

Criminal Justice Consultation Paper

Response Document

Issues in Police Responses.

Training for all police coming into contact with victims or survivors to have and understanding of complex trauma.

General duties police officers are often the first responders for situations where sexual assault has occurred, either alone or in conjunction with other reported offending. The victims of sexual assault, of either sex, can present to Police across a range of emotional responses.

Also, the nature of sexual offending can be a complex crime, often involving family members or perceived friends which can leave victims with feelings of fear, guilt, embarrassment, humiliation etc.

The way a victim presents to police in the first instance and the subsequent response she/he receives can significantly impact on the success and quality of any subsequent police investigation that takes place.

For this reason, it is important that police have some understanding of the complexities of sexual assault. The level of training for police needs to be incorporated at their initial training phase and incorporate a strong perspective from victim/survivors.

Obviously those police involved with conducting investigations need to be highly trained in the area of sexual assault, interviewing and victimology with a preferred desire to work in this field.

Should police do more to encourage victims and survivors to report their abuse?

It is the responsibility of police to investigate reported crime, however, in the case of sexual assault and family violence their needs to be an understanding by police that the victim has some control in whether a criminal justice response is proceeded with and to acknowledge this. This needs to be balanced with the hastily made decision to mark matters as 'complaint withdrawn' or 'no further police action' based on the victim's responses.

Nevertheless, in those cases of serious physical injury or imminent risk, police have a role to act immediately in the interests of victim safety regardless of the victim's wishes.

Should police provide more information to make clear that victims can withdraw at any stage?

In the case of family violence, police often adopt a pro-prosecution strategy to hold domestic violence perpetrators to account, regardless of victims wishes. There is a strong argument of support for this strategy. In the case of sexual assault, the complexities of the crime are different and the impact upon a victim can be significant. That is why victims should have a strong voice in any criminal investigation and this advice should be given in the earliest stages of contact with police. Nevertheless, in those cases of serious or imminent violence, police have a duty to act and prosecute.

Should police provide more options for reporting, including by telephone and online?

The serious nature of sexual assault requires a face-to-face response at some point. An online mechanism could only be an initial stage to a further meeting where a thorough 'options' discussion could be held and the full extent of the matter is known. It would be extremely difficult to conduct any type of investigation or rapport building between police/victim via online reporting.

Additionally, there would need to be some form of validation in relation to any information being submitted via any online portal, otherwise there it would be open to abuse or misuse.

What options might work best for Aboriginal and Torres Strait Islander victims?

General duties police would still be attending in the first instance, however, a referral and follow up phase could be implemented immediately or at a later stage with a culturally reflective on-call support person or family member.

What options might work best for prisoners or survivors with criminal records?

Again, training should ensure that police responders are non-judgemental, regardless of the victims' circumstances. Follow up meetings should be arranged with suitably trained investigators in discreet circumstances to ensure confidentiality.

Importance of regular communication with victims.

Very important to allay the belief of inaction or of being forgotten. Vic Police have systems in place to record the information, however, it is dependent on investigators. With long periods of leave or police member's absence, victims can feel forgotten.

Same police investigate and liaise with victim during course of process?

Extremely important that this process be maintained where possible. This was a major aim of the SOCIT model in Victoria, however, over time and with internal pressures on police with resourcing and investigation timeframes, it has waned to some extent. Highly desirable that this process is maintained to ensure rapport and support of victims by the investigator. The same investigator should also be involved with the perpetrator to have a comprehensive and full understanding of the dynamics of the sexual offending and the crime being investigated.

Police responses and institutions.

Reporting to support service/agency and the passing of information to Police?

This should not occur unless a significant or imminent risk of serious injury exists or with the victim's consent. With existing privacy legislation, there is provision that in the case of an identified risk to the personal safety of a victim or the safety of another person, a report could be made to police without the victim's consent. Also in the case of the RAMP process, a similar situation could occur where police are notified without the victim's consent, but again, only in the cases of serious or imminent risk of serious injury.

With the proposed amendments to the Privacy Legislation in consequence of the introduction of the Support and Safety Hubs, the sharing of victim and perpetrator information for the purpose of risk assessments would be further broadened, however, the intended consequence of these amendments is aimed at risk minimisation for the victim.

As for general involvement, advice or support received by a victim through a service or support agency, the details of same should not be given to police. This would undermine the trust and rapport developed between the victim and service provider. It would generally be the case that any victim engaging with a service/support agency would be advised and given warning of circumstances requiring the sharing of their information.

If victims became aware that their information may be shared without consent, it would lead to less reporting, however, there needs to be a distinction between the sharing of information for a criminal justice process and the sharing for a risk management process. Unfortunately, it could be envisaged that information sharing for a risk management process could lead to a victim being unwillingly involved in a criminal investigation.

It is understandable that some victims are initially unwilling to directly report to police and there could be numerous reasons for this unwillingness. The process of reporting needs to be as simple and as comfortable as it can be.

Child Sexual Abuse Offences

Persistent child sexual abuse over multiple occasions

This is clearly an issue which often presents itself where children have been abused on multiple occasions, in similar circumstances and over lengthy periods of time. It also applies to adults or to adults now reporting child sexual abuse. The new offence in Victoria of 'course of conduct' seeks to address those scenarios to some extent, however, a preference would seem to remain to charge offenders with the offences that are able to be clearly particularised. In these situations, offenders are not being held accountable for the full extent of their offending.

Balanced against this however, is the offender's right to be aware of the charges against him and to have a right of reply or ability to defend the charge/s.

Limitations for Child Sexual Abuse

All limitations for the reporting or prosecution of child sexual abuse should be removed from legislation. By the nature of sexual abuse, many victims find themselves unable to report matters for a variety of reasons. By having prosecution limitations, victims are either pressured into reporting matters when emotionally unprepared or finding themselves having no legal means to hold perpetrators to account criminally.

Third Party Offences

Failing to report child abuse?

Yes, where it is clearly evident and able to be proved that some person had knowledge of the offending and took no action. However, there would need to be recognized defences to a charge of this type to allow for situations involving fear/duress, mental capacity, age etc. It would be similar to existing 'mandatory reporting' legislation.

Senior people in institutions fail to intervene to protect a child from sexual abuse?

Legislation now exists in Victoria for offences of this type. Especially relevant and should be applicable in any institutions where children are involved, including clubs and sporting groups.

Institutions fail to intervene to protect a child from sexual abuse?

Existing civil process may be sufficient in these cases following successful criminal prosecution of senior individuals. If individuals are found to have condoned or ignored institutionalised abuse against appropriate policies/procedures of an institution, then criminal offences may be undeserved.

Issues in Prosecution Responses

Prosecution staff to be trained in complex trauma?

Yes, so as to have a full understanding of the offending and the 'whole story' concept when dealing with victims and speaking to juries.

Same Prosecution staff

This is the same as with the intentions of the SOCIT model. The less change for the victim in the prosecution process, the better.

Witness Assistance Services Role. Should there be more specialist services, including for Aboriginal & Torres Strait Islander victims and survivors and victims who are still children?

The current witness assistance service provision role seems to be adequate in this particular area of the State. Witness Assistance services can be provided by Anglicare, Specialist Family Violence Services and there is a local Court Network of volunteers who also provide support.

Should there be a right to complain or seek a review of a prosecutor's decision to discontinue or prosecution or to withdraw charges.

The option for victim's to have prosecutorial decisions reviewed by the OPP used to be in existence but has now been revoked. The decision to prosecute lying predominantly with Victoria Police. The existing Police authorisation process can at times be subjective, depending on the person authorising briefs of evidence and their relevant experience and training in the field. A right of review should be available.

Accepting a guilty plea to a lesser charge?

Often, this can allow a perpetrator to be convicted and negate the need for a victim to give evidence. There needs to be consultation with all parties involved in a case to make this decision and, if agreed, it can lead to a more streamlined court process and resolution. There should be a proviso that summaries of evidence are not overly 'watered down' to reflect only the lesser charge though.

Evidence of Victims and Survivors

Pre-recording of evidence.

This currently works in many cases of sexual assault for vulnerable witnesses, usually children and adult victims with a cognitive impairment. It would be a practical step to expand this option for all victims of sexual assault so that their 'evidence in chief' could be given via pre-recorded evidence. Cross-examination would still need to be available in person and in fairness to any accused at some later point if required.

Use of Intermediaries.

Provided that are suitably recognised by the Court as competent in their field of communication.

Ground Rules for questioning of victims before cross-examination.

Judges already have rules of evidence that need to be followed within the respective state and territory court jurisdictions and based on legislation. They should already be exercising leadership in the courtroom environment around the proper and appropriate questioning of victims including vulnerable witnesses. Setting ground rules should not be necessary if appropriate guidelines are already within legislation

Tendency and Coincident Evidence and Joint Trials

Should it be easier to have joint trials so that all allegations against a particular accused can be heard and determined in the one trial?

This should definitely be the case. Often a police case will be significantly stronger when multiple charges against multiple victims are run within the same hearing. Obviously, there is understanding and agreement that any charge against an accused, should be able to be tested and prosecuted on its own merit, however, in many cases, charges will fail or not be proceeded with when separated at trial. The overall impact of separation of charges should be taken into account and the impact upon victim's be given consideration. The separation of charges can be misused to drag out criminal proceedings and wear down victim's willingness to continue with the process.

Sentencing

Should convicted offenders be prevented from raising their 'good character' to seek a reduced sentence if their good character helped them to commit the offences?

Definitely. It should be a consideration for judges/magistrates in their sentencing regime and evidence of good character should be barred in such cases, but only where that good behaviour has been used as a tool to commit offences.

Should convicted offenders be sentenced according to sentencing standards at the time they are sentenced, rather than the standards that applied at the time they committed the offence?

Yes. Due to inevitable delays within the criminal justice system, sentencing can sometimes occur some considerable time after conviction. Also community standards change over time. In many cases involving historical legislation do not reflect current standards where limits were placed on sentencing options for judges/magistrates. Offender sentencing for historical offences should be reflective of current sentencing for similar offences.

Appeals

Should a victim/survivor's evidence in a trial be recorded so that they do not have to give evidence again if there needs to be a retrial?

Yes. Often a hearing or trial will need a re-hearing due to a technical issue of law or misdirection by a judge for example. In these cases, the victim is not at fault and should not be subjected to the emotional trauma and stress of reliving the experience.

General

Are there other improvements you would like to see in the criminal justice response to institutional child sexual abuse – including police, prosecutions and trials?

Less consideration for perpetrators and more consideration for a smoother and less emotional process for victims choosing to proceed through the criminal justice process.