

Victorian Law Reform Commission review: *Improving the Response of the Justice System to Sexual Offences*

Submission by Women's Legal Service Victoria

Women's Legal Service Victoria welcomes the opportunity to contribute to the Victoria Law Reform Commission review into *Improving the Response of the Justice System to Sexual Offences*.

Women's Legal provides assistance to women who are experiencing family violence and relationship breakdown. We deliver duty lawyer services at Melbourne Magistrates' Court, the family law courts and the Children's Court (Family Division), as well as ongoing legal representation across these jurisdictions for women experiencing significant disadvantage. We work with a wraparound model of service delivery, where clients are also supported by social workers and financial counsellors, depending on their needs.

Foundations of our submission

Sexual offending perpetrated against women by a cohabiting partner is significantly under-reported, and barriers to help-seeking are compounded by systemic and socio-economic disadvantage¹. With this in mind, and given Women's Legal areas of legal practice and client cohort, we considered that our lawyers may have observations on the experiences of women we work with that would be a valuable contribution to the review.

Our submission presents practice-based evidence, informed largely by a qualitative group interview with lawyers at Women's Legal.

We invited lawyers to share their insights and observations about clients' experiences of reporting sexual assault and accessing supports – in the justice system as well as non-legal services. The group interview was semi-structured, with the questions based on aspects of the Issues Papers that are relevant to our areas of legal practice and expertise.

The observations of our lawyers may provide a unique perspective and valuable insights into the lived experiences of women accessing family violence, family law and child protection legal help, and some of the systemic, cultural and professional practice barriers to their needs being met in the existing justice system response to sexual assault.

Structure of the submission

Our submission is in two parts.

PART ONE addresses **Issues Paper H** and **Issues Paper A**. Here we discuss barriers to disclosure and help-seeking for sexual harm among women receiving family violence, family law and child protection legal assistance. It discusses the lawyer-client relationship in these jurisdictions as a critical opportunity to support people to seek justice and access specialist sexual assault services.

¹ Cox, P. (2015), *Sexual assault and domestic violence in the context of co-occurrence and re-victimisation: State of knowledge paper*, Sydney: ANROWS

Victoria Police (2018), *Policing Harm, Upholding the Right: Victoria Police strategy for family violence, sexual offences and child abuse 2018-2023*, Victoria

PART TWO addresses **Issues Paper G**, and discusses the need to introduce restorative and alternative justice models to complement the existing criminal justices response, in order that access to justice is enhanced for women experiencing sexual assault in the context of family violence.

Summary of recommendations

Issues Paper A: Systems integration, and Issues Paper H: Other justice processes

1. Prioritise and dedicate resources to a reform program to redress the structural, systemic and cultural barriers to disclosure, help-seeking and justice system recourse for women who experience sexual assault in the context of family violence
2. Provide training to lawyers practicing in jurisdictions where clients are likely to have experienced sexual assault, including family violence law, family law and child protection, so that they are adequately resourced to discuss sexual assault and support clients' access to justice and help services. Consider collaborating with Victoria's community legal centres, as the main provider of duty lawyer services to family violence victim survivors, to develop and pilot training for eventual broader roll-out to legal practitioners across Victoria
3. Strengthen the referral pathways between the legal assistance sector and specialist sexual assault services to improve family violence victim survivors' access to therapeutic services

Issues Paper A: Child protection

1. Provide additional and sustained investment in prevention and early intervention programs to identify and respond to risk factors including family violence as early as possible and minimise the need for child protection involvement.
2. Implement robust cultural change and compliance strategies to ensure child protection practice accords with practice guidelines, and timely supports are provided to victim survivors, including early referral to legal and other specialised help services. Priority should be given to working with affected family members to address safety concerns and ensure that children are only removed from the care of a non-violent parent as a last resort.
3. Implement Victoria Legal Aid recommendations (see [Achieving safe and certain homes for children](#)) to improve the permanency amendments to the *Children, Youth and Families Act 2005* including urgent amendments to the reunification timeframes to allow the court to make decisions in the best interest of the child.

Issues Paper G: Restorative and alternative justice models

1. Women's Legal strongly supports the introduction of restorative and alternative justice models as an option for people seeking a justice system response to sexual assault
2. We recommend that restorative and alternative justice models for sexual offences be well-integrated with the family violence response system, including the legal assistance sector
3. A co-design approach that involves victim survivors in development of the model from the outset is recommended. The development approach should include consultation with lawyers who practice in areas of law that intersect with family violence, as a source of valuable information, and to strengthen collaboration and embed effective referral pathways.

Part One: Sexual assault disclosure and help-seeking in the civil law setting

Issues Paper A: Working Together to Respond to Sexual Offences: Systems

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

Issues Paper H: Sexual Offences: Civil Law and Other Non-Criminal Responses

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

Question 2 – How can the interaction between other justice processes and the criminal justice system be improved?

When women are escaping family violence and seeking protection from the justice system, their lawyer may be the first person to whom they disclose sexual abuse. In some cases, disclosure to a lawyer is the only time sexual abuse is divulged.

There are several reasons why women may disclose sexual abuse only to a lawyer, and not to other professionals and authorities. Fears women might have about mandatory reporting may be allayed by the knowledge that information shared with a lawyer is bound by legal professional privilege. Further, disclosure of sexual abuse can occur out of necessity, where it is relevant to court proceedings. Lawyers and clients who work together over a long period build a trusting relationship, resulting in clients feeling safe to make disclosures of sexual abuse after a considerable amount of time has passed.

Lawyers across Women's Legal areas of practice are well placed to sensitively discuss sexual abuse with their clients and support their access to the justice system and support services. However, there are several aspects of responding to sexual harm that are challenging for lawyers who are working in the family violence, family law and child protection jurisdictions.

Our lawyers emphasised that, while experience of sexual assault is "very common" among the clients they work with, there are significant barriers to disclosure and help-seeking. The common barriers to disclosure for our clients can be any number of the following:

- Immediate safety needs are prioritised and sexual abuse is de-prioritised
- Clients not identifying their experience as sexual abuse
- Fear of adverse consequences of disclosing sexual abuse, including child protection intervention
- Lack of trust in authorities
- Not wanting or having confidence in the criminal justice response to sexual abuse

Immediate safety needs prioritised and sexual abuse de-prioritised

There is a lot going on for women when they are escaping a perpetrator's abuse, and separation is the point at which women are at highest risk of serious violence. At the point at which women escaping violence first engage with their lawyer, they commonly prioritise their own and their children's immediate safety needs, recovery from recent trauma, and basic living needs including secure shelter.

"There is so much going on. I have a number of clients who wouldn't even think that disclosing sexual assault is something to do in this context."

Experiences not identified by the client as sexual abuse

Our lawyers describe that women we work with can find it difficult to name their experiences as sexual abuse. Often they have endured many years of sexual coercion and sexual assault, to the extent that the perpetrators' use of sexual violence has become "normalised". This is particularly the case when sexual violence has been one of many interconnected forms of coercive and controlling abuse perpetrated against them over time, as is the typical dynamic of family violence. The ethical and professional judgement complexities that this can present for lawyers is captured here:

"Clients don't necessarily recognise it as sexual assault, particularly if they have not yet separated. Is it the role of the lawyer to name the sexual assault as such? This may be disempowering for the woman. [Intervention Orders] are a prompt for having the conversation. But it is a difficult conversation to have. There is not much training around this."

Fear of adverse consequences, compounded by disadvantage

Women are often fearful there may be adverse consequences if they report sexual assault to authorities. Many of our clients are unwilling to disclose sexual abuse due to well-founded fears of homelessness, fear of child protection intervention (discussed in more detail below), and fear of escalating physical violence by the perpetrator.

Women with multiple, intersecting forms of disadvantage are especially vulnerable to sexual abuse and exploitation. One lawyer described how her client's vulnerabilities were exploited by her abuser who forced her to participate in group sex acts:

"Her husband facilitated a trip [interstate] for this purpose. She was young - he was 40 years older. She had no money, didn't speak English and had no idea what was going on. He threatened to send her back to her country if she didn't go through with it, forcing her to do these sexual acts. She was all alone"

Compounding barriers to disclosure such as low-English proficiency, social and geographical isolation, lack of financial independence, and insecure visa status are common among the women we support.

Distrust of authorities and the justice system

Disclosure and help-seeking for sexual violence requires a very high-level of trust and confidence in authorities by women that they will be believed, and their safety and wellbeing needs will be met.

It is not uncommon for our clients to have a high level of distrust of authorities and the justice system, as well as low confidence that professionals within the justice system and beyond will support them. Our lawyers emphasised that this is especially the case when women have witnessed authorities colluding with the abuser, as illustrated in this example:

"Clients don't feel protected when police come to the house. For example, one of my clients said the police officers had a cigarette with the perpetrator when they came to the house. So clients think 'what's the point' and feel hopeless reporting sexual assault to authorities."

Not wanting to engage with or low confidence in criminal justice response

Our lawyers report that what women escaping and recovering from family violence commonly want from the justice system is solutions that support them to put an end to the abuse and enable them to move on with their lives. They describe that clients commonly see the criminal justice system as poorly equipped to support their safety and recovery. Factors identified as contributing to this viewpoint include that many women experience a deep sense of shame and failure for having been sexually abused by an intimate

partner, the potential for criminal proceedings to be disempowering and re-traumatising, and lack of confidence in the criminal justice system. One lawyer observed:

“If she reports to police, she feels it’s out of her control. This is a deterrent. What does a guilty verdict actually achieve? Women don’t want to relive their story fifty times in public.”

Regardless of how desirable it might be for police or the broader community that women pursue criminal repercussions for sexual assault, it is seldom what our clients want – and fear of a criminal response can itself be a barrier to engaging with authorities.

Summary of findings

Consultation with Women’s Legal lawyers practicing in family violence, family law and child protection revealed that sexual assault is highly prevalent among the women we work with. Our lawyers identified significant barriers to women accessing justice system recourse for sexual abuse when it is perpetrated in the context of family violence. Lawyers identified that when sexual assault is disclosed to them, their capacity to support clients to seek justice system recourse is limited, as well as stating that there is need for strengthened referral pathways between legal and specialist help services. These are weighty systemic and cultural problems, and until they are resolved, the justice and recovery needs of women who experience sexual abuse in the context of family violence will overwhelmingly remain unmet.

For consideration

Lawyers practising in family violence law, family law and child protection are an important part of family violence response, and for some women are the only person to whom they disclose sexual assault. Lawyers who are properly trained to discuss sexual abuse and are confident in their capacity to respond to clients’ needs have the potential to make a profound difference to the lives of sexual assault victim survivors who may otherwise never engage with the justice system or other services. Victoria’s community legal centres, as the main providers of duty lawyer services to family violence victim survivors in Victoria, may be the ideal setting in which to develop and pilot initiatives to build lawyers’ capacity to respond to sexual assault.

Recommendations

1. Prioritise and dedicate resources to a reform program to redress the structural, systemic and cultural barriers to disclosure, help-seeking and justice system recourse for women who experience sexual assault in the context of family violence
2. Provide training to lawyers practicing in jurisdictions where clients are likely to have experienced sexual assault, including family violence law, family law and child protection, so that they are adequately resourced to discuss sexual assault and support clients’ access to justice and help services. Consider collaborating with Victoria’s community legal centres, as the main provider of duty lawyer services to family violence victim survivors, to develop and pilot training for eventual broader roll-out to legal practitioners across Victoria
3. Strengthen the referral pathways between the legal assistance sector and specialist sexual assault services to improve family violence victim survivors’ access to therapeutic services

Issues Paper A: Working Together to Respond to Sexual Offences: Systems

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

Women's Legal offers multi-disciplinary, early-intervention and crisis-response services for vulnerable mothers engaged with child protection. We deliver duty lawyer services as well as ongoing legal representation to ensure that women and children are safe and that children removed from parental care have the best possible opportunity to be reunited with their mother.

Our Health Justice Partnership with Monash Health provides legal assistance and ongoing support to women who attend antenatal appointments. This early intervention, integrated model aims to ensure that women experiencing family violence during pregnancy have access to legal advice and support services that enable their baby to remain with them once discharged from hospital.

Our lawyers who work with women involved with child protection find that fear of child protection intervention is the biggest barrier to disclosure of sexual assault.

Family violence remains a significant factor in child protection intervention and child removals across Australia, including removals at birth. Mothers are commonly held responsible for being unable to protect their children and blamed for having contact with perpetrators. Insufficient attention is given to supporting mother victim survivors of sexual abuse. Children are sometimes removed because of complex violence-related issues (eg housing, drug use), without assistance being provided to the victim survivor to properly support her recovery and thereby enable reunification with her children to occur.

Mothers conceal sexual abuse perpetrated against them, due to fear of child removal

Many women do not report family violence to police or reach out to services for help because they fear child protection will remove their children if they do so. This is particularly the experience of First Nations women, women from migrant and refugee backgrounds, and women with disabilities.

Mothers engaged with child protection often conceal their experiences of sexual abuse because disclosure may have adverse consequences. Information about sexual assault is commonly used as evidence that a victim survivor mother is placing her children at risk. As one of our child protection lawyers explained:

"Why would she tell the [child protection] worker 'I've been allowing him [into the home]'? Why would she disclose? She doesn't see it as helpful."

The risk of intervention by child protection ensures that disadvantaged women experiencing sexual assault in the context of family violence are silenced and the abuse perpetrated against them remains invisible.

Lack of integrated support for mothers who have been sexually abused

Child protection responses often fail to integrate support for the victim survivor parent or engage in joint problem solving with affected family members. Our lawyers emphasised the systemic failure of child protection services to provide appropriate supports including referrals for women and children who are victim survivors of sexual assault.

"Child Protection is understaffed. They don't have time to have the conversations, but it's the only way to help women get the help they need."

"Often the worker says: 'here's a [phone] number' with no explanation. The message heard is 'you've experienced this, you're bad' rather than 'you've experienced trauma'."

Requirements placed on victim survivors by child protection are not always trauma-informed. This leads to unrealistic expectations being placed on mothers who have been sexually abused, for example to recognise and address inappropriate sexualised behavior in children whilst her own recovery needs are largely ignored.

Our lawyers who work with mothers engaged with child protection find it difficult to identify practical solutions to support their clients' needs. Accessing support for sexual assault victim survivors that remain in a relationship with their perpetrator is particularly problematic because of the risk of child protection intervention.

In the absence of a cohesive, integrated response that provides clear pathways between legal services and specialised sexual assault services, it is likely that victim survivors will not seek assistance due to the risk of child removal.

Permanency timeframes operate as a disincentive to disclosure

The lack of support for women experiencing sexual assault is compounded by strict reunification timelines that require protective concerns to be addressed within 24 months of a child being removed from parental care. Where protective concerns cannot be addressed within these timeframes, the legislation requires children to be permanently placed in out-of-home care.

The permanency timeframes operate as disincentive for women to disclose relevant information or seek assistance from support services and increase the risks associated with late disclosure of sexual assault for women seek reunification with their children.

Information systems and victim-blaming attitudes

Low-quality information that wrongly categorises the situation is shared by child protection and other service providers with mandatory reporting obligations and can follow women through multiple legal systems. This includes file notes that, for example, blame the mother for the violence perpetrated by the father, mutualise violence rather than hold the perpetrator accountable, misidentify the person most in need of protection, minimise the risk posed by the father and paternal family members, and suggest that a lack of engagement with the child protection worker when the issue is the worker's lack of cultural competency.

