



# **IMPROVING RESPONSES TO ALLEGATIONS INVOLVING SEXUAL ABUSE, SEXUAL ASSAULT AND SEXUAL MISCONDUCT**

**DISCUSSION PAPER  
FEBRUARY 2005**

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## TABLE OF CONTENTS

<b>1</b>	<b>FOREWORD</b>	<b>1</b>
<b>2</b>	<b>CONTEXT</b>	<b>2</b>
2.1	Background.....	2
2.2	Enquiry Process .....	3
<b>3</b>	<b>DISCUSSION OF ISSUES</b>	<b>4</b>
3.1	Issues unique to sexual assault.....	4
3.2	Information management.....	5
3.2.1	When is a report made? .....	5
3.2.2	What is reported? .....	6
3.2.3	Inter-agency Liaison .....	7
3.2.4	Mandatory reporting.....	9
3.2.5	The role of the media.....	10
3.3	Parallel Processes.....	11
3.3.1	Agency employees accused of sexual assault	11
3.3.2	Child protection issues.....	14
3.3.3	Other duty of care issues.....	16
3.4	Police Investigation Process.....	16
3.4.1	Communications issues.....	17
3.4.2	Evidence gathering.....	18
3.4.3	Use of Independent Third Persons .....	19
3.4.4	Complaints withdrawn.....	20
3.4.5	Non-authorisation of briefs.....	21
3.5	Resources .....	22
3.5.1	A Qualified Workforce.....	22
3.5.2	Costs .....	23
3.6	Area of particular concern .....	23
3.7	Concluding Comment .....	24
<b>4</b>	<b>SUMMARY OF ISSUES</b>	<b>25</b>

Agencies or individuals wanting to respond to this discussion paper should do so in writing by 5.00pm 4 March 2005. A summary of issues to structure responses appears at page 25. Responses should be addressed to:

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# 1 FOREWORD

This discussion paper deals with a range of issues that arise when reports of *sexual assault* come to the attention of Government agencies.

While it is acknowledged that the use of a generic term to describe a range of behaviours is problematic, for ease of reading the term ‘sexual assault’ is used throughout this discussion paper to incorporate the terms ‘sexual abuse’, ‘sexual misconduct’ and ‘sexual offence’.<sup>1</sup>

This paper addresses those issues when someone makes a report about sexual assault to a Government agency. It is acknowledged that the majority of people who experience sexual assault do not report it.<sup>2</sup> Discussion about the prevalence of sexual assault and why people do not report it are largely beyond the scope of this paper but are discussed in the Victorian Law Reform Commission’s recent report.<sup>3</sup>

The Law Reform Commission has recently examined issues to do with the criminal justice system’s response to complainants in sexual assault cases. Some of these issues are also noted in this discussion paper to reflect what has been said during the consultation process.

However a number of the issues raised in this discussion paper were outside the scope of the Law Reform Commission and have little to do with the criminal justice system. Some of these issues have resource or policy implications for Government. Others warrant further research and on-going community debate. A number may be resolved simply by re-thinking administrative policies and practices.

The object of this discussion paper is to seek submissions from agencies and individuals that:

- Provide responses to the questions posed in Chapter 3 of this document;
- Raise any additional issues considered relevant; and that
- Suggest practical solutions to overcome existing shortcomings.

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<sup>1</sup> See Para 3.2.2 of this discussion paper for further discussion of issues to do with terminology in this area.

<sup>2</sup> *Sexual Offences: Law and Procedure – Discussion Paper* .Victorian Law Reform Commission 2001 p.21.

<sup>3</sup> *Sexual Offences: Law and Procedure – Discussion Paper* .Victorian Law Reform Commission 2001

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## 2 CONTEXT

### 2.1 Background

In October 2004 the Ombudsman, Mr G E Brouwer, established a Special Projects Unit to conduct an enquiry into the way Government agencies including the Department of Education and Training, the Department of Human Services and Victoria Police respond to allegations about sexual assault.

The enquiry is being conducted pursuant to section 13A of the *Ombudsman Act 1973*. Section 13A states:

(2) *The Ombudsman may conduct an enquiry either on his or her own motion or as a consequence of a complaint under section 14.*

The enquiