerational trauma and associated rates of family, domestic and sexual violence (FSDV) experienced by Aboriginal communities. We recognise the structural discrimination and systemic racism which, to our collective shame, sees Aboriginal children removed from their families at disproportionate rates and which also sees Aboriginal communities disproportionately policed and incarcerated at a higher rate than any other peoples in the world.

As such, the CIJ commits to ensuring that our work supports and is informed by the strengths of First Nations peoples and strives towards truth, reconciliation, sovereignty and healing.



Artwork 'Luwaytini' by Mark Cleaver, Palawa

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Acronyms

Australian Law Reform Commission	ALRC
Adolescent violence in the home.....	AVITH
Affected Family Members	AFMs
Bureau of Crime Statistics and Research	BOCSAR
Culturally and Linguistically Diverse.....	CALD
Child Witness Service.....	CWS
Child and Youth Witness Service	CWYS
Centre for Innovative Justice	CIJ
Criminal Procedure Act	CPA
Family Violence Intervention Orders	FVIO
Ground Rules Hearings	GRH
Lesbian, Gay, Bisexual, Transgender, Intersex and Queer	LGBTIQ+
Men's Behaviour Change Programs	MBCP
Royal Commission into Family Violence	RCFV
Specialist Family Violence Courts.....	SFVC
Victim Impact Statement	VIS
Victim and Witness Assistance Service	VWAS
Victorian Law Reform Commission	VLRC
Video and Audio Recording of Evidence	VARE
Witness Assistance Service	WAS

1 Part One – Introduction and context

The Centre for Innovative Justice (CIJ) welcomes the opportunity to contribute to this Inquiry by the Australian Law Reform Commission (ALRC). As an organisation committed to making all justice system responses function in a more human-centred and trauma-founded manner, the CIJ offers this submission as a vehicle for insight into the way in which current justice systems can be a source of “new trauma” for too many victim survivors of sexual offence. This is an indictment on these systems that must be mitigated, to the greatest degree possible, by “*a trauma-informed, holistic, whole-of-systems and transformative approach*”, as the Inquiry’s Terms of Reference describe.

Too often, however, these “justice” systems define themselves too narrowly – situating themselves in isolation from the other mechanisms in the community that can make a difference to people’s experiences of harm – including their willingness to report these experiences and, in doing so, potentially prevent future offending.

In this submission, therefore, we draw on lessons across a particular program within the CIJ which focuses not only on family, domestic and sexual violence, but also the impacts of trauma which influence people’s experience of legal processes to suggest that justice system responses need to recognise a dual responsibility. This dual responsibility involves:

- remembering the human who turned to the legal process for recognition and response; while
- identifying that the independence of this process should not equate to isolation from wider supports.

As such, while the bulk of this submission attempts to address some of the core questions contained in the ALRC’s Issues paper, it does so while situating the discussion within a wider exploration of victim survivor experiences at each relevant stage. Core to the submission, then, are the stories of those with lived experience who have been supported to contribute to a selection of our research projects – victim survivors of sexual assault, family violence and crime victimisation more broadly. Wherever possible, we have incorporated these insights to bring the voices of victim survivors to the fore, noting that all of these participants contributed to our research program with the expressed wish that their insights would help to improve the experience of others.

To note, this is one of two submissions to this inquiry made by the CIJ overall. The first, written by the CIJ’s Open Circle service delivery arm, focuses on the use of restorative justice in response to sexual offending, including by drawing on its own practice experience. This second submission will therefore not duplicate discussion in that particular area – particularly as the team responsible for this second submission is currently conducting a review of a particular restorative mechanism and, as such, should not comment on restorative justice measures more broadly at this time.

1.1 The CIJ's expertise

As noted above, the CIJ has extensive experience conducting research and developing responses in relation to sexual, domestic and family violence; crime victimisation more broadly; and the impacts of trauma which interact with systemic drivers to push people into contact with legal processes. The bulk of this research involves people with lived experience of the justice system and is conducted in a way that carefully provides safety and support to participants, while also being subject to comprehensive ethical review and approval.

Some of our broad program of work includes early research into [innovative justice responses to sexual offending](#), which provided a blueprint for governments and legal systems to explore alternative approaches. The CIJ has also conducted numerous projects investigating responses to broader experiences of crime victimisation and harm, the majority informed by interviews with victims of crime, including (but not limited to):

- a comprehensive review and proposed redesign of Victim Services in Victoria titled [Strengthening Victoria's Victim Support System](#) released in 2020, along with a companion guide of [Key Practice Insights](#) to supporting victims of crime, which involved direct research with 39 victims of different types of crime;
- a companion (unpublished) piece of research to review and redesign Victoria's [Child Witness Service](#) (CWS) now known as the Child Youth Witness Service (CYWS), also informed by interviews and family members who had contact with the service;
- Research into the [ways in which victims are consulted in relation to decisions made by prosecutors](#) in indictable matters, and the development of a guide on [best practice communication with victims](#), commissioned by the Victoria Office of Police Prosecutions (OPP); and
- [Submissions to a DJCS review into the experiences of victims of crime involved in proceedings in the summary criminal jurisdiction](#).

The CIJ has also led multiple projects in partnership with First Nations communities, particularly regarding the disproportionate experiences of victimisation of these communities; as well as the criminalisation of Aboriginal women and the increasing misidentification by family violence systems, which sits within our wider program of research into the criminalisation of women more generally.

In particular, as part of our work with First Nations communities, the CIJ led a groundbreaking piece of research with a community-led methodology exploring barriers to reporting and justice responses, including direct research with 23 Aboriginal victims of crime (forthcoming).

Further, the CIJ runs a substantial program of research into domestic and family violence. This has included extensive work supporting the implementation of recommendations from the Royal Commission into Family Violence (RCFV), particularly focusing on 'perpetrator interventions' and court responses to family and domestic violence.

Fuelled by the CIJ's first report in this area, [Opportunities for early intervention: bringing perpetrators of family violence into view](#), the program has gone on to interrogate ways to stem risk and improve safety across a number of contexts, including by '[mapping the roles and responsibilities of services and agencies in relation to perpetrator interventions](#)'; developing court mandated pathways that go [Beyond getting him to a program](#); and proposing the redesign of protection order processes so that these orders function as [More than just a piece of paper](#).

The program focused on family and domestic violence also includes multiple ANROWS funded projects, including research focused on young people's experience and use of harm, including the Positive Interventions for [Perpetrators of Adolescent violence in the home \(AVITH\) project \(the PIPA project\)](#) and the [WRAP Around Families Experiencing AVITH project](#).

Finally, and most directly relevant, the CIJ was privileged to conduct research commissioned by the Bureau of Crime Statistics and Research (BOCSAR) in which the CIJ interviewed 34 victim survivors of sexual assault from diverse backgrounds in relation to their end-to-end experience of the legal process where they had reported the offence to police. Combined with stakeholder consultations conducted by project lead KPMG, the study titled ["This is my story: It's your case, but it's my story"](#) informed a suite of recommendations for comprehensive reform of the justice system.

Across this program of work, the CIJ has highlighted the way in which experiences of sexual violence intersect with experiences of domestic and family violence and with crime victimisation more broadly. In our work on broader experiences of crime victimisation, for example, the impacts of child sexual abuse and sexual violence in adolescence and adulthood feature strongly, as they do in our work regarding the increasing rates of women's criminalisation. In our work on domestic and family violence, the prevalence of sexual violence is also striking, while lessons from our work on domestic and family violence can also be applicable in some circumstances when examining responses to sexual harm.

While lessons across the CIJ's wider program of work are therefore relevant to this Inquiry, this submission will be drawing primarily from its recent interview study with complainants of sexual offences in NSW; from our extensive Victim Services Review and related Child Witness Review; from our research into the experiences of Aboriginal Victims of Crime (to be released in the final quarter of 2024); and from a selection of our work on court responses to family violence. Other work is described more broadly where relevant, noting that many of the CIJ's projects are conducted for Government, courts or statutory authorities and in some cases are not able to be published.

Important to note, one of the primary findings from the CIJ's Victim Services Review was that crime type does not always dictate the impacts that people will experience. In this research, the CIJ spoke with some victims of incredibly severe and violent offences, but who were able to draw on a range of pre-existing protective factors, while other victims were severely impacted and crippled in an ongoing way by what the community may assume was a less serious crime, such as their home being burgled.

"You don't realise how much that affects you, like someone entering your domain and taking away your ability to remain safe in your own home ... that inability to function on an everyday basis".

- Participant, "Key Practice Insights"

Our recent NSW research similarly indicated that the protective factors present in people's lives are a significant determinant of the impacts from the harm that they may experience, noting the distinct harm caused by sexual offending. This means that, while we have taken care to draw on experiences from our broader research on crime victimisation which also features sexual offending, we have also cautiously highlighted insights from victims of crime more broadly when we consider this relevant.

Before venturing into a focus on the Inquiry's specific questions more specifically, however, this submission first emphasises some wider considerations drawn from our particular focus on, and work directly with, three priority populations. We highlight these examples to foreground a reminder to the Inquiry that very few people who experience a sexual offence actually fit the wider community's conception of a victim survivor of sexual assault. Noting high profile examples of white, middle class, professional adult women who still receive highly traumatising responses once they report sexual harm, it is vital to continue to challenge assumptions that experiences of sexual offences are a one-off incident from which an individual is otherwise likely to recover with some time-limited assistance.

Instead, the CIJ calls on the Inquiry to recognise sexual offending and harm as endemic, and as a repeated experience for which far too many Australians receive far too little support.

1.2 Aboriginal and Torres Strait Islander peoples

Prior to addressing the core questions contained in the ALRC's Issues paper, the remainder of Part One outlines some of the broader considerations which the CIJ invite the Inquiry to keep in view while developing its recommendations.

The CIJ is committed to working closely with First Nations peoples and believes that the voices of community are integral to understanding the way in which Aboriginal and/or Torres Strait Islander identities can shape an individual's experience of processes and systems. Across multiple projects, the CIJ has embedded community control in the design, implementation and reporting of research as it relates to the experiences of Aboriginal and Torres Strait Islander peoples and has continuously advocated for self-determined solutions and systemic change.

Wider evidence – including the CIJ's previous work in partnership with Aboriginal organisations and communities – shows clearly that Aboriginal and Torres Strait Islander people are overrepresented at all stages of the justice system, both as offenders and as victims of crime, yet are dramatically under-represented in terms of those who receive appropriate services or support.¹

¹ Cunneen, C. and Rowe, S. (2015) *Decolonising Indigenous Victimisation*, at <https://www.austlii.edu.au/au/journals/UNSWLRS/2015/47.pdf>; referring to Australian, Canada and New Zealand. See also AIHW, *Older Australia at a glance*. Web report. 2018. <https://www.aihw.gov.au/reports/older-people/older-australia-at-a-glance/contents/demographics-of-older-australians/australia-s-changing-age-and-gender-profile>

The overrepresentation of Aboriginal women as victims of domestic, family and sexual violence, for example, is well known. This includes that Aboriginal women are 35 times more likely to be hospitalised as a result of this violence, and five times more likely to be victims of homicide. Australian Indigenous respondents in the International Violence Against Women Survey, meanwhile, reported three times as many incidents of sexual violence in the previous 12 months compared to non-Indigenous women.² The CIJ notes that it is important to recognise here that violence against Aboriginal women is often perpetrated by non-Indigenous men, particularly in the context of systems abuse.

The factors contributing to these high rates of victimisation are well recognised. These include the ongoing impacts of colonisation and dispossession, such as the intergenerational trauma and disadvantage that Aboriginal communities continue to experience, which can make Aboriginal and Torres Strait Islander people more vulnerable to experiences of harm. Just as relevant are the devastating impacts of systems and structures which continue to make Australian Aboriginal people the most incarcerated people in the world. State intervention in Aboriginal and Torres Strait Islander communities similarly continues to be felt through persistently high and actually increasing rates of child removal, echoing the legacy of grief passed on as a result of the Stolen Generations.

This intergenerational trauma created by dispossession and child removal – combined with the resulting distrust in government agencies – can mean that Aboriginal and Torres Strait Islander people not only experience particularly high rates of harm but are especially fearful of reporting these experiences to police, or of otherwise seeking support.

As part of the CIJ's *This is my story* study, Aboriginal participants spoke of the distinct and ongoing impacts of intergenerational trauma, the effects of which meant that sexual violence had become endemic in too many of their community members' experiences, including where this was committed by non-Indigenous people in positions of power. This was echoed by Aboriginal victims of crime in our forthcoming and wider Victorian research, participants in which emphasised the impact of intergenerational trauma and systems harm in normalising experiences of violence within their community. As a result, many Aboriginal people described minimising their own experiences in comparison to what family and community members, particularly Elders, had already endured.

Through these two projects, Aboriginal participants outlined the powerful role that the concept of shame can play in their community and the impact of that this has on disclosing sexual offences. The CIJ heard that women who were Elders and respected persons in their community were often 'carrying' the stories of other women who did not feel as though they could come forward, as well as carrying their own experiences of sexual harm. The CIJ heard that this experience of shame can be further compounding for Aboriginal men in terms of their readiness to disclose their own experience of sexual violence or to seek help.

The CIJ's research also indicated that community and familial obligations can prevent Aboriginal victim survivors from coming forward, as they may fear the social repercussions of reporting a sexual offence committed by someone known to them. Where the perpetrator is also a member of the local Aboriginal community, the CIJ heard that the over-policing and over-incarceration of Aboriginal communities made victim survivors particularly reluctant to contribute to these incarceration rates any further.

² State of Victoria, (2016) Royal Commission into Family Violence, Report and Recommendations Volume V, 13.

This highlights an unescapable fact when considering the justice responses of Aboriginal and Torres Strait Islander victim survivors of sexual violence, being the significant fear and distrust of police felt by Aboriginal communities. Stemming from cumulative and ongoing negative experiences with police at the individual, familial and community level, this distrust is also founded on the significant overreach by other statutory authorities, such as Child Protection. Given the high rates of sexual assault experienced by Aboriginal women, it is also important to recognise that it is culturally inappropriate and unsafe for this group to describe their experiences of sexual offences to a male police officer. The presence of a female, Aboriginal police officer is therefore crucial if Aboriginal women are going to feel safe enough to disclose experiences of sexual harm.

By contrast, the CIJ's research also indicates that Aboriginal victim survivors may feel more confident about reporting if they can share their experiences in a culturally specific manner. Across multiple projects, therefore, Aboriginal participants have suggested that having Aboriginal representation across justice agencies, including community Elders or respected persons, present would help Aboriginal victim survivors to feel supported and understood.

These and other themes drawn from the voices of Aboriginal participants in the CIJ's research will feature throughout this submission, while further specific considerations in relation to the disproportionate impact of crime victimisation and the hyper incarceration of Aboriginal women is discussed further at section 1.4.

1.3 Children and young people

The CIJ also runs a specific program looking at the trajectories of children and young people who have experienced family violence, as well as being identified by systems as having used it. Certainly, children, especially younger children, are an inherently vulnerable cohort in relation to crime victimisation, with Australia's first National Child Maltreatment Study recently finding that two thirds of Australians have been abused, neglected or exposed to domestic and family violence as children.³

Further, the Crime Statistics Agency reports that over 14,000 affected family members in a family violence police report in 2023 were aged 15 – 24,⁴ while data from the Australian Institute of Family Studies showed that almost a third of 18 and 19 year olds had experienced violence from an intimate partner.⁵ These are striking statistics given that violence is under reported by young people, while police and other agencies are still developing the capacity to identify young people as victim survivors. Combined, this means that the actual figure is likely to be considerably higher.

³ Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023). The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report. Australian Child Maltreatment Study, Queensland University of Technology

⁴<https://www.crimestatistics.vic.gov.au/crime-statistics/latest-victorian-crime-data/family-incidents-2>

⁵ Growing Up in Australia Project: The Longitudinal Study of Australian Children (LSAC), Australian Institute of Family Studies.

Exposure to crime and violence have been shown to compromise a child's physical, social and psychological functioning.⁶ Child victims of sexual abuse are likely to have multiple and interconnected needs and may require access to different services throughout the life course.⁷ Similarly, evidence provided to the RCFV outlined how exposure to family and domestic violence can have profound short and long-term effects on children and young people which are similar to the impacts on children who experience direct physical violence. Children can suffer from a variety of physical, emotional and mental health effects including depression, anxiety, low self-esteem, impaired cognitive functioning, learning difficulties and mood problems.⁸ In addition, children with a history of maltreatment, trauma or victimisation have a higher likelihood of criminal justice system contact as offenders.⁹

In addition, many instances of violence against children occur within contexts where the incident may not be recognised as criminal; may not be ordinarily addressed within the criminal justice system; or may not be likely to result in prosecution. Examples include child maltreatment or neglect;¹⁰ corporal punishment; family violence that targets the child, (including from a sibling) or to which the child is a witness; family abduction; or violence between peers (i.e., bullying).

When considering the disproportionate rates of crime victimisation amongst children and young people and its impacts, therefore, it is crucial to consider the relatively low rates at which young people report victimisation¹¹ and receive support.¹² Evidence indicates significant gaps in service provision to the particularly vulnerable cohort of children in institutional settings and out of home care, for example, with a 2010 report by the NSW Ombudsman finding that a disturbingly small number of applications for crimes compensation had been made by the NSW Department of Community Services on behalf of children subject to a care order,¹³ despite the likelihood that a significant number of these children had experienced very serious crime.¹⁴

⁶ Lamont, A. (2014) 'Effects of child abuse and neglect for children and adolescents' (Resource sheet, National Child Protection Clearinghouse).

⁷ Commonwealth of Australia (2017), Royal Commission into Institutional Responses to Child Abuse, Vol II, Nature and Cause, 35.

⁸ State of Victoria, (2014 – 2016) Royal Commission into Family Violence, *Summary and Recommendations*, Parl Paper No 132 (2014-2016), Vol II, 103.

⁹ Malvaso, C. Delfabbro, P. and Day, A. (2016) Risk factors that influence the maltreatment-offending association: A systematic review of prospective and longitudinal studies. *Aggression & Violent Behaviour*, 1-15. In Australia, young people aged 10 – 16 years who are subject to a child protection order are twelve times more likely to be in youth justice systems than the general population of the same age Adam Dean, (2018) *Young people involved in child protection and youth justice systems* (Child Family Community Australia, 2018)

¹⁰ In Australia, less than 10 per cent of all child protection matters involve the prosecution of an offender. See Australian Institute of Criminology, Australian crime: Facts & figures: 2011, Chapter 8: Spotlight on child victims – crime and child maltreatment <<https://aic.gov.au/publications/facts/2011/chapter-8-spotlight-child-victims-crime-and-child-maltreatment>>.

¹¹ Crime Statistics Agency, Crime statistics Year Ending 31 December 2018, Victim reports, Table 5.

¹² Ibid, p 103.

¹³ The Victorian Department of Health and Human Services' Child Protection Manual states that 'where child protection practitioners become aware a child has been a victim of crime, consideration should be given to referral (and support) of the child or family to the Victims of Crime Helpline' see online resource <<https://www.cpmmanual.vic.gov.au/advice-and-protocols/service-descriptions/support-services/services-victims-crime-including-vocat>>.

¹⁴ Commission for Children and Young People, *'In our own words': Systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system* (Commission for Children and Young People, 2019), p 36

The CIJ's research continues to show that children and young people drop off the radar when agencies are considering or assessing risk. For example, research into family and sexual violence responses during COVID led by the Centre for Family Research and Evaluation at Drummond Street, the CIJ and the Australian Institute of Family Studies, included a targeted case file review of 70 MARAM risk assessment tools and associated safety plans collected from organisations offering a broad range of programs to people experiencing and using violence.¹⁵

The [*Futureproofing safety: surfacing inequality and building service capacity for crisis ready responses*](#) research found a glaring absence of data recorded on MARAM assessments about risk to children and young people during this time. Specifically, very few assessments were completed for children and young people as victim survivors in their own right, whether these were initial MARAM assessments at system intake, or subsequent assessments by the services to which a family had been referred.¹⁶

Far from a COVID-related exception, the ongoing work of the CIJ indicates a continuing gap in initial assessments by the Orange Door (Victoria's intake point) for children and young people as victim survivors in their own right. Rather, young children continue to be subsumed within the experience of their protective parent, often remaining so during ongoing service contact. Young people unaccompanied by a protective parent, meanwhile, are disappearing from view altogether after any initial contact with an intake point.

More broadly, the *Futureproofing safety* research identified that sexual harm against children had increased during this time, while the withdrawal of Child Protection services during COVID may have contributed to a failure to identify this harm. Further, the research also showed that the impact of school closures may have prevented disclosure of risk and victimisation from young people, the impacts of which may be likely to be ongoing.

Even more crucial to note, children and young people from particular cohorts are at higher risk of experiencing violence during childhood. For example, young people with diverse gender and sexual identities experience disproportionate rates of harm and additional barriers to support, which may include threats to 'out' or reveal their gender identity.¹⁷

¹⁵ McCann, B. Campbell, E. Carson, R. Logan, N. Ellard, R. Simpson, M. Fong, H. Stevens, E. Poyner, E. Gibson, M. Young, S. Hew, E. De Maio, J. Jamaledine, Z. Soutter, E. Maury, S. Price, E. Forster, H. Kaspiew, R. Horsfall, B. Falconer, L. La Rocca, L. Lasater, Z. (2023), *Future-proofing Safety: Surfacing inequality and building service capacity for crisis-ready responses* (Research report, 09/2023). Family Safety Victoria. [Future-proofing-Safety-Final-Report.pdf \(cfre.org.au\)](#)

¹⁶ Ibid, 32.

¹⁷ Corrie, T. & Moore, S. (2021), *Amplify: Turning Up the Volume on Young People and Family Violence* (Research Report), Melbourne City Mission, p 26.

Further, children and young people with disability are particularly at risk,¹⁸ as are children and young people from First Nations communities.¹⁹ Young people who have experienced adult perpetrated harm but are unaccompanied by a protective parent are also more vulnerable to experiencing additional violence.²⁰ This includes experience of intimate partner violence, particularly where unaccompanied young people have no stable housing and are vulnerable to subsequent exploitation or the use of “survival sex” to put a roof over their heads.²¹

Young people who are identified by systems as using domestic, family and sexual harm, meanwhile, have experienced adult perpetrated harm at almost universal rates.²² This includes young people who in some jurisdictions have been made respondents to protection orders when they are victim survivors of previous and, often, ongoing adult perpetrated harm themselves – sometimes including, as the CIJ’s research has shown, systems abuse by the adults in their lives.²³

Vital to remember is that approximately one child is killed as a result of family violence every fortnight in Australia.²⁴ Just as crucial, a 2019 investigation by the Victorian Commissioners for Children and Young People into children who died by suicide and were known by Child Protection, concluded that, “their lives were marred by family violence, dysfunction and often chronic neglect.”²⁵ Recent evidence has shown that the association of young people’s deaths by suicide with experiences of family and domestic violence during childhood and adolescence is too often overlooked, despite being well established in international literature.²⁶

1.4 People in contact with the justice system as offenders

Another vulnerable and largely overlooked cohort of victims is people who are involved in the justice system as offenders, and particularly people in custodial settings. Evidence certainly notes that people in correctional facilities have higher rates of victimisation, both preceding and during incarceration.

¹⁸ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, (2023) Final Report, Volume 3, *Nature and Extent of Violence, Abuse, Neglect and Exploitation*, Commonwealth of Australia <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%203%2C%20Nature%20and%20Extent%20of%20Violence%2C%20abuse%2C%20neglect%20and%20exploitation.pdf>

¹⁹ Importantly, up to date data in this area is being collected as part of a crucial recent investment into First Nations led research into this subject <https://ministers.dss.gov.au/media-releases/13016#:~:text=First%20Nations%20women%20and%20children,a%20result%20of%20family%20violence.>

²⁰ Corrie & Moore, above n 20.

²¹ Ibid.

²² Campbell, E. (2022) *Adolescents Using Family Violence (AFV): MARAM Family Violence Guidance Project, Review of the Evidence Base*, Centre for Innovative Justice, RMIT University.

²³ Campbell, E., Richter, J, Howard, J & Cockburn, H. (2020) *The PIPA Project: Positive Interventions for Perpetrators of Adolescent violence in the home* Research Report 03, 2020. ANROWS, Sydney.; Campbell, E., Ellard, R., Hew, E., Simpson, M., McCann, B., & Meyer, S. (2023). *WRAP around families experiencing AVITH: Towards a collaborative service response* (Research report, 04/2023). ANROWS, <https://anrowsdev.wpenginepowered.com/wp-content/uploads/2023/04/RP.20.01-Campbell-RR1-WRAP-AVITH-1.pdf>

²⁴ Brown T, Bricknell, S., Bryant, W., Lyneham, S., Tyson, D. & Fernandez Arias, P. (2019). Filicide offenders. *Trends & issues in crime and criminal justice* no. 568. Canberra: Australian Institute of Criminology.

²⁵ Commission for Children and Young People, (2019) *Lost, not forgotten: Inquiry into children who died by suicide and were known to Child Protection* Melbourne, p3.

²⁶ Meyer, S., Atienzar-Prieto, M., Fitz-Gibbon, K., & Moore, S. (2023). *Missing Figures: The Role of Domestic and Family Violence in Youth Suicide - Current State of Knowledge Report*. Griffith University: Brisbane

The data also shows an interrelationship between victimisation and offending. For example, while 1.7% of respondents to the Legal Australia-Wide Survey overall had allegedly committed a recent offence,²⁷ the figure was 5.2% for victims of crime. Conversely, while 13.3% of respondents overall reported crime victimisation, the figure was 41.1% for alleged offenders.²⁸ The overlap may be much greater still over the life course, with victimisation associated with negative offending outcomes.

The overlap of experiences of victimisation and offending is similarly reflected in prison populations, where many people in prison, particularly in women's prisons, have also been victims of violent crime and abuse. Studies have found high rates of Post Traumatic Stress Disorder in the prison population,²⁹ with inmates in one study found to suffer rates of 10 per cent for men and 23.2 per cent for women, compared with the lifetime prevalence in the general population of around 7 per cent.³⁰

While the broader link between offending and victimisation³¹ has a strong empirical association,³² this is especially the case in relation to childhood experiences of sexual assault. An Australian study examining the trajectories of victim survivors of child sexual abuse over multiple decades found them to be "almost five times more likely to be charged with an offence than their peers in the general population".³³

With higher rates of histories of childhood victimisation (particularly sexual abuse) and associated contact with child protective services, as well as subsequent victimisation as adolescents and adults (including sexual assault and family violence), this link is more pronounced for women. This is particularly the case Aboriginal and Torres Strait Islander women who are more likely than non-Indigenous women to have been removed from their families and to have grown up in state care,³⁴ as well as to have experienced serious family violence and sexual abuse.³⁵

²⁷ Coumarelos, C., Macourt, D., People, J., McDonald, H., Wei, Z., Iriana, R. and Ramsey, S. (2012) *Legal Australia Wide Survey: Legal Need in Australia* Law and Justice Foundation of NSW.

²⁸ Ibid

²⁹ Caruana, C., Campbell, E., Bissett, T. & Ogilvie, K (2021) *Leaving Custody Behind: Foundations for safer communities and gender-informed criminal justice systems* Centre for Innovative Justice, RMIT University, Melbourne; Campbell, E., Macmillan, L., Caruana, C. (2020) *Women Transforming Justice: Final Evaluation Report*, Centre for Innovative Justice, RMIT University; Caruana, C., Campbell, E., and Simpson, M. (forthcoming) *Lessons from COVID-19: The use of remand, bail and sentencing for women*, Centre for Innovative Justice, RMIT University, Melbourne.

³⁰ Takahashi, Y. and James, C. (2019) *Victimology & Victim Assistance. Advocacy, Intervention, and Restoration*. Sage, p. 131

³¹ We acknowledge, however, the risk of applying simplistic understandings of the drivers of women's offending and note that aspects of a woman's identity and experience intersect with each other – sometimes to compound structural and social disadvantage.

³² Jennings, W., Piquero, A., & Reingle, J. (2012) 'On the overlap between victimization and offending: A review of the literature.' 17(1) *Aggression and violent offending*, 16-26. See also the Law Australia Wide Survey by the Law and Justice Foundation of NSW. For example, overall, 1.7 per cent of all respondents to the Legal Australia-Wide Survey reported that they had been alleged to have recently committed a crime during the 12-month reference period. However, this percentage increased to 5.2 per cent of the sub-group of respondents who reported having been a victim of crime. Conversely, while 13.3 per cent of all respondents reported having experienced a crime, the proportion was much higher (41.1 per cent) for those respondents who were also alleged to have committed a crime during the survey reference period. Coumarelos, et al. above n 39.

³³ Ogloff, J., M., Cutajar, Mann, E. & Mullen, P. (2012) Child sexual abuse and subsequent offending and victimisation: A 45 year follow-up study. *Trends & issues in crime and criminal justice no. 440*. Canberra: Australian Institute of Criminology

³⁴ Research with mothers in custody in NSW found that 60 per cent of Aboriginal women in custody participating in the study reported being removed from their families as children. Sullivan, E., Kendall, S., Chang, S., Baldry, E., Zeki, R., Gilles, M., Wilson, M., Butler, T., Levy, M., Wayland, S., Cullen, P., Jones, M. & Sherwood, J. (2019) 'Aboriginal mothers in prison in Australia: a study of social, emotional and physical wellbeing' 43 (3) *Australian and New Zealand Journal of Public Health* 241-247.

³⁵ Stubbs, J. & Tolmie J. (2008) 'Battered women charged with homicide: advancing the interests of Indigenous women' 41 (1) *Australian & New Zealand Journal of Criminology* 138-161; Blagg, H., Morgan, N., Cunneen, C. & Ferrante, A. (2005) *Systemic Racism as a Factor in the Overrepresentation of Aboriginal People in the Victorian Criminal Justice System*, Equal Opportunity Commission of Victoria;.

While studies vary, authors suggest that “exposure to traumatic events is nearly universal among incarcerated women, with studies showing ranges of trauma exposure to be between 77 per cent and 90 per cent”.³⁶ A 2004 Australian Institute of Criminology study found that 87 per cent of incarcerated women were victims of sexual, physical or emotional abuse, either in childhood (63 per cent) or in adulthood (78 per cent).³⁷ A NSW study found that 69 per cent of Aboriginal women prisoners surveyed reported that they were abused as children, while 73 per cent reported abuse as adults, with 42 per cent having experienced sexual assault.³⁸

Evidence indicates that victimisation from family, domestic – and particularly sexual – violence can lead women to commit criminal offences in a variety of ways, including through self-medicating with alcohol or drugs; being forced into sexual exploitation; resisting violence through physical force (and being misidentified by police as the predominant aggressor as a result); experiencing systems abuse; or through the impacts of associated poverty, often entrenched through financial abuse by a partner.³⁹ Researchers have described a “triumvirate of gendered needs” stemming from women’s experiences of victimisation and the substance abuse and mental illness that results from those experiences.⁴⁰ In particular, the literature identifies a significant co-occurrence between childhood sexual abuse and substance dependence – suggesting that substance dependence may be one step on the path from victimisation to offending, rather than a “cause” of offending itself.⁴¹

Spending time in prison can also exacerbate existing trauma and disrupt recovery. The Royal Commission into Institutional Responses to Child Sexual Abuse noted in its report that the correctional environment is full of unavoidable triggers for survivors of trauma, such as pat-downs and strip searches; frequent discipline from authority figures; and restricted movement.⁴² Here we note that the Inquiry should consider the impact of strip searches, in particular, on women in custody as a breach of obligations recognised by the Bangkok Rules – set out by the international community over a decade ago in terms of how women in custody should be treated, as highlighted in a substantial Issues Paper released by the CIJ in 2020.⁴³

³⁶ Green, B., Jeanne, M., Daroowalla, A., & Siddique, J. (2005) ‘Trauma exposure, mental health functioning and program needs of women in jail’, 51 (1) *Crime & Delinquency* 133-151, 134.

³⁷ Johnson, H. (2004), ‘Drugs and crime: A study of incarcerated female offenders’ AIC: Research and public policy series, xiv.

³⁸ State of Victoria, Royal Commission into Family Violence, Report and Recommendations Volume IV (2016), p. 67.

³⁹ Gilfus, M. (2002) Women’s experiences of abuse as a risk factor for incarceration, Applied Research Forum, National Online Resource Center on Violence Against Women.

⁴⁰ Stathopoulos M, Quadara, A. Fileborn, B. & Clark. H. (2012), *Addressing women’s victimisation histories in custodial settings*, Australian Institute of Family Studies.

⁴¹ Ibid.

⁴² Commonwealth of Australia, (2017) *Royal Commission into Institutional Responses to Child Sexual Abuse*, Vol 11, Nature and Cause p.65.

⁴³ Caruana, et al, above n 29.

Less widely acknowledged is the fact that traumatised women who have resulting substance dependence or mental health needs are not only pushed into contact with the criminal justice system but are commonly seen as ‘high risk’ or ‘complex’ and can therefore face barriers to accessing mainstream services which can respond to their victimisation.⁴⁴

Evidence also indicates that a growing number of adult women are being “misidentified” by family violence system responses.⁴⁵ For example, an examination of data related to Women’s Legal Service Victoria clients indicated that 10% had been misidentified.⁴⁶

Far from an inadvertent outcome or byproduct of a proactive family violence system, in fact, ‘misidentification’ may be the deliberate outcome of a man’s weaponisation of the system against his female partner. Alternatively, or additionally, it may be the direct result of profiling and racism by statutory systems.⁴⁷ In particular, services working with Aboriginal and Torres Strait women continue to see frequent examples of their clients being characterised as a person using family violence, rather than as the person most in need of protection.

This is reflected in police data which shows that, in 2020, close to 80 per cent of Aboriginal women named as a respondent in police family violence Reports had been previously recorded as an AFM. This was the case for only 27 per cent of male respondents, and close to 59 per cent of all female respondents.⁴⁸ Misidentification also intersects with lethality, with a review of family violence related deaths in 2015 finding that 44.4 per cent of female victims of homicide were identified as the respondent in a protection order on at least one occasion.⁴⁹

The CIJ is embarking on dedicated research exploring the experiences of First Nations women who have been misidentified. Commissioned by Djirra, the project will include examination of Djirra service data, case file reviews, interviews with Djirra clients and extensive focus groups with professionals. Amongst many other considerations, the research will consider the rate at which First Nations clients of Djirra are experiencing violence from non-Indigenous men, including where these non-Indigenous partners are using systems such as the Family Law system to perpetuate and further abuse, as noted above.⁵⁰

⁴⁴ Campbell et al., 2020 above n 30.

⁴⁵ Nancarrow, H., Thomas, K., Ringland, V. & Modini, T. (2020), *Accurately Identifying the “Person most in need to protection” in domestic and family violence law*, ANROWS Research Report, No. 23/2020, Sydney 5.

⁴⁶ Women’s Legal Service Victoria (2018): ‘Officer she’s psychotic and I need protection’: Police misidentification of the ‘primary aggressor’ in family violence incidents in Victoria.

⁴⁷ Here we refer the Inquiry to the submission from Flat Out.

⁴⁸ Family Violence Reform Implementation Monitor, (2021) Monitoring Victoria’s family violence reforms. Accurate identification of the predominant Aggressor, 10.

⁴⁹ Domestic and Family Violence Death Review and Advisory Board (2017), *A report of the Domestic and Family Violence Death Review and Advisory Board*, 82.

⁵⁰ See also Djirra’s submission to the Yoorook Justice Commission on 14 June 2024. <https://djirra.org.au/oorook-justice-commission-14-june-2024/>

More broadly, research by the lead author of this submission – both in the context of a national ANROWS funded study, as well as research to support the implementation of RCFV recommendations – found that migrant and refugee women were also acutely vulnerable to systems abuse and resulting misidentification.⁵¹ These separate studies heard multiple accounts from practitioners about men attempting to leverage their female partner’s lack of English and uncertain visa status to position them as the predominant aggressor.⁵² Being brought before a court, therefore, was a crucial mechanism for this misidentification to be corrected – including where a court might direct Victoria Police to have a recording translated, or to make further inquiries about the history of the relevant family.⁵³

1.5 Further reflections

Overall, the CIJ raises the above issues as examples of context which the Inquiry should keep within view when considering the interaction of sexual offences with legal processes and the role of these processes in a wider community response to sexual harm. Some of the issues raised are examples of how certain groups in the community have disproportionate and intersecting experiences of victimisation, despite these remaining less visible to the wider system response. In too many instances, people who have experienced sexual harm can instead present to the system for other reasons – frequently in child removal, civil justice or carceral contexts, when they should have instead received much earlier support.

To this end, the CIJ’s *Strengthening Victoria’s Victim Support System* report noted work conducted by Victoria’s Department of Justice and Community Safety and the (as it was then) Department of Health and Human Services which identified that these Departments shared certain “complex, common clients” who were presenting to statutory systems at different points. The most striking finding was that the majority had been the victim of some sort of crime or interpersonal harm early in life and had first presented to the system as such. This work showed that, generally, these clients had not received any referrals or support for this experience. A considerable time later, however, they presented instead to Child Protection or justice systems in relation to their use of harm or commission of an offence.⁵⁴

In considering how processes can respond more effectively to sexual offences, therefore, it is critical that the Inquiry situates the role of the legal process as part of a wider system response – one which, if it can help to facilitate support at a much earlier point, can prevent trajectories of harm into the future.

⁵¹ Chung, D., Upton-Davis, K., Cordier, R., Campbell, E., Wong, T., Salter, M., Austen, S., O’Leary, P., Breckenridge, J., Vlasis, R., Green, D., Pracilio, A., Young, A., Gore, A., Watts, L., Wilkes-Gillan, S., Speyer, R., Mahoney, S., Anderson, S. & Bissett, T. (2020), *Improved Accountability: the role of perpetrator intervention systems*, ANROWS Research Report 20, June 2020 <https://cij.org.au/cms/wp-content/uploads/2020/08/anrows-improved-accountability-full-report.pdf>; Campbell, E., Bissett, T., Howard, A., Lewers, N., Polis, M. & Richter, J. (2021) *More than just a piece of paper: getting protection orders made in a safe and supported way. Responding to Recommendation 77 of the Royal Commission into Family Violence*, Centre for Innovative Justice, RMIT University, Melbourne.

⁵² Ibid

⁵³ Ibid

⁵⁴ Ellard, R., Campbell, E., Caruana, C. Ali, J., Ogilvie, K., Haralambous, M., (2020) *Strengthening Victoria’s Victim Support System: Victim Services Review Final Report*, Centre for Innovative Justice, RMIT University, Melbourne, 50. <https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>; Ellard, R. & Campbell, E. (2020) *Key Practice Insights: Supporting Victims of Crime*, RMIT University, Melbourne. .

2 Part Two - reporting the experience of sexual violence

Parts Two and Three of this submission discuss many of the areas raised in the Inquiry's Issues paper. Like the Inquiry's Issues paper, these parts of the submission take an "end-to-end" view of the legal process, while at the same time reflecting on broader considerations along the way. Specifically, Parts One and Two draw particularly heavily on the CIJ's recent *This is my story* research, more generally on our work exploring the experience of Aboriginal victims of crime, as well as on our *Strengthening Victim Supports* and *Key Practice Insights: supporting victims of crime* resources. While the CIJ has conducted a range of work in this area, we have opted to relay relevant challenges and reform opportunities through the voices of the participants in our most recent research, while referring where relevant to other projects. Detail from the CIJ's other relevant work about the specific Victorian context is then included in the Appendix to the submission.

As the Inquiry will be well aware, people who experience sexual violence often face significant barriers to disclosure and reporting. Given that access to victim support systems (as well as legal processes) is largely premised on people first reporting their experiences, this requirement not only impacts the number of investigations and potential prosecutions, but also means that many victim survivors are unable to access the support required to address their needs in any meaningful way.

Research conducted by the CIJ reflects insights from the wider literature about the cohorts that are presumed to under-report crime. In addition to the cohorts identified in Part One which have been the most recent focus of this particular CIJ research program, these cohorts also include older people, people living with disability, people from culturally and linguistically diverse communities; and people who identify as Lesbian Gay Bisexual Transgender Intersex Queer+ (LGBTIQ+). Further, the experience of multiple and intersecting forms of marginalisation and discrimination can compound the impact of crime; contribute to lower rates of reporting; and lead to reduced engagement with support services.⁵⁵ Some of these barriers to reporting, including for particular cohorts, are discussed below.

2.1 Barriers to reporting an experience of sexual violence

Across the breadth of the CIJ's research with victim survivors and the services that support them, recurrent themes around barriers to disclosure and reporting arise.

2.1.1 Perceptions of sexual harm as a criminal offence

The first includes the extent to which victim survivors perceive what they have experienced as an offence, or otherwise a harm that should attract a justice response. For example, while understanding of sexual violence and the concept of consent has matured in recent years – no doubt contributing to an increased rate of victim survivor reports of sexual offences⁵⁶ – many of the participants in the CIJ's research had not initially viewed their experiences as being one of sexual assault until they had described it to someone else or had heard others' descriptions of what constituted a sexual offence.

⁵⁵ Intersectionality as relevant in relation to family violence, for example, was explored by the Royal Commission into Family Violence. State of Victoria, Royal Commission into Family Violence, *Summary and Recommendations* (Parl Paper No 132, 2014-2016).

⁵⁶ Australian Institute of Family Studies, 12 April 2024, Family, Domestic and Sexual Offence incidents reported to police.

“I think in my mind, when I pictured sexual assault, I was thinking of a very extreme sort of thing, like something that only happens to a few people and is very violent and I didn’t put myself in that category. But then ... I realised that that did include me after that presentation at school.”

– Participant, “This is my story”.

“I had all these symptoms of someone who had been sexually assaulted but just didn’t realise. So, I went to the counsellor, really just to get help. And then the counsellor says ... ‘you do realise that you’re describing a sexual assault’. And I’m like, ‘what are you talking about?’ Like, I was in shock and denial.”

– Participant, “This is my story”.

“I initially didn’t report and it was a few years later that I was studying and [in my class] they were talking about [sexual assault] and it kind of triggered a bunch of stuff from being pretty badly sexually assaulted ... ongoing over a period of time kind of situation ...”

- Participant, “Key Practice Insights”

The challenge can be further compounded when the way in which people experience sexual violence is so rarely as the public imagines. Rather than the one-off incident perpetrated by a stranger, as noted above, it far more frequently occurs in the context of intimate relationships and/or poly-victimisation.

“... the first two incidents, I didn’t necessarily see them as assault myself because I just didn’t want to think about them and thought it was just, like, embarrassing that’s how my first sexual experiences went. But like coercive, like getting someone to ... do something sexual with you under duress is not consensual ... and I don’t think the system reflects that. They focus way more on, like, my injuries.”

– Participant, “This is my story”.

“[Perpetrator of first set of offences] tried to ring me while I was in session with [counsellor about assault by a different offender] and she saw me go from cool, calm and collected to panic attack”

– Participant, “This is my story”.

“... [The disclosure] was a moment of crisis with my mental health ... And a lot of trauma from not only the sexual assault, but my own experience of domestic violence was coming up”

- Participant, “This is my story”.

Some First Nations participants in the NSW research spoke of the ongoing impacts of intergenerational trauma and the interaction of this on what they described as a “normalisation” of violence. This included sexual violence having been used by powerful figures in the community when community members were younger, such as heads of the local church and on local missions where they had lived.

“... you think you heard the worst story, and then you hear someone else’s story”

- Participant, “This is my story”.

“...[women] think it’s normal because it happened to them when they were little.”

- Participant, “This is my story”.

As noted in Part One, participants in the CIJ’s research into the experiences of Aboriginal victims of crime, released later in 2024, echoed these perspectives. Participants in this research explained that the violence of colonisation and ongoing patterns of hyper-incarceration and child removal meant that many First Nations people who had been victims of family or sexual violence did not feel that their own experiences warranted attention. Compounding this, of course, was the expectation that their experiences would be minimised or dismissed, at best, by justice agencies – discussed further below.

2.1.2 Fearing blame, judgment or being disadvantaged in wider contexts

In addition to perceptions around the severity of the offence or the response that it warranted, some participants in the CIJ's research in NSW described their anxiety around reporting where they felt that they would be subject to blame or judgment. This included participants referring specifically to "rape myths" and ideas about who would be more likely to be believed as what a significant evidence base refers to as a 'deserving victim'.

"I didn't want to go through the whole standing on the like the stand and getting called a liar and getting judged because I was drunk ... So, I was more worried about how I would be portrayed."

– Participant, "This is my story".

Many participants noted that the increased profile of sexual offences – and, more relevantly, the highly publicised trajectory of associated prosecutions – was a major factor in their hesitation to report. Some nominated the devastating impacts of the proceedings involving Brittany Higgins as a complainant and were also aware of the way in which sexual assault advocate Grace Tame had been targeted by media commentators. Others nominated other high-profile cases that were in the media at the time or described the way in which sexual offence matters were known across smaller regional communities.

"...the Jarryd Hayne case was happening at the time ... Every single detail was mentioned. Yeah, they spat on the victim, and I was like, 'I don't want that to happen to me at all.'"

– Participant, "This is my story".

"A lot of people who go to [regional town] court for sexual assault offences get off ... so I wasn't willing to go through and everyone know about it if it was just going to be thrown back in my face..."

– Participant, "This is my story".

Further, if victim survivors were under the influence of alcohol or drugs at the time of the offence, or were engaging in illegal activity, this could also deter them from reporting as they may feel that they were partially responsible. One participant felt shamed for her consumption of alcohol as well as her family's and community's focus on the rape in terms of it being her first sexual experience, rather than a criminal offence. This participant subsequently went through the criminal justice process without her family or friends being aware of this occurring and without them providing any support.

"... My [family] ... were just, like, so angry at me saying like 'why did you drink so much?' ... And like, 'oh, it's a shame you're not a virgin anymore'."

– Participant, "This is my story".

Some participants felt shamed that they had either agreed to go somewhere with the perpetrator prior to the assault or had invited the perpetrator to their house. One participant not only felt blamed in the course of justice system interactions for inviting the perpetrator to her home but distressed that her invitation seemed to have been treated by the perpetrator himself as a licence for sexual offending.

"An invitation to my house is not an invitation to my body."

– Participant, "This is my story".

More generally, interview participants volunteered a range of reasons why they were reluctant to report sexual assault by someone with whom they had an existing relationship. Examples included participants feeling responsible for the welfare of their perpetrator, particularly when they are a current or former intimate partner or family member, despite them being the perpetrator of an offence.

More generally, those who knew the perpetrator, whether in an existing relationship or as an acquaintance, felt that they would potentially be stigmatised by their wider circle of family and friends for reporting. Where participants had maintained a relationship with the perpetrator after the sexual offence, they feared being blamed for maintaining contact.

“I remember thinking, ‘I’m not going to come to the police, they’ll never believe me.’ You know, I have some fault in this because I should have broken up with him ... or something like that.”

– Participant, “This is my story”.

As noted in Part One, First Nations participants also emphasised the powerful role that the concept of shame can play in their community and the impact of that this has on disclosing sexual offences. These participants discussed the way that shame and secrecy had prevented women from coming forward in the past, with women who were Elders and respected persons in the community now carrying other women’s stories of harm.

“... Before I got healing in my life there was no way I would go to the police cos I was too shame ... I think you can tell when Aboriginal women have gone through what I been through, you know, big hoodies, cover your shame, cover your body, until you get healing.”

Participant, “This is my story”.

Participants also explained that shame played a deeply significant role for men in their community in terms of a readiness to disclose their own experiences of sexual violence or seek help.

“... men won’t talk about it, more than women, because they’re too shame”.

- Participant, “This is my story”.

First Nations participants similarly reflected on concerns about how a report would be perceived.

“... when you speak up, you’re like a troublemaker in the community... a dobber ...”.

- Participant, “This is my story”.

These concerns were echoed by participants in the CIJ’s Victorian research into the broader experiences of Aboriginal victims of crime. This included participants who had endured quite extensive intimate partner and sexual violence from another member of their community but did not want to be seen as contributing to community incarceration rates by reporting him to police.

This last point was similarly reflected in the NSW research. Here, some participants emphasised that the over-policing and disproportionate incarceration of First Nations communities meant that victim survivors of sexual offences were reluctant to contribute to these incarceration rates any further. While explaining that they wanted accountability for perpetrators of sexual harm, participants also reflected on the impacts that incarceration could have on a whole family.

“... these women do the time too, taking the children to visit every week”.

Participant, “This is my story”.

Crucial to note, the CIJ's wider research with First Nations communities highlights that abuse of First Nations women often continues to occur at the hands of non-Indigenous men, as noted in Part One. This includes current research with Aboriginal women who have been misidentified as predominant aggressors in the family violence system response, which indicates that Aboriginal women may experience especially high rates of systems abuse from non-Indigenous men.

2.1.3 Fear of reporting to police

By far and away the biggest barrier to reporting, of course, is unfamiliarity with, or fear of, police. It should be noted that anxiety about contacting the police is not limited to participants from particular cohorts or with particular experiences across the CIJ's research but, rather, is often described across our research samples. For example, multiple participants in the NSW study feared reporting because they had not had any contact with police or any justice agencies before. Participants were concerned that they might set off a process that they could not then change or control.

"I didn't want to walk in there and go, 'hey, what happens if I report this?' And they go '... well, you're here now, so you probably should' ... and then be pressured into doing it."

– Participant, "This is my story"

"... to actually go forward and make the report ... even just get to the police station. It took a very long time and a lot of preparation sort of behind the scenes."

– Participant, "This is my story".

"I'd grown up my family telling me that, if I did ever need to go to police, like, report something, then I would somehow end up in jail or in trouble. Which doesn't make sense, but [that] was in my head."

- Participant, "This is my story".

Participants also felt ashamed about police having access to their intimate information

"I had sent [the perpetrator] a lot of sexts and nudes ... That was a massive barrier. I kind of thought, 'I'll give up now', like, gross. ... police officers that had never met me had to look at those photos"

- Participant, "This is my story".

"... they've taken my phone and stuff. It's scary because I didn't delete anything because ... I didn't want to look like I was lying"

- Participant, "This is my story".

2.1.4 Immigration status and barriers to reporting for diverse communities

For those from marginalised backgrounds, the anxiety was obviously compounded. One participant described an experience in which an investigating police officer raised queries about her immigration status in the context of the sexual offence investigation. This in turn appeared to be related to the officer's views about the participant's work in the sex industry. More broadly, two participants who were international students told the CIJ that they did not necessarily know what to expect when reporting to police because they had no knowledge of Australian criminal justice processes; did not speak English as their first language; or were concerned about their capacity to complete their studies if they pursued a criminal justice response.

The CIJ notes here that factors more generally contributing to under-reporting for this cohort, and which also impede access to appropriate services, include:

- language barriers;
- lack of knowledge and familiarity with available support services, as well as lack of awareness about rights and legal protections;
- social stigma and shame relating to some crimes (such as family violence); and
- mistrust of authorities.⁵⁷

Further, the CIJ notes that women from Culturally and Linguistically Diverse (CALD) communities who have experienced sexual violence face additional barriers of financial and emotional dependence on others, family, cultural, religious and community pressures.⁵⁸ A lack of culturally appropriate services, instances of racism, bias and over-policing may also undermine engagement of people from CALD communities with victim services.⁵⁹ Restricted visa status can also impact eligibility for certain supports, where access to Centrelink benefits, income support, health services and public housing is non-existent or limited, or where this can result in significant administrative complexity when seeking access to supports. Some of these barriers relating to eligibility for support have broader applicability to temporary visa holders who have experienced a crime.⁶⁰

Echoing some of these wider barriers, other participants in the NSW study who were from culturally diverse backgrounds but who were not recent arrivals volunteered particular concerns related to family and community perceptions around sexual assault. One described her family focusing on the rape as the loss of her virginity, as noted above, while another spoke of feeling embarrassed to disclose her experience to her extended family, because of their particular cultural background.

“Telling my parents was one of the hardest things to do. They’re Vietnamese, they’re conservative, they’re Catholic ...”

– Participant, “This is my story”.

Participants in the CIJ’s wider research on crime victimisation have also highlighted that inaction or disinterest from police based on systemic racism can be barriers to reporting a crime.

“I did not report it because I didn’t think police would help ... they didn’t respond in the first incident [involving serious racial violence and death threats] so I wouldn’t get help for this.”

Participant, “Key Practice Insights”.

⁵⁷ Segrave, M. *Temporary migration and family violence: An analysis of victimisation, vulnerability and support*. (Monash University, School of Social Sciences, 2017).

⁵⁸ Taylor, N., and Putt, J. ‘Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia’ (Trends & issues in crime and criminal justice no. 345, Australian Institute of Criminology, 2007).

⁵⁹ Australian Institute of Family Studies, ‘Enhancing family and relationship service accessibility and delivery to culturally and linguistically diverse families in Australia’ (AFRC Issues, 3, 2008).

⁶⁰ Thomas, K., Segrave, M. and InTouch Multicultural Centre Against Family Violence (2018). *Research Brief: Support options for migrant women on temporary visas experiencing family violence in Australia*.

2.1.5 LGBTIQ+ communities and barriers to reporting

Similarly, the CIJ's research in NSW also heard from LGBTIQ+ interview participants that discriminatory or minimising responses from police that involved heteronormative assumptions and stereotypes were damaging and could discourage people from reporting their experiences or seeking help.

"I already knew from the get-go I'm going to have to be dealing with discrimination, right. Gay woman. Angry lesbian trope..."

– Participant, "This is my story".

This particular participant also felt their experience was being diminished by a discriminatory response from a medical professional following disclosure.

"...I'm sitting with the [medical professional] and she's asking, 'anything traumatic happen recently?' I'm like, yeah [and] told her my situation ... without flinching she goes 'are you still a lesbian?' I go 'why, was it supposed to fix me?'"

– Participant, "This is my story".

"I was actually deadnamed⁶¹ ... from police during their investigations as well, despite me formally and legally changing my name ... and I mean that particular officer would have had to have done some digging because my legal name was changed for quite some time ... I believe that they were seeing whether or not I was going to snap and bark and be aggressive ... I felt, like baited into something."

– Participant, "This is my story".

Contemporary surveys from Australia certainly indicate that 75 per cent of people from LGBTIQ⁶² communities experience verbal abuse; 41 per cent threats of physical violence; and 23 per cent physical assault. Victimization rates are higher for transgender survey participants, with 92 per cent of trans women and 55 per cent of trans men experiencing verbal abuse, and 46 per cent of trans women, and 36 per cent of trans men experiencing physical assault. Survey data from a Queensland study also suggests a lack of assistance sought by victims from LGBTIQ communities. Of all survey respondents who reported victimisation in a two-year study period, only a quarter (25 per cent) sought help.⁶³

More broadly the RCFV referred to research showing that:

- around one-third of people in same-sex relationships experience intimate partner violence;
- there are low rates of reporting family violence to the police in LGBTIQ communities. For example, in one study, only 18 per cent of those who had experienced forced sex and 20 per cent of those who had been injured, reported the incident to the police;
- Victoria Police data indicates that around eight per cent of all family violence incidents involving a male perpetrator, and three per cent of all incidents involving a male victim, related to violence between current or former same-sex partners;

⁶¹ Deadnaming is the act of referring to a transgender person by a name they used prior to transitioning, such as their birth name.

⁶² Each of these communities and the barriers they face are distinct and we refer to 'LGBTIQ' collectively for convenience.

⁶³ Alan Barman and Shirleen Robinson (2010). 'Speaking out: homophobic and transphobic abuse in Queensland.' Australian Academic Press.

- People from LGBTIQ communities are less likely to report violence, to seek support or to identify experiences of family violence and abuse. This is partly because of a fear of 'outing', as well as actual or perceived discrimination and harassment;
- The justice system and service providers are frequently unsupportive of intersex individuals.⁶⁴

2.1.6 People engaged in sex work and barriers to reporting

People engaged in sex work, meanwhile, also face particular barriers to reporting related to significant stigma surrounding their profession. As briefly referred to above, participants in the CIJ's study in NSW who were engaged in sex work described negative treatment from police based on stigma around sex work as a barrier to reporting.

"I did not feel comfortable calling police ... I wasn't out as a sex worker, that was like a big concern for me that I would be on government records as being a sex worker"

– Participant, "This is my story".

"I had previously had negative experiences with police and reporting sexual assault ... because you're a sex worker and you're selling one service, you've [been seen as having] given up your right to be upset about an assault that wasn't within what you agreed to. Sort of saying that it doesn't really matter what happens to you because you're in a different category."

– Participant, "This is my story".

2.1.7 Prior histories of victimisation and barriers to reporting

Further, several participants in the NSW study had prior experience of domestic, family or sexual violence during childhood, with a lack of appropriate response by police at that time contributing to their lack of confidence that police would respond any differently to their experience of sexual assault in adulthood. One participant described a history of police declining to follow up on breaches of a protection order which made her think that reporting anything else, including a sexual offence, would not be taken seriously.

"I didn't trust police anyway because ... growing up I used to have to call the police a lot being in domestic violence and like there was like nine of us in the three-bedroom house"

- Participant, "This is my story".

"I copped like a whole range of different victim blaming stuff [when reporting childhood sexual abuse] which then has pretty much impacted any other time I've needed to go [to police]."

- Participant, "This is my story".

"I had been to other police stations around domestic violence ... nothing was really done about it, and that violence continued."

- Participant, "This is my story".

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⁶⁴ State of Victoria, Royal Commission into Family Violence, Report and Recommendations Volume V (2016), 143.

2.1.8 Negative experiences of other systems

Other examples included considerations around wider systemic or legal processes. This included one participant who described being raped by her former partner prior to a family law mediation as her former partner's way of intimidating her to agree to his demands. This participant did not want the police response to impede the associated property settlement, however, as the settlement was what was going to give her some financial independence and rid her of the perpetrator's wider systems abuse.

“And they were you know, ‘we’re going to serve him with an [protection order]’, and I was begging them [saying] ‘no, we’ve got mediation My house depends on it... If you give him an [order] we can’t do that’, and they ended up saying, ‘no, it’s actually out of your hands.’”

– Participant, “This is my story”.

Participants who had previously been arrested or charged by police, including as a result of their own experiences of marginalisation, also considered it very unlikely that they would be believed or experience a positive interaction with police if they reported a sexual offence.

“[Former abusive partner] got arrested a few times, but I got arrested with him. Because I was with him, so they arrested both of us. ...I used to automatically think, even when I haven’t done anything and I see them, ‘oh they’re coming to arrest me’.”

– Participant, “This is my story”.

“[My mental health and disability issues were triggered by the assault] ... and the police and ambulance were called ... and then when I’ve run past the police, I was charged with assault ...”

– Participant, “This is my story”.

“The police judged me cos I got COVID fines. It doesn’t matter what I’ve done, I’m a victim of crime”.

- Participant, “This is my story”.

Important to highlight, people with intellectual disabilities or cognitive impairments are disproportionately likely to have had prior interaction with police. This can mean that they may be less likely to report a sexual offence in the first place or to disclose all the details relating to the offence if they feel that this may lead to them being disbelieved or charged themselves.

First Nations participants in the CIJ's research for the NSW study reflected on the significance of the role of police and other statutory authorities in their capacity to report experiences of harm. These included both historical and current experiences.

“... when I was growing up, you see a police car, you run and hide. And the black cars were welfare, come to take the children away. We made sure that the kids with the fairest skins were safely hid first, then the rest of us hid. ... Now I’m trying to teach my grandkids that police are safe, but they see them taking our people away in handcuffs. ... Then DOCS march into our communities and rip our children away too.”

- Participant, “This is my story”.

“...of the 20 people who may go through something, only one will ...go up to the police.”.

- Participant, “This is my story”.

Reflecting here on the wider Victorian research with Aboriginal victims of crime, the eligibility criteria in the Victorian research was not limited to people who had reported their experience. As a result, the vast majority of the 23 Aboriginal participants in the Victorian research had not reported their experiences of crime, despite many being incredibly serious. In reflecting on this, participants stated bluntly that, despite the work over decades to improve Victoria Police's capability and capacity to work with First Nations communities, police and other statutory authorities were not safe places for Aboriginal victims, including for those participants who had experienced clear and quite severe police brutality. These participants told the CIJ that they far preferred to seek support from their family, community and Aboriginal-controlled organisations than to seek the 'justice' on offer from the mainstream system.

2.2 Reasons for reporting, despite the barriers

As a result of all these significant barriers to reporting, just some of which are highlighted above, the CIJ researchers asked participants in the NSW study why they had, in fact, ultimately reported to police (given that this was the remit of the particular study).

2.2.1 Negative consequences for the offender

Some participants explained that they had reported because they wanted to see the person who had assaulted them experience some kind of negative consequence as a result of being connected with the case, including having to answer questions from police or attend court.

"I wanted him to be arrested that same day ... I really just wanted him to go to jail because it's, I don't think anyone should be able to walk free after doing that."

– Participant, "This is my story".

"...the next part was that 'ok what do you want to do with it?' I go 'we're reporting it! ... I'm gay, there's semen in my vagina. I didn't put it there and I didn't ask for it to be put there ... I'm not on the pill and a stranger has just drugged and raped me, fucking report the bastard.'"

– Participant, "This is my story".

This contrasted with the perspective of one First Nations participant, who explained that she did not view incarceration as rehabilitative and that she had tried to push for the offender, who had experienced extensive childhood trauma, to receive support to understand the impacts of his behaviour.

"Everyone needs to sit down and tell him what needs to be done and what rehab he needs for his own issues. The whole point is that you don't want him to reoffend, and no one cared that I was trying to give them helpful advice for his rehabilitation."

- Participant, "This is my story".

A participant in the CIJ's Victim Support research similarly noted that criminal justice responses were unlikely to address an offender's behaviour over the long term.

"You know, it's no good just locking these people up in jail because of their crimes, because it's never going to fix it ... "

- Participant, "Key Practice Insights".

What emerged as more important than the sentencing outcome for many victims in the CIJ's Victim Services Review, in fact, was the extent to which they felt that their experience had been recognised – either through the court process or by the broader system - and whether they had been supported to understand *why* a particular outcome had occurred.

2.2.2 Wider accountability

Multiple NSW participants explained that they had reported their experiences to police because they wanted some form of accountability. This did not necessarily mean punishment or a negative consequence, but rather they wanted the perpetrator to recognise that their behaviour was wrong.

“I obviously don't know what other people are hoping for when they give their statement, but ... I let the officer know that all I want is for the ... guys to realise that what they have done is wrong I just want him to talk to them and explain to them so that they won't do it again ...”

– Participant, “This is my story”.

“I think it came down to the fact where I was like ‘well, I know he needs to be held accountable.’ I could not do it and be totally fine with that. Or I could not do it and then six months later be like, ‘what if I'd?’ You know, yeah like if I heard or saw him on the news or something”

– Participant, “This is my story”.

“I actually just wanted a simple apology from the perpetrator ... I know that sounds like not enough or anything but that's what I wanted.”

– Participant, “This is my story”.

Reflecting the endemic nature of sexual assault across Australia, many NSW participants had family or friends who had experienced sexual assault or had experienced sexual assault themselves from multiple perpetrators over time. This made them keenly aware that their own most recent experience was not an isolated incident or extreme example but, rather, a common occurrence that they felt an obligation to stem. Adding to this, some explained that they felt that they were expected to report by others or felt that they otherwise had an obligation as a member of a civil society.

“... real or imagined, I definitely felt a pressure that everyone else was working really hard to get this person to be held accountable, and ... that my involvement would really help.”

– Participant, “This is my story”.

“I had some issues like physical injuries. So, I went and saw [a GP and gynaecologist] and then was kind of told or insinuated by a lot of people that I had a responsibility to report it.”

– Participant, “This is my story”.

“I thought that that was what you were supposed to do. Someone does something wrong, you go to the place ... they don't do the wrong thing anymore. ... And you know, if you didn't do that, then this behaviour keeps happening ... you just go to the police so that they can be like, ‘hey, what you do is bad’ and that person goes ‘OK, sorry, it was bad’.”

– Participant, “This is my story”.

One participant was encouraged by wider media coverage and greater community recognition of sexual assault at the time.

“The ‘Me Too’ movement was, you know, really, it was everywhere at that point so there was this huge push for me to go to the police.”

– Participant, “This is my story”.

Other participants had not actively chosen to report their offence. Rather, it occurred because the police were contacted by a family member, friend or colleague, or a professional had encouraged it.

“I was intoxicated when it happened to me and one of my friends came and found me ... just called the police. So it wasn’t a conscious like, ‘I’m going to report what happened’, it just happened.”

– Participant, “This is my story”.

“... my colleague actually called the police. So, I was unsure as to whether I wanted to go ahead with it ... and didn’t want to get anyone in trouble”

- Participant, “This is my story”.

“...so my psychologist actually called the police for me. Because I was like, scared to make that initial contact. ... And from the get-go, to be honest, it was a bit like, ‘oh God, like this is going to be shit’ ...”

– Participant, “This is my story”.

In one case a participant with an intellectual disability had been assaulted in a public place and contacted her caseworker to disclose it. The caseworker then contacted the police.

“The police came looking for me. And they found me, and I was all upset.”

– Participant, “This is my story”.

In one case police contacted the participant directly, having become aware that they might be connected in some way to the perpetrator.

“I was actually approached by the police ... I’ve never met anyone else who that’s happened to, I think that’s a rare experience, and that’s because there was already an investigation ongoing.”

– Participant, “This is my story”.

For one participant, the initial disclosure to family and friends, followed by repeating their story to health and other support services, made them feel that reporting was not much of a step further as they had lost control of the information.

“So many people were involved I just thought, I might as well just tell everyone everything because it doesn’t matter, it isn’t my story anymore.”

– Participant, “This is my story”.

This feeling of losing responsibility was, to one participant, a welcome relief.

“It was more about getting my story out, giving it to someone else and them to go ‘OK, should we charge him, should we not?’ I just wanted it to be in someone else’s hands.”

– Participant, “This is my story”.

2.2.3 Reporting as a result of safety fears

Two NSW interview participants also described the considerable fear that they continued to feel about the accused, particularly where the sexual offence had occurred in the context of ongoing domestic and family violence, or alternatively where it had occurred in the context of a small regional community. Reporting was therefore a way of protecting their own safety in the future.

“... the only thing that I wanted at the time was for my ex-husband not to ... approach my house again.”
– Participant, “This is my story”.

“...living in the same town as my attacker, I kind of wanted to know ... he was going to be charged”
– Participant, “This is my story”.

2.2.4 Being one of multiple complainants in the same prosecution

Two NSW participants were one of multiple victims of their respective perpetrators. Awareness that there were other victim survivors who had come forward made them feel reassured about their own decision to report or participate in an investigation, including where they had previously felt reluctance.

“Other women have also come forward against him which made me feel better about myself.”
– Participant, “This is my story”.

“... the police told me it would help the other girls if I did ... I kind of just went ‘well, yeah if it will help them then I will do it.’”
– Participant, “This is my story”.

2.2.5 Protecting others

By far and away the most significant reason for reporting amongst the NSW participants, however, was because they wanted to support other victim survivors of the same offender, or to prevent their own experience from happening to someone else. This included participants who had no expectation that their own report would go any further.

“I knew that, if it did happen again and if the same name comes up ... if at least nothing happens with me ... at least I can help somebody else”.
– Participant, “This is my story”.

“I knew I needed to report because ... I didn’t want my perpetrator to hurt someone else ...”.
– Participant, “This is my story”.

“... I wasn’t coming in to protect me, I was protecting the next woman”.
– Participant, “This is my story”.

“... one of my friends had actually seen the offender with another girl ... I was like, ‘no, I wouldn’t want another girl to go through this’ ... I wasn’t more thinking about me, I was thinking about future women.”
– Participant, “This is my story”.

2.3 Addressing barriers to reporting

Crucially, the CIJ's wider research, including the NSW study, demonstrates that the absence of appropriate community-based support can function as a barrier to reporting. In the NSW study, for example, several participants had completed an online reporting mechanism which allows their experience to be put on record without it being a formal police report. These participants chose this option as a way of registering their experiences, particularly in the event that other offences came to light, as noted above. Participants emphasised, however, that the experience of completing a SARO could still be confusing and distressing and that having support when doing so was therefore crucial.

"It was stressful, really stressful, but [support practitioners] were good ... I wouldn't have been able to do it without them ... I think it's very important that women have someone help them do that".

- Participant, "This is my story".

More broadly, the participants in the NSW study noted that reporting their experiences usually occurred in the context of support from family, friends, colleagues or health professionals, with only a minority reporting their offence to police without some kind of support in place.

More broadly, the CIJ's forthcoming study into the experiences of Aboriginal victims of crime highlights that receiving support from family, community and culturally safe services is much more of a priority for Aboriginal people, including those who have experienced very serious offences. To this end, findings indicated that an alternative reporting mechanism or culturally safe supports to facilitate reporting must be a foundation of any legal response that can be seen as appropriate or relevant to First Nations communities.

Certainly, apparent across the CIJ's program of research is the need for coordinated systems responses that facilitate early and sustained access, *"from prior to reporting, to after the conclusion of formal justice system processes"*⁶⁵ to the specialist support and therapeutic interventions that can help address the trauma from domestic, family and sexual violence.

Findings from both the CIJ's work *Strengthening Victoria's Victim Support System* and the associated review of the Child Witness Service indicate that, for many vulnerable cohorts, barriers to reporting crime to police translates into barriers to accessing the supports necessary to heal from the harm caused. It was also apparent from the review of the Child Witness Service that the number of referrals to the service of children and young people from First Nations communities and those within the out-of-home care and youth justice systems did not appear to reflect their likely rate of crime victimisation.

The disproportionately high rate at which women, and especially Aboriginal and Torres Strait Islander women experience sexual assault – combined with the relatively low rates at which they make a report in relation to that assault, and the length of time it takes them to make a report (particularly for assault experienced in childhood) – also suggests that a significant proportion of victim survivors have minimal or delayed contact with systems capable of linking them with assistance for the trauma that they have experienced. This is reinforced by the CIJ's Victim's Services Review and Aboriginal victims of crime research, which showed that early access to appropriate support can help victims of crime to feel confident about coming forward and reporting.

⁶⁵ As set out in the Terms of Reference.



Key to the current Inquiry, therefore, is the incorporation of understanding about the impacts of trauma left untreated, including on the ability of victim survivors to report sexual assault and to navigate criminal justice processes that may follow. Also crucial to recognise in the Inquiry's considerations, are the availability of these services and supports which can serve as a foundation for reporting sexual offences, including supports which are culturally appropriate, or which can help to mitigate the impacts of shame or stigma for victim survivors from a range of intersecting experiences and identities.

Finally, while community awareness around sexual offences may have increased in recent years, the CIJ's most recent studies in this area demonstrate that a "normalisation" of harm or certain types of behaviour, as well as an absence of understanding in certain contexts, may prevent some victims of sexual assault from recognising their experience as criminal offence – and, associated with that, one deserving recognition and a serious response.

3 Part Three - justice responses once reporting occurs

Where barriers are overcome and victim survivors of sexual offences do report their experiences to police, of course, an extended field of hurdles lies stretched out ahead. Part Three of this submission describes some of those hurdles encountered by participants in our NSW study, also featuring reflections from the CIJ's wider victim-focused research where applicable.

3.1 Police responses to reports of sexual violence

3.1.1 Features of positive experiences in reporting

Before these hurdles are explored, it is particularly important to highlight where they were not apparent or were removed – articulating what a positive experience of reporting to police actually looked like for some participants in the NSW study. This ranged from positive interactions with detectives, general duties officers, and members of the specialist policing responses, with some relating to the prompt and comprehensive response that victims had received when they first initiated a report.

“I called the police ... and there were two policemen here within 20 minutes... then within an hour there were two detectives here. So, they arranged for me to have my girlfriend take me up to the ... hospital to do an assault test ... and while we were at the hospital ... they'd served the [protection order].”

– Participant, “This is my story”.

“... within 10 minutes they already had a detective on my case, like all ready to look after me ... and they were just super supportive. ... and then he picked me up from my house, dropped me off at the hospital and then picked me up from the hospital and dropped me back home with one of my friends ... I did feel quite invalidated ... like when it first happened. Like ‘oh I just got too drunk’, this and that, but the detective was like, ... ‘you were a victim in this whole situation’. Like, not at one point did he take anything away from my experience ... the police were just wonderful ... I don't think there is anything more the police or the hospital could have done for me.”

– Participant, “This is my story”.

As well as prompt responses and immediate validation, participants described other features of a supportive experience while making a report or giving a statement at the police station. These included:

- having a safe and private space to be interviewed;
- having a female officer available where this was the victim-survivor's wish;
- being questioned in a calm and respectful manner that indicated that the victim-survivor could take their time;
- being listened to and affirmed that they were doing the right thing in reporting.

“they were all very nice ... [the male officer] said we needed to have a woman in the room with us as well. ... I had, like, actually quite a good experience with them. They were very sympathetic ...”

– Participant, “This is my story”.

“I had a female police officer. Because I requested one.... She was really good. I felt like she was a good person, a genuine ... like the way she asked questions and stuff”.

- Participant, “This is my story”.

"[The detective] was very, very sort of calming and he didn't stand over me ... And he was very patient, didn't talk over me ... and when I'd stop and say things like 'oh, you know, it's probably nothing' ... he would say 'no, it's not nothing ... what you're saying is really serious'."

– Participant, "This is my story".

"The detectives were really good at reassuring that I was doing the right thing as in filing the report ... but also reassuring me that whatever I said there's no wrong answer and, if I couldn't remember something that's ok and it wasn't going to be held against me ..."

– Participant, "This is my story".

While specialist detectives were recognised as highly valuable in theory, participants described this more as being dependent upon the individual and whether they appeared to care and be invested, rather than the specialisation of the role.

"... they still found the time to, you know, be invested in the case and really seriously want justice for me and for the other girls. That was just so powerful."

– Participant, "This is my story".

"... the way that he spoke to me so calmly and gently in his approach ... I was crying and I actually said to him, can I give you a hug because you are the first person that has truly believed me."

– Participant, "This is my story".

More broadly, the length of the relationship with a detective (where this was not impacted by absences and turnover) meant that the quality of the interaction with the investigating detective was of more significance in terms of interview participants experiences overall.

"If I hadn't heard from the legal team ... I would ring [my detective] and he would give me an update on what he knew or what he could find out on his system."

– Participant, "This is my story".

"You could just tell that she cared so deeply about how outcomes, and I think ... there's so much power I guess, in police officers getting a little bit personally involved in it."

– Participant, "This is my story".

"... I'm literally lucky that I got a detective who actually was experienced, you know, kind of learned in all of these like areas and learning. So, I felt really safe and everything ... but I'm sure a lot of other complainants have not really had that experience ..."

– Participant, "This is my story".

Despite the positive experiences outlined through the examples above, it is important to note that a positive experience at one point does not necessarily equate to a positive experience overall. This means that some of the examples described above were volunteered by participants as a positive feature of an otherwise varied or negative experience.

"And [the female officer is] like, 'I totally understand'. And, you know, 'I'm really sorry. And you're so brave for reporting this.' ... But then I had the sergeant who took me through the actual statement and that was a completely different experience. Even though I know they have to be kind of you know, impartial ... but just there was no empathy ..."

– Participant, "This is my story".

In fact – and crucial to note – only one out of the 29 interview participants in the NSW study had a positive experience right throughout her entire interaction with police. Of significance, this was also the only participant who actively elected not to pursue her matter further. In many ways it was clear that this single participant felt sufficiently supported and believed to make a clear and active choice about what was best for her in the circumstances, rather than feeling that the decision was out of her control.

“It was completely my choice throughout the whole process ... from the word go, it was ‘if this is what you want to do then we can do this. If you just want to make this report and not charge, we can put this on a shelf, and if you want to revisit this is five years, we can charge him in five years because we’ve got all the evidence from when the event occurred’.”

- Participant, “This is my story”.

Noting the above participant’s experience as the exception, the following sub-section provides examples of the points of interaction which need to be considered to ensure a consistently positive experience for all victim survivors of sexual assault, regardless of where or to whom they report.

3.1.2 Features of negative experiences in reporting and the associated impacts

The CIJ notes here that the term “attrition” refers to matters not progressing or discontinuing between the point of initial report and ultimately reaching trial. Too often it is assumed – or even suggested by those working across justice system agencies – that “attrition” is most commonly the result of complainants withdrawing their statements and electing not to proceed for a variety of reasons, including those that serve as barriers to reporting in the first place. This was certainly the suggestion from professional stakeholders contributing to the *This is my story* research.

Crucial to note, however, the CIJ’s research with victim survivors in NSW (and elsewhere) found that the “attrition” in our research generally occurred either in the context of participants choosing not to follow up when they had heard nothing further from police, or most commonly when a decision was made by police or prosecutions not to pursue the matter.

This in turn occurred either as the result of an overt police decision not to progress the investigation, or by default when the investigation was not conducted in a timely or thorough way. In fact, a striking finding was that, despite negative experiences of reporting, the vast majority of participants wished to persist with the process and went to considerable lengths to see this occur. This finding was echoed in the CIJ’s forthcoming research into the experiences of Aboriginal victims of crime and into the experiences of Victorian victims of crime more broadly. These qualitative findings are arguably supported by recent research released by BOCSAR in which it was found that the largest point of attrition is at the police investigation stage, with only 15 per cent of reported sexual assaults resulting in legal action being commenced by police.⁶⁶

While highlighting the negative experiences of many participants who reported to police, the wish of victim survivors to see their matter properly investigated and pursued is important context for the Inquiry to bear in mind, summarised by one participant’s reflection:

“...if somebody’s gone to the police, they obviously want you to do something.”

Participant, “This is my story”.

⁶⁶ BOCSAR

3.1.3 Impact of the initial police interaction

An individual's experience at the front desk or when police attend a callout can obviously deter them from going further with their report. Participants in the NSW study shared negative experiences of their first contact with police when they presented to a station to report or when they called police for help. These experiences included feeling that the police receiving the initial report lacked empathy or understanding, as well as feeling that there should have been more specialist support available from the start.

“... from the get-go, anyone that's [reporting] something to do with DV or sexual assault, coercive control, or anything, [straight away] the police should be offering forms of support ...”

– Participant, “This is my story”.

“I asked at the front desk ‘I need to talk to somebody about my ex and the way he's been treating me’ ... and they're kind of like, ‘Oh, no one's here to talk about that right now ... what do you want to speak to them about?’ And I said ‘the way he's treating me, ... he's very violent.’ [And the officer says] ... ‘well, you know ... the domestic violence people will be in on Monday’. And [it was only when] I said to him, ‘look, I don't feel safe ... let's put it this way, he hits me and he rapes me.’ And [he] just went, ‘oh yeah, I'll see if there's somebody that you can talk to.’ ... I almost walked out.”

– Participant, “This is my story”.

Some participants specifically volunteered that having a trained support person to explain what to expect from the process – to sit with them while giving their statement, or to provide debriefing and support immediately afterwards – would have made the difference to their experience and, in one case, to having any further contact with police afterwards.

“Just someone who can get to know you a bit beforehand, get an idea of how you work and what your responses might mean. And someone to sit with you afterwards and have a cup of tea and check that you're alright before you go home. Just treat you like a human being if that's not the job of the police”.

Participant, “This is my story”.

“I would have liked ... the offer of something like ... ‘are you going to need to see a counsellor afterwards? Do you want a social worker or a support person in the room with you? Do you want to have a chat with one of them before you make your statement just so you know what to expect?’ ... Like ‘what can we do to make this more comfortable for you?’”

– Participant, “This is my story”.

One participant explained that police had been immediately dismissive of their experience on the basis of a perception that the participant was physically large and could have defended themselves.

“I ... had a police officer say to me, ‘well, you were a dude, why didn't you just knock him out’”

– Participant, “This is my story”.

Aboriginal participants in the CIJ's Victorian research, meanwhile, reported hostile responses as soon as they reported. Examples included being looked up on the police system and described as a result as being “known to police”, despite having come to report a serious crime that they had experienced. This experience made this particular participant immediately leave the police station and not seek further help.

3.1.4 Physical environment of the police station

Participants also described the intimidating environment of the police station as making them feel frightened in that setting.

“... we were in that waiting area and there’s people that were violent.... there was this guy going off at the police.”

- Participant, “This is my story”.

“... the room was very cold metaphorically, but also physically ... It didn’t feel very welcoming at all. It’s just kind of a desk. Kind of funny smell, and just cold, hard facts.”

- Participant, “This is my story”.

“It’s a funny place to report a crime ... I understand that they’re going to get all kind of walks of life coming through and that they need their protection and whatever, I get that. But someone’s coming to report a crime, surely there’s a more inviting and healing environment that you could provide just to make going in there not such a barrier, let alone ... an Indigenous person going in there”

– Participant, “This is my story”.

“...they should be doing it in a more comfortable environment, like nice lounges, nice atmosphere, no criminals around singing out...”

Participant, “This is my story”.

Participants also offered examples in which they simply wished to have privacy once they arrived.

“I was helping a friend report a sexual assault and the woman who greeted us in the police station didn’t take us into a private room ... just, over the desk, middle of the police station, [she] was like ‘OK, tell me what happened.’ And I was like, ‘she shouldn’t have to tell you here, can she tell you in a private room?’ And the woman was like ‘no I need an overview first’. And I was like, ‘well, we’ll give you an overview privately,’ like, [what would’ve happened] if... I wasn’t there?”

– Participant, “This is my story”.

3.1.5 Nature of questioning when taking statements

Another theme to emerge across the NSW study was the very detailed and specific questions that police are required to ask when taking a report or statement, the nature of which complainants can find extremely intrusive. Participants suggested that they found the nature of the questions that they had been asked confronting and very detailed, with one explaining that she felt quite overwhelmed.

“... after the first few questions I was like, ‘Oh my God, how am I going to survive this?’ Because it started with questions about just the Uber drive ... 15 questions, maybe more.”

– Participant, “This is my story”.

That said, participants generally accepted the rationale for police questions when they were put respectfully, and ideally when the reason for asking them was explained, as indicated below.

“I feel like [the police member] informed me of everything ... it’s very graphic in a way, when you do the report like, some of the questions he asked, I had never even thought of. And it was very confronting. But the way that he approached it, he was very respectful ...”

– Participant, “This is my story”.

Some participants experienced language barriers in answering questions accurately and found this distressing. This included one who did not have English as a first language, and another who lived with a disability and found remembering the sequence of any events or describing things difficult. These participants felt that their own limitations in being able to use accurate terminology – either for specific body parts or for geographical features about the location where the assault took place – undermined the interest of police in investigating further.

“It was tricky because it was trying to remember everything that happened.”
- Participant, “This is my story”.

“.. they asked me about the ins and outs of my whole life ... wanting to test whether I was truthful”.
- Participant, “This is my story”.

“... they asked horrific questions, like not even my therapist would be that invasive...”
- Participant, “This is my story”.

Further, the research highlighted that police may not be immediately aware that the complainant has a disability, particularly where this is a cognitive impairment or intellectual disability.

“My [support person] and I asked them to reframe or break down the questions so that I could answer them properly, but they wouldn’t”.
- Participant, “This is my story”.

First Nations participants also suggested that having community Elders or respected persons present would help Aboriginal victim survivors to feel supported and understood during an interview. They similarly explained that it was particularly culturally inappropriate and unsafe for Aboriginal women to describe experiences of sexual offences to a male police officer, as noted earlier in this submission. This meant that the presence of a female, Aboriginal police officer was crucial if First Nations women were going to be encouraged to report and disclose their experiences of sexual harm. The CIJ heard, however, that access to an Aboriginal-identified police member was very restricted, with one participant faced with a choice between accessing culturally safe support and progressing her report.

“I requested an Aboriginal worker, an Aboriginal female, and was advised that I couldn’t have one. I was told that it would delay the investigation and I would have to swap to another area. And I thought, well, I don’t really want to go for that, then. Then they brought another female officer in and stood beside [the investigating officer] just to tick the box. Then I never saw her again”.
- Participant, “This is my story”.

3.1.6 Feeling judged or shamed during questioning

The NSW study indicated that police responses during the reporting process were often still mired in concepts of ‘real’ rape and judgments about the victim survivor. Participants observed that police appeared to be more inclined to respond respectfully and proactively where the assault fitted the stereotypical conception of a sexual assault. In other words:

- an assault committed in public;
- as a one-off by a male stranger;
- against a female victim survivor with no criminal history; and
- one that is reported to friends, family and police straight away before presenting for forensic examination.

Clear themes from the research also indicated that complainants who did not meet this were more likely to receive a dismissive or overtly negative response. This includes complainants who had been affected by alcohol at the time of the offence, those who were engaged in other risk-taking behaviours, and those who had not reported the offence/s immediately; as well as victim survivors who did not fit the mould of a 'real' victim.

Examples from participants included police offering opinions about their behaviour or what they could have done in the circumstances.

"... [The police officer] said 'what have you learned from this?' And I felt a bit kind of taken aback because it was like, what? What am I supposed to have learned from this?' Like, it's not exactly a learning lesson. And he kind of talked about how I shouldn't put myself in risky situations and that as a teenager, it is common to take part in risk taking behaviour, because I was drinking underage, but I mean, I don't think drinking underage warrants being sexually assaulted."

– Participant, "This is my story".

"I remember vividly one of them saying 'why were you so naïve?'"

– Participant, "This is my story".

"[The police officer] said, 'I have daughters, so I know about guy problems'. I was so confused, this was not 'a guy problem' ... after I finished giving him my statement, he [asked] 'So, what is it that makes you think that this was a sexual assault?' Which I then had to explain it to him"

– Participant, "This is my story".

Some participants had spent some time gathering the courage to report, only to feel that they were dismissed because their matter had occurred over three months prior to the report and was therefore deemed to be 'historic'.

"[The police officer] was just like, 'look, if it did happen, there's no evidence Why did you report it? What were you hoping for?' ... and he just said 'we can't do anything about it.' And then that was it."

– Participant, "This is my story".

One male participant who experienced an assault by a female in a position of authority took some time to come forward given the stigma and the impacts of the trauma. Once he had done so, the participant described the two male police officers dismissing it entirely:

"They asked 'did you enjoy it? You must have enjoyed it'. And there's me sitting in my trauma and they're laughing"

- Participant, "This is my story".

This participant left the police station unsupported, distressed and considering self-harm.

3.1.7 Understanding the impacts of trauma and having a trauma-informed approach

Important to note is the extent to which police understand the impacts of trauma, including on victim survivor memory. Evidence clearly shows that memories can be fragmented and disorganised after an experience of trauma,⁶⁷ but inconsistent statements can still be interpreted by police as untruthful. Similarly, research shows that trauma can elicit a range of responses which can seem counterintuitive when someone is faced with a direct threat.

⁶⁷ For example, see Christianson, S. & Loftus, E.F. (1987), 'Memory for traumatic events', *Applied Cognitive Psychology*, 1(4), pp. 225-339 and Foa, E.B. (1993), 'Posttraumatic stress disorder in rape victims', *American Psychiatric Press Review of Psychiatry*, 12, pp. 273-303.

For example, one stakeholder in the NSW study described an example where a victim survivor had driven the perpetrator home after the offence, which police could not understand. Some participants echoed their concern that behaviour that was designed to manage their trauma and keep themselves safe after the offence would be misunderstood.

“So fawning was my primary trauma response, And I didn't think I fully understood that.”

– Participant, “This is my story”.

“... being in a relationship with the perpetrator does complicate things in court or in this reporting stage because, when the police are gathering the information, ... they want to know if a jury member, any sort of reasonable person, would think that you were at fault for it.”

– Participant, “This is my story”.

In some instances, this lack of understanding about trauma responses led police to discourage complainants from taking the matter any further, as illustrated in the example below.

“I'll never forget this part, he said, ‘If this was to go before, you know, a jury or, you know, a defence lawyer would jump all over this ... now, you can recognise it for what it was, but back then they were enjoyable experiences for you, weren't they?’”

– Participant, “This is my story”.

“They said ‘you're in a relationship, nothing to see here’ ... and we weren't even in a relationship, [the perpetrator] had just convinced them we were.”

- Participant, “This is my story”.

One participant explained that a lack of a trauma-informed approach was illustrated by the fact that her initial request for a female police officer was ignored after her statement had been completed and the investigation was taken over by a male police officer.

“Like, you don't do that to someone who's been through what I've been through with multiple males and then throw a man into the mix halfway through and expect me to be alright with it.”

- Participant, “This is my story”.

The research suggested that NSW police were aware of the importance of a trauma-informed approach and of ensuring that complainants feel that they have control and agency in the reporting process, while acknowledging that this was a gap in current training and capability building. Equally, participants frequently nominated that this area required specialised training, expressing surprise that somebody would want to work in the area if they did not care about the subject matter.

“I think sort of trauma-informed police officers would have been great, but I guess that's a big ask for some people – emotionally intelligent, trauma-informed detectives, anyone doing the interviewing.”

– Participant, “This is my story”.

“I understand that it might not be the kind of job for everyone, but if you specialise in that field, then you should at least be like interested to help people. And if you're not, then please be so honest ... so that somebody else can do it.”

– Participant, “This is my story”.

Some participants felt that police were “going through the motions” in terms of their obligations to take a trauma-informed approach. These participants stated that they would have preferred police to acknowledge their limitations, rather than trying to suggest that they understood the complainant experience.

“...don't try and act like you know everything because it's OK if you don't. ...So, like own that and be like, 'I know this is not a great environment, but like we're trying' Don't just say that you care because it's written on a piece of paper that you have to say that you do.”

– Participant, “This is my story”.

This participant was one of many who suggested that police and complainants alike would benefit from a social worker or other specialist practitioner being present during a police interview. One volunteered that having a specialist support person available at the time of reporting was one of the primary things that would have made a difference to their experience.

3.1.8 Recognition of sexual offences as a significant crime

A further theme to emerge from participants in NSW was the way in which police often appeared to regard other types of crime as being more serious. Several reported experiences with police in which they overtly expressed or conveyed the strong impression that other types of offences took priority.

“... [the detective said] ‘I'm really sorry there's a home invasion, we have to reschedule’.”

– Participant, “This is my story”.

“... most detectives aren't interested in dealing with that sort of stuff, they want the big, you know, like the murders and the like the stabbings and all that stuff.”

– Participant, “This is my story”.

“[The detective] agreed for me to go in to talk to him about what happened and then when I got there, he said, ‘uh, sorry, you know, I've been really busy. I'm dealing with the [serious violence offence] ... around the corner’ ... and then... ‘oh, you've got cameras outside the front of your house, haven't you?’ ... And we spent half an hour going through my cameras [in relation to the other offence].”

– Participant, “This is my story”.

Compounding participants' perceptions that police did not regard their offence as serious was the lapse of time that occurred between the incident and reporting. Participants experienced this as a signal that their matter was not important in comparison to other crimes.

“And it can just be put on the back burner because the assault already happened, and nobody died so no more investigating needs to be done. You know, there's the robbery or fingerprints need taking or there's a car chase.”

– Participant, “This is my story”.

“...it's like almost like sexual assault victims ... are seen as like kind of nuisances or like kind of like ‘Oh, this case isn't important, it happened like six months ago. Someone's been assaulted in the club tonight. Or like, punched or like glassed or something.’”

– Participant, “This is my story”.

“Whereas [the female officer] ... would always tell me what was going on, when [investigating male officer] got a hold of it, it was like his investigation. He didn't really give a fuck about it... he didn't get back or tell me what he was doing ... he just kept saying ‘I can't tell you that information’.”

- Participant, “This is my story”

3.1.9 Being viewed as an ‘unreliable witness’

Participants also observed that they were more likely to be met with a positive and proactive response from police where they presented as what wider research in this area describes as a “deserving victim.”

“I was lucky that I walked into a police station in a well-funded area ... I was lucky that I walked in at the time that a detective who gave a shit about this kind of stuff was there. I was lucky that the person that I accused was not so sympathetic ... I was lucky that I was white and the officers were white..... Like so much stuff would have gone differently and it shouldn’t be that close of a call.”

– Participant, “This is my story”.

Conversely, participants who did not fit this profile reported negative experiences. This included participants who had agreed to a sexual act of some kind and were therefore assumed to have consented to the whole experience.

“... it’s like ‘oh she gave oral sex so she can’t have been raped.”

– Participant, “This is my story”.

“If you’re a sex worker, like you have all the difficulties that general victims have, but you also have the additional impact of [the perception] that sex workers are, like, ‘unrapable’ ”

– Participant, “This is my story”.

Arguably vindicating the fears of those reluctant to report, many of the NSW participants had experienced what they felt to be a judgmental response where they had been intoxicated at the time of the assault or had ongoing contact with the perpetrator. It should be noted again that, where these participants had reached the stage of reporting, this judgmental response did not impact their determination to proceed with the matter or their wish to have the matter investigated further.

3.1.10 Setting expectations around low rates of prosecution

While police acknowledge the challenge of ultimately prosecuting “historical offences”, it is reasonable to assume that any reference to “historical offences” relates to offences committed some years prior to reporting. The CIJ’s research in NSW, however, found that complainants who reported offences which were even a few months old often received a discouraging response from police and were told that their complaint was “historical”.

“I contacted [the detective] every month or so, just asking ... [and she would say] ‘Oh, you know, sorry I don’t have any time to see you. Historical complaints aren’t treated as a priority.”

– Participant, “This is my story”.

“I walked out of there, no support, no care, no interest. It had taken so long to get up the courage to come forward, and then nothing”.

– Participant, “This is my story”.

Some participants similarly suggested that they would have appreciated knowing about the challenges of the legal process upfront. While dismissive responses are re-traumatising, participants explained that the good intentions of police and emphatic language that some might use can also create expectations which are ultimately not able to be realised by the system. This indicates that there is an appropriate balance to be struck where police are supportive, while also advising of the likely challenges ahead.

“... they don’t want to scare you out of the process so when they do give you information it feels a bit sugar-coated.”

– Participant, “This is my story”.

“A lot of promises [were made by police] about what was going to happen, but just never happened.”

Participant, “This is my story”.

By contrast, some participants had experienced some blunt advice from the police who had taken their statement.

“I asked him. ‘So, what if you find out that this actually happened and it gets to court, like, do they have to apologise to me ...?’ And he was like, ‘no it would be way worse than that. Like they might go to prison, and in case it gets to court, like, you have to prepare yourself because it’s going to be really hard, but I wouldn’t worry about that right now because usually it doesn’t get to court ...’”

– Participant, “This is my story”.

While many participants had a negative experience of reporting to police, few wished to see their matter left there once they had done so. In fact, only one participant indicated that a realistic assessment about the prospects of a conviction would have caused them to withdraw their complaint.

3.1.11 Variability in communication

A significant theme across the NSW study was participants’ disappointment in a lack of follow up or further information from police. This included examples in which they had experienced a very positive initial interaction with police but had then received very little or no follow up. Alternatively, they received a dismissive response when they followed up themselves.

“...if somebody’s made a phone call and left a message, respond to that message ... so I just became really uncomfortable that I was being a nuisance.”

– Participant, “This is my story”.

“I’d call, and I’d ask for [the investigating officer] and he wouldn’t be there. And then, like, who else do I talk to? So, if he wasn’t there, then I couldn’t talk to him they’d just hang up.”

– Participant, “This is my story”.

“... it actually got passed on to the police station in [other regional town], so hours away ... and all just information relayed over the phone or, you know, in the statement itself. So, I hadn’t even met who was going to be looking at that case.”

- Participant, “This is my story”.

As well as feeling ignored or forgotten, participants felt scared about repeatedly following up for information. In one case, a participant described feeling targeted by police for having agitated for their matter to be investigated.

“I was scared to ask too many questions ... [police officer] treated me like I was a nuisance and tried to get off the phone very quickly and I hung up. ... I just need to not be sort of raped again by someone treating me like a nuisance.”

– Participant, “This is my story”.

“I actually was then targeted by police. So, then actually I received a mental health referral where they were trying to section me just to like silence me, you know like back off.”

– Participant, “This is my story”.

The CIJ’s research with victims of crime in Victoria for the Victim’s Services Review echoed the frustrations and confusion of victims who were simply seeking information about their matter.

In particular, the research highlighted the value of proactively providing victims of crime with information about what was happening in relation to their case, rather than placing the burden on victims to try constantly to obtain information.

"[I would have benefitted from] more communication and where it's at. Rather than someone that, I hate the word victim, but the person that's not the perpetrator has to make those phone calls to see what stages things are at so that you know you're safe. [I wanted to know] whether he'd been served, whether he'd been put in prison, whether he was secure away from my location. Everything really."

- Participant, "Key Practice Insights".

Where police informants were proactive about keeping participants informed, this was greatly appreciated. By contrast, for the significant proportion of victims who reported that police did not keep them informed of what was happening in their case, this was sometimes perceived as the deliberate withholding of information or made the victim feel that the way in which they were impacted by the crime did not matter. This lack of information could also mean that victims were fearful and did not know whether their offender had been apprehended, and if they were at ongoing risk.

"It makes me wonder, well, my case mustn't be important enough. I mustn't be important enough. I mustn't be important enough to even contact and let me know what's going on."

- Participant, "Key Practice Insights".

In some instances, victim support practitioners sometimes took on the role of liaising with police on behalf of the victim. This did not always mean that information became available more quickly, but it removed the burden from victims of crime themselves and reassured them that their practitioner would advise them of any information as it became available. Strong relationships between police and victim support services – including clear expectations and processes for keeping victims informed, either directly or via their practitioner (with the victim's consent) – can improve victim's overall experience of the justice system.

"[My victim support practitioner] ... was the backbone, getting that information from police. I would call them and try to obtain some information, they wouldn't tell me anything..."

- Participant, "Key Practice Insights".

This experience of feeling ignored by police was equally distressing for many of the participants in the NSW study. Some volunteered, without any prompt, that they were aware that they had rights under the Charter of Victim's Rights to be kept informed of their matter's progress.

"I've read ... the Victim's Charter of Rights and they're supposed to provide you with like a card ... that tells you where to go for support and tells you the number for sexual assault. I never got that. They never said anything. It was just like, 'OK, thanks for coming in, see you later'"

- Participant, "This is my story".

"I still do not accept that the circumstances surrounding my case did not warrant adhering to the Charter of Victims' Rights ... my only thought was if I can't do it, then what about people from ... disadvantaged backgrounds ...? What can this possibly be like for them? ... I think that there needs to be a third-party service that keeps that keeps them honest and keeps them on the Charter"

- Participant, "This is my story".

That said, some participants acknowledged that, where police had followed up, they often had little to report. This was as a result of multiple adjournments of procedural hearings and very little tangible progress. One described this information as “updates about nothing” and suggested that complainants should be given the choice to “opt out” of being provided with procedural updates.

“...giving people the heads up, ‘you’re going to get a lot of no news phone calls’ or maybe like an opt in, opt out sort of thing. Because if I’d known more about how it was going to be like I probably would have said ‘don’t let me know when there’s a mention...’”

– Participant, “This is my story”.

3.1.12 Investigation failures

When a complainant reports a sexual offence, this may result in charging the perpetrator with an offence if police consider that there is sufficient evidence. Multiple participants in the NSW study, however – including those who reported immediately following an offence– described this process as taking months when officers failed to follow up to complete the statement process. Further, many reported that no formal statement was taken by police in the context of offences that were not immediately reported but instead reported some months later or longer. This is discussed further below.

Separately – and despite the important role of forensic information in the context of an investigation or prosecution of an offence – some participants told the CIJ that they had not been aware of this process at all or had not been made aware in time for the relevant DNA evidence to be collected.

“I was also really terrified because the thought of ... being touched after a rape is so terrifying ... [the idea] of this person I didn’t know touching me in places that were still hurting ... and then everyone, my family, all got really angry at me that I didn’t do it. So then I went back and did it. But by the time I’d done that, it was already like, all the evidence is gone ...”

– Participant, “This is my story”:

“...when the crime had happened, I ... called Lifeline. And the person ... told me pretty much just have a bath and have a self-care afternoon. ...And then I can maybe go to the police next week. So obviously I did that. And then the next week, I get the courage to call the police and I’m getting in trouble from the police officers because I bathed. ... So that pretty much stuffed up a lot of stuff as well, 1000% ... and that’s why I know from now on ... whatever it is, go to the hospital straight away.”

- Participant, “This is my story”.

Participants in the NSW study also noted a lack of awareness from their existing support networks, including GPs or counsellors. This lack of understanding concerned what a reporting process entailed, either prior to or following the medical and forensic examination. This points again to the need for greater community-wide awareness around sexual offences and associated legal and health processes. Participants particularly emphasised the importance of the fact that they were most likely to disclose to a GP and that GPs should be better supported as a result.

“I read that GPs handle like five disclosures a week on average ...[and] they don’t know what to do, then all these people that are making disclosures are also going to not know what to do. And then, yeah, if it’s the blind leading the blind, it’s not conducive to healing and recovery.”

– Participant, “This is my story”.

“... my GP and my gyno had no idea what to do ... Like my GP’s been my GP since I was [young], and she... was like ‘shit, like what the fuck do we do?’ ... ‘I have no ... idea where you need to go.’”

– Participant, “This is my story”.

Important to note here is the longstanding challenge in accessing forensic examinations in regional and remote areas. That said, the CIJ's *Futureproofing safety* project – a broad study of the response to family, domestic and sexual violence across Victoria during COVID – identified a significant reduction in the availability of forensic examinations following sexual assault in Victoria during this time.⁶⁸ This was initially because of restrictions on forensic examiners travelling while “stay at home” orders were enforced. As a result, victim survivors who wanted a forensic examination had no choice but to “hold evidence” (ie remain in the clothes in which they had been assaulted and avoid washing) while travelling in a police van to another part of Victoria to be examined.⁶⁹

The CIJ heard from sexual assault counsellors that, during this time, many victim survivors chose not to undergo a forensic examination after a sexual offence – losing the opportunity for forensic evidence to be collected that could inform (and sometimes be crucial to) any future prosecution.⁷⁰ At the time of the publication of the research in September 2023, however, the full remit of forensic examinations had not been reinstated, with victim survivors still limited in the forensic support that they could receive. The CIJ therefore encourages the Inquiry to seek information about the current availability of forensic examinations across all Australian jurisdictions to ensure that this crucial source of evidence which can inform sexual offence prosecution is adequately resourced, transparent and available.

That said, the CIJ emphasises that the decision to undergo a forensic examination must remain the choice of the individual victim survivor and one that, if exercised, should not necessarily compel further steps in the legal process. Certainly NSW participants told the CIJ that this agency was the only reason that they decided to undergo the medical and forensic assessment, being reluctant to proceed with one at all unless they knew that they were not compelled to report or give a formal statement to police.

“I had the option to do a rape kit. But at that point I was really scared of talking to the police ... they let me know that doing the rape kit doesn't mean that I have to speak to the police, I still have the option to reach out to them afterwards ... I gave an official statement a month after the rape.”

– Participant, “This is my story”.

Given that some complainants may simply be reporting because they feel that they are obliged to, or because they feel pressured to do so by family or friends, as noted in the section above, this sense of choice is important to maintain. It is also potentially more likely to be contributing to the effective gathering of evidence given that some complainants would not go through with it all if they felt that it was mandatory or automatically propelled them into the criminal justice process.

The participants who had accessed an examination generally reported positive experiences when doing so. This included one who specifically went to a sexual assault health service first because of fear of discrimination when reporting to police.

“The examination itself is very, really very intrusive ... But I knew that it was an important part of the process.”

– Participant, “This is my story”.

⁶⁸ McCann et al, above n 7, 144.

⁶⁹ Ibid.

⁷⁰ Ibid, 145.

“... being a [healthcare worker] ... I knew that I couldn’t shower. I knew that I couldn’t do anything like that until certain processes took place and to wait for over an hour and a half just to have someone arrive was really horrible and you know, sitting there in that feeling of self-disgust and questioning.”

- Participant, “This is my story”.

“I went to ...the sexual assault clinic, and the reason I went there is because of my sexuality, like I face a lot of discrimination.”

- Participant, “This is my story”.

Importantly, as well as accessing the forensic examination, six participants described the value of the NSW Health’s integrated response enabling a connection with a specialist sexual assault counsellor. The significance of this was a particularly strong finding across the research.

“I went to the hospital before I reported it... because I had pain in my abdomen from the rape ... that’s when they gave me the, they did a scan and went to tests and gave me the contact of the counsellor.”

- Participant, “This is my story”.

“...when I was getting the rape kit done, the psychologist ... gave me information [about] ... Victim Services.... I wasn’t told about this at the police station, I was told about it at the hospital.”

- Participant, “This is my story”.

“...and I went and got the [Sexual Assault Investigation Kit] done. And I was introduced to a social worker ... And she put through all, like the stuff I needed. So, all the support and everything. She passed on my details to [the specialist counsellor] ... she called me ... three days after it happened.”

- Participant, “This is my story”.

Important to note, one participant felt particularly distressed by her experience of trying to access forensic examination. Despite her experience occurring after COVID restrictions had been removed and despite having a medical exemption for wearing a mask or being vaccinated, this participant described being subject to a forensic examination by practitioners in full protective gear, with much of the communication taking place via video from the next room and the process taking eight hours overall.

“They wouldn’t let my support person in with me. They forced me to wear a mask and have sheets over me. They forced me to do a test, to get probed further 12 hours after an assault. I wasn’t sick but they separated me and treated me like I had COVID - when I was there because I’d been raped.”

- Participant, “This is my story”.

3.1.13 Qualify of investigation and evidence gathering

As noted at the outset of this sub-section, the quality of investigation and evidence gathering – as well as the delay which many participants had observed as occurring in relation to their matter – emerged as a particularly significant theme across the NSW research. This related to a number of different points in the investigation.

A number of participants described their concerns about what they saw as a rushed and incomplete approach to taking their statements, with some being told that the detail that they were offering was not relevant and others feeling dismissed by the police officer.

“I think there were kind of like, ‘there’s no point in giving all this minute detail’, they probably knew it wasn’t going to go anywhere”.

- Participant, “This is my story”.

For some participants, this approach was at odds with their emotional and physical needs, potentially jeopardising not only the evidence available to their case, but their overall wellbeing.

“... the people that have to do the statement, seeing how emotionally distressed I was, it probably would have been in their better interest and in mine to just say ‘look, let’s regroup. Let’s go tomorrow.’”

– Participant, “This is my story”.

Participants offered multiple examples in which they felt that the written statement was not an accurate reflection of their story. They felt that this had occurred because police were writing it up while the complainant was speaking, rather than the complainant being able to write it up themselves.

“... to have someone else writing your story for you, you were the only person who was there, who saw the body and language, who knew what you felt and knew what each nuance meant.”

– Participant, “This is my story”.

3.1.14 Evidence provided by complainants

Participants in the NSW research told the CIJ that they wished that they had better understood what information was likely to be relevant to police and often regretted offering extraneous detail that was later used against them by the defence. In some cases, participants were told by police that information that was not directly relevant to the incident would not be provided to the accused or defence. Participants explained their distress at being asked to hand over photographs, texts and mobile phones, not having realised that intimate or personal images or messages, including those not relevant to the matter, would be looked at by police and provided to the defence. Later, they were cross-examined about it as a way of discrediting them generally, despite it not being directly relevant to the details of the assault. Participants were also nervous about this information being distributed more broadly.

“...They had all my photos ... my app history ... even though they only gave like the defence just the text messages, I still suffered from the anxiety of the, you know, just my personal information is sitting somewhere. Yeah. And I have no control over it. Like, had I known that they take my entire phone, I wouldn’t have given my phone in like, yeah, first place. That still haunts me to this very day.”

– Participant, “This is my story”.

3.1.15 Gathering additional evidence

A strong theme emerging from the research was complainants’ disappointment when police did not appear to follow up with the investigation. Examples given included gathering CCTV footage or interviewing witnesses, either in a timely fashion or at all. For some, this was directly relevant to the success of their matter when it came to hearing.

“... they refused to take any additions to my statement, didn’t even pick up the CCTV until eight weeks – after the assault... I kept calling them, being like ‘you haven’t picked up the CCTV... And then later on in the trial that came out that they also failed to take [relevant] statements.”

– Participant, “This is my story”.

“... my friends tried to get in contact with my detective [to provide statements] and just couldn’t... [the detective] would make appointments and then cancel ... those statements were never collected.”

– Participant, “This is my story”.

“... there is CCTV footage of him following me in the car. That’s stalking and intimidating. But do you think that they had followed up? [There were] many witnesses ... [but no] further investigation done”.

- Participant, “This is my story”.

Importantly, several participants volunteered their disappointment and confusion when police appeared not to interview the accused, or alternatively, only did so some time after the offence had been reported. Participants with this experience had not been advised why a formal interview had not occurred or why there was considerable delay between initial contact and a formal interview.

“I could have given them his address, but they never even asked ... I had the names of some of his friends and they never asked ... they just looked at it and then it was like, yeah, ‘nothing we can do’.”

– Participant, “This is my story”.

“... the police went and saw him at his door. ... And he denied everything. He said he remembered the night, but he was too drunk. ... not the level of accountability I would have wanted him to have. ... None of my friends, actually said they were contacted [either]. Which I felt was quite strange. As I, you know, provided numbers and social media handles and addresses and everything.”

- Participant, “This is my story”.

“... [one of the offenders] told [the officer] that we did have sex..., but it was consensual... I remember being filmed, being drugged and he denied all of that. And then afterwards [the officer] told me that [the perpetrator] wasn't interested in coming to the police station to give an interview and his guess is that the [other alleged offenders in a gang rape] also wouldn't be interested either.... And when [the officer] contacted me again ... he let me know that he spoke to the ‘nice one’ [and said] ... ‘you told me that one of the guys asked the [others] to leave the room and stop filming ... So, he's apparently the nice one ...’ He did ask the [others] to leave, but ... after they left, it got worse because he then started choking me.... And [the officer] knew that”

– Participant, “This is my story”

To note, several participants had been asked by police to participate in an “intercept” phone call. This occurred where police had obtained permission to record a conversation between the complainant and the accused in the hope of obtaining some sort of admission. This appeared to be a fairly common approach in circumstances where there was insufficient evidence available beyond the complainant’s statement and any statement provided by the accused. Participants who had undergone this experience found it re-traumatising but felt that they were obliged to cooperate for the success of the investigation. One participant had a particularly distressing experience of this process.

“... they wired me up to have a phone conversation with him to see if we could get an admission ... then when the call finished, [the detective] ... got the little recording device ... and he's fiddling around, sort of looking very confused and didn't know what he was doing and I said, ‘it hasn't recorded, has it?’ And I absolutely lost it ... because ... [the perpetrator had] said enough to incriminate himself...”

– Participant, “This is my story”.

3.1.16 Reasons for not proceeding with a prosecution

When police did not proceed with the investigation, participants in the NSW study said that they wanted an explanation. Participants acknowledged that this was often a decision that was out of the hands of the investigating officers but felt that it was still their responsibility to relay. One volunteered that news like this could put already traumatised victim survivors at risk of self-harm.

“... one thing I really would have liked is for someone to explain to me what else it would have taken to go further with my case ... there is a lot of evidence which was collected, and it was the rape kit and ... it showed that I had [a particular drug] in my system... which wasn't by choice. ... and also they had the mixed DNA, it showed that it wasn't just one guy I had the bruises. I had the address. I recognised them in the picture I just don't understand why that wasn't enough.”

– Participant, “This is my story”.

“... she called me up and said ‘congratulations, we’ve got some good news, technically you weren’t sexually assaulted under the law’

– Participant, “This is my story”.

“[From police we would have liked] a much more open dialogue about what happened from their perspective. We wanted to know every minute detail. I mean some of it, they couldn’t, they didn’t know, and that’s fine [...] But it wasn’t a priority to them ...”

- Participant, “Key Practice Insights”.

“He basically said ... we’re not going to because we’re not going to get a conviction ... I know it’s disheartening [but] we just want to do what’s in your best interest like, we don’t want to put you through that’, and I was like, ‘you don’t know me. ... you don’t know what this means for me’.”

– Participant, “This is my story”.

One First Nations participant expressed particular disappointment with how the police or prosecution decision not to proceed was handled and eventually communicated to them.

“... if they had done it more culturally appropriate and in the right manner than I probably could have had him in court. It’s because their attitude ... especially with black people, is that they don’t really give a shit. I was driving in my car and I was told over the phone. I was on speaker phone ... and so [child] heard everything about it ... Like, how does he know how this is going to affect me? Like, I didn’t have any supports with me, ... like I could have gone and killed myself”.

- Participant, “This is my story”.

As noted above, sexual offence matters may not proceed to trial for a number of reasons, though interviews indicated that this was largely as a result of justice agencies determining that a prosecution was unlikely to succeed, including for lack of evidence acquired during the investigation phase.

More generally, complainants may decide to withdraw their statement for a range of reasons. This may be because of an overall experience of lack of support or due to negative experiences in preparation for trial. As noted above in relation to barriers to reporting, complainants may also fear repercussions from the alleged offender or wider familial or community pressure. Participants in the NSW study reported that this was particularly the case in close-knit regional communities.

“I was hesitant about it. Just because it’s one of those things that when it comes out. I feel like it’s going to tear the family apart. And I don’t want to be responsible for that...”

– Participant, “This is my story”.

“...his friends are quite intertwined with my friends so, it’s quite a small town...”

– Participant, “This is my story”.

Important to note, the few participants who had either withdrawn or had considered doing so emphasised that their primary motivation was fear of how they would be treated during the trial.

“I just didn’t want to go through that same process. I didn’t want to have to sit before people that didn’t know me and cross examine me and determine whether or not ... I’m telling the truth.”

– Participant, “This is my story”.

This included some participants whose matter was high profile due to the accused’s position in the community. For example, despite being believed and supported throughout, one participant was advised by the prosecution that she would likely be highly re-traumatised while participating in the trial. This was in large part because of media scrutiny and the fact that the cross-examination would inevitably focus on the use of alcohol and ongoing communications between her and the accused.

“... the Crown prosecutor ... told me about all the options I had. Like, ‘this is what would happen to you if you went to trial ... salacious details will be in like the front pages.’ You know, ‘you sent this message and it’s going to be like front page’ and it was just extremely terrifying and they said because of my age that they recommended that I don’t go ahead with it. ... I thought about it, and I said ‘yep, I don’t want to do this anymore’ ... it was just too scary ... Like, my mental health takes priority now’.”

– Participant, “This is my story”.

3.2 Prosecution responses

3.2.1 Lack of information about the trial process

Following a report of a sexual offence, a complainant’s role in the trial process interacts with various parts of the legal system. Participants from across the CIJ’s research, including research relating to crime victimisation more broadly, as well as sexual offences, emphasised that the trial process is very unclear for complainants and that there is a lack of available and consolidated information about what the process entails.

Participants in the NSW study, for example, noted that they would have liked information provided in a considered way. These complainants described receiving multiple rushed phone calls, including from different prosecution personnel, with little time to process or write down the information.

Given this, participants told the CIJ that they would have appreciated receiving updates and explanations in writing and to have opportunities to receive information in a way that was not rushed.

“... often I’d be coming home from work or I’d be in the car taking the call because it was sort of the only time between picking up my kids and work ... so I’d have pieces of paper everywhere, you know, dot points and trying to scribble down everything that they were ... trying to [say]. So, to be followed up with that in in writing ... would have been beneficial. I could have been able to process it or potentially even read it over and had other questions and clarification on things.”

– Participant, “This is my story”

“You definitely want someone just touching base with you. What you want to hear that somebody just... is I guess... someone, somewhere has an eye to your wellbeing.”

- Participant, “Key Practice Insights”.

The lack of clarity that complainants experience in relation to the trial process is often compounded by the length of time between reporting and the commencement of a trial. Here the CIJ noted that participants persist with the process despite the considerable delay that many have experienced.

“So, the second day of the trial, they asked for it to be vacated ... and the DPP tried to refute that application, saying ‘you just had an additional five or six months ... but the judge just sided with defence and vacated the matter. I had actually missed out on Uni because of that...”

– Participant, “This is my story”.

Important to recognise are the limitations on the information that can be provided to complainants prior to and during their examination in court, with prosecutors constrained by what they can say for fear of interfering with the provision of evidence. This is directly related to a complainant realising that their role was one of “witness”, discussed below. It is also relevant to a complainant’s discovery that they could not be advised of certain issues about the way that the prosecution case would be run and the varied extent to which they were prepared for the chief examination.

This in turn is linked to the distressing realisation that complainants could not discuss the trial with other witnesses. Because of the nature of the offence, these were most likely to include their closest family and friends, given that these were the people to whom the complainant had likely first disclosed.

“It was just hard because a part of it was, legally, I’m not allowed to speak to my friends. So, if they’re giving evidence, I’m not allowed to speak to them. So how am I supposed to process all of this if I can’t speak to my friends about what happened...?”

– Participant, “This is my story”.

3.2.2 Complainants’ status as a ‘witness’

NSW participants whose matters had been listed for trial all volunteered that the realisation that they were merely witnesses in their own matter was particularly traumatic. Many explained that they had already had their power and choice removed by the sexual offence – including, for some, in the context of coercive control – and that this status as a witness entrenched this loss of agency.

“I was just another witness. I couldn’t watch it.”

– Participant, “This is my story”.

“... a lawyer should be appointed by the state, for the complainant I’m the victim, not the fucking witness. ... they kept saying, “it’s not your case” ... my whole fucking life is on hold for three years...”

– Participant, “This is my story”.

“... it was apparent even from that first, you know, court visit with the DPP where they were like ‘this is what’s best for us’ that like, they weren’t my lawyers, like they ... [don’t] work for me, but I like, I work for them in a way, like I’m the reason that they’re able to bring this case forward ... I’m a material piece of evidence. I’m not a person”

– Participant, “This is my story”.

Noting that prosecutors are obliged to pass on any divergent or contradictory statements from complainants to the defence, this contributes to complainants feeling that they lack control and agency through the trial process. Participants emphasised that this realisation increased the trauma that they experienced, cementing the loss of trust in the legal system.

“I’m the DPP... anything you tell me I have to give to them so be careful’ ...What a waste of time.”

– Participant, “This is my story”.

A number of participants also raised this issue, reflecting that this further entrenched their feelings around a loss of agency. They noted the sense that the prosecution made decisions that were purported to be in their interests, yet they felt were actually about the way that the prosecution preferred to run the case.

“... the prosecution said ‘we’re not going to raise your sexuality, we think it will play better with the jury’. And I said ‘I’ve already had my identity taken away by the rape, now you’re going to do it again’.”

– Participant, “This is my story”.

“... the first time I said I wanted to give up my anonymity, they were like, ‘no, it’ll be bad for our case’. There was not like ‘People on the Internet are really mean’, it was like, ‘no, we have a case to run’ ... It’s like, ‘well, we’ve spent so much money on this case. We’re not gonna stop now’ ... I don’t know why they’re so angry with me. This is my story. Like, it’s your case, but it’s my story”.

– Participant, “This is my story”.

Complainants also spoke of the difference that access to legal information and advice would have made for their experience. This included information and advice which could have helped them to understand the reasons for their role and manage their expectations around this. Some participants found this experience particularly distressing.

“... the prosecution ... gave me a brief overview of like ‘we’ll ask you to tell us everything and then they’ll ask you questions about it’. Umm, they said to me, ‘don’t elaborate on your questions. Just answer the question that they’re asking’, which I feel was a bit of a detriment ...”

– Participant, “This is my story”.

“I’ve never heard any of that language before. ... I don’t know what any of it means ...”

– Participant, “This is my story”.

“I remember having a meeting with the prosecution and ... my Mum, like her voice was breaking, she was about to start sobbing and I remember her saying, ‘just be honest with us... is he going to be found guilty, is it worth it?... I don’t want to put my baby through this’ ... And I remember the lawyers being like ‘oh, we don’t know’ ... But basically [the statistics are] 50/50’.”

– Participant, “This is my story”.

Specific advice and representation in relation to confidential communications and disclosure of sexual histories was also important, which some interview participants received from NSW Legal Aid’s Sexual Assault Communications Privilege Service. Some participants felt, however, that they also would have benefited from advocacy in relation to procedural matters.

“I should have had a lawyer saying to me ‘just shut up, you’ve given them that one just let them work with that one’, right.”

– Participant, “This is my story”.

“I actually think that in the application to vacate the trial, the victim should be heard... you can actually provide a brief statement and look at the impact and find out more about the details...”

– Participant, “This is my story”.

3.2.3 Lack of consistent support to understand and engage with the trial process

The NSW study indicated that complainants have limited access to consistent support during their end-to-end experience of reporting a sexual offence to trial. Stakeholders involved noted that a significant challenge for complainants during the trial process is to keep track of the multiple services with which they engage, as well as the potential re-traumatisation from having to share their experiences and stories multiple times, with “each person a new judgement”.

Stakeholders also noted the impacts of staffing turnover on ensuring continuity in any prosecution team, which can include mixed messaging and failures of communication. Variation in the extent of communication received from individual professionals, was also described, some of whom have a different view about the importance of keeping a witness at arm’s length.

As noted above, participants in this study would have liked to receive information in writing as well as phone calls, and also have a form of transparency and accountability in how this communication was coordinated and followed up. Participants would also have liked to receive practical and non-judgmental information about aspects that they could potentially control.

“The DPP, I asked them what to wear and they made fun of me for asking, they were like ‘that’s a silly question’. And I was like ‘no its not, that’s the only thing out of this whole situation that I can control...”

– Participant, “This is my story”.

Participants whose matters had been listed for trial agreed that tours of the courts before the trial commenced were useful, while some also gave examples of other information or communication being provided by a Witness Assistance Service (WAS) officer that they found valuable.

"I think the first time I actually got information, was when I met with the prosecution lawyers and they gave me ... a WAS officer ... She gave me a booklet ... about like, what the court looks like and what to expect. ... at least I knew that she was somebody who would provide me with information if I needed it."

– Participant, "This is my story".

That said, participants who shared observations about the above service explained that their interaction with their WAS officer was generally fairly limited, and for the most part, appeared to be constrained by the nature of the role. This included concerns that the primary obligation of the WAS officer was to support the quality of evidence and information exchange between prosecution lawyers and the complainant; disappointment that the WAS officer was not able to attend court with them; and disappointment about turnover in the role which meant that an ongoing relationship was not developed.

"...they're meant to make you a better witness, they're not really there for support. I mean, they do provide support but really, they're there to make you a good witness for the stage."

– Participant, "This is my story".

"I had a WAS officer, but I feel like they didn't really do anything. Like, I still don't know what their role was ... And when I actually asked ... 'I'm happy to go without any of the other service provisions or any of the other phone calls, if I can just have them for court support instead' and they're very much like 'no you can't just swap the hours' ... [plus] there's so much turnover, like I had three different WAS officers over the how many years it was, yeah ... and by that time you don't want to build a new relationship ... Three different WAS officers, but then none of them actually showed up for court."

– Participant. "This is my story".

"Sometimes I would e-mail or I would text the WAS, but often they sort of would reply 'Oh, I'll have to ask the solicitor that'. And the answer would never really eventuate."

– Participant, "This is my story".

The research therefore highlighted an important gap between the expectations of complainants and what a witness support service can actually deliver.

This gap between victim survivor expectations and what a witness support service could actually deliver was echoed in the findings of the CIJ's research into the experiences of Aboriginal victims of crime, as well as our research for the Victims Services Review, *Strengthening Victoria's Victim Support System*. What victims of crime found useful in terms of support that they *had* received from a witness support service is discussed further in Part Five of this submission.

Overall, however, the CIJ's research indicates that greater clarity around the nature of the role and the extent to which, and what type of, support can be provided would be beneficial. In addition, further resourcing and investment in these type of services would ensure that their function can be clarified and so that their potential can be fully realised for the benefit of complainants, as well as for the administration of justice.

3.3 The trial process

Those NSW participants who reached the stage of the trial process described the value of trauma-informed, ongoing support throughout the trial. Some participants had experiences of being supported by dedicated detectives, who had stayed with their matter the whole way through and who appeared invested in the process and the result. Participants described the considerable value that this support offered, where they had one detective who knew their story and, in many cases, who came to the hearing despite having been moved to another unit or area. Participants also described the value of informal support from family and friends, with some having had their close networks attend the hearing with them, or on their behalf in relevant circumstances.

“[New partner] was incredible, came to court every single day and sat outside the room, and so did my parents. And about four police officers. Like between one and four, like not all of them would be there every day, but I had this massive group of people waiting outside court every single day.”

– Participant, “This is my story”.

That said, a greater proportion of participants went through the process without their family knowing. This was either because they did not feel that they could carry the burden of their family’s response in addition to managing their own trauma, or because disclosure of the offence had been a negative experience for them.

“I didn’t want my family to hear anything, to be a part of it.”

– Participant, “This is my story”.

“I didn’t have family come... not one sibling came to support me. So, you don’t tell people, because you don’t want to be rejected again and again and again. So, you just do it by yourself.”

Participant, “This is my story”.

In the latter examples, sexual assault counsellors or other specialist supports were the complainants’ primary lifeline, although some went through the process without any ongoing form of support at all.

Finally, one form of support nominated as particularly valuable by some complainants was from people with the same lived experience. Participants described the difference that it made when they had someone beside them who had endured a similar thing. In some cases, however, this was a reminder of how brutal the prosecution and cross-examination process could be.

“I just sat outside trying to just like, [get] the courage, and then [another] survivor came and sat next to me and talked to me and that was when I felt informed for the first time in the process.”

– Participant, “This is my story”.

3.3.1 Complainants reported a range of negative experiences during trial

Complainants highlighted the risk of re-traumatisation as a result of their experiences during trial. Factors that influence a complainant’s experience during trial can also impact the quality of evidence that they can provide. Negative experiences during trial can then contribute to the existing stigma around the trial process, which can impact other victim survivors’ willingness to report.

Across the study, stakeholders spoke of complainants who travelled long distances to appear at court, isolating them from their homes and support systems. This was noted to impact First Nations complainants who may need to travel off-Country to appear at court. Also relevant, financial and caring responsibilities can be significantly disrupted by needing to appear at court.

Critically, complainants may also be in close proximity with the perpetrator of their assault during the trial, as well as with the perpetrators' family and/or support networks. This extends beyond the courtroom, to bathrooms and local cafes at court break times. Interview participants also spoke of the fear that they felt when navigating the court building.

"... we're all walking in and out the same entrance ... You know, even walking outside the court, ... we're walking around and we walked right past the accused's father ... it doesn't worry the prosecution, it doesn't worry the court, it doesn't matter. The day goes on, right? ... but I can still see his Dad's face walking past me in that street ... Things that don't matter to them because I'm just their evidence."

– Participant, "This is my story".

Some First Nations participants similarly reflected that attending court could be a further source of shame in the community.

"It was shame and feeling dirty. It's not like you don't want to talk about your experience but ... if there was a space that was nicer and more supportive that you could go at the end of each day. Like to get a feed and have a lay down ... and you could get linked with supports"

- Participant, "This is my story".

COVID-19 caused a significant backlog in the courts, further delaying many trials. This impacted negatively on complainants' experiences of the process, with some participants speaking about the impact of COVID-19 on their ability to participate in the proceedings.

"... [the] judge ... actually paused the court proceedings [and] said. 'No, no, no, we have a victim that wants to be here. We're going to call her in [online] now' ... So, I was treated well once I managed to get in. It was mainly the court staff to be honest. ... By the time 2022 came around I was cranky, I was like 'You've had two years to get this right.'"

– Participant, "This is my story".

The option to provide evidence remotely or via CCTV was regarded positively by participants, noting that it can remain logistically challenging or cause problems when the complainant can still see the perpetrator. Participants who had been able to provide evidence remotely spoke about the benefits of doing so. That said, one appeared to have been actively discouraged by the prosecution to give evidence in this way, the implication being that juries would be more likely to believe or feel sympathy for a complainant if they appeared in person.

"... having the video link option was really good. At one point I thought I wanted to go in there, into the [courtroom] and they did say they were like you can but mmm ... And then like, as soon as it got closer, I was like, yeah, I don't want to do that. But yeah, having that option felt good."

– Participant, "This is my story".

"[Giving evidence via video was good but] at first it wasn't because he was on the screen. I could see him as soon as I sat down. So, that kind of threw me."

- Participant, "This is my story".

"... they told me that I had the option to sit in the courtroom or to go to the like the victims' evidence place around the corner. But they very heavily suggested that I not go ... And they basically said that the jury doesn't connect with people on a screen and it's totally up to me. I can do what I want, but 'we don't see good outcomes from cases where the victim isn't in the room'."

– Participant, "This is my story".

The CIJ has provided a detailed discussion of the mechanisms available to child and vulnerable witnesses in Victoria to provide evidence remotely in the Appendix to this submission. More broadly, however, we note from our wider experience evaluating remote hearing facilities in the family violence context in Victoria; from our *Futureproofing safety* study, as well as from the CIJ's current research into the use of online hearings across all Victorian jurisdictions, that remote access alone can often be only half of the equation.

Participants in the CIJ's evaluation and research program have described very clearly the importance of this access being backed up by connection to relevant support. This is in part so that participants do not feel isolated, as well as disconnected from a process that they might struggle to understand. The way in which this is addressed in the context of children and young people giving evidence remotely is discussed in the Appendix, as noted above.

3.3.2 Lack of psychological support through the trial process

Where they had managed to access or maintain engagement with a very stretched sexual assault service network, NSW participants whose matter reached trial praised the incredibly valuable and trauma-informed support that they received from their counsellor or other psychological supports where these were specialised in trauma and gendered violence.

"... they're specialists in their field ... I found them really knowledgeable, patient, empathetic. Let me have my rants needed them about the system, but also very honest about the system and like wouldn't get my hopes up about the process. And like you know, 'I don't want to be negative. But this is often the kind of outcome that people face. We never know with each case, but I just want you to be prepared.'"

– Participant, "This is my story".

Some described negative interactions with more generalist counsellors who were not equipped to support people with their particular type of experience.

"... she got me to make a water bottle filled with glitter so that, if I couldn't sleep, I could shake it and watch the glitter fall ... I didn't know what to say... that's probably why she thought I was fine after three sessions because she was like, 'well she doesn't talk that much ... I think you're fine'."

– Participant, "This is my story".

"I've found you gotta do your research. Like just because they know about anxiety or eating disorders or OCD or whatever doesn't mean that they know about trauma."

- Participant, "This is my story".

"It was like she was just constantly too busy when I was talking, she wasn't quite listening, kept having to repeat myself. She was always on the phone or a computer."

- Participant, "This is my story".

"Yes, our law is black and white, but our world is grey. And unless they understand the grey part, it's not going to work."

- Participant, "Key Practice Insights".

"... I felt really judged and ashamed for stuff ... that was anything to do with my body or sex or anything. So, then I swapped to another counsellor and she was just 'I can't give you too much help' because she was only a mental health social worker. Which confused me because why was she able to be a victim services counsellor [if] they're not able to give full extent of help?"

- Participant, "This is my story".

One participant had found the response of a generalist counsellor so limited and ill-equipped in terms of trauma-informed approaches that they walked out of the first appointment.

NSW participants also indicated that access to specialist service was stretched, with many sexual assault counsellors or private psychologists having to go outside the remit of their role to provide support through the trial process. Some also indicated that their access to psychological supports had dropped away by the time that their trial proceeded, highlighting an additional impact of the delay and length of trial processes on the wellbeing and recovery of complainants.

“I called one or two times just sort of being like ‘hey just checking I am still on the waiting list, like help!’ So yeah, I got in for like a one-off appointment at one point ... you could tell that the psychologists who work there were doing everything that they could. But they just didn’t have the capacity ...”

– Participant, “This is my story”.

“I attended sexual assault counselling ... And that was overall really helpful. However, because there was such significant delays in the police response, by the time that charges were laid, I was already not part of the service anymore ... you can only have that many sessions.”

– Participant, “This is my story”.

Participants spoke more broadly about capacity issues for specialist counselling and therapeutic services. This was particularly reflected by participants who were trying to access these services a while after an offence, but this was also observed by participants who had accessed the service immediately following an offence.

“... [GP] called the sexual assault service. And they were like, ‘oh, when did that happen?’ And she was like, ‘[two months ago]’. And they were like ‘sorry, we can’t see her, we can only deal with cases have happened in the last seven days ... we’re fully like at capacity, overloaded.’”

– Participant, “This is my story”.

“They’re incredibly under resourced and they were able to be supporting quite well for the first year, the second-year kind of died off was hit and miss and now ...”

– Participant, “This is my story”.

Interview participants from regional areas also reflected how their geography can impact their access to specialist services.

“I just really need to see a clinical psychologist, and there isn’t any availability here ... you wait a long time.”

– Participant, “This is my story”.

By contrast, the Victim’s Services Review conducted by the CIJ demonstrated the value of having specialist support during the court process.

“[Being supported at court] makes it a lot easier to deal with. I mean, you’re talking to someone who understands what you’re going through ... [It makes you feel] safe and comfortable”

- Participant, “Key Practice Insights”.

3.3.3 Unclear processes and decisions during trial

Participants who had been through the trial process also described the impacts of the distressing nature of the trial process, compounded where they had not received appropriate support, on their ability to provide their best evidence. These experiences were particularly relevant to the devastating impacts on complainants of cross-examination, discussed further below.

Important to recognise first, however, is the lack of transparency in the trial process for complainants. For example, complainants can observe certain evidence being left out or certain personal information obtained by the defence through a subpoena. Across the CIJ's research with victims of crime, victims have reported waiting months for a trial to commence, before finding out just weeks before the trial date that their counselling notes have been subpoenaed. This issue highlights the benefit of initial access to legal advice and information, as well as access to specific legal representation in relation to confidential communications.

Experiences like these can be distressing for complainants and can impact on their ability to continue through the trial process or extend or undermine their recovery journey. Some participants suggested that there needed to be greater accountability for legal professionals in terms of any failure to follow up processes which contributed to delay. A wish for transparency, as well as accountability, about decisions during the trial process echoed participants' wishes for transparency and accountability during the process of investigation and preparation for prosecution.

Participants also expressed distress that they had worked hard to follow up their own matter, including to provide information to complete their statement; inquire as to whether other witnesses or the accused had been interviewed; or even to provide CCTV footage where this had not yet been obtained by the investigating police. The discovery that their fears had been realised when evidence in their case was considered insufficient added to the traumatic experience that the prosecution process represented and meant that they were often answering to the defence in court for police failures to investigate.

“... [the defence] made it up; that I'm just adding to my story ... as I go along...”

– Participant, “This is my story”.

3.3.4 Guilty pleas and downgrading of charges

The experience of charges being negotiated down – including immediately before a trial – was another step in the process which many participants found distressing. Many who shared their experiences of this had a reasonable and pragmatic understanding, whether from their own research or from wider community understanding, that this was a common occurrence in the prosecution process. What they found distressing, however, was the lack of input they had to the decision; the impact that this had on their opportunity to give evidence where the negotiation was associated with guilty plea; or the way in which they found out about the outcomes of this negotiation.

“So, on the day, I never got sent a link ... And then I just got nothing. DPP had known it was already arranged for me, so they ... just assumed that I had access. ... And then Mum's, like, called me, hysterical going ‘turn on the TV’. So, I see on the news that he's pled guilty and that's how I found out.”

– Participant, “This is my story”.

“... [the prosecution] had told me if I decide to do a plea deal, he will be, what's the word? Convicted. And he will also be on a sex offender register. ... I had to write a letter about why I decided to take this plea deal and literally the whole letter was about that. ‘I want him to carry this, and I want him to be put on this’. And then they just tell me last minute like ‘oh that actually doesn't happen. Like, sorry.’”

– Participant, “This is my story”.

Similarly, the Victim's Services Review highlighted that victims of crime may have benefitted from dedicated legal advice. In particular, the research indicated that victims of crime would benefit from being supported to understand the rationale behind prosecution decisions relating to charges and plea resolutions; the factors influencing sentencing outcomes and general information about sentencing options; the reasons behind inclusion or exclusion of certain types of evidence; as well as common legal terms, so that they can follow what is happening during the court event.

"I'm not a court person, I'm an average everyday person. If you're going to use court jargon with me, I'm going to be like, 'Talk English'. I was sitting there in court half the time on Google trying to find out what things mean."

- Participant, "Key Practice Insights".

"I feel that the system is completely wrong and I feel that it's more there for the perpetrator. Okay, I know that he's got a right to fight and falsely proclaim his innocence, but I also feel it should be there for a right for us to proclaim that, well, ... we should have a right to know more about what's going on..."

- Participant, "Key Practice Insights".

"I had no time frame. I didn't have any idea what the plea was for, what the charges were actually for... [The police informant] just said, 'Oh, there's a few charges there, we're going to get him with two random things'. And then I was like, 'Well, what about all the other stuff?'. And there was nothing really said about that and then, going to court and what happens in court wasn't really explained that great [...]"

- Participant, "Key Practice Insights".

The impacts of the charges being negotiated down extended well beyond the distress of realising that the charges did not reflect the full extent of what the complainant had experienced. Rather, the negotiation down of charges and associated plea and sentencing for a reduced offence(s) had an impact on the account that the *complainant* could give of their own experiences.

This included having an influence on the Statement of Facts that needed to be agreed between the parties in a proceeding involving a guilty plea, as well as the matters which complainants could discuss in their Victim Impact Statement. Participants viewed this as one of the few opportunities for them to have a voice in the proceedings and to describe the impact that the offending had on their lives, rather than just answer questions about the offending and associated issues in order for the charges to be tested and proven. Interview participants found this negotiating down of their 'truth' to be particularly distressing.

"They kind of just threw that in last minute. Like. 'Oh yeah. Like we're just going to check over the Statement of Facts.' Whatever. I did not understand that the Statement of Facts was, like, what determines the result, kind of thing. And the Statement of Facts was obviously not factual whatsoever. It was like, literally none of it was true. And I remember I had a few things that I said, like 'this must be included' kind of thing. And then [the] lawyers were [like] ... 'you can't say this because then they'll take away the plea deal and then you have to go to court' kind of thing ... I had it all these, like, bruises all over my body. I couldn't include that whatsoever. I couldn't include any of it. I was never allowed to say that I was passed out, blacked out ... I can say that I was sleeping. "Resting", I think it was."

- Participant, "This is my story".

Given that a VIS is only read at the point of sentencing, the sentencing judge can only take into account the impact of the offences which have been proven (either by a guilty plea or a jury verdict). As a result, participants described having to curtail their VIS severely and leave out parts which were vital to their experience of long term and wide-ranging damage caused by the offending.

“... at 4:30 the day before I was meant to deliver my [VIS] at court, I received a call from the managing solicitor for the case who said that the defence have several issues wrong with my statement that you're going to need to [address] and I just remember thinking 'I submitted this to you a month ago'”

– Participant, “This is my story”.

“I appreciated the [VIS] but because he was found not guilty for [most of the charges] I could only talk about what he was found guilty for, which was a common assault. So, I couldn't talk about the impacts of being raped at all; it is quite silencing. And also, how can you decide whether, you know, nightmares or loss of appetite or you know trouble concentrating, how can you know that that is the common assault or the rape?”

– Participant, “This is my story”.

Interview participants also spoke of other challenges which they felt had undermined the value of the VIS in their matter.

“...I just can't see, with COVID, why I couldn't just go in as a single person and read my statement in front of him. That was another thing that was really important to me, and I had to do it by video link ... I had the local newspaper calling me. The journalist [said] 'I'm going to put you on speakerphone'. So, the bloody journalist was in there in the court room. And I couldn't get in there to read my statement.”

– Participant, “This is my story”.

Others spoke of the benefit of being able to read it in person, even with the content curtailed as a result of the guilty plea.

“I don't even like getting up to talk in front of people like, [but I] read this thing out and my rapist is in the room, and ... I was looking at it him the whole time and he didn't put his head up once. I was staring at him, so I thought that was powerful.”

– Participant, “This is my story”.

Concerningly, the wider research of the CIJ – including the Victim Services Review and Victorian research into the experiences of Aboriginal victims of crime – found that a surprising number of the participants with whom we spoke and had been supported with a Victim Impact Statement process and some were even unaware that this had been an option available to them.

3.3.5 Cross-examination

Despite the relatively small proportion of NSW participants whose matter had reached the stage at which cross-examination was relevant, the study clearly indicated that this process remains distressing, despite multiple attempts to improve it over recent years. Professional stakeholders agreed that cross-examination is the most difficult aspect of the criminal justice system for complainants, with a judicial officer describing it as a “*torture chamber*” for victim survivors.

Multiple participants who reached trial spoke at length about the confronting and humiliating nature of questions from the defence during cross-examination. Overall participants suggested that the cross-examination process was designed to humiliate and discredit them, while also undermining their feeling of agency in finally being able to tell their story.

“... they showed screenshots in court and ... I'd already gone through the prosecution for the evidence in chief, and so the defence showed them and tried to make me out to be a really terrible person and it was the first time in the whole thing where I started crying ... And it was designed just to humiliate me. It doesn't make me more or less credible rape victim at all ... it's completely irrelevant, but it was designed to humiliate me, and it was punishment from the defence lawyers.”

– Participant, “This is my story”.

“Everything to do with, like, telling your story is embarrassing, right? ... And I started to cry and that worked so fucking well for them.”

– Participant, “This is my story”.

“He kept repeating the question even though I'd answered it. Yeah, just trying to get me to change my statement ... trying to make me a liar, basically.”

- Participant, “This is my story”.

Participants also described experiences of being questioned at length about unrelated issues as a way of discrediting them, or being presented with new evidence during cross-examination, with their confused responses then used against them.

“First I was questioned for an hour and a half about what happened. ... Then I was questioned for three hours about what didn't happen...”

– Participant, “This is my story”>

“... [the defence lawyer] was painting the story like I was lying and trying to trip me up ... and it was probably about 45 minutes on this one. She's talking about the couch where it happened ... then afterwards, the Crown gets the opportunity to have a few questions ... it was all clarified. It was like ‘there you go, how easy was that?’ ... instead, it was like I had to endure, like, 45 minutes of ... someone doubting my story...”

– Participant, “This is my story”.

Judges reflected in consultations that it is their role to observe how the complainant is feeling, offer breaks, and step in to interrupt inappropriate questioning where required. Participants similarly offered examples of the benefits when judges had intervened in the cross-examination process.

“I still had a good feeling about the trial because the judge's summing up was really good.”

– Participant, “This is my story”.

“I just really loved the judge, and I just felt like she was really fair and when I was upset and would tell me to have breaks and she was clearly invested in my wellbeing.”

– Participant, “This is my story”.

“...the judge sort of stepped in and was like, ‘you've already asked that question’ and that kind of thing.”

– Participant, “This is my story”.

3.3.6 The need for trauma-informed approaches

A specific theme arising throughout the NSW research was that, during trial, there is a lack of understanding of the impacts of trauma on victim survivors of sexual assault. This includes the different responses that victim-survivors may have, including freezing or fawning response to trauma.

“One of the questions the defence asked me was like, ‘why didn’t I run away?’ And I felt like being like ‘hello’, like ‘flight, flight or freeze’? Like, duh. But then again, it’s like, why does that fall on me to have to explain that ... the defence lawyers, she knows, they know, they’re smart.”

– Participant, “This is my story”.

Stakeholders also suggested that judicial officers do not always engage in trauma-informed conduct. This was noted as particularly harmful for complainants with pre-existing mental health conditions. Judges and legal practitioners acknowledged this gap, noting a need for education and a contemporary understanding of the impacts of trauma on memory. Participants also reflected on the impacts of trauma on their own recollections of specific details being challenged in cross-examination.

“Like there’s no reason why I would need to look at the places where I was raped except to make me shut up. It feels like a threat, actually. It felt like a threat.”

– Participant, “This is my story”.

“I was on the stand for five and a half days being cross-examined. Going through court and going through all this horrific shit, you might not properly remember everything and they use that against people. I asked [the barrister] ‘would you like your daughter to go through this?’... You do all this work in counselling and therapy to try and de-escalate the long-term memory triggers and re-establish different connections ... That doesn’t help when you’re then supposed to be fully in your trauma and remembering things on the stand ... And you’re not allowed to bring your statement on the stand. I think that’s bullshit. I trust what I wrote [when I gave my statement], I don’t trust my memory after all this time and all my hard work to heal.”

Participant. “This is my story”.

“I had no memory of being taken to the shower. But that didn’t change what happened on the bed.”

– Participant, “This is my story”.

It is therefore crucial for prosecution and defence practitioners, as well as judicial officers, to develop a detailed understanding of the impacts of trauma, including its impacts on memory as well as some of the core responses that a complainant may exhibit.

3.3.7 Repeated delays and length of the trial processes

Separately, the research indicated that the length of time until a trial commences impedes complainants’ recovery, with many complainants waiting years before their trial takes place. The process of then re-engaging with their assault can be highly retraumatising for complainants, working against their long-term healing.

“Like, I’ve been waiting for this ... four or five years since the assault and I’ve reported straight away, so four or five years of my life [and] chronic stress every day.”

– Participant, “This is my story”.

This participant also suggested that, where the delay in a trial is the result of procedural failures on the part of the respective legal teams, complainants should receive a financial payment or that legal professionals should receive some sort of disciplinary or regulatory consequence.

“[The defence] are obviously playing on the fact that if they delayed another time I might drop out ... and I actually think that judges are way too tolerant with it and you actually should lose professional standing if you actually haven’t prepared for your matter.”

– Participant, “This is my story”.

3.4 Experiences post-trial

3.4.1 Outcome of their trial

Stakeholders in the NSW research reflected that low conviction rates or lenient sentences in sexual offence matters mean that the majority of complainants are disappointed by the outcomes of their trials. That said, the experiences of participants reflected a greater level of complexity than this. Rather than being concerned about the lenience of a sentence, most participants whose matter involved a guilty verdict were very clear about rejecting any notion that they had persisted with the prosecution for the purposes of punishment.

“... a lot of people said ‘oh, it’s not long enough’. I think people just arbitrarily say that ... it’s based on, like, no thought behind it, because it was three to five years. That’s pretty fucking long ... that’s a lifetime ... people have told me things that they think will help me feel better, that do not help me feel better. Like the prosecution and the police said, ‘he’s not going to have a great time in prison’. Like, why would I want to hear that?”

– Participant, “This is my story”.

“Some of the witness support people were very like... ‘he needs to be held accountable’ and ... ‘he needs to pay for what he did’ ... he wasn’t showing up for the mentions in court, and they eventually found him ... at a homelessness shelter ... that’s when [the witness support person] ... made a comment like, ‘well, it’s always good to see, not karma, but you know, consequences’, and I was just, I did not need to know that.”

– Participant, “This is my story”.

Rather, as noted earlier, what participants described was a desire to protect potential victims in the future; to see the offender held accountable and told that their behaviour was wrong; and – most of all – to be believed. As such, in many cases, a guilty verdict alone was the priority.

Alternatively, an indication from the judge that their story was credible and that they had been believed was the key piece of information that the participant needed.

“It felt huge to be believed.”

– Participant, “This is my story”.

“... what felt like the closest thing to justice to me was when the jury said ‘guilty’. I was like, I don’t care about the sentencing, that was all I needed. And I don’t think I needed that before I went to court, but as soon as I told my story in court, all of a sudden it became really important ... when the judge said at the sentencing that my version of events was the correct account of what happened and nothing that the defence had suggested or asked me about was true.”

– Participant, “This is my story”.

Conversely, the sense that they had not been believed was a more devastating component of the experience for some participants. Some spoke of the impact of receiving a not guilty verdict, whether in court or elsewhere, with some requiring acute psychiatric care and experiencing suicidal ideation or attempts.

“I was at home when they told me. The police officer texted me and I said ‘I’m coming to the city, where are you’ and she said, ‘I’ll meet you at the DPP offices’, and I walked into the building, and we basically ran up to each other and she just grabbed me and held me, and I just, like, sobbed.”

– Participant, “This is my story”.

"I took a lot of tablets. And my friend called the ambulance ... I didn't want him to go to jail. I didn't even want an apology. I just wanted him to know what he did was wrong ..."
- Participant, "This is my story".

Linking to a lack of post-trial support, other participants spoke of being at court when a verdict was announced or sentence delivered and then feeling that they disappeared into a 'black hole' when there was no follow up or engagement with prosecution. This included one participant who had never had an explanation of what the offender's sentence actually meant.

"I still to this day don't understand what happened... like no one explained it to me..."
- Participant, "This is my story".

"... there was no like, you know, 'this is what could happen'. They kind of just said bye forever."
- Participant, "This is my story".

"... within one minute of saying the verdict, it's like all gone. Yeah, and I think there wasn't really much like future planning that gets done in terms of like, what you have to fill that big hole. ... It's something that doesn't seem to be on people's like radar."
- Participant, "This is my story".

This feeling of being immediately forgotten was also reflected by participants in the CIJ's wider research with victims of crime. In fact, the absence of debriefing or delayed follow up was essentially the one criticism that participants offered during the CIJ's review of the Child Witness Service.

"You finish at court... that's it... You are cut off from everything. It ended and it was like - nothing. Three years of my life ... and now you've left me with nowhere to go... like a book without a back cover."

Participant, "Child Witness Service review"

3.4.2 Overall impact of proceeding to trial

Overall, the CIJ's research in NSW highlighted the risk inherent when victim survivors of sexual assault take part in the trial process. Even when there is a guilty verdict, the research noted that this was often unrelated to a complainant's welfare and recovery. Some participants had gained an element of what they had been seeking from the process, despite the very distinct and new experiences of trauma that the trial had created. The vast majority, however, felt that it had done more harm than good.

"That process was probably as bad as the abuse that I copped, to be honest."
- Participant, "This is my story".

"It took me a very long time and a lot of talking to [counsellor] to be able to ... come to terms with the fact that you don't always get justice."
- Participant, "This is my story".

"... you still feel like you're being victimised. Because you don't have that [voice] and you feel powerless and demoralised ... that must absolutely affect so many people. Because you just go, 'Where's my voice?'"
- Participant, "Key Practice Insights".

"I've got my closure on my historical abuse. I haven't got my ... justice system closure, and I don't know that I will."
- Participant, "This is my story".

Some participants were explicitly clear that they would never report a future offence and actively discouraged other people from doing so.

"I've actually advocated for people not to come forward because there's no justice in any of this at all. Like, what's the point? Like, statistically, nothing happens..."

– Participant, "This is my story".

"I would advise victims not to go ahead with the trial... like there's other ways to get the truth out of people without making them feel as though that there's something's wrong with them."

– Participant, "This is my story".

"... it didn't even re-traumatise me, it gave me new trauma. Like, it wasn't like a rehashing of like whatever it was, just like this whole new set of like, trust issues. And I'm so well supported as well, like informal support networks. What is it like for someone who doesn't have any of that?"

– Participant, "This is my story".

"I honestly believe not reporting probably would have made everything so much easier for me."

Participant, "This is my story".

Despite this, some participants noted that it was ultimately important to them that they had reported.

"... if you told me now [that I was not going to get a guilty verdict] I would have still gone through with it. I think it was important that I did it for the other girls."

– Participant, "This is my story"

"I'm glad I did it. ... [I] wish it was a different outcome. But I had to try."

- Participant, "This is my story".

"I knew what needed to be done ... I had a responsibility to tell the truth and fix the problem."

- Participant, "This is my story".

4 Different expectations and meanings of ‘justice’

As noted above, multiple participants in the NSW research indicated that they would be unlikely to report to police if they experienced another sexual offence. This sentiment was echoed by a number of stakeholders, including judicial officers, one of whom was very experienced in sexual assault trials and said that they would advise a family member not to report if they experienced a sexual offence.

That said, it was a testament to the grace, resilience and strength of participants that they had identified aspects of the experience that they valued and were pleased, in different ways and for different reasons, that they had tried to hold the perpetrator to account. Participants found comfort in the fact that different aspects of the legal process would at least be having some kind of impact on the perpetrator. For example, one found comfort in multiple adjournments in a protection order process, knowing that the perpetrator was at least being inconvenienced and having to resource legal representation.

“I was just glad that he had something to worry about ... and having time to think about what he’d done’.”

– Participant, “This is my story”.

By contrast, one participant who received a guilty verdict and whose perpetrator had spent a short time in custody referred to their desire for the offender to understand that their behaviour was wrong as the main objective, which was ultimately not realised. This is an underlying irony, or inadvertent consequence, of a process in which denial and minimisation are set in train by the nature of the adversarial process.

“... the only thing I wanted from this was to show that this was wrong and it was ... the only thing I didn’t get ... I had my day in court and that’s what some people want. This person went to prison and that’s what some people want ... the only thing that didn’t happen was that [he acknowledged that what happened] was bad.”

– Participant, “This is my story”.

“I’m not seeking justice in a system that is so unjust and so against victim survivors, I’m literally just seeking accountability.”

– Participant, “This is my story”.

4.1 Alternative forms of justice

4.1.1 Options pursued by complainants

A small number of participants described processes separate to the criminal justice system through which they had sought to be recognised and believed. This included regulatory processes, civil legal proceedings, and other reporting mechanisms.

One example was a participant working in the sex industry who would have appreciated greater awareness and more timely information about WorkCover payments.

“I was sexually assaulted in the course of my job but, because it was sex work, I didn’t know about my working rights ... the business sort of, you know, told me like, ‘oh, you can’t get WorkCover’, you know, ‘you’re a sole trader.’ Yeah, and it was only like years later I found out that actually sex workers working in a brothel or massage parlour are eligible for WorkCover, but then it was way too late”

– Participant, “This is my story”.

Another participant made a complaint to a health regulatory body. This participant realised that, potentially, a professional disciplinary matter would potentially be treated more seriously than the assault that she had experienced.

“So ... when they when you go into a [regulatory] investigation, they suspend the practitioner while the [investigation] is happening. If he practices in that time, it’s actually illegal. So, he can actually be criminally charged for working under a suspension ... But it felt weird that if he was caught, that was almost like the higher prosecution than probably my [sexual offence] case.”

– Participant, “This is my story”.

For one participant, an initial approach to the tertiary institution at which she and the accused both studied had snowballed into a highly damaging process. She had made this approach only to access counselling and to keep the perpetrator at a distance. With the criminal investigation ultimately not proceeding to trial, despite strong evidence, the tertiary institution then instigated its own investigation into the alleged offences, as these had occurred on campus. What ensued was a highly stressful and traumatising process for this young participant.

“... I went to that [investigation] meeting and lawyers were cross-examining me at the same time, which was terrifying, and I didn’t understand what was happening ... [one of the lawyers] told me that the perpetrator accused me of being vexatious and that I should be punished ... So I went down this spiral thinking that he was going to sue me for defamation. I’ve ended up in that meeting feeling extremely disbelieved. And I was just saying, ‘OK, OK’, just so she would stop questioning me. Because we just got to a point where anything I said she was just like, ‘well, we don’t believe you’ ... when the investigators started showing me CCTV ... I felt like I was always like, being forced to re-live it. And I’m like, ‘but I don’t want to see this’. And ‘oh, we have to show you for procedural fairness’ ... but I wasn’t afforded procedural fairness ... victims need to be able to come forward without having to feel like something bad would happen to them as a result of complaining ... I would never have said anything to anyone had I known that was like a real possibility or threat.”

– Participant, “This is my story”.

The importance of being acknowledged and believed – as well as of having their own particular interpretation of justice recognised – was reflected by the endeavours of one participant, who had specifically looked into the benefits of restorative justice processes.

“I want to be able to look at him and speak to him about the impact it’s had on me and see what reaction he has, because... I know not everyone wants it, but I feel like to me, that will be able to give me ... some sort of closure ... I just want something out of it for me ... Because I want an answer. I want to try and do something. It’s just, there’s nothing apart from restorative justice that gives you that unless you go out on your own and try and seek it ...”

– Participant, “This is my story”.

As noted at the outset of this submission, the value of restorative justice processes – including the care that must be taken in how they are conducted – is discussed in detail in the CIJ’s first submission to this Inquiry from the CIJ’s restorative justice service delivery arm, Open Circle.

Finally, of the participants who had pursued another legal avenue, only one had received an outcome with which they were partially satisfied. This participant had experienced a sexual offence at a work-related event, perpetrated by a colleague, and had pursued the perpetrator and employer in a civil claim, as well as seeking Workcover.

"I thought at least he'd be sacked, but if not, at least he'd be demoted ... then the penny finally dropped. He stayed at work, I was removed. I... They fought the worker's compensation claim. I then lost my job. And it took me all that to realise, 'I'm not safe here' ... Every time I asserted my right, every time I spoke up ... they took a really punishing approach ... so I ended up getting legal advice ... I was thinking ... 'that's not how my story is going to end' ... [I was] very, very clear on what justice looks like for me... While I'm satisfied overall ... it came at significant personal risk and financial cost. And ... that's something that is unachievable and unrealistic for most victim survivors..."

– Participant, "This is my story".

Here, the CIJ notes the literature concerning the benefits or otherwise of civil claims in tort, which may be more readily established and proven than criminal charges, given the relevant standard of proof.⁷¹ Civil damages are also more likely to offer a greater amount in damages than through victim financial assistance schemes, which are discussed below.⁷² Research certainly indicates that engaging their own lawyer to act on their instructions throughout the trial process may provide victim survivors of sexual assault with a sense of having more control of the legal process than in a criminal prosecution.⁷³

Where a criminal prosecution of sexual assault by the state incurs no cost to victim survivors, however, a victim survivor who pursues civil litigation must fund their own legal representation.⁷⁴ Commentators also argue that, when victim survivors are framed as plaintiffs in civil litigation, the state is relieved of its responsibility to prosecute and punish sexual offending as a public wrong.⁷⁵ Scholars have also argued that tort law privileges tangible, pecuniary harm over intangible non-pecuniary harm where the serious and persistent psychological, emotional and relational harm they have experienced may not be properly accounted for in any quantum of damages.⁷⁶ The payment of damages has also been argued as akin to allowing perpetrators to 'buy' non-consensual sex.⁷⁷

Nonetheless, commentators argue that funding compelling civil cases would increase perpetrator accountability and reinforce community understanding of sexual violence as both a personal and social wrong.⁷⁸

⁷¹ Centre for Innovative Justice, (2014) *Innovative Justice Responses to Sexual Offending—Pathways to Better Outcomes for Victims, Offenders and the Community* RMIT University, Melbourne 92 <<https://cij.org.au/research-projects/sexual-offences/>>.

⁷² Holder, R. and Daly, K. (2018) 'Recognition, Reconnection, and Renewal: The Meaning of Money to Sexual Assault Survivors' 24(1) *International Review of Victimology* 25, 27; Victorian Law Reform Commission (n 72) 255 [10.67].

⁷³ Naylor, B. (2010) 'Effective Justice for Victims of Sexual Assault: Taking up the Debate on Alternative Pathways' 33(3) *University of New South Wales Law Journal* 662, 667 ('Effective Justice for Victims of Sexual Assault'); Feldthusen, B., Hankivsky O. and Greaves, L. (2000) 'Therapeutic Consequences of Civil Actions for Damages and Compensation Claims by Victims of Sexual Abuse' 12(1) *Canadian Journal of Women and the Law* 66, 75.

⁷⁴ Weiner, M. (2020) 'Civil Recourse Insurance: Increasing Access to the Tort System for Survivors of Domestic and Sexual Violence' 62(4) *Arizona Law Review* 957, 961 ('Civil Recourse Insurance').

⁷⁵ Antonsdóttir, H. (2020) 'Compensation as a Means to Justice? Sexual Violence Survivors' Views on the Tort Law Option in Iceland' 28(3) *Feminist Legal Studies* 277 ('Compensation as a Means to Justice?').

⁷⁶ Adjin-Tettey, E. (2012) 'Sexual Wrongdoing: Do the Remedies Reflect the Wrong?' in *Feminist Perspectives on Tort Law* (Routledge).

⁷⁷ Godden-Rasul, N. & Wiper, C. (2024) "Trauma-informed lawyering in the context of civil claims for sexual violence" *Journal of Law and Society*, 51 (2).

⁷⁸ Jay, A. (2019), *Accountability and Reparations Investigation Report* (2019) part C.1 [7] <<https://www.iicsa.org.uk/reports-recommendations/publications/investigation/accountability-reparations>>; Centre for Innovative Justice, RMIT University, above n 31, 92.

4.1.2 Victims compensation

An understated aspect of the victim support response in NSW (as in other Australian jurisdictions) was the victim's compensation process, through which victim survivors can apply for reimbursement of medical expenses and other costs, funding for counselling, as well as a modest recognition payment.⁷⁹ Interview participants appreciated this small payment and found it useful in a variety of ways.

"I think the total payout was about \$10,000 ... and I bought my companion animal and I actually bought her ... because I wanted to train her ... to be a court support animal."

– Participant, "This is my story".

The recognition from administrative process was described by some participants as the only positive aspect of their wider experience and was consistently characterised by participants who had accessed it as being much more significant than the associated financial support.

"It was actually just ... the assessor making note that, you know, he wasn't criminally charged, but that didn't negate the probabilities of what happened to me."

– Participant, "This is my story".

"And there was a personal statement of the person who had read through my application ... that was actually the best part ... to hear, like an opinion from somebody who wasn't involved and that was way better than like receiving the money."

– Participant, "This is my story".

"...it was less about the money and more about the fact that someone like believed me and that it's recognised."

– Participant, "This is my story".

"It felt a bit dirty getting that money, but the recognition was good".

– Participant, "This is my story".

The few concerns about this scheme expressed by participants stemmed from misunderstanding or misinformation about limited timeframes in which to submit an application, as well as concerns around the quality and choice of counselling or other therapeutic options available under the scheme. This was because access to counselling services was only available through a prescribed list of providers.

"I'm grateful that the scheme is there, I'm grateful that the government funds it but, yeah, the quality of service did more damage than good".

– Participant, "This is my story".

"... Victim Services actually doesn't pay for any, like, holistic support. So like, even if you were eligible ... say if you want to do [different types of] therapy, they only pay for the counsellors that are on their list. And because the rate is so low, therapists who have specialist skills, like, don't sign up."

– Participant, "This is my story".

Interviews with complainants for the NSW research demonstrated that the impacts of a sexual offence – as well as the associated and often just as devastating impacts of the legal process – need to be better acknowledged and considered by the legal and wider support service systems.

⁷⁹ Victims Support Scheme provides counselling, financial support and a recognition payment to victims of a violent crime in NSW.

4.2 Wider considerations

4.2.1 Impact on personal relationships

Related to the finding that victim support services need to recognise the breadth of the impacts of a sexual offence, participants similarly described a wide range of support needs, with the offence and subsequent interaction with the legal process interacting to compound these harms and prolong recovery. Impacts not accounted for in the criminal justice process include impacts on relationships with family and friends. As indicated throughout the various accounts throughout this report, these impacts included the feelings of shame that participants felt that prevented them from disclosing to family or that made them feel that they carried a burden of their family's reaction when they did.

"I feel like I had to be the better person in that situation and think that they're processing the trauma as well, but that shouldn't be on a 17-year-old girl trying to process it herself."

– Participant, "This is my story".

"I have brothers; they didn't know how to talk to me and it was just awkward ... I was so inadvertently angry with my brothers after I disclosed because I was like, 'you will never have to worry about it'"

– Participant, "This is my story".

"I can't imagine I'll ever have a relationship again. Yeah, my trust issues are zero."

– Participant, "This is my story".

Participants similarly described the impact of having reported the offence, with family members who had initially encouraged them to do so then becoming worried about them proceeding further.

"I felt like a lot of people backed down, like my family, and everyone was kind of always asking me, like, 'Are you sure? Are you sure?' ... It was kind of like 'you all wanted me so bad to do this...'"

– Participant, "This is my story".

"And the number of times you're asked, 'Are you sure you want to do this?' Do you ask that if somebody rings up to report a stolen wallet? ...there's a kind of deterrence to start with. It's a cop out."

- Participant, "This is my story".

This highlighted the need for the partners and family members of victim survivors to have access to their own support, the benefits of which were highlighted by one participant.

"... someone who's supporting someone else needs support too"

– Participant, "This is my story".

4.2.2 Impacts on complainants' ability to heal

The significant impacts of the sexual offence, as well as any associated trauma of the legal process, continued to play out in a variety of ways for participants in the NSW study. This included impacts on living arrangements, both in terms of their immediate housing, as well as their comfort levels in remaining living in a particular community. Some participants felt especially triggered by the thought of contact with the specific community in which the offence had taken place, often moving away and being reluctant to return or avoiding certain places when they were there.

"I haven't been back for Christmas. I didn't go back for my grandfather's funeral ... it hasn't sort of intruded on my safe little [new] town. So, I just have here as a safe space."

– Participant, "This is my story".

"I don't like to go home, I don't like driving past the pub and the house where it happened"

– Participant, "This is my story".

"I wish that whole community would just get swallowed up and disappear, I get really upset if I hear or see anything about that place."

– Participant, "This is my story".

Participants also experienced acute impacts on their mental health. Periods in acute psychiatric care were associated with the investigation process and with learning of a not guilty verdict, including being involuntarily admitted when they were simply advocating for their matter to be investigated.

"I had to go into an inpatient psychiatric hospital.... Which was also shit, survivor wise – they're so not trauma informed. ... they just loaded me up with medication and I was like a full-on zombie."

– Participant, "This is my story".

In addition to these more acute examples, participants described their life as having been put on hold during the investigation and prosecution process, describing the constant need to follow up with police or prosecution or attend counselling, crowding other aspects of their lives. This included needing to apply for special consideration in relation to completing school or early admission when applying for university; deferring university studies altogether; taking extended periods away from work; and having experienced serious physical and mental health impacts.

"I took a month off work because I just couldn't be around males. Like, it's a constant battle that I have to live with, and I'll probably have it for the rest of my life. And he just gets to walk free and."

– Participant, "This is my story".

"I dropped out of Uni several times. Like, when the assault first happened and then didn't resume because of the initial trials ... And that was really expensive ..."

– Participant, "This is my story".

"I question myself if what happened even happened every single day. I pretty much don't want to go anywhere unless my best friends are with me, because I think 'what if something happens then?'. Well, if these other things could happen to me then and the police can't do anything, then if anything else happens, nothing's going to happen. I can't shower by myself. Can't cook, clean and don't drive anymore. I haven't been to Uni in over a year. Yeah, I pretty much can't do anything."

– Participant, "This is my story".

Participants also described the impact of the lack of effective or meaningful support that they had received, leading to a general mistrust of services. To note, one participant had developed a much greater fear of police as a result of their matter.

"Nobody ever calls when they say they'll call or does what they say they will do."

– Participant, "This is my story".

"... when like, I and my friends go somewhere where there is police, just like guarding or standing around, I always tell them 'can we please just go somewhere else?' I don't want to look at them. Don't want to talk to them... I don't have that when it comes to men, it's just like police in general."

– Participant, "This is my story".

"... it's going to be a lifelong process because it's still affects me to this day"

– Participant, "This is my story".

4.2.3 Complainants supporting each other

Steps that participants had taken to support their recovery or look after their wellbeing were wide-ranging and often involved different pathways to sharing their story. Multiple participants had commenced producing a podcast.

“I don’t know why, but if I can help just one person by them, hearing my story, then you know I set out to do what I achieved. And so, as a result, I’ve launched a podcast”

- Participant, “This is my story”.

“[The podcast] was the best thing that could have happened because afterwards I felt like I really had my closure and now I can talk about ... everything that happened without like being really devastated afterwards ... now that I could, like, help other people potentially, it makes me feel a lot better.”

- Participant, “This is my story”.

This included acknowledging the endemic nature of sexual offences in the community and the fact that so many people did not go through the legal process or see a conviction. For example, one participant pointed out that, while she knew that sexual offences were widespread, she was the only person she knew who had gone through a court process.

“I don’t know anyone ... that’s gone through the court process. But ... I can name so many people who have been raped or sexually assaulted or anything like that, easily.”

- Participant, “This is my story”.

Some participants had found forms of peer support. This included being supported at court and as having access to peer forums and discussions.⁸⁰ These forums provided comfort and support in terms of interview participants realising that they were not the only one to have had such a negative experience and that the sexual offence or court process should not define them.

“... [other victim-survivors] said that they didn’t need 12 other people to tell them that they have been raped. Which is quite sad really, but I think I just sort of got better.”

- Participant, “This is my story”.

“I was in contact with the Survivor Hub⁸¹. And that’s when they said, ‘OK, well, if you’ve got no one to go’ ... ‘I’ll come with you.’ And so, she was there when I was giving evidence. Which was really helpful.”

- Participant, “This is my story”.

That said, other participants who had encountered different modes of peer support or voluntary support networks reported mixed experiences, with some facilitators being insufficiently aware of the kinds of discussions that people could find triggering. This indicated a need for a clear and considered approach to the establishment of peer networks and their associated resourcing and capacity building.

Separately, First Nations participants described the importance of culturally-safe healing and support.

“Holistic and therapeutic support is really important. I need someone who understands trauma and who is open-minded about what I need to try in order to heal.... And if you don’t have much of your culture, you need people around you who can help you normalise things and support you”

- Participant, “This is my story”.

⁸⁰ One of which, The Survivor Hub, was a source of referrals to the research, with debriefing arranged by the research team and offered by Full Stop counsellors.

⁸¹ The Survivor Hub is a survivor-led, not-for-profit organisation that supports people who have been impacted by sexual assault.

More broadly, multiple participants nominated a very clear need for people with lived experience to inform and be part of training for police, lawyers, court staff and judicial officers. The CIJ notes that this would also need to be appropriately resourced and for people with lived experience to be adequately supported with capacity and capability building so that they were not carrying the cultural load of trauma-informed practice or experiencing isolation from other staff in the service.

4.2.4 Victim survivors giving back

A strong theme was the overwhelming objective for most participants to support others who had experienced sexual assault. Participants indicated that, as part of their recovery, they were finding professional avenues to prevent sexual offences from happening in the future or supporting people who experienced it, if and when it did occur. Almost all were training, retraining for, or otherwise committing time to, roles that involved increasing awareness of sexual assault, improving the system; or supporting other victim survivors. Some of these roles involved the development of information resources.

“I don’t want to discourage people from reporting. Because for some people, reporting is what they want to do or need to do, or you know, whatever. And that’s what justice looks like for some people. So, I don’t want to discourage people, but I want them to go into the process fully informed and they’re not at the moment. They’re not fully informed, not at all.”

– Participant, “This is my story”.

Importantly, victim survivors also expressed an ongoing need to feel heard and validated in their experiences. This included coming to terms with the idea that a conventional notion of “justice” may never be attained in their case and that sharing their experience through participation in research and advocacy was a way of making a genuine difference to themselves and others.

“Because some people are just so destroyed by the actual process, I imagine they just want to move on and forget about it. But then there’s people like me and others who kind of have that voice and want to voice, you know that the system needs to change.”

– Participant, “This is my story.”

“I’ve been seeking to have a voice for years and this is the first time that someone has listened.”

– Participant, “This is my story”.

“You’re the first person who’s asked for my side of the story.”

Participant, “Key Practice Insights”.

Many expressed extraordinary optimism and resilience in the circumstances, despite their experiences.

“... hopefully there is a change ... I think too, now that kids are more empowered as well, that’ll start changing things.”

- Participant, “This is my story”.

First Nations participants were taking the lead on pushing for change in their community. This included as grandmothers and Aunties teaching their children and grandchildren how to be safe, how to be respectful and, just as importantly, how to speak up.

“No one has hurt us more than the white man.”

- Participant, “This is my story”.

“Trauma has taken our families, our people’s lives. ... using drugs and alcohol to push it all down, seeing suicide as the only way out. ... We can’t rely on the authorities. We are the protecting adults, the guidance.”

- Participant, *“This is my story”*.

“We got to educate our community, our men and our women, that if something happens to you, or you do something, they’ve gotta be held accountable ... Use your voice. Because while you’re on this earth, you’re speaking up for our women”.

- Participant, *“This is my story”*.

Nonetheless, stakeholders and participants alike described the system itself at multiple points across the project as an “inherently broken”. For participants, the combined response of those contributing to the research can be summed up by one rather direct suggestion that we take the justice system response to sexual offences and:

“Burn it down”.

– Participant, *“This is my story”*.

5 Building it out by centring the victim survivor

Despite the very understandable suggestion from the NSW participant above that the only answer to the challenges of the justice system response is to “burn it down”, the CIJ suggests that there are also ways to build it out and broaden our vision of what “justice” actually means.

This should not, however, equate to just “tinkering” at the edges – nor even making the response more trauma-informed or, more accurately, trauma-*founded*, despite this being crucial. Rather, it should mean making sure that every victim of violent crime, including sexual offences, receives end-to-end recovery and support, regardless of whether they report; whether this report leads to charges or prosecution; or whether the prosecution results in a conviction.

Accordingly, this part of the submission explores the lessons from the CIJ’s Victim’s Services Review, *Strengthening Victoria’s Victim Support System*, before then going on to a briefer discussion of the CIJ’s recommendations from other relevant projects as examples of possible directions for the Inquiry. These are offered while being mindful of the substantial recommendations for reform that already exist, including as a result of extensive Inquiries such as the current one, that have come before.

5.1 Lessons from *Strengthening Victoria’s Victim Support System*

As discussed in Part Two of this submission, a substantial number of victims of any crime type do not report their experience to police for a diversity of reasons. Importantly, the CIJ’s Victim’s Services Review also identified that, even where victims of crime do report to police, they may not be in a position to identify their needs and to take up the offer of any relevant referral.

The absence of a criminal justice process does not, however, mean that victims do not require support. In fact, the CIJ’s research indicated that the absence of a criminal justice process can complicate and prolong a person’s recovery when they do not feel that they have been provided with an opportunity to be heard or to have their experience validated.

Even where a report is made but ultimately does not or cannot progress, the broader service response can become even more important. For many victims of crime who contributed to the CIJ’s research, this was about feeling remembered. Too often, however, this came down to the “luck of the draw” in terms of the individual professionals who a victim may encounter. For example, validation of one participant’s experience came through a police informant who supported them in a range of ways – not only making an initial referral to victim support services, but also making follow-up referrals and providing additional information along the way to ensure that the participant knew to access entitlements. Another participant, for whom the relevant offender had been found unfit to plead, described the police informant dropping by to keep her updated on the matter and taking the time to explain why the criminal matter was not proceeding. These small examples of an informant taking the time to ensure that a victim was supported and understood what was happening made an enormous difference.

Other participants spoke about individual case workers who made them feel heard and supported. This could include regular phone check-ins to remind the victim that the system was keeping an eye on their wellbeing. It could also include actively smoothing the victim’s path to recovery by ensuring that their evolving needs – including highly practical needs – were identified and met, and that they were not left to manage the ongoing impacts of their experience alone.

These examples highlighted how the broader system response – including interactions with police and victim support services – can go some way to addressing victims’ justice needs, ensuring that they feel heard, supported and are understood as a genuine participant in the process, regardless of whether it progresses to a trial or conviction. By contrast, each point along the way in which a victim received an inadequate response from a particular service or agency could compound their sense of being invisible.

Although the victim support and wider service systems do not have the capacity to shape legal outcomes, the CIJ’s research found that support can significantly influence the way that a victim of crime experiences the justice system – if this is a system with which they do end up in contact. This includes ensuring that they are linked in with services that are actively assessing and responding to their needs. As highlighted in Parts Two and Three of this submission, it also includes ensuring that they are kept informed of the process and are supported to understand why particular decisions are made.

Provision of support, however, does not always have to relate to the criminal justice process. In fact, the CIJ’s research found that wider recovery needs were often equally, or even more, important to a participant’s capacity to manage the effects of the crime that they experienced.

Just as victims of crime who did not experience a criminal justice process sometimes felt that they were invisible, the privileging of needs relating to the criminal justice process often meant that therapeutic, practical and wider legal needs were completely overlooked.

“The things we struggled with in those initial periods were just simply ... getting up and getting food on the table and making sure there was food for the lunchboxes, and just keeping the house going, looking after the kids. That was a massive struggle.”

- Participant, “Key Practice Insights”.

Importantly, different participants described a range of needs as the most critical for them in their recovery process. For example, some felt that practical needs were the most important, while what was missing from the service response that others received was emotional support. Rather than indicating that one type of support took priority over others, therefore, the research highlighted the unique nature of each victim’s needs and service preferences, as well as how much they were influenced by each person’s individual circumstances and, as noted at the outset of this submission, protective factors.

“... I can see why they would be the things you would offer somebody. Maybe some people would feel safer with those things under their belt. For me, I actually probably just needed some emotional support, like that was, more than anything else ... They were talking about burglar security screens for my windows, whatever, whatever. Actually, I probably just wanted someone to talk to.”

- Participant, “Key Practice Insights”.

A further theme emerging from the research was that victims' needs arising as a result of an offence are *interrelated* and *interdependent*. For example, a victim's lack of safe housing may subsequently undermine their capacity to engage with therapeutic and other supports. This was also true of participants whose experience impacted their capacity to participate in paid employment – including those who experienced a crime in or related to their workplace – or incurred other financial losses. For these participants, support to manage their financial needs was crucial to recovery, as unaddressed financial needs were often liable to spiral, impacting victims' housing, physical and mental health, as well as capacity to manage more broadly. Participants also described the importance of addressing practical needs so that they could focus on recovering from their experience, with assistance with household management and childcare raised as specific examples which afforded them the opportunity to feel less overwhelmed.

“... [home help] enabled me to actually just think and, she did everything. I mean, I was still there, it's not like I went out anywhere much but it enabled me to not have to worry about all the washing and kids, she helped me with the baby and it meant that I could actually go out and attend to [our] affairs as ... it was just unbelievable how much there was to do.”

- Participant, “Key Practice Insights”.

One area in which the breadth of victims' needs was most overlooked was in relation to legal needs. In particular, the CIJ's research confirmed that the legal needs of victims of crime go well beyond advice and assistance regarding rights relating to the criminal justice process or access to state-funded financial assistance. While these are clearly needs in their own right, the CIJ's research identified a broad range of other unmet legal needs, some of which were nominated by participants and some of which became apparent during the interview process, given the CIJ research team's legal expertise. These unmet legal needs included legal advice in relation to a range of issues such as family violence, family law and child protection, employment, migration status and wider options for compensation and restitution. The research process revealed that victims of crime are not always able to identify and articulate their legal needs, making issues-spotting by skilled legal practitioners crucial.

“Straight after a crime you [could say], ‘Yeah, oh you're family violence ... you've got property settlement, you've got all that sort of stuff which is family law, intervention orders is civil law, and then you've got criminal if they breach. [The] law is so blurred and all the rest of it and most people don't understand it. We really need someone to explain that stuff to us and I think having a legal person would make you feel more empowered and more in control because you're not in control at all ...”

- Participant, “Key Practice Insights”.

A key finding of the research, therefore, was that victims of crime require *holistic* support which responds to the various life domains that may be impacted by their experience of crime. This means that supports should be tailored and responsive to the needs of each individual victim of crime, including legal needs, with practitioners being afforded the autonomy to work flexibly in order to assess and address the needs of their clients.

With this identified, a further key finding of the CIJ's research was that the service system often assumes that victims of crime will proactively advocate for themselves, seeking help when they need it and articulating their support needs. In part, the research found that this assumption is built into the design of key victim services, with most practitioners carrying prohibitive caseloads that meant that there were simply not enough hours in the day for them to reach out proactively to their clients.

The research also suggested, however, that an understanding of “victim-led” service delivery and practice had developed which equated “victim-led” with “victim-initiated”. A common theme across the research – including for participants from a wide range of circumstances – was that victims felt that the onus was on them to ask for help and describe what they needed, rather than being supported to understand what was available and how it might fit their needs and circumstances.

“I can understand how people who are victims have things happen and it can just destroy their life. Because to actually get through it and get the help you need and all of that, the onus is really on you to seek that help and find ways of getting it for the most part, rather than it coming to you. You’ve really got to put your hand up and jump up and down a bit to get what you need.”

- Participant, “Key Practice Insights”.

It was apparent that participants were very rarely able to ask proactively for what they needed. In part this was due to the impacts of recent and often significant trauma, with participants describing feeling “at breakdown point”, “drowning” and that “everything’s spinning”. The limited capacity of victims to articulate their needs also stemmed largely from the fact that many participants appeared to have had very limited involvement with the service system, either because they had not experienced crime before, or because they had not reported prior experiences or been connected with services when they did. In this context, participants simply did not know what services and supports were available.

“You were just on your own [...] It took us probably three or four months before we realised that there were special childcare subsidies. There were things that actually could be done to help us. But that took months and that was through our own searching around.”

- Participant, “Key Practice Insights”.

The research also found that participants’ needs changed over time and that a focus on front-end service delivery, with limited follow-up, often meant that services were not able to identify when a participant’s needs escalated.

“At the very beginning they explained how when it goes to court they can arrange someone there on the day. It was very informative up front but the wheels came off over time. The way the last conversation went was, ‘Okay, you don’t need us?’... ‘Okay, I guess I don’t.’”

- Participant, “Key Practice Insights”.

Multiple participants described periods in which they felt unable to cope, with some experiencing periods of significant mental ill health. Despite remaining an open client of a service, these participants were not actively engaged with supports and none of them recalled proactively reaching out to request additional support during periods of crisis or escalating need. It is important, therefore, for services to provide victims of crime with windows of opportunity to reconnect with supports, including by proactively checking in to see how they are doing and to adjust or put new supports in place as required.

“People expect you to feel better and move on and get on with things. Someone touching base, understanding that that isn’t the case, would have been nice.”

- Participant, “Key Practice Insights”.

The CIJ's research also surfaced barriers to engagement that individual victims of crime may encounter. Given that victims of crime were often already feeling vulnerable and struggling to cope, many could disengage from services as a result of fairly practical considerations. For example, one participant had never received support because, at the time he was contacted, his physical injuries prevented him from attending the service premises. This participant declined service as a result and did not receive any support until he was contacted by the service as part of the recruitment process for the CIJ's research. This provided him with a window to re-engage and ultimately resulted in him seeking a counselling referral. Other participants also described being unwilling to leave the home in the immediate aftermath of the crime, either because of physical injuries impacting their ability; fear of encountering the offender; or general fear and anxiety around being in public spaces.

“Because the time when the lady offered me some [support] I was... I didn't even want to go out of the home. I just didn't want to face people.”

- Participant, “Key Practice Insights”.

The CIJ's research also indicated that recent migrants were particularly vulnerable to service disengagement. Limited knowledge of local service and justice systems combined with social isolation to, function as a barrier and undermine the capacity of this cohort to advocate proactively to have their needs met. In the case of two participants, this was to the extent that the CIJ research team felt it necessary to seek the participants' consent to contact the relevant service and request that they re-engage due to welfare concerns.

“I really wish I had [received support sooner]. I am seeing the psychologist and the situation is worse now. I am addicted to bad things now and my habits have changed, I don't look after myself anymore. I wish I'd had support, especially when I was very depressed in the beginning.”

- Participant, “Key Practice Insights”.

Rather than being a reflection on the individual services or workers, this appeared to be the result of the overarching assumption that victims of crime will proactively seek help when they need it. The capacity of practitioners to check-in regularly with clients, including those who were particularly vulnerable to disengagement and social isolation, was further limited by unsustainable caseloads.

These findings highlighted the need to shift from conceptions of “victim-led” that place the onus on the victim, and instead ensure that the system is underpinned by the interrelated concepts of “victim-led while also trauma-informed”. This means understanding that it is the role of the service system, and not the individual victim, to ensure that a victims' needs are assessed and understood; to identify appropriate supports; and, where required, to scaffold victims' engagement with those supports through warm referrals, advocacy and effective case coordination.

Further, the CIJ's research identified that a key element of “victim-led” service delivery is quality, tailored information provision which empowers victims of crime to make informed decisions and to understand what is happening, as well as their rights, entitlements and the nature of supports available.

Further, the CIJ's research suggested that individual victims of crime will have different preferences in terms of how they receive information, as echoed in the earlier discussions about the CIJ's research in NSW. For example, some wanted as much information upfront as possible, while others wanted information to be staggered so that they would not be overwhelmed. The research also indicated that the provision of generic information was usually ineffective, as this placed the onus on the victim to trawl through information to identify which supports and services might be relevant to them, rather than being actively supported and guided to the supports that they needed at that particular time.

[My] head was still a little bit unclear ... It was too much stuff, I wasn't really getting any of it. So then she sent me a package of information which she promise to do on the phone, you know, 'Don't worry, you don't have to remember all of this , ...' And again, the package just looked like a lot of stuff. It just all felt like somebody referring me to somebody referring me to somebody referring me..."

- Participant, "Key Practice Insights".

A range of strategies were identified by the CIJ's research as improving the effectiveness of information provision and building the capacity of victims to self-manage their needs over time. These included:

- following up the verbal provision of information with relevant written materials;
- signposting where victims of crime can seek additional information in a self-guided way;
- ensuring that victims of crime know who to contact if they have further questions, or proactively reaching out to ensure that information was understood; and
- asking victims of crime whether they prefer written or verbal information, or a combination of both.

For some participants, the CIJ's research also suggested that more time should be taken to explain the nature of relevant supports, as well as understanding why victims may decline them. The research identified situations in which participants had declined, disengaged from, or otherwise been reluctant to take up particular supports due to a misunderstanding about the implications of accessing them. These represented missed opportunities to engage victims of crime in meaningful supports which may have made a real difference to their recovery.

"I was trying to avoid [going to counselling], you know? Because if I go there and my boss knows, he says, 'Oh, oh, you are not ready enough so I'm not going to give you shifts', you know?"

- Participant, "Key Practice Insights".

Overall, the CIJ's research found that victims greatly valued when their support worker knew the system well and could provide them with specialist information, advice and guidance – not only upfront, but as their needs changed over time. This made participants feel that they were not alone in navigating the system and alleviated much of the stress and anxiety associated with identifying and managing their needs, as well as relevant justice system processes.

"I've got an awesome worker at the moment, she's just awesome [...] They'll explain the system to you in a way that you'll understand, but they also follow things up for you like questions and what-not..."

- Participant, "Key Practice Insights".

By contrast, generic information often overwhelmed victims of crime; came across as 'impersonal' or 'scripted'; and could prompt them to disengage.

Where participants did have a caseworker who proactively checked in with them, this made a big difference to their perception of the service system. Participants described feeling as if the harm that they had suffered was being recognised and validated by the service system. It also reminded them that they could reach out to their caseworker if they needed to talk or their needs changed. Participants who did not receive this type of proactive support volunteered that a regular “check-in” would have reminded them that someone had an eye on their welfare and that additional help was available.

“As weird as it is, you just felt like ... someone actually cared. And it was that feeling more than anything and that’s a good feeling. The people care and, you know, you’ve just been a victim but someone’s there to look after you or worry about your mental health ... That was good.”

– Participant, “Key Practice Insights”.

Regular check-ins also provided caseworkers with an opportunity to support clients to identify and work towards new recovery goals. For example, a participant who had experienced a significant assault described being prompted by a caseworker to reflect on whether he was ready to return to work. The caseworker then supported him to secure a volunteer position to rebuild his confidence and job readiness after a long period out of the workforce.

“The first twelve months, once a month she was ringing me, just out of the blue. Just ringing me and said, ‘How are you going? How’s everything going? Are you feeling good?’ She was on top of it [...]”

– Participants, “Key Practice Insights”.

The CIJ’s research indicated that this support needed to involve regular follow-up, including after making referrals to “close the loop” and ensure that any referral had been followed through and was meeting the victim’s needs. Where a referral did not result in a timely, quality service delivered by an appropriately skilled practitioner, participants felt let down. This could in turn trigger disengagement where the service did not follow up. Some participants also needed prompting to make and attend their appointment, particularly if they were struggling to cope or were socially isolated. Where ineffective referrals were made and not followed up, the needs of participants often went unmet.

The CIJ’s research also indicated the importance of discussing the frequency and timing of support with victims upfront, as participants generally did not find it useful if calls were at times when they were likely to be distracted, such as during work hours (or while they were driving with their children in the car, as a participant in the NSW research reflected). Here it is important to note that phone-based support will not be suitable for all victims, with some participants indicating a preference for face-to-face appointments.

“At the moment, I’m quite well. I’ve only got monthly appointments but, when things turn to shit, it really does turn to shit. Ringing Lifeline and SuicideLine and 1800RESPECT is great, but it’s not the same as face-to-face, one-on-one.”

– Participant, “Key Practice Insights”.

This means that a tailored approach is needed to determine the most appropriate approach for individual victims. Decisions as to the appropriateness of phone-based support should consider victims’ communication needs, as well as ensuring that they have a safe, secure environment from which to engage with support, particularly when working with victim survivors of family, domestic and sexual violence.

In much the same way that the CIJ's research found that victim support services often assumed that victims of crime will proactively identify and advocate for their needs, it also identified a presumption that all victims of crime have a support network which can stop them from falling through the cracks.

Participants who suffered ongoing impacts of the crime that they experienced often described being heavily reliant on family to address their needs. This included for critical supports such as accommodation, either short-term (for example, where the crime occurred in the victim's home) or longer-term, including where the participant was unable to work and support themselves financially.

"I wasn't allowed back to the house for a couple of days until all the fingerprinting and that was done, but the thing that I was concerned about is, if I didn't have any relatives or any friends to go stay with, and I had no money, what was I supposed to do? Sleep in the car?"

– Participant, "Key Practice Insights".

"Asking to borrow money all the time. 'Mum, can I have fifty dollars to get medication' ... and I didn't have to pay food or rent or board or anything at Mum's But if someone had to do that, good luck to them [...] I really say good luck because you'd literally almost be on the street."

– Participant, "Key Practice Insights".

In one example, a participant who was not able to remain safely where she usually lived had no option but to stay with her parents in the immediate aftermath of the crime, despite a history of violence from her father. The impacts of her experience of victimisation also meant that she was unable to work, with the participant exposed to her parents' home environment all day as a result.

"On the night it happened the copper said, 'Go to your mum and dad's house, you'll be safe there.' ... I haven't got no support from nothing and no-one."

– Participant, "Key Practice Insights".

For some participants, particularly those who had significant physical and psychological support needs, their partner often took on considerable carer duties. This could be the result of a single incident, although one participant had experienced protracted family violence, resulting in profound impacts on her physical and mental health which continued almost a decade after the violence had ceased.

Participants who did not have strong, local support networks often felt isolated and alone, sometimes struggling to manage their day-to-day needs, as well as needs arising from their experience of crime.

"There was so much pressure on me. I was just by myself. I didn't have any male adult to help me and was under deep stress..."

– Participant, "Key Practice Insights".

Social isolation appeared to be self-reinforcing. For participants who were socially isolated prior to their experience of crime, the lack of a supportive social network meant that their needs could escalate..

"I'm trying to work on it by myself ... But ... I'm in a town where I've got no family, I've got no friends around me, so I'm pretty isolated. The only support I've got is my counsellor and that's phone counselling. Apart from that I'm pretty much going through this blindfolded by myself hoping that I'm doing the right thing."

– Participant, "Key Practice Insights".

Overall, the research suggested that, while the service response can leverage existing support networks, service responses should not be predicated or reliant on the availability of these supports. Further, it is crucial that services identify where a victim of crime may be particularly socially isolated or may have critical support needs – such as accommodation – that cannot be provided through family, so that an appropriate service response can be put in place and needs can be prevented from escalating.

The CIJ's research also identified the myriad ways in which crime could impact on families. Support to manage the impacts of crime on children was limited or completely absent. Even where children were present when an offence occurred, their individual needs were rarely assessed and none received individualised support. In addition, very few parents described being supported to parent effectively and minimise the impacts of their own experience on their capacity to support their children.

“[I have] three children. And since that incident happened, most of the time we just locked ourselves inside the house and so my little daughter, because of the stress, almost lost all of her hair [...] I was hoping and expecting that someone can help her with counselling and other assistance and support.”

– Participant, “Key Practice Insights”.

“Probably how it's mostly affected me was actually my family. I had my children with me on the day of the event ... The youngest did have nightmares post that [event], so she woke up with nightmares and she'd never had nightmare before. [And my oldest child] did definitely struggle. It was like a blockage...”

– Participant, “Key Practice Insights”.

In one example, the participant described two of the adolescent children experiencing nightmares and significant behavioural issues, including using violence at school. Another child relocated to live with his father due to the ways in which his mother continued to be impacted by her experience of crime.

“And it got that bad, in the end, he moved out. He's moved in with his father. He just said, ‘I can't cope with Mum being... Mum's never been like this. I can't cope with it.’”

– Participant, “Key Practice Insights”.

Another participant described becoming heavily reliant on her children for support due to the ongoing impacts of her experience of victimisation, eventually leading to conflict with her children. One of her adolescent children even started to use violence towards her.

“I have a diagnosed post-traumatic stress disorder as a result of the crime ... And [my] children aren't supported through the system at all either, so my daughter was acting out and she assaulted me [...] My children have become my carers as a result of the crime and that's not fair on their development.”

– Participant, “Key Practice Insights”.

This complex example highlights how, where the impacts of crime are not addressed and where supports do not reflect the needs of the whole family, there is potential for families to be pushed into an ongoing cycle of violence, trauma and justice system involvement. In fact, the CIJ's research found that it was a significant limitation of victim support services that they could not work with the whole family to assess and address ongoing safety concerns and reduce the risk of further victimisation.

Where an experience of crime interacts with drivers of gendered violence, this may also escalate the risk of further harm being perpetrated by a victim against family members or being experienced by a victim who had become increasingly dependent on her partner.

“After the incident there was depression and anxiety [...] If [my wife] said a word, I’d snap. I’d either yell or just snap. I had to walk away, cool down, and once it started it just went worse and worse. It got to the stage where she’d say a word and we’d end up in a fight and I thought, “Well, that’s not me.”

– Participant, “Key Practice Insights”.

“I’ve got no independence at all. Everywhere I go, [my partner] needs to come with me [...] Before I could go shopping on my own. I had a really independent life ... and now I depend on him.”

– Participant, “Key Practice Insights”.

Overall, the research revealed substantial complexity across family circumstances and indicated a clear need to build the capacity of support services to work with the whole family or, at minimum, to conduct preliminary whole-of-family needs assessments and then refer into appropriate specialist services.

A key finding of the CIJ’s research was that the victim support system is designed primarily to respond to an isolated incident of crime. The aim of victim support, in this context, is to assist the victim to manage the impacts of the crime and to return to the position they were in before it occurred. Interviews with victims of crime, however, revealed a range of complex circumstances and often co-occurring needs that were present prior to the person’s experience of crime and made them particularly vulnerable to future victimisation, harm and other forms of contact with the justice system.

For multiple families, family violence, child protection involvement and intergenerational disadvantage were features of their lives, and several families had one or more children with disability. Several participants had one or more family members who had engaged in offending or risk-taking behaviours. In some families, multiple family members had been the victim of a crime, including across unrelated incidents. Repeat victimisation of individual victims of crime was also identified.

“From the [prior experience of family member’s victimisation], I would probably attribute the bulk of my trauma, and then the second incident kind of exacerbated all of the issues ... and made them worse ...”

– Participant, “Key Practice Insights”.

For individuals and families who had experienced multiple incidents of crime, a limitation of the service system was that it was frequently not able to respond to their whole experience. This was true where they had needs that cut across sectors and programmatic lines, such as family violence, sexual assault and ‘generalist’ victim support services. It was also, however, a result of the focus within victim services on an individual incident rather than broader patterns of harm and victimisation.

“They can do specific things and have specific roles. They can’t do holistic type stuff. They can only help with one particular matter at a time [but] if yours is complex and complicated, they’re sort of restricted by boundaries in what they can and can’t do.”

– Participant, “Key Practice Insights”.

The complex needs encountered in the CIJ’s research highlighted how a service response that aims to return a victim to the situation that they were in before the crime occurred is likely to be of limited benefit. By contrast, where practitioners have the flexibility to deliver intensive and holistic support to victims – including addressing needs that have not arisen from their experience of crime, but that make them vulnerable to future experiences of harm – the victim support system can function as a window to engage with hard-to-reach cohorts in relation to their wider needs and work to reduce future harm.

In addition to the re-traumatisation of the justice system, therefore, what the CIJ's research also illustrated is that other interactions with the service system can be re-traumatising for victims of crime too. In particular, participants struggled to navigate processes to access entitlements (such as those available through Centrelink) where they were expected to comply with standard processes that did not reflect their needs and typically interacted with staff with little or no understanding of those needs.

“To front up to the agencies and to the hospitals and to the doctors and to jump through all those hoops is just far too complicated. And a lot of the time it's extremely emotional as well and people just don't seem to understand or they just don't care...”

– Participant, “Key Practice Insights”.

Negative interactions with services that do not specialise in working with victims of crime had the potential to make them feel unsupported and that their experience did not matter. It also increased the likelihood that victims would disengage from the service system entirely. By contrast, where mainstream services had an awareness of crime victimisation, they could not only validate a victims' experience, but could function as an access point. In one example encountered through the CIJ's research, a participant who was not linked in with services received her initial referral from a Centrelink staff member who identified her experience of victimisation and encouraged her to seek support.

“Anyway, when I went down to see the lady at Centrelink, she got my Centrelink stuff sorted and she said, ‘Right now, on a personal note, you need to go see these ladies down at [family violence service]. And that's where my recommendation came from. I am so grateful that lady spoke up, because otherwise I never would have heard of them.’”

– Participant, “Key Practice Insights”.

In another example, a participant who was receiving minimal support attended hospital for an unrelated issue. This interaction provided an opportunity for hospital social workers to identify that the victim had significant unmet needs arising from her recent experience of crime, and appropriate supports were put in place before those needs escalated.

These examples in which the broader service system functioned as an entry point to support, as well as examples in which mainstream services had the effect of re-traumatising victims of crime, highlight how important it is to achieve baseline competencies to recognise and respond to experiences of crime victimisation across the service system. This encompasses:

- justice system agencies – including police, courts, prosecutorial agencies and other decision-making bodies victims of crime may interact with, such as parole boards;
- mainstream services – including legal services, mental health, housing, youth support, counselling, financial counselling, health, and child and family services; and
- other agencies victims of crime are likely to interact with – such as State Trustees, Centrelink, Medicare and the Office of Housing.

Throughout the CIJ's research, examples were identified that highlighted the breadth of services and agencies with which victims of crime are often required to interact, and the capacity of any one of these interactions to make victims feel that the harm they experienced does not matter. The research suggested that case coordination and advocacy can play an important role by actively navigating victims through the broader service system and reducing the need for them to re-tell their story.

"[You want someone] supporting you with making those phone calls and accessing those services because you feel ashamed that you can't support yourself and look after yourself. So your self-esteem and confidence isn't the greatest to start with and you feel horrible having to ask for help."

– Participant, "Key Practice Insights".

Most participants wanted a single point of contact where they could go for information, and which could actively navigate them through the system. Where they were supported by a practitioner who knew the system well; smoothed their journey through the system through effective case coordination and advocacy; and followed-up with them proactively, they felt well-supported and tended to have a better overall experience of the system.

"[My worker] has been the person I could go to when I've needed someone."

– Participant, "Key Practice Insights".

Beyond this core support, however, the research revealed a breadth of needs and circumstances – some of which arose as a result of the crime and some which were present prior to the person's experience of crime and had the potential to compound their experience of victimisation.

Overwhelmingly, the research indicated that support must be highly individualised. This includes having options for how support is provided and at what level, as well as ensuring that ongoing risk and needs assessment is embedded across practice. It also means ensuring that support services are sufficiently resourced and empowered to work flexibly, recognising both the highly specialist nature of their work, as well as the breadth of needs and circumstances to which they are required to respond.

"Like a 'project manager' in a way ... why can't there be a project manager, like a social worker... if someone needs counselling then you've got someone on hand ... Or if you need free food, then this is where the food vans are. Or if you need accommodation..."

– Participant, "Key Practice Insights".

"My current [victim support worker], she advocated quite a lot for me while I was in hospital because I couldn't do it for myself and I'm single and on my own and I have no family support either because the whole family, it just fell apart big time. So if you get a really awesome worker who is prepared to step up and do more than what she's supposed to be doing, you're really, really lucky."

– Participant, "Key Practice Insights".

Where assumptions existed about what victims want or need, these often meant that victims disengaged; did not have their needs met; or never came into contact with the support system in the first place. Many of the participants told the CIJ that they wanted the system to work better for others. Some were also highly cognisant of the protective factors which had meant that their trajectory following their experience of victimisation, may differ markedly from the trajectory of other victims of crime in slightly different circumstances.

“[T]here’s a lot of people that are out there who don’t have my experiences or personality or whatever you want to say, and they must really, really, struggle. If they’ve been through what I’ve been through, I cannot imagine how they can get out of this in a positive way, with a minimal amount of damage...”

– Participant, “Key Practice Insights”.

Themes of the recommendations developed by the CIJ in response to all of these findings, therefore, relate to providing victims of any type of crime with early, consistent and sustained support and information; a single point of contact that can “dial up” and “dial down” when required; independent legal advice that can spot and address the range of legal needs that can arise as a result of crime; accountability and expertise in the systems with which they interact; and a serious investment in the development of culturally safe and community-led responses.

Acknowledging that the future service model recommended by the CIJ was very specifically designed to act as the lynchpin of the Victim Support System, actively navigating victims of crime through the criminal justice and broader service system; providing tailored information and advice; and proactively checking in to identify where victims’ needs may have changed. The proposed model was informed by understandings of trauma and the impact that this can have on individuals and families. The model also actively sought to reduce the potential for *re-traumatisation* as victims of crime move through the system by walking with them side by side.

A key finding of the CIJ’s 2020 research with victims of crime was that individuals and families impacted by crime have varying levels of need and capacity to self-manage. This could be influenced by the nature of the crime experienced; pre-existing vulnerabilities, including trauma histories and previous experiences of victimisation; and the presence of informal supports, although their needs and capacity were typically a product of all three factors.

This finding indicated a need to provide more intensive support to those who require it, as well as an opportunity to develop a lower-intensity, lower-cost support option for those with greater capacity to self-manage, thereby increasing overall sustainability. The service model was therefore based on a tiered approach to support provision, to be delivered through three core services:

- An integrated, phone-based **Victim Support Centre (VSC)** that provides an intake function for victims of crime who are being referred into victim services, as well as a core response to victims of crime against the person which includes comprehensive and ongoing risk and needs assessment; information and advice; psychological first aid; warm referrals to a range of services; case coordination; and proactive, phone-based outreach to remind clients that they are supported and to identify changes in support needs. The VSC was also proposed to incorporate a specialist team to respond to L17s for male victims of family violence, the Victims Register, and to play a key role in coordination and oversight of critical incident responses.
- A more intensive, case management model, similar to the Victorian Victims Assistance Program as it was in 2020, but with significantly enhanced capacity to address a range of client needs, including where those needs are multiple and complex. This service – called the **Victim Support and Recovery Program (VSRP)** – would be delivered through a network of community-based agencies across the state and will be fully integrated with the VSC so that it could act as a step-up service response, with clients being supported to step back down into less intensive VSC support as they progress through their recovery journey.

- A **Specialist Service for Bereaved Families (SSBF)** which would replicate the single worker model of the VSRP but allow for an even higher intensity and duration of service provision in recognition of the significant practical and therapeutic needs of families bereaved by homicide. Importantly, the SSBF response is delivered jointly by the VSRP and VSC – with VSRP services in the family’s community providing direct support and case management, while the VSC provides back-end support and oversight, coordinating the team around the family (including where individual family members are supported by different VSRP providers) and liaising with key government agencies such as Victoria Police and the Coroners Court to streamline processes and provide families with a single source of information.

It was also a key finding of the CIJ’s review that victims of crime wanted, but had no source of, dedicated and comprehensive legal advice. The review also identified that victims of crime often had a range of unmet legal needs beyond the criminal justice process, which could escalate if not addressed.

The proposed service model, therefore, included a new **Victims Legal Advice Service (VLAS)** which leveraged existing publicly funded legal services through a co-location model, and would provide victims of crime with tailored legal information and advice, referrals and discrete task assistance. The specialised nature of this service would also ensure that victims of crime receive legal support from lawyers with an understanding of the needs and experiences of victims of crime, and the application of trauma-informed approaches to legal practice.

Finally, the service model contemplated the increase in frequency and scale of critical incidents within Victoria and considered how the three core services described above – that is, the VSC, VSRP and SSBF – could provide surge capacity in critical incidents to deliver specialised support to victims of crime in these contexts and ensure that Victoria’s whole-of-government response to critical incidents was informed by an understanding of victims’ needs.

Fundamental requirements for a coordinated system

The proposed service model was intended to be fully integrated so that, even as clients “stepped through” the model, they would experience it as a single, seamless service. It would also have significantly enhanced capacity to provide proactive support, identifying victims’ needs before they escalated or became protracted. The delivery of this type of model would require several fundamental enablers to be in place, including critical uplift of IT infrastructure from the current state; a renewed focus on a highly skilled and professionalised workforce; and a robust approach to quality control and continuous improvement to ensure the delivery of consistent, high-quality services.

System-level governance arrangements; a strategic approach to engagement and communications to ensure strong awareness of the availability and scope of specialist victim services; and integration with key external services, including sexual assault and family violence services, would all contribute to a more coordinated and cohesive system response to victims of crime.

Crucial to note, a detailed discussion of the CIJ’s work for the associated review of Victoria’s Child Witness Service is contained in the Appendix to this submission, in which the CIJ’s recommendations in this review are also outlined.

5.2 Lessons from the NSW This is my story research.

The recommendations stemming from the findings of the study in NSW also drew on the CIJ's work on the above Victim Services Review and reflected many of the same themes. These recommendations are replicated directly from the report in this submission for the sake of accuracy, given that the CIJ were one of two partners in the research. To note, the recommendations also drew substantially on the work that had gone before in the Victorian Law Reform Commission's review in relation to sexual offences. Noting the context-specific focus of many of the recommendations, commonalities are still apparent across the opportunities for improvement that are available in all jurisdictions relevant to this Inquiry. These include opportunities to provide early, consistent and sustained support and information, as well as independent legal advice for victim survivors, while also building in additional expertise and accountability into the relevant systems with which they interact.

The research team recommended that the NSW Government:

1	Deliver targeted public awareness campaigns and associated resources for the community, including GPs and other frontline health professionals.	<p>These campaigns would seek to improve victim-survivors' understanding of their experience as well as build a more nuanced understanding in common disclosure points – such as family, friends and frontline health professionals – of the reporting process and available supports.</p> <p>Campaigns would benefit from being tailored to different community groups (such as victim-survivors, family and friends, and the broader community) and different professions (such as GPs and other frontline health professionals, counsellors, and other key points of disclosure).</p> <p>Resources may include details of the process from reporting a sexual offence through to trial, with examples and/or anecdotes of 'success stories' in order to support victim survivors' understanding.</p>
2	Consider establishing a model of care which connects victim-survivors with a consistent source of support	<p>The proposed approach would involve support that is distinct from other specialised roles already in existence and should be focused on information and advocacy, as well as coordination of care. It would ensure that victim-survivors are provided with consistent end-to-end support.</p>
3	Explore options which facilitate access for complainants to timely and accurate legal information regarding the legal process	<p>Access to legal information and expertise will ensure that victim-survivors have access to timely advice which can help them understand the process; access support on procedural issues and improve their confidence in the legal process overall.</p>

4	Introduce a multiagency protocol that outlines the roles and responsibilities of all stakeholders in the criminal justice process in the context of sexual offences	<p>The agencies involved in this protocol could include NSW Police Force, ODPP, NSW Health, and Victims Support.</p> <p>The intention of this protocol is to inform improvement and support across the reporting and prosecution process.</p>
5	Introduce a NSW Police Code of Practice to standardise a trauma informed approach to working with complainants and investigating sexual offence complaints	<p>This Code of Practice would act as a companion to the Code of Practice on Domestic and Family Violence</p>
6	Roll out training for NSW Police across all commands on trauma, sexual offence myths and impacts of sexual violence	<p>Training will enable consistent police practice in accordance with the Code of Practice for Sexual Violence. Ideally, this training would include co-design and delivery by victim-survivors with lived experience of sexual offences and the criminal justice process, supported by frontline practitioners.</p> <p>Consideration will need to be given to the capacity of frontline officers to ensure that this training is appropriately scheduled and prioritised by Commands.</p>
7	Pursue initiatives to improve access to, and quality of, medical and forensic examinations	<p>This could include:</p> <ul style="list-style-type: none"> conducting a statewide review of the process of evidence collection and recording to determine where gaps are occurring within the system and within the state. developing guidelines and associated training for NSW Police Force officers and mainstream frontline health professionals (such as GPs) on the medical and forensic examination process.

8	Adopt a Sexual Offence Model Litigant approach to be adopted in all sexual offence trials	A Sexual Offence Model Litigant approach is designed to realise the intent of the relevant legislative reforms in recent years, including the introduction of new jury directions. An approach of this kind would include establishing a form of 'ground rules' between the parties' representatives and the presiding judge to ensure that expectations around appropriate lines of questioning and trauma-informed approaches are shared and understood. This echoes similar recommendations in other jurisdictions.
9	Develop and deliver consistent specialist training regarding the impacts of trauma on victim-survivors of sexual offences, as well as training regarding trauma-informed approaches for judicial officers and court personnel	This training should be delivered to judicial officers and court personnel, as well as legal practitioners who work in the jurisdiction, recognising that all interactions that a complainant has, at all points of the process, can contribute to this new trauma and potentially deter them from continuing with the process.
10	Commission research into areas identified by this study as warranting closer examination	<p>This study has highlighted a number of areas that would warrant further research to understand drivers and identify areas for further improvement:</p> <ul style="list-style-type: none"> - The experience of people who are victim-survivors but who have not made a report to police to identify ways to address barriers to reporting - Why, despite stronger case management approaches in the District Court, complainants are still experiencing adjournments and associated delays in their sexual offence matters <p>The experiences of Aboriginal and Torres Strait Islander communities in relation to sexual offences and engagement with the legal process.</p>

11	Conduct a demand, funding and service model assessment of the WAS to determine what level of assessment would ensure consistent provision of the service across the state	The research found that complainants experienced the WAS role as more limited than they expected and that they would have preferred access to greater consistency and support. Similarly, informants spoke of variable access to WAS officers due to capacity issues in the service. Supplementing recommendations above, the NSW Government should assess whether additional investment could support attendance at court by WAS officers where this is the complainant's preference or where other forms of support are not available.
12	Conduct a demand and funding review of the statewide NSW Health Sexual Assault Service network to determine what level of investment would ensure consistent provision of specialist and therapeutic support across the state.	We heard that capacity and workload pressures mean that the NSW Health SAS network is not able to consistently provide specialist support to victim-survivors of sexual offences. A thorough assessment is required to understand the level of existing and future demand for NSW Health SASs and the funding required to meet that demand with the full suite of specialist, therapeutic support required by victim-survivors. The funding model should also recognise the role of SASs in providing clinical supervision and advice to other health services and external agencies.
13	Explore the development of a sexual violence Restorative Justice Service to deliver restorative approaches in sexual offence matters.	A Restorative Justice Service could sit alongside the traditional legal process to enable victim-survivors to pursue a justice response that suits their experience and recovery. This could include having an opportunity to tell their story, experiencing recognition of what had occurred, receiving information about relevant events, and receiving an apology and reparations.
14	Commit to public reporting on the timelines of investigation of sexual offence, the number of sexual offence matters that are withdrawn, and reasons for the outcome of sexual offence investigations and prosecution.	Public reporting will provide greater transparency of decisions that are made during the reporting and investigation process. This will improve understanding of attrition patterns and improve accountability of police and prosecution agencies for their actions and decisions at different stages of the investigation and prosecution process. It will also enable monitoring of the impact of implementing the recommendations outlined above to determine if more needs to be done.

5.3 Lessons from the CIJ's work with First Nations communities.

The CIJ is unable to provide the Inquiry with the specific findings and recommendations from this research until they are formally launched by the Aboriginal Justice Caucus later in 2024. Important to note, however, are the existing recommendations from other mechanisms with significant authority.

For example, the Royal Commission into Institutional Responses to Child Sexual Abuse noted that a service system that is responsive to the specific needs of Aboriginal and Torres Strait Islander survivors of violence should adopt Indigenous healing approaches in addition to culturally responsive mainstream services. The RCFV similarly stressed the importance of services provided by Aboriginal community-controlled organisations, tailored justice system responses, early intervention and greater investment in long-term service delivery and evaluations of Aboriginal family violence programs and support services.

The Victorian Aboriginal Justice Agreement, first established over 20 years ago, outlines the Victorian Government's commitments to improving justice outcomes for First Nation peoples.⁸² The fourth iteration of the Agreement has a specific focus on victimisation within Aboriginal communities, with the following strategies, as outlined in the Aboriginal Justice Framework, of particular relevance to victim-focused responses:

- Provide family-centred responses that coordinate support for families, when family members are involved in the justice system, to enhance their capacity to heal from trauma, and improve parenting, relationship, communication and problem-solving capabilities;
- Meet the specific needs of Aboriginal victims and witnesses of crime, particularly children. Provide culturally-informed support and enable access to the services they need to ensure that healing can occur;
- Meet the particular needs of vulnerable children and young people in out of home care due to family violence and support them to access the services they need to avoid future involvement with the criminal justice system;
- Address underlying causes of offending through healing and trauma-informed approaches that explore the intergenerational experiences of people affected by violence, strengthen protective factors and increase coping strategies;
- Enable Aboriginal stakeholders to self-determine program outcomes, design, deliver and evaluate justice services for Aboriginal people;
- Build the capacity of justice services to provide family-centred, wrap around, holistic programs and services that promote the healing of the individual and contribute to the wellbeing of the community;
- Create opportunities for the voices of Aboriginal children and young people to be heard and contribute to decision-making on key justice policy, legislative and/or service developments that affect them.

⁸² Burra Lotjpa Dunguludja. (Senior Leaders, Talking Strong) Victorian Aboriginal Justice Agreement Phase 4. A partnership between the Victorian Government and Aboriginal Community. Retrieved May 2024 from <https://www.aboriginaljustice.vic.gov.au/the-agreement>

More generally, the CIJ can advise that the themes of its recommendations in the Aboriginal victims of crime research echo the above priorities, while also targeting specific needs for creating culturally appropriate and alternative reporting and support mechanisms, including by removing barriers in existing systems; as well as the sustained planning and development of appropriate community-led and victim-focused services.

5.4 Lessons from the CIJ's work regarding children and young people

Noted in Part One of this submission, children and young people are particularly vulnerable to crime victimisation, including sexual offences, but underrepresented in those who receive appropriate justice system responses or service support. While the CIJ's review of the Child Witness Service noted the supports that should be – and, in many cases are already available – to child and young victim survivors of sexual offences who give evidence in court, the CIJ's wider program of work offers some useful additional reminders in the development of any wider recommendations by this Inquiry that may impact young people.

This is because young people as a cohort are poorly understood, with a growing evidence base indicating that the current service system is highly inappropriate for young people who are seeking support. Service systems that are designed and run by adults – and, importantly, which too often require the consent of both parents before delivering services – are ill equipped for young people who have experienced harm.

Here the CIJ's research in the *PIPA project* and *WRAP Around Families Experiencing AVITH* project, cited in Part One of this submission, highlighted the importance of trusted adults and, most crucially, independent legal advice for young people who are in contact with the legal system. This is because this practitioner may be the first person that the young person has met that they can genuinely trust, including with their disclosures of their own experiences of harm. In addition, this may involve situations where they are in contact with legal processes as a result of experiencing violence or, just as urgently, when they are identified as respondents to protection orders or offenders of domestic and family violence, which may also include sexual harm within these behaviours.

As noted in the introduction to this submission, young people identified by the system have usually experienced adult perpetrated violence themselves. This includes young people who are using violence in intimate relationships,⁸³ which the CIJ notes is an under-examined trend emerging in Victorian Family Violence Intervention Orders and Personal Safety Intervention Orders (PSIOs), without sufficient interrogation of the accuracy or overlap of relevant assessments.

⁸³ Corrie & Moore, above n 20.

While there are currently no Victorian services designed to respond to young people who use intimate partner violence, as with the evidence in relation to AVITH, an evidence review by the CIJ to support the development of the pending young person focused [MARAM Practice Guidance](#) indicates that experiences of adult perpetrated violence are significant risk factors for the use of intimate partner violence by young people.⁸⁴ Existing evidence also indicates, however, that trauma histories can interact with gendered beliefs about relationship roles and, in particular, experiences of punitive parenting for perpetration of intimate partner violence by boys and experiences of sexual abuse for perpetration of intimate partner violence by girls.⁸⁵ The presence of violence in peer relationships has also been shown to be a significant risk factor.⁸⁶

Importantly, this evidence review also shows that experiences or use of sexual violence are the least likely to be disclosed or asked about in risk assessments with young people, such is the stigma that surrounds these issues. Combined with emerging evidence about the prevalence of young people's experiences of sexual harm, this suggests that experiences of sexual harm in young people are even more prevalent in young people coming into contact with legal processes and criminal justice systems.

5.5 Lessons from the CIJ's Women's Decarceration program

Growing understanding about the role played by trauma from gendered violence in women's criminalisation highlights the need for the current Inquiry to include consideration of correctional systems as an important source of potential services for victim survivors. This could include support to report sexual assaults or pursue a justice response in another way, for example by applying for crimes compensation, which the CIJ's work has found to be a particularly important missing step for a lot of women in custody, as noted in Part Three.

In a 2020 discussion paper,⁸⁷ the CIJ makes the case for increased investment in specialist and mainstream supports for women as an adjunct to the criminal process, as well as for women in custody. This includes services to meet women's immediate practical needs, as well as those which provide more long-term, therapeutic support that is coordinated and accessible at early and multiple points of a woman's contact with the criminal justice system.

While the RCFV recommended improved supports for women in custody who had experienced family, domestic or sexual violence – and while prison in-reach and post release programs providing targeted support were introduced or consolidated as a result – research suggests that access to in-prison programs remains problematic, particularly for women held on remand or serving short sentences.

The Royal Commission into Victoria's Mental Health System, meanwhile, noted that capacity constraints, combined with poor coordination at the "interface between the criminal justice system and the mental health system" means that people living with mental health issues are not able to access the services they need at the time they need them. This results in the justice system, and more specifically prisons, becoming "last resort" providers of mental health services.⁸⁸

⁸⁴ Campbell, above, n 34.

⁸⁵ Ibid, 63.

⁸⁶ Ibid.

⁸⁷ Caruana, et al, above n 3.

⁸⁸ State of Victoria (2021) Royal Commission into Victoria's Mental Health System. Final report. Summary and recommendations. 23

It is not a stretch to conclude that earlier and more effective intervention in the community would mean less demand for support in these settings in the first place. Greater investment in responses to gendered violence overall – as well as increased understanding across the wider criminal justice system of the way in which trauma can drive women’s mental health issues and substance dependence – has the potential to prevent women being pushed into escalating contact with a system from which, as victims of gendered violence, they should reasonably expect protection.

Crucial as services within custodial environments will continue to be, the CIJ acknowledges the inherent contradiction of delivering therapeutic services in what is an inherently traumatising environment. The CIJ therefore advocates for women’s ‘decarceration’, i.e., a move away from imprisonment as the main sanction for women’s criminal offending and the promotion of alternatives that address the drivers of women’s justice involvement by responding to the trauma resulting from victimisation. An example of such an approach is the trauma-informed, holistic and culturally safe model for a therapeutic facility for Aboriginal and Torres Strait Islander women recently developed by the CIJ in partnership with Djirra.⁸⁹

More generally, the CIJ’s wider program of work in relation to women’s criminalisation shows the crucial role of sustained, therapeutic, case management support for women who are often identified as too “complex” to fit into any particular service silo and, as such, miss out altogether.⁹⁰

5.6 Lessons from court responses to domestic and family violence

The lessons from the CIJ’s Victim Services Review, as well as the other areas of research briefly summarised above, all highlight the value of similar themes. These are that:

- victim survivors must receive support – ideally on a continuous basis – as early as possible after they have experienced or disclosed violence;
- this support should not be dependent on whether their matter progresses through the justice system, or even knocks on the front door of this system, but should be available regardless;
- access to legal assistance is essential, not only so that it can support with matters relevant to the particular crime but so that it can identify and respond to the wide range of other legal needs that arise as a result of, or in connection with, experiences of violence;
- connection to support which meets a holistic range of needs, including fundamental needs such as housing and financial security, is just as important related to the legal process; and that
- specialist and trauma-founded responses within the justice system itself are absolutely crucial.

⁸⁹ Commissioned by the Koori Justice Unit and led by Djirra – an Aboriginal community-controlled organisation (ACCO) providing specialist family violence legal and case management support across Victoria – the CIJ conducted a Feasibility Study for a residential program model for Aboriginal women in contact with the justice system as an alternative to imprisonment. The model developed includes access to a wide range of services and support, including specialist sexual assault services, in a residential setting. It is currently before the Aboriginal Justice Caucus (the governance body established under the fourth Victorian Aboriginal Agreement) for endorsement. As such we are unable to disclose specific features of the model at this time.

⁹⁰ Campbell et al, above n 3.

One of the greatest challenges in relation to the justice response to sexual offences, however, is that, as well as failing to facilitate connection with appropriate supports on any reliable and consistent basis, most of the justice response comes a long way down the track. This undermines the value of any supports that might be leveraged by justice system contact, while the system response itself can then undo many of the gains that victim survivors have been able to make along their recovery journey.

A justice response that, at least in theory, offers some contrast to this is the response from the Victorian network of Specialist Family Violence Courts (SFVCs). In contrast with the standard criminal justice response, this predominantly civil response offers:

- Early contact (sometimes within days or 24 hours of a reported police incident) with the court process, which in turn can facilitate connection with relevant support services as well as risk assessment;
- A response administered in a specialist setting and (increasingly) purpose-built physical environment, in which all court staff and judicial officers have a specialist understanding of family and domestic violence;
- A legislative remit to assess victim survivor safety and risk, including in relation to the duration of orders, as well as to consider accountability for people using violence;
- A legislative obligation and independent judicial duty to consider the safety of children, including to consider the impact and interaction with concurrent family law proceedings.

Noting that sexual offences frequently occur within the context of family and domestic violence, making the SFVC environment directly relevant, the CIJ also suggests that there are broader common elements in these environments which mirror those identified in our research about the features that can make a difference to a victim survivor's experience overall.

Prior to exploring these features, however, the CIJ cautions upfront against any assumption that SFVCs are always able to ensure that appropriate support is available to people seeking protection through the Family Violence Intervention Order (FVIO) system. Further, a factor that runs interference with the legislative and wider remit of these SFVCs is the extraordinary volume to which these courts are attempting to respond, with a 23 per cent increase in the reporting of family violence in Victoria between 2017 and 2022, for example.⁹¹

Partly in response to this volume – as well as in response to the imperative of “getting an order in place” and thereby providing a victim survivor with an associated degree of protection – Victoria's family violence system usually defaults to a compromise. By virtue of this compromise, orders are able to be made by a court where a respondent has agreed, or “consented” to the order “without admissions” – as such avoiding a time-consuming contested hearing, while simultaneously ensuring that consent to an order will not be used as evidence in any associated criminal proceeding.

⁹¹ Wand, K. (2024) 'Community Legal Centres struggling to provide critical family violence support as funding trails demand' <https://www.fclc.org.au/family_violence_funding_trails_demand>..

Research by the CIJ, released in 2021, [*More than just a piece of paper: getting protection orders made in a safe and supported way*](#) indicates that the system would “grind to a halt” without having this legislative option of a compromise available. Further, the CIJ heard from legal practitioners working in this field that a mechanism which allows them to get a protection order in place quickly, while avoiding the trauma of a contested hearing, then enables practitioners to facilitate connection for a victim survivor with much needed support.

“... so now we can refer her off to ... family law advice, or we can get her in for some counselling or we can do a [victims compensation] application or whatever else, we can follow that on.

Because he's out of the bloody way...”

Practitioner, “More than just a piece of paper”.

“... I just wanna know she and the kids are safe for now. And we're not gonna drag her through the court system through a contested hearing, have [him] cross examine her and go through all this stuff. And then we can move on then because the Family Court will make him go and do a Men's Behaviour Change Program or will make him go and do a psych assessment or he'll get a [Community Corrections Order] ... Child Protection will be involved, or like drug testing. I just think we're the initial guard dog that says, ‘You're out of here.’”

Practitioner, “More than just a piece of paper”.

It is still crucial to remember, however, that the mechanism of the law's protection in this situation not only enables – but essentially relies on – denial and minimisation of the relevant behaviour. Victim survivors told the CIJ that they can find this highly distressing – a situation mirroring their experience when the charges in a sexual offence matter are negotiated down, either prior to or during prosecution.

The CIJ also heard from respondents that they were sometimes quite confused by this approach, but understood it as a way of minimising the cost and impact of the FVIO process.

“So, I know that's sort of playing innocent, but when that ends up going in into a court of law with a judge you have to basically end up agreeing to it because otherwise you end up going through this horrendous process of going to court, having to pay for it. It's much easier to say ‘Yes, yes, yes, I'm a naughty boy, slap me on the wrist and off we go’.”

Respondent, “More than just a piece of paper”.

“... [the duty lawyer] came in and said to me, he said ‘Look ... just accept it without admissions... because you'll go back to court in three months' time, it'll cost you thousands again and then it'll get adjourned again, it'll be another three months, it'll cost you thousands again’. And he said ‘Agree to it, Agree to do this Men's Behaviour Change course and it will all be finished’ ... And I told them that [at the MBCP]. I said, “The only reason I'm sitting here is because it was going to cost me thousands of dollars”.

Respondent, “More than just a piece of paper”.

MBCP practitioners similarly reflected that they saw this denial and minimisation continue to play out once a respondent reached their program.

“With the consent without admission orders ... that’s sometimes [defeating] the purpose of what we do here ... They’ve accepted that they don’t have to admit anything. They then get sent on an order that sends them here and we ask them to admit what they’ve done. And they will not buy into that because that’s just their narrative already, he’s down the track of ‘I didn’t do anything’ ... they’re a lot harder to shift if they’ve dropped behind that line already and they’ve had that supported via their experience of going to court and not having to admit what they’ve done.”

Practitioner, “More than just a piece of paper”.

Some Magistrates and specialist family violence practitioners also expressed similar concerns, particularly as this interacted with the Family Law process – a particular concern given the Family Law jurisdiction’s overall struggle to grapple appropriately with family and domestic violence.

“If you’ve got Family Law proceedings, an Intervention Order that’s obtained by consent, is quite minimised ... ‘There’s been no proof there’s been family violence’, you know ‘This has been by consent without admissions,’ so you’re left with something fairly meaningless, as far as the Family Circuit Court goes.

Practitioner, “More than just a piece of paper”.

“By consent without admission FVIOs and how they are considered under the Family Law Act is an important consideration here. So, if we don’t determine an application or find that there is family violence, there’s no finality on this issue. Then the family move into the Family Law jurisdiction and that court has to also go through and test that same issue. What I’m hearing from federal colleagues ... is they would prefer there to be a finding in the Magistrates’ Court before it came to the Family Court because it would settle or enable resolution of more things there. However, the certainty of an intervention order is also helpful. [but in the absence of ‘consent without admissions’] ... there would be very long, drawn out proceedings...”

Magistrate, “More than just a piece of paper”.

“Even in very serious family violence circumstances, the [protected person] often thinks he has legal ‘rights’ [to see children] ... This dynamic is abundantly clear in the courts. I think the consent order process is fraught with danger and pitfalls currently if the expectation is future safety ... Many women are negotiating away their safety, sometimes their children’s safety ... to avoid giving evidence, understandably. Because they don’t expect to be believed. Many have also been told that for years.”

Magistrate, “More than just a piece of paper”

“If people ... settle on a consent ‘without admissions’ basis on the first date, or even if they haven’t had proper Family Law advice, we’re placing women and children at significant risk. Because they will try and make arrangements without knowing how to make safe arrangements ... all of these women are forced into a position where they’re making parenting arrangements where they know that he’s never changed a nappy. He’s never taken the kids to school. All he does is take the little boy to footy every Saturday.... Many women accept that if such arrangements are made, they know that their kid’s going to live on McDonalds for four days ... and that’s not the worst of it ... I just think it leaves so many kids open to these abusive arrangements where the mother has agreed ... for purposes of trying to keep the peace ... it’s a cursed agreement.”

Magistrate, “More than just a piece of paper”.

Noting that the CIJ recommended a legislative change to mitigate some of the challenges in this area in the Victorian context, the complex and often damaging interaction of the protection order and Family Law jurisdictions more broadly are explored in detail in the *More than just a piece of paper* research, with them also recognised through the recommendations in the ALRC’s previous 2019 Inquiry.⁹² Further, the CIJ notes commentary in the National Domestic and Family Violence Bench Book which suggests that family law decisions makers should not discount the significance of interim protection orders, despite the absence of findings in relation to disputed facts.⁹³

To this end, the CIJ’s research also highlights the importance of judicial court craft. In court observations conducted for this research, the CIJ observed one matter in which the police had referred to the application for a FVIO as “by consent.” The Magistrate replied, “there is no such thing as an order by consent, because I am the one who decides if the proposal is reasonable and I am the one who assesses the risk. Today I think the proposal is a sensible one”.

Similarly, another Magistrate often said words to the effect of, “it is the court’s role to address risk,” when she explained whether she was going to make orders which differed from those proposed by or “consented to” by the parties. Magistrates who treated an application to resolve by consent as “a proposal” were focused on ways that the order could contribute to the goals of safety:

“... when people come and are negotiating say a safe contact order – and indicate an outcome that I think doesn’t look right – is for me to say, ‘well look I’m not prepared to make this order, however, I’ll stand it down and you can get some legal advice’ ... ‘Oh no don’t worry’, they’ll say. ... And of course, you have to be careful in court not to escalate him any further or in any way feed into things so it can be a bit of a careful conversation or dance. But sometimes I’ll say things like, ‘well I can see that you really think this order is a good idea, but I don’t, I’m sorry’. And it’s my job to do that”.

Magistrate, “More than just a piece of paper”.

⁹² In particular see Recs 1-5, 7-8, 19, 51-52, Australian Law Reform Commission, ‘Family Law for the Future — An Inquiry into the Family Law System: Final Report’ (2019) *ALRC Report 135* <https://www.alrc.gov.au/sites/default/files/alrc_report_135.pdf>.

⁹³ ‘National Domestic and Family Violence Bench Book’, (2018), 10.16 Unacceptable risk and best interests <<http://dfvbenchbook.aija.org.au/family-law-proceedings/unacceptable-risk-and-best-interests/>>.

Despite the substantial caveat about the protection order context, however, some of the elements in this environment may still be useful for the Inquiry to consider. It is also useful to highlight some of the contradictions between the benefits that victim survivors can glean from the SFVC jurisdiction and the reality of the justice response to sexual offences.

The CIJ's *More than just a piece of paper* recommended that all parties receive access to support and legal advice *prior* to attending court, so as to inform more considered decision making.⁹⁴ The relevance of this issue to the ALRC's Inquiry is that access to court-based support and family violence-informed public legal assistance represents an opportunity for providing early support and a path to recovery, as well as intervening to prevent further harm. Similarly, information which can identify and mitigate the damage of links with Family Law processes is crucial to incorporate, as noted above, including in the context of wider family law systems abuse.⁹⁵

Evidence indicates that specialist legal assistance provided at an early stage can reduce the risk that people using violence pose and improve victim survivor safety, if conducted in a meaningful and appropriate way.⁹⁶ This is partly because it can reduce heightened emotions and allow a respondent to a protection order application to feel heard, which research shows is more likely to lead to compliance.⁹⁷ Most importantly, it provides an opportunity for the concept of family and domestic violence to be explained; information about the process to be conveyed; and details about the meaning of any protection order imposed fully stepped out.⁹⁸

While privately funded practitioners have not necessarily received training to avoid collusion, the CIJ's work in this area highlights that legal practitioners from public legal assistance settings may have specialist knowledge in how to advise and represent people using violence while promoting accountability and safety.⁹⁹ Comprehensive and specialist public legal assistance is therefore a crucial avenue for preventing further violence by encouraging compliance and reducing future breaches, while also reducing the need for applications or variations – all of which take up valuable court time.

⁹⁴ Campbell, E., Bissett, T., Howard, A., Lewers, N., Polis, M. & Richter, J (2021) *More than just a piece of paper: getting protection orders made in a safe and supported way. Responding to Recommendation 77 of the Royal Commission into Family Violence*, Centre for Innovative Justice, RMIT University, Melbourne.

⁹⁵ Lyons, K. (2024) 'Debt, danger or a decade of fighting: how a lack of legal services leaves DV victims with dire choices' *The Guardian* <https://www.theguardian.com/australia-news/article/2024/may/17/debt-danger-or-a-decade-of-fighting-how-a-lack-of-legal-services-leaves-dv-victims-with-dire-choices>

⁹⁶ Campbell, E. (2015) Opportunities for early intervention: bringing perpetrators into view, Centre for Innovative Justice, RMIT University, Melbourne. <https://cij.org.au/cms/wp-content/uploads/2018/08/opportunities-for-early-intervention.pdf> Campbell, E., Bissett, T., Howard, A., Lewers, N., Polis, M. & Richter, J (2021) *More than just a piece of paper: getting protection orders made in a safe and supported way. Responding to Recommendation 77 of the Royal Commission into Family Violence*, Centre for Innovative Justice, RMIT University, Melbourne.

⁹⁷ Pike, J. (2015) 'Demanding accountability in domestic violence courts: Defendants' perceptions of mandated batterer's intervention programs' (PhD Thesis, State University of New York) 108.

⁹⁸ Campbell, above n 96; Campbell, E., Vlasis, R & Bissett, T. (2018) *Beyond 'getting him to a program': towards best practice for perpetrator accountability in the Specialist Family Violence Court context*, Centre for Innovative Justice, RMIT University, Melbourne. <https://cij.org.au/cms/wp-content/uploads/2018/08/cor-literature-review.pdf> Vlasis R & Campbell, E. (2019) *Bringing pathways towards accountability together: perpetrator journeys and system roles and responsibilities* RMIT University, Melbourne, <https://cij.org.au/cms/wp-content/uploads/2018/08/bringing-pathways-towards-accountability-together-perpetrator-experiences-and-system-roles-and-responsibilities-170519.pdf>; Campbell et al, above n 94

⁹⁹ Simpson, M., Campbell, E. Ellard, R., Pathmanathan, J & Campbell Walker, F. (forthcoming) *Evaluation of Victoria Legal Aid's Legal Practice Model*, Centre for Innovative Justice, RMIT University, Melbourne.

Perhaps most relevantly for this Inquiry, specialist public legal assistance is a valuable touchpoint through which people using and experiencing violence can receive referrals and information, as well as have their immediate and longer-term needs identified. Lawyers and support practitioners offering integrated legal and casework assistance advocated, in particular, for “earlier and *follow-through* engagement with non-legal support services”.

Significantly, the research identified that support at court and being linked in for ongoing casework support are critical for victim survivor’ “feelings of safety at court and in narratives of hope, wellbeing and recovery”. Also noted was the value of appropriately funded legal representation for Affected Family Members (AFMs) in self-initiated applications to alleviate the requirement for them to attend court (in person), increase feelings of safety and minimise re-traumatisation.

“Through the intervention process at the court they put me through to this organisation called [Specialist family violence service]... they helped me through a lot of stuff and, you know, finances, the court, counselling, all these things that kind of made me how I am right now. Just a little bit more comfortable ... There is no way I would have found ... [this service alone]. I was just in a state of being lost and scared ... getting someone to show you, ‘no, you’re not alone we’re here for you, we’re here to support you in this process because nobody deserves to be treated like that’, it’s amazing, it is ... I can’t even tell you how, like, half of the stuff they’ve done. Probably they think it’s nothing, but it is major [to me].”

- AFM, “More than just a piece of paper”.

[Police] referred me to [specialist service], they helped with a lot of things ... helped me get some childcare for my daughter ... They helped me change the locks on the door. Yeah, and... I didn’t have a phone, so they gave me some help ... because ... I wasn’t allowed to have a phone before.

- Affected Family Member, “More than just a piece of paper”.

Magistrates also saw the value of the court functioning as a touchpoint, often standing matters down so that people could not only be connected with legal assistance but with appropriate service support and risk assessment. As well as observing Magistrates asking for a CLC lawyer to be paged to provide a protected person with legal advice, the CIJ also observed Magistrates asking for non-legal services to be paged to provide support.

“[Prior to court] they may not, any of them, respondent or the applicant, may not have accessed services. And we know all the reasons why they don’t access services. So, I think the court is quite a good place [to offer services] ... that’s why I take the view [that we shouldn’t discourage respondents from attending court for the sake of efficiency or safety] He’s our problem, so we’ve got to address him.”

Magistrate, “More than just a piece of paper”.

Crucially, the CIJ also heard about the value of early access to judicial validation for victim survivors.

“[AFMs] feel that they are being empowered, [when the Magistrate says] ... to the respondent: ‘This is not what you should be doing, and if you do this, this is what will be the consequences.’ Just these few sentences that Magistrate could make towards the respondent just to make sure that women are being recognised, that the violence, their stories are being recognised ... that empowers women a lot ...”

Practitioner, “More than just a piece of paper”.

Acknowledging this, the CIJ’s research also found that it was important to keep a lens on respondent experiences of the process, a factor evidenced through wider studies which show correlations between judicial officers’ respectful approach to engagement with perpetrator compliance and low rates of recidivism.¹⁰⁰

Similarly, other studies have identified that perpetrators who believe that they have experienced “assembly line justice” appear to cling to minimising discourses, believing that they were not given the opportunity to tell the court “what really happened”.¹⁰¹ Literature also highlights the negative impacts of some “counterproductive” judicial interactions on perpetrator accountability where judicial techniques convey the impression that perpetrators must be watched and coerced into compliance.¹⁰²

Evidence certainly shows that, if the legal system instils a sense of unfair treatment in perpetrators, this will reduce the likelihood of their compliance with legal mechanisms, which are ultimately the tools which the legal system uses to keep victim survivors safe.¹⁰³

A risk minimisation strategy which appeared to be relatively widely used and observed in the CIJ’s research included clarification that orders are made by the court (and not necessarily at the AFM’s request in police applications):

“[It’s useful when Magistrates] ... give a warning about the possible consequences of breach of an intervention order, they’ll also go on to say /and, look, these allegations are very serious. If these allegations are true, you really need to have a think about your behaviour, and be setting a better example for your kids’ ... I think it’s a good approach when we are using a consent without admissions model ... [telling respondents] ‘well, if you’re doing it again, you’re probably going to be sitting in the serious end of the sentencing’ ... to say ‘now it’s your responsibility to behave like a better person’.”

Practitioner, “More than just a piece of paper”.

That said, the research also heard that many respondents are highly confused about the process and struggle to understand the information conveyed to them, or what is happening at court more generally.

¹⁰⁰ Petrucci, C. (2002) ‘Respect as a component in the judge defendant interaction in a specialised domestic violence court that utilizes therapeutic jurisprudence’ 38 *Criminal Law Bulletin* 288.

¹⁰¹ Pike, J. (2015) *Demanding Accountability in Domestic Violence Courts: Defendants’ Perceptions of Mandated Batterer’s Intervention Programs* State University of New York 117 <<https://ubir.buffalo.edu/xmlui/handle/10477/51551>>.

¹⁰² King M, & Batagol, B., (2010) ‘Enforcer, Manager or Leader? The Judicial Role in Family Violence Courts’ 33 *International Journal of Law and Psychiatry* 416.

¹⁰³ Epstein, D. (2002) ‘Procedural Justice: Tempering the State’s Response to Domestic Violence’ 42 *William and Mary Law Review* 1874.

“For many people it’s often their first engagement with the legal system. So, they don’t have the tools to be able to negotiate, or navigate, or even understand what ‘consent without admissions’ means ... by the time I’ve finished a full day of 60 matters and I say, ‘you’ve consented to the making of the order but you haven’t agreed to the allegations contained in the police application’ ... I sometimes watch respondents and they look a bit dead behind the eyes. ... I think they read, ‘I’ve lost something. I’m not quite sure what it is. I’ve agreed to something. But I’ve never said that I’ve done anything wrong.’ ... a couple of weeks later ... they breach.”

Magistrate, “More than just a piece of paper”.

“I had a good 15, 20 minute conversation with a guy yesterday and he said all the right things. He was like ‘yep, it’s fine. I’m agreeing, it’s no problem’ ... I got into court and he said ‘I think I need some legal advice’ ...he was just overwhelmed by the whole process ... it’s just an overload of information.”

Practitioner, “More than just a piece of paper”.

The CIJ similarly observed this confusion in respondents appearing at court. Transactional exchanges were also observed to escalate resentment and anger in respondents. For example, one Magistrate inquired as to whether respondents had anything to say, while not looking at them – either while the respondent answered, or when the Magistrate explained the order’s conditions.

One respondent replied that he did have something to say, at which point the Magistrate said, “well then, get on with it”. When the respondent (who had informed the court that he had not received any support or legal advice) proceeded to ask why he was living in his car, the Magistrate interrupted him and said: “we’re not interested in those views here, you can talk to someone else about it”. While this Magistrate may have been attempting to avoid colluding with the respondent, the CIJ observed that the respondent left the court visibly angry and potentially posing greater risk than when he arrived.

Other respondents told the CIJ that their interaction with the court had been very brief.

CIJ: “...what did the judge at the time say to you about [consenting to the order]?”

Respondent: “It’s a very sensible decision you’ve made here, Mr [name]. It’s saved you a lot of time and it’s saved your family a lot of heartache”. ...

CIJ: “...and did you say anything?”

Respondent: “Yes ma’am, no, ma’am, yes Your Honour...Nod the head, walk out”

Respondent, “More than just a piece of paper”.

Despite the protective logic of rapid court engagement, therefore, participants in the CIJ’s research suggested that the current timeframe of the bulk of FVIO listings is too rushed. This is because it propels parties into engaging with difficult legal concepts and decisions about the future, often in the immediate aftermath of a violent incident and life upheaval. Magistrates shared these concerns:

“I said to the police, ‘is there any reason why you think you should list these matters so immediately? ... The police just said, ‘look we’re just churning basically. We get the next one, we just whack it into court.’ ... the unholy timeframe is not working [very often] for anyone”.

Magistrate, “More than just a piece of paper”.

Rather than a return date (the first date when an application is heard in court) very close to the initial incident, practitioners who worked closely with service users endorsed a delayed FVIO return date and argued that more time was needed for increased access to legal advice, risk assessment and safety planning. These practitioners indicated a number of ways in which the system is currently impacted by rapid return dates in the absence of pre-court engagement. These included matters often being adjourned at first return with fairly standardised conditions in an expectation that parties are not in a position to consider their circumstances clearly. It also included parties with intersecting legal issues struggling to reach agreement without advice:

“We give them so much verbal vomit of all the information, all the different options, all the different scenarios you can think of at that point in time. And then you go, ‘Quick. Decide. Got five minutes’. I just think that most parties don’t even understand the process and they don’t understand the orders made and they don’t know what they consented to and they don’t know if they’re supposed to go to mediation, what that even means, or what service they’re meant to ring - it’s almost like a theatre that happens between the legal people, it’s got nothing to do with them.”

- Practitioner, “More than just a piece of paper”.

“... once there’s an [interim] order in place, there should not be an obscene rush to get a consent without admissions [final] order in place. We shouldn’t be trying to resolve everything on the first date. Because respondents have often recently been excluded from their homes and their accommodation hasn’t settled down yet. There’s been a huge crisis ... and everybody’s all over the place ... I think we need interims in place for a much longer period ... Then the matter will come back to court and I’ll hear how you’re going. Over the course of that six months, a whole lot of things can happen. You can do a Men’s Behaviour Change course. You can think about addressing your alcohol problems ... If we think about relationship breakdowns when there’s no violence, people take time ... So, why would we expect that, when there is violence, the timeframe will be much shorter ...?”

- Magistrate, “More than just a piece of paper”.

“... having somebody who’s already heightened, who hasn’t slept for two days because they’ve been kicked out of their house by the police ... they don’t have their things. They haven’t showered ... They’re at risk of losing their whole family ... And then, you’ve got them sitting in a court ... until 4:30 ... Sometimes waiting for an interpreter, so they haven’t even been able to speak to anybody ... obviously, the onus is on that person not to do anything. But it’s a huge safety risk, because you’re heightening them ... sitting there, stewing in that anxiety about what’s been going on.”

- Magistrate, “More than just a piece of paper”.

While the CIJ advocates for “slowing down” of the legal process in this model, the end result should be fewer adjournments and court attendances required of service users. In summary, the CIJ suggested that the tensions and concerns associated with court dates in the immediate aftermath of reported family violence incidents would ideally be addressed directly by pre-court triage and service engagement. In addition, the pre-engagement measures outlined in its report would complement extended judicial management of matters by providing ongoing casework and therapeutic support to address risk. This includes tracking and managing dynamic risks, including acute dynamic risks.

The CIJ's findings are consistent with a significant body of literature which indicates that FVIOs may provide little comfort or protection in and of themselves but, as flagged above, could be entry points for referrals to support that improve victim-survivors' feelings of safety.¹⁰⁴ This contradicts the assumption, discussed earlier, that "getting an order in place" is equivalent to protection and instead underlines the importance of earlier and follow-through engagement with the non-legal processes which were credited by AFMs with making the real differences in their lives.

"A lot of times, I feel like we've ... kind of gotten the referral way too late, when ... you look at it and you're like, 'Wow, if you kind of would have just come to us at the start, and known about us, we could have mitigated a lot of these'"

- Practitioner, "More than just a piece of paper".

"[Police] asked me to attend court ... there was a lady from an organisation called [org name] and she was there explaining to me what exactly is happening ... Even though half of the stuff I didn't even pick up because I was just so scared ... And the whole time ... there was someone there ... that was such a lovely support to have ... And the lady would come and tell me, 'oh he's just left court and now you can wait fifteen minutes and then leave' ... Gave me a bit of leeway so that I'm not going to be in the same place [as him]."

- AFM, "More than just a piece of paper".

Evaluations of comparable specialist assistance at courts in other jurisdictions confirm the benefits of wrap-around service delivery for clients experiencing family violence.¹⁰⁵ An evaluation of a specialist Domestic Violence Unit (DVU) operated by Legal Aid NSW found that a number of aspects of the model facilitated trauma-informed service delivery for victim survivors.¹⁰⁶ The evaluation noted that the DVU was established "in response to an identified need for a more integrated and intensive response to the complex needs of people experiencing or at serious risk of domestic and/or family violence".¹⁰⁷

Further, the NSW evaluation found that the support offered to clients, including legal assistance across multiple legal problem types and social work support for non-legal needs, resulted in a "better, more supported experience that fostered client empowerment and continued engagement with services and ultimately resulted in "more holistic and enduring outcomes".¹⁰⁸ The accessible, supported, trauma-informed, streamlined and holistic nature of services enabled more timely intervention, a better service experience and better outcomes across a "broader range of both legal and non-legal needs".¹⁰⁹

¹⁰⁴ Meyer, S. (2011) 'Seeking Help for Intimate Partner Violence: Victims' Experiences When Approaching the Criminal Justice System for IPV-Related Support and Protection in an Australian Jurisdiction' 6 *Feminist Criminology* 6. 268-290; Smith, J. (2010) 'Experiences of consequences, accountability and responsibility by men for their violence against women and children' (PhD Thesis, University of Melbourne).

¹⁰⁵ Coumarelos C. (2019), 'Quantifying the legal and broader life impacts of domestic and family violence' 32 *Justice Issues (Law and Justice Foundation of New South Wales)* 26 ('Quantifying the legal and broader life impacts').

¹⁰⁶ Coumarelos, C., Forell, S., Wilson A. & Karras, M. (2018) 'Legal Aid NSW Domestic Violence Unit: Process evaluation of the first nine months' (Report, Law and Justice Foundation of New South Wales), 50-52 ('Legal Aid NSW Domestic Violence Unit').