Conclusions

Ensuring that child protection responses to family violence place responsibility with the perpetrator of the violence rather than the victim survivor is critical in addressing barriers to disclosure of sexual assault and enabling mothers with child protection involvement to access appropriate supports.

Current efforts must be strengthened to ensure that child protection practitioners have a better understanding of family violence and sexual assault so that risk can be assessed and managed, and women are given appropriate support. There should be no onus on victims of family violence to manage risk; it is the perpetrators' behaviour that should be the focus of attention.

In addition to cultural and practice reform across the child protection system, greater investment in prevention and early intervention programs is needed to ensure that disadvantaged families receive appropriate supports and reduce the likelihood that women and children will be placed at risk of harm. Family violence including sexual abuse must be identified as early as possible to ensure that victim survivors can access support services with minimal risk of child protection intervention.

Recommendations

1. Provide additional and sustained investment in prevention and early intervention programs to identify and respond to risk factors including family violence as early as possible and minimise the need for child protection involvement.
2. Implement robust cultural change and compliance strategies to ensure child protection practice accords with practice guidelines, and timely supports are provided to victim survivors, including early referral to legal and other specialist help services. Priority should be given to working with affected family members to address safety concerns and ensure that children are only removed from the care of a non-violent parent as a last resort.
3. Implement Victoria Legal Aid recommendations (see [Achieving safe and certain homes for children](#)) to improve the permanency amendments to the *Children, Youth and Families Act 2005* including urgent amendments to the reunification timeframes to allow the court to make decisions in the best interest of the child.

Part 2: Justice options for victim survivors of sexual assault

Issues Paper G: Sexual Offences: Restorative and Alternative Justice Models

Question 1 – Do you support adopting a restorative justice model for sexual offences? Why or why not?

Question 3 – If a restorative justice model is adopted, what should its features be?

Clients of Women's Legal have commonly experienced considerable abuse that has been perpetrated against them in a multitude of ways over time. Most often, when sexual assault is disclosed, the reason for disclosure is to get the perpetrator out of their life and to work towards recovery.

A criminal justice response is seldom sought by and is often inappropriate to the needs of our clients who have experienced sexual assault in the context of family violence.

We recognise the crucial role of the criminal justice system in holding perpetrators of sexual assault accountable and strongly agree with the need to improve the existing system, including consideration of a new model for the prosecution of sexual offences.

However, the criminal justice response to sexual assault does not meet the needs of women who do not want to or cannot pursue that route.

For this reason, Women's Legal strongly supports restorative and alternative justice models being available to women seeking justice system responses to sexual assault.

Recommendations

1. Women's Legal strongly supports the introduction of restorative and alternative justice models as an option for people seeking a justice system response to sexual assault
2. We recommend that restorative and alternative justice models for sexual offences be well-integrated with the family violence response system, including the legal assistance sector
3. A co-design approach that involves victim survivors in development of the model from the outset is recommended. The development approach should include consultation with lawyers who practice in areas of law that intersect with family violence, as a source of valuable information, and to strengthen collaboration and embed effective referral pathways.

About Women's Legal Service Victoria

Women's Legal Service Victoria is a not for profit organisation which has been providing free legal services to women since 1982. We work with and for women to address legal issues arising from family violence and relationship breakdown.

We exist to help build a gender equitable country. Our unique contribution to this vision – as lawyers, advocates and educators – is to work alongside women experiencing disadvantage to promote their rights to live free from violence and make informed choices about their relationships.

Women's Legal specialises in family violence, family law and child protection law – recognising the intersection between the jurisdictions. We do this by:

- Providing legal advice and representation to women
- Advocating for law and policy that respects and promotes the rights of women
- Building the capacity of other professionals and the community to identify and respond appropriately to legal need

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