¹⁰⁷ Ibid.

¹⁰⁸ Coumarelos et al., 'Legal Aid NSW Domestic Violence Unit' 64.

¹⁰⁹ Ibid 62.

In an assessment of multiple evaluations of different types of specialist family violence courts across Australia, researchers note that the results affirm the benefit of “appropriate, targeted, timely and joined-up legal and human services for complex life problems experienced by disadvantaged people, such as victims of [domestic and family violence] ...”.¹¹⁰ The results also point to the value of retaining and expanding integrated legal and human services in family violence contexts, such as through specialist family violence prevention legal services, to ensure that they are widely accessible.¹¹¹

In addition to service engagement with AFMs, the CIJ’s own research highlighted that engagement with respondents outside the stressful court environment also had considerable benefits. Most practitioners also acknowledged benefits, such as earlier resolution of matters and access to court-based practitioners who could assess risk, when respondents attended court. Practitioners and respondents alike painted a compelling and almost unanimous picture of the impacts on respondents’ experiences of the FVIO system and their willingness to consent to (and refrain from breaching) FVIOs.

In particular, the respondents with whom the CIJ spoke – as well as those who were also observed in court by the CIJ – were frequently living in unstable accommodation, in a motel, or in a car when they first attended court. This lack of stability and heightened stress decreased their capacity to focus on matters at court and also fuelled their sense of resentment and anger towards “the system”. Practitioners at Aboriginal Community Controlled Organisations also indicated that lack of safe and stable housing was the single biggest issue for clients who they supported, suggesting that an effective intervention would involve supported housing options for people excluded from home by FVIOs.¹¹²

The research therefore signalled that services for respondents, as well as AFMs, was a vital gap in the system response. These services included consistent access to legal advice, as well as crisis and short-term accommodation, which in combination could increase comprehension; decrease confusion and resentment; and support a more meaningful engagement once respondents did attend court.

In addition to recommendations directed more specifically to the Victorian family violence context, the CIJ’s recommendations in the *More than just a piece of paper* research also contained proposals for a process which maximised one of the primary benefits of the SFVC system – early access to legal assistance and associated service supports. That included, relevant to the family violence context, triaging and streaming matters so that risk was addressed as quickly as possible, while parties were attending a ‘first return’ date as equipped as possible with appropriate advice and service connections.

Separately, over the last three years the CIJ has been conducting a developmental evaluation of Victoria Legal Aid’s Legal Practice Model which operates within these SFVC environments. Soon to be published, this evaluation found that access to early, specialist legal advice – and often most crucially – access to non-legal support for highly pragmatic needs, such as immediate safety, housing or financial assistance – could make the biggest difference to a person’s engagement in the FVIO process. When published, this evaluation can be provided to the Inquiry for further background about what this building out of the legal response in that particular context looks like, as well as the promise that it offers.

¹¹⁰ Coumarelos, C ‘Quantifying the legal and broader life impacts’ 26.

¹¹¹ Ibid 26-27.

¹¹² The CIJ notes that an example of a program that could meet this kind of need is Dardi Munmurro Ngarra Jarranounith Place (accommodation linked to perpetrator program) although to meet the immediate needs of excluded men would require an emergency ‘hostel’ as a transitional element of the program. The CIJ are not currently aware of a similar residential program available for other perpetrator demographics.

Discussion and conclusion

It is definitely tempting to dispense with the criminal legal process altogether when responding to sexual offences. Certainly, a great many victim survivors will seek to avoid what they perceive as a process that can only cause a “new trauma” or compound existing harm. This means that every point of the justice response must be dramatically overhauled to ensure that it is not only informed by, but *founded upon*, a thorough understanding of trauma. It also means that other options that sit outside the criminal justice process, including other reporting options, need to be considered.

Inevitably, however, alternative options will not be what everyone is seeking, nor what everyone can access. While all processes should be designed from a community-led perspective and with complex and intersecting needs in mind, it is often victim survivors with greater resources that are able to exercise genuine choice.

More generally, the exploration or provision of alternative options should not let the criminal justice system off the hook. If an imperative remains to respond to offending on behalf of the state, it is nonsense to suggest that this response should not be capable of remembering and respecting the person who reported this offending in the first place. An intelligent system should be capable of keeping more than one objective in view at any one time. In short, we must keep leveraging opportunities to make the justice system function as a positive, rather than a negative, intervention in people’s lives.

For the victim survivors of sexual offences, and victims of crime more broadly, contributing to the CIJ’s research, this would sound like a big ask – with many understandably keen to light the match on a system that caused extensive and unspeakable hurt. The signposts to achieving meaningful change, however, are there throughout. At every point in our research, participants have told us that they wanted to be seen, heard and remembered; that they wanted their needs as a whole person recognised and addressed; that they wanted access to appropriate and sustained support; that they wanted delays avoided and their matter prioritised, but the process not so rushed that they get left behind.

The elements highlighted in this submission point to useful directions – directions which not only seek to reform elements of the justice response itself but to situate it within a broader community support system. It is shirking imagination, as well as intelligence, for justice responses to pull up the drawbridge and isolate themselves from the wider community they serve.

Judicial independence and the independence of the courts more generally can be preserved while a court simultaneously situates itself as one part of a broader community response to harm. As evidenced throughout this submission, building up these relationships and connections to “appropriate, targeted, timely and joined-up legal and human services for complex life problems” may sometimes be the biggest difference that a justice response can make for someone who has experienced harm, even while the conventional wheels of justice continue to turn.

If a victim survivor has been properly and appropriately supported in a holistic way AND if the justice system itself becomes more trauma-founded at the same time, then a disappointing outcome – whether at investigation or prosecution stage – becomes less damaging. In other words, if the process has been built up and out to become one representing support and respect – and if victim survivors have felt remembered and validated throughout while having their wider needs met – it’s possible that the incineration of an inherently broken system can wait. For now.

Appendix – Witness Support

This Appendix provides further background drawn from CIJ projects that have involved reviews of specific victim support services.

5.1 Support for victims as witnesses

A primary concern for victim survivors participating in any legal proceeding is that their views are considered in making prosecutorial decisions relevant to the case, regardless of whether those wishes are acted on directly. For example, 2019 CIJ research commissioned by the Victoria Office of Police Prosecutions found that “victims are more likely to feel fairly treated by the criminal justice system when police and prosecutors: take an interest in them; give them an opportunity to express their wishes; and take their wishes into consideration.”¹¹³

More broadly, a strong finding from the CIJ’s subsequent work on *Strengthening Victoria’s Victim Support System* was that being kept informed about criminal justice processes is relevant to the extent to which people feel that they are part of the process.¹¹⁴ Providing support that includes tailored information and advice, as well as regular contact to check on people’s wellbeing and changing needs, and that functions as a central point of contact over time can maximise opportunities for victims of crime to engage meaningfully in legal proceedings.

As was made clear in the CIJ’s earlier research into consultations with victims as part of the prosecutorial process, however, the way in which that consultation occurs, is also important.

For victims involved in indictable matters, the presence of the Victim and Witness Assistance Service ensures that Office of Police Prosecutions prosecutors are “socialised” by working in partnership with social workers engaged by that service to operate in a trauma informed way.

Victims in matters proceeding summarily,¹¹⁵ however, and who deal solely with police prosecutors, are less likely to experience that communication in the same considered and trauma-informed way. Here it is important to note that the associated time and resources from all the agencies involved in ensuring that victims can meaningfully participate in court proceedings needs to be considered, particularly in the high volume and less well-resourced summary jurisdiction.

¹¹³ Winford, S. Lewers, N & Polis, M, (2019) *Communicating with victims about resolution decisions: A study of victims’ experiences and communication needs*, Centre for Innovative Justice, RMIT University, Melbourne.

¹¹⁴ Ellard, R., Campbell, E., Caruana, C. Ali, J., Ogilvie, K., Haralambous, M, (2020) *Strengthening Victoria’s Victim Support System: Victim Services Review Final Report*, Centre for Innovative Justice, RMIT University, Melbourne, 50. <https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>; Ellard, R. & Campbell, E. (2020) *Key Practice Insights; Supporting Victims of Crime*, RMIT University, Melbourne.

¹¹⁵ Changes to the *Magistrates’ Court Act* 1989 (Vic) in 2006 and 2009 increased the number of indictable matters that can be triable summarily. These include sexual offences (sexual assault, sexual assault of a child under 16, indecent act, grooming, assault with an intent to commit a sexual offence) and other offences against the person (assault, causing serious injury recklessly, intentionally cause injury, threat to inflict serious injury; aggravated burglary), as well as offences committed in the context of family violence. Hence witnesses in these matters are likely to have vulnerabilities resulting from their specific type of victimisation, in addition to their youth.

While there have been significant improvements in the provision of assistance for victims of crime to participate in court processes in indictable matters over recent years, therefore, a clear need persists for greater research and investment into the supports that are available to victim complainants, particularly in the high-volume context of the Magistrates' Court.

In particular, the lack of specialist witness support for adult victims participating in summary matters, including those with pre-existing vulnerabilities, means that most people who experience crime are left to navigate stressful court proceedings largely unassisted. This not only has the potential to compound trauma and impact negatively on the ability to recover from experiences of victimisation, but also compromises people's ability to exercise their rights as outlined in the Victim's Charter.

More broadly, an absence of supports to address the wider range of needs created or compounded by crime victimisation can entrench trajectories of harm. Given that the vast majority of people who experience a criminal offence will see that matter dealt with in the summary jurisdiction, that setting represents an opportunity to stem trajectories of harm and foster much needed recovery and support. This can ensure that the contact which a victim of a summary offence has with the legal system becomes a positive, rather than a negative, intervention.

5.1.1 Witness support services

Noting the above caveats about the contexts in which these are available, witness support services play an important role in enabling complainants who are experiencing specific vulnerabilities to participate in legal proceedings. In Victoria, dedicated services¹¹⁶ are available for defined categories of survivors of crime victimisation, including sexual offending, who are engaged with criminal justice processes. These include:

- The **Child and Youth Witness Service (CYWS)**, which assists children and young people (aged under 18 at a time when charges are laid) involved in criminal proceedings involving a crime against the person. The service is available to child and young witnesses called both for the prosecution and for the defence in indictable and summary matters; and
- The **Victim and Witness Assistance Service (VWAS)**, which supports all adult victims of crime and vulnerable witnesses for the prosecution¹¹⁷ in matters involving the Office of Public Prosecutions i.e., in indictable matters.

In addition, the **Intermediary Program (IP)** "assists criminal justice professionals to communicate clearly with witnesses who are giving evidence in police interviews and during court proceedings."¹¹⁸ The program is available to people aged over 18 if they have a cognitive impairment and are complainant witnesses in proceedings relating to sexual offences and homicide matters.

¹¹⁶ The description of these services is drawn from information collated by the CIJ for the review of the Child Witness Service and is therefore current as at March 2020.

¹¹⁷ As at March 2020, VWAS had no eligibility criteria that determines vulnerability, although the CIJ was advised that priority is given to 'families who have lost loved ones; victims and witnesses in sexual assault and family violence matters; and vulnerable victims.'

¹¹⁸ Intermediary Program. Retrieved May 2024 from <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/intermediary-program>>

Information about service models and frameworks underpinning witness support initiatives services in Australia and overseas is difficult to locate and evidence relating to their effectiveness is scarce, with few publicly available evaluations. Regardless, the existing literature indicates a degree of consistency in what is considered promising practice as well as the issues and challenges that these services face.

5.1.2 Victoria's Child and Youth Witness Service

The Child and Youth Witness Service (previously the Child Witness Service) is a specialist program providing support for young people in Victoria who may be called to provide evidence as a witness or a complainant in criminal proceedings related to violent offending. At the time of the CIJ's 2019 review of the service, close to two thirds of matters referred to the service related to sex offences, and a similar proportion of clients assisted by the service were complainants, or victim survivors.

The service was established in 2007 following a recommendation by the Victorian Law Reform Commission (VLRC) in its review of criminal justice responses to sexual offences in 2004.¹¹⁹ One of the key findings of that review was that children and young people who are witnesses or complainants in criminal matters involving serious offending need additional safeguards and protection. Rather than assuming that the existing justice infrastructure could or should offer this support, Victoria followed the lead of jurisdictions both overseas and interstate and established a standalone, specialist response through the Child Witness Service.

Located in premises separate to courts, the service is delivered by a team of social workers, psychologists and other practitioners who prepare and support children, young people and their families to participate in criminal processes. This includes by:

- providing pre-trial engagement and information to help children, young people and their families understand and prepare for the trial process;
- introducing the young person to the professionals involved in the proceedings;
- facilitating communication with police and prosecutors in the provision of updates on the case;
- minimising young people's exposure to court processes by facilitating the pre-recording of evidence or the provision of evidence remotely; and
- supporting young people in the provision of that evidence.

Child and Youth Witness Officers are also responsible for linking young people and their families with a range of services aimed at addressing trauma and other support needs.

At the time of the CIJ's review, child witnesses in Victoria had access to services that included:

- the provision for police statements to be recorded via Video and Audio Recording of Evidence (VAREs);

¹¹⁹ Recommendation 105, Victorian Law Reform Commission, (2004) *Sexual Offences Final Report*, (VLRC) <<https://www.lawreform.vic.gov.au/project/sexual-offences-2004-inquiry/>>

- the 2018 introduction of the Intermediaries Program Pilot and associated Special Hearings and Ground Rules Hearings (GRH) in matters where the accused is charged with a sexual offence against a person who was under the age of 18 or who was cognitively impaired at the time the proceeding commenced (*Criminal Procedure Act 2009 (CPA 2009)* s369. See section 0 for more detail);
- abolishing the cross examination of child complainant witnesses at the committal stage. The combined effect of VAREs and the abolition of cross examination at committals means that a child sexual assault victim is only cross-examined once;
- fast tracking special hearings matters involving children and young people within three months of the accused being committed for trial (*CPA 2009* s371);
- judicial training and resources provided by the Judicial College of Victoria (JCV);¹²⁰
- mandatory jury directions required under the *Jury Directions Act 2015* placing restrictions on what the judge and practitioners can say about the credibility of complainants and the significance of any delays in reporting;
- special measures to support vulnerable witnesses in the court room, including allowing for the use of screens; pre-recorded evidence; evidence to be given outside the courtroom; the witness to be accompanied by a support person; and restrictions on who can be present in court when the young person is giving evidence;
- provisions in the *CPA 2009* in proceedings relating to a sexual offence or where conduct constitutes family violence:
 - for a person to be declared a ‘protected person’ (*CPA 2009* s 355), and prohibiting personal cross-examination of the complainant by an unrepresented defendant (*CPA 2009* s 357);
 - prohibiting cross-examination at a committal hearing where the complainant is a child or a person with a cognitive impairment (*CPA 2009* s 123);
 - requiring that the evidence of a complainant who is a child or who has a cognitive impairment is pre-recorded (*CPA 2009* Part 8.2 Division 6);
 - allowing for recordings of a complainant giving evidence in a previous trial to be made available to avoid the need for the complainant to give further evidence (*CPA 2009* Part 8.2 Division 2);
 - allowing for police interviews to stand as the evidence in-chief of a complainant who is a child or who has a cognitive impairment (*CPA 2009* Part 8.2 Division 5).

¹²⁰ The CWS worked with the JCV to produce guidance notes on child witnesses in the judicial resource, see Judicial College of Victoria, *Victims of Crime in the Courtroom: A guide for Judicial Officers* (JCV, accessed May 2024 <http://judicialcollege.vic.edu.au/eManuals/Victims/Victims%20of%20Crime%20in%20the%20Courtroom_WholeDoc.pdf>. The notes set out ‘considerations for judicial officers and court staff to limit re-traumatisation of victims and enhance opportunities for post-traumatic growth, without compromising the integrity of the criminal justice system’.

In addition to protections built into criminal processes outlined above, the establishment of the Commission for Children and Young People in 2013 (replacing the Office of the Child Safety Commissioner), and the office of the Victims of Crime Commissioner (VoCC) in 2015 contributed to understanding about the needs of children and young people engaged with the criminal justice system and of victims of crime more broadly.

For Aboriginal children and families, Phase 4 of the Victorian Aboriginal Justice Agreement, *Burra Lotjpa Dungaludja* ('Senior Leaders Talking Strong') brings a focus to the importance of providing culturally safe justice programs that are trauma-informed, restorative and therapeutic, as well as the need to better support Aboriginal families, witnesses and victims to manage and minimise the effects of crime.¹²¹

5.1.3 Evidence of effectiveness

It was evident from the CIJ's review that the Child Witness Service (as it was at the time) was viewed by justice stakeholders and service providers as a vital element of an improved criminal justice system response. It was described by practitioners providing specialist therapeutic support to children and young people, particularly in the context of sexual offences, as a vital element of an improved criminal justice system – one which was had previously been failing to give young people sufficient voice.

The review found that the service was clearly well integrated into the criminal justice landscape in Victoria. Stakeholders noted how the work of the service helped them to focus on their own professional roles, knowing that potentially distressed children and their families were well supported. Judicial officers valued the fact that child witnesses were supported and in a safe environment when providing crucial evidence. Police and prosecutors appreciated the role of Child Witness Officers pre- and post- trial in explaining the process and outcomes of proceedings to young people and their families. Overall, stakeholders agreed that the support provided by the service helped to improve the quality of evidence provided, thereby enabling prosecutions to proceed that may not have otherwise done so.

Feedback from young people and their families echoed those of stakeholders. Most families could not fault the service. Comments included that:

- communication was clear and information provided was easy to access;
- support provided to parents was equally vital, as it enabled parents to care and 'fight for' their children more effectively; and
- families could not imagine how they or their child could have gone through with the criminal trial process without the support of the Child Witness Service.

¹²¹ See Outcomes 1.2.1, 3.1.1 and 3.1.2, *The Aboriginal Justice Agreement Phase 4, Burra Lotjpa Dungaludja*, retrieved May 2024) <<https://www.aboriginaljustice.vic.gov.au/the-agreement/the-aboriginal-justice-agreement-phase-4>>.

Young people interviewed described the support provided by the Child Witness Service as being “a hundred percent what I needed”; like having “someone on my team”; and as providing “humanity” to what was otherwise a “brutal” process. One young person spoke of the “comfort” provided by the environment and the staff of the service, particularly in the context of having effectively had their childhood cut short through their experience of serious crime.

5.1.4 Key issues relevant to witness support

Three key issues relevant to witness services emerged from the CIJ’s review of the Child Witness Service, as it was then.

While the definition of a “vulnerable witness”¹²² varies between jurisdictions within Australia and internationally, it is generally confined to young people (aged up to 16 or 18); adults with specific communication, cognitive or other disabilities; or adults appearing in matters where there was sensitivity or potential for intimidation (ie matters of sexual assault, family violence or where the crime was committed by a criminal gang or organisation).

This narrow definition excludes other groups known to face challenges when engaging with the criminal justice system. For example, as noted in the body of the CIJ’s submission, Aboriginal and Torres Strait Islander people face a range of complex barriers to access to justice which are shaped by experiences of colonisation and racism. Research has also found that migrants and refugees who participate in Australian court processes face additional challenges which may include a distrust of court processes and may lack an understanding of Australian law and court procedures.¹²³ The literature does not provide any insight, however, into whether additional supports are being provided to these broader groups of vulnerable witnesses, unless they fit the criteria of being a child or having a disability which impacts communication.

Consistent with this wider evidence base, it was apparent from the CIJ’s Child Witness Service review that certain cohorts were under-represented in the service’s client base, specifically children, young people and families from Aboriginal and Torres Strait Islander communities as well as those with more complex needs, including young people in out-of-home care and youth detention. While it was not possible to draw accurate conclusions from the incomplete service data that was available, stakeholders strongly suggested that young people who are less likely to report crime to police, or who are not referred for support in the context of other challenges, are not adequately captured as Child Witness Service clients. This accords with CIJ findings from its wider Victim Services Review, as well as with relevant literature, which suggest that cohorts over-represented as victims of crime can be *under*-represented in terms of receiving victim support.

¹²² A number of jurisdictions have ceased describing witnesses as ‘vulnerable’ and instead refer to ‘special witnesses’ who have access to a range of ‘special measures’. The use of the term vulnerable is considered a high contested term and one which may result in disempowering particular groups including children. Eades, D. (2012) Communication with Aboriginal Speakers of English in the Legal Process, *Australian Journal of Linguistics* 32(4), p 2473-489

¹²³ Perry, M, (2019) *The law, equality and inclusiveness in a culturally and linguistically diverse society*, *Adelaide Law Review*, 40(1), p 273-284; Williams, O and Jenkins, E, *Minority Judges’ Recommendations for improving Court Services for Battered Women of Color: A Focus Group Report* (2015) *Journal of Child Custody*, 12: p 175-1191; Diversity, J, C.o.C. *The Path to Justice: Migrant and Refugee Women’s Experience of the Courts*: 2016: Canberra.

The lack of targeted services available for vulnerable young adults was also identified as a serious service gap. Young people who were over the age of 18 at the time of the offence, and who were appearing in summary matters in the Magistrates' Court, were not eligible for either the Child Witness Service (which required the young person to be under 18 at the time of the offence) or the Victim and Witness Assistance Service (which was only available in proceedings involving indictable charges).

Judicial officers and police consulted in the review indicated that young people up to the age of 25 make up a substantial proportion of victims of crime and vulnerable witnesses combined. The CIJ therefore recommended that the Child Witness Service conduct a pilot whereby services were extended to young people aged up to the age of 21 years who are appearing as witnesses in the summary stream in matters involving either crimes against the person or family violence.

Given increased understanding of the impacts of trauma on the ability of victim survivors to participate in the legal process, therefore, the CIJ is of the view that this Inquiry should investigate the potential for access to witness support to be expanded to all witnesses/complainants whose ability to engage in proceedings is impacted by trauma, including non-complainant prosecution or defence witnesses.

Further, the literature suggests that a key element of effective support for vulnerable witnesses is ensuring that services are well connected. In particular, strong partnerships with police are required to ensure engagement with vulnerable witnesses as early as possible.¹²⁴ Mention is also made about the importance of information being shared between services to ensure that the needs of child witnesses are known by all parties involved in supporting them in court.¹²⁵ Difficulties retrieving crucial information about young witnesses from police and other child welfare bodies was mentioned in a number of jurisdictions.¹²⁶

A number of child witness services featured in the literature provide debriefing or referred children to other services for this support. Some concern is expressed in the literature about the end of a court case being a challenging time and therefore an important opportunity to ensure that support is available. A number of studies suggested that it is not always clear who is responsible for debriefing young witnesses and that this is an area where better coordination might be needed. A New Zealand study of young witnesses found that only half received debriefing, with children and young people commenting that this was something that should have been offered to them.¹²⁷

¹²⁴ Plotnikoff, J. and R. Woolfson, (2009) *Evaluating implementation of Government commitments to young witnesses in criminal proceedings.*, NSPCC: United Kingdom.

¹²⁵ Davies, E., H. Devere, and J. Verbitsky,(2004) *Court Education for Young Witnesses: Evaluation of the Pilot Service in Aotearoa, New Zealand.* Psychiatry, Psychology and Law. 11(2): p. 226-235.

¹²⁶ Ibid.

¹²⁷ Ibid.

The review of the Child Witness Service indicated that a key challenge faced by the service was the capacity to maintain the quality, length and depth of services required. This included limited capacity to provide follow-up support once the young person's involvement with the criminal justice system comes to an end. It also highlighted the need for a more sophisticated understanding of workforce requirements for professionals supporting clients with complex trauma. Findings such as these reflect wider recognition that work with clients who have experiences of sustained offending or trauma is highly specialist, time consuming work.

A strong message from the review of the Child Witness Service, therefore, was that services for child witnesses need to be flexible enough to allow for their offerings to be customised to meet the needs of individual witnesses and their families.¹²⁸ The review found that this point was particularly salient for services working with adolescents, with a number of services highlighting that they had received feedback or high rates of disengagement from adolescents who described the resources used by the service as more suitable for younger children, with those aged 12-18 less well catered for or considered.¹²⁹ This recommendation is reflected in the Victorian Government's announcement in 2023 launching a new purpose-built facility, renamed the Child and Youth Witness Service, which could deliver "a trauma informed, child and family friendly space"¹³⁰ as was recommended by the CIJ in its 2020 review. The service is co-located with the Intermediaries Program, as also recommended by the CIJ.

Finally, the CIJ heard that conferences conducted post-court involve a meeting between a young person and their family with the Child Witness Service, the Victoria Police informant, the Office of Police Prosecutions and other agencies deemed relevant to discuss the outcome of the legal process. This included providing information on plea deals; the reason for any discontinuance; the sentence handed down; or the absence of a conviction.

Stakeholders consulted for the Child Witness Service review regarded these conferences as a crucial way of providing a young witness and their family with a wider context and perspective, as well as countering what was often a disempowering experience of the criminal justice system for victims and witnesses. To this end, stakeholders noted that these conferences required a united approach from agencies, particularly given that police informants or SOCIT teams may not be aware of why or how an outcome has occurred.

Consultations also highlighted that these conferences were particularly important in matters involving juvenile offenders. This was because diversionary processes may often be used, leaving families of victims without a sense of 'justice' being done in the way they had anticipated.

As valuable as these conferences were, the CIJ heard that it was crucial that they occur in a timely manner. One young person interviewed as part of the Child Witness Service review indicated that the debriefing session was offered to them more than six months after sentencing. This delayed process left the young person feeling unsettled and unresolved – a feeling which the young person described, as noted in the body of this submission, as like being "a book without a back cover".

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Victorian Government (2023) 'New Victim Support Centre Opens For Young People' (Media Release, 22 August 2023). Accessed May 2024, <<https://www.premier.vic.gov.au/site-4/new-victim-support-centre-opens-young-people>>

As a result, the CIJ's recommendations that emerged from the CIJ's review of the Child Witness Service reflect the emphasis on ensuring greater access for a greater diversity of child witnesses and ensuring that extended support was available. These recommendations were made in the context of wider proposals for a strengthened 'Victim Support' service model. Intended to be implemented across three phases, these recommendations included that the Victorian Government:

- Expand witness support beyond the current narrow definitions of vulnerability, to include all victim survivors of sexual offending and other groups requiring customised support;
- Ensure adequate resourcing to allow staff to engage with criminal justice system stakeholders, with a particular focus on police to promote early and appropriate referrals;
- Ensure that the service is welcoming and appropriate for adolescents who make up a significant proportion of clients to the service, including considering changing the name of the service to reflect this;
- Ensure that children in rural areas are able to access child friendly and appropriate facilities outside the court environment to give their evidence to court;
- Funding services adequately to allow for continued support to children after their contact with the criminal justice system and the service has concluded; and

the potential co-location of the renamed service and the Intermediary Program, with an additional, dedicated part-time presence from the Office of Police Prosecution's Victim and Witness Assistance Service, in purpose-built premises.

5.1.5 Provision of evidence remotely

Research into the use of evidence given remotely or via video links suggests that this can reduce children's anxiety and improve their experience of providing evidence in court.¹³¹ Studies also recommend that children and young people giving evidence remotely are located in a venue outside the court building to ensure that they and their families will not come into contact with the defendant or need to pass through security. For example, in the ACT context, remote witness facilities include complete isolation from the court precinct with a hidden, separate entrance.¹³² While the use of these measures has not been found to have an impact on the outcomes of trials per se, studies indicate that the use of video link has an impact in terms of more trials proceeding, which in turn has the potential to result in more convictions overall.¹³³

¹³¹ Hamlyn, B., Phelps, A., Turle, J., and Sattar, G. (2004) *Are Special Measures Working? Evidence from surveys of vulnerable and intimidated witnesses* (Home Office Research Study 283, Development and Statistics Directorate).

¹³² Interview suits at the facility have an ante room with sofas where families can wait while the child gives evidence, Tea and coffee making facilities are available as children are provided with breakfast.

¹³³ McNamee, H., Molyneaux, F., and Geraghty, T. (2012) *Key Stakeholder Evaluation of NSPCC Young Witness Service Remote Live Link* (SPCC Northern Ireland).

The CIJ's 2020 review of the Victoria's Child Witness Service illustrates the importance of ensuring that the provision of evidence remotely occurs in a safe, private and supportive environment. The Child Witness Service was found to offer a child-friendly environment, providing an appropriate, comfortable space where children, young people and their families can engage with their legal team. A range of play materials, such as dolls and puppets helped to familiarise children and young people with the court environment, and child witnesses could see and touch a set of judge's robes. Opportunities were also provided for judges and defence barristers to attend at the centre in their civilian attire to visit child witnesses on the morning of court. In addition, children and young people can sit in the remote witness room to familiarise themselves with the environment from which they will be providing evidence.

The CIJ found, however, that the service model for the provision of evidence remotely by child witnesses differs considerably between metropolitan and regional areas. A significant issue identified by almost all stakeholders in that study was the lack of suitability of remote witness facilities in regional areas, with children and young people providing evidence from remote witness facilities at regional courts. In addition to the fact that these venues are clearly not designed to be child-friendly, regional courts can present different challenges in relation to safety and ensuring that child witnesses and their families have minimal contact with the accused.

The facilities were described as run down, too small, not sound-proof and generally "pretty awful" by most stakeholders consulted, including Child Witness Service staff. Examples were given of children and young people giving evidence in rooms near police cells where they can hear offenders screaming and swearing. In one country town, the room where evidence is given remotely was described as a thoroughfare, where people sometimes walk through while the child is giving evidence. Other courts used an area full of computer systems which generated heat and create significant noise. CWS staff said that they would like facilities for child witnesses to be purpose built and suitable for children, with everything of a child appropriate size.

Key recommendations included the need for Child Witness Officers to be co-located with relevant agencies in the regions, preferably those with remote witness facilities and video-conferencing technology for outreach support. This could include the local Orange Door or the local Victim Assistance Program service. The need for investment in purpose-built remote witness rooms across the state for children, young people and their families was also highlighted.

5.1.6 Intermediaries and ground rules hearings

One of the ways in which the quality of evidence given by witnesses with communication difficulties has been enhanced is via the provision of intermediaries. Intermediaries support vulnerable witnesses (and sometimes defendants), including children, young people and other witnesses with a disability or challenges in communicating, to contribute in a meaningful way to the trial process by providing their best possible evidence.¹³⁴

¹³⁴ Collins, K., Harker, N., and Antonopoulos, G. (2017) 'The Impact of the Registered Intermediary on Adults' Perceptions of Child Witnesses: Evidence from a Mock Cross Examination' (2017) 23(2) *European Journal of Criminal Policy Research* 211-225.

Unlike Child Witness Officers who provide emotional support and advocacy, as “officers of the court” intermediaries have a duty to act impartially when assisting communication with a witness. The interests of the individual witness are not the focus, beyond facilitating the witness’s opportunity to have their “day in court” and have their “voice heard”. Minimising the trauma associated with giving evidence is a fortunate by-product, rather than the aim of their work. In an evaluation of the NSW intermediary pilot, Ground Rules Hearings (GRHs) were found to make a real difference to children’s experiences of the process, with the witness intermediary found to reduce the child’s stress and improve their confidence when answering questions¹³⁵

The Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017) made several recommendations relating to the need for intermediary service to be available in the investigation and prosecution of matters involving child sexual abuse.¹³⁶ This has led to the establishment of intermediary schemes in most jurisdictions in Australia. Services vary in terms of the qualifications of their staff; how they are recruited and trained; whether they undertake assessments; and the degree of intervention in the trial process, being whether they provide advice to other court and legal practitioners or whether they simply act in a role similar to “interpreters”.¹³⁷

The available literature suggests that there is often resistance to the introduction of intermediary schemes, due to concerns about the fairness of the process for defendants and the potential for intermediaries to pollute the evidence. A recent review of the NSW sexual offences pilot recommended that child witness intermediaries change their name from “children’s champions” to ensure that they are not misleading families about their role as neutral facilitator in communication and assistant to the court.¹³⁸ Once a scheme is introduced, however, concerns about the neutrality of intermediaries generally dissipate and the scheme is usually well received.¹³⁹ Some consensus exists in the literature that intermediaries play an important educative role in providing guidance about developmentally appropriate and effective questioning practices for police and prosecution lawyers.¹⁴⁰

5.1.7 The Intermediary Program in Victoria

The Intermediary Program was first delivered in Victoria as a pilot program in 2018. The service provides specialist communication support for children, young people and adults with a cognitive impairment who are involved in justice processes as complainants in matters involving sexual offences and witnesses in homicide cases.

¹³⁵ Cashmore, J., and Shackel, R. (2018) *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report* (UNSW)

¹³⁶ See recommendations 9(j); 13(c) and (d); and 59. Commonwealth of Australia (2017), Royal Commission into Institutional Responses to Child Sexual Abuse.

¹³⁷ Cooper, P., Dando, C., and Ormerod, T. (2018) ‘One Step Forward and two Steps back? The “20 Principles” for questioning vulnerable witnesses and the lack of an evidence-based approach’, 22(4) *The International Journal of Evidence & Proof* 392-351-370.

¹³⁸ See Cashmore, J., and Shackel, R. (2018) *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report* (UNSW)

¹³⁹ *Ibid.* Police consulted in this review also expressed the view that working with the IPP helped them to improve their communication skills.

¹⁴⁰ *Ibid.*

Under the program, communication specialists with backgrounds in psychology, speech pathology, social work and occupational therapy assess and ensure that communication with witnesses¹⁴¹ is as complete, coherent and accurate as possible. The key functions of intermediaries as established at the pilot stage of the Victorian service include:¹⁴²

- undertaking an assessment of the witness's communication style and specific communication assistance required;
- providing a description of the communication needs of the witness to the investigating police officer, legal practitioners and judicial officers;
- facilitating communication between parties by contributing to the development of ground rules in a Ground Rules Hearing (GRH) to prevent or overcome communication issues. This may be via recommendations on the use of visual prompts; advice on the language and structure of examination and cross examination; and advice about the timing of testimony and the need for breaks; and
- preparing court reports on the individual's communication needs and practical strategies for managing these needs.

Intermediaries can also provide support during the recording of VAREs for police interviews.

As is the case with the Child and Youth Witness Service, the CIJ notes that the current eligibility criteria to access services under the Intermediary Program is too narrow. While the focus on matters involving sexual assault and serious violent offending causing death is welcomed, there is a clear need for intermediary assistance in all criminal trials and family violence proceedings involving children, young people and adults who have cognitive impairment.

As a result, many jurisdictions within Australia and internationally have implemented a range of measures to try and make the experience less traumatic, while ensuring that legal outcomes are as robust as possible. These justice reforms have resulted, to a large extent, from state and commonwealth reviews and commissions of inquiry and can be broadly grouped into three categories i.e., the introduction of modifications to court processes and procedures; the provision of specific witness services, such as the Victorian Child Youth Witness Service; and the use of intermediaries to facilitate communication.¹⁴³

¹⁴¹ The pilot includes children and adults with a cognitive impairment who are either complainants in a sexual offence matter or witnesses in homicide matters. No Intermediary assistance is available to non-complainant child witnesses in sexual offence matters.

¹⁴² Department of Justice and Community Safety, Victorian Intermediary Pilot Program (Retrieved May 2024) <<https://www.justice.vic.gov.au/justice-system/courts-and-tribunals/victorian-intermediaries-pilot-program>>.

¹⁴³ Tim Henning, 'Obtaining the best evidence from children and witnesses with cognitive impairments – "plus ça change" or prospects new?' (2013) 37(3) *Criminal Law Journal* 155-174.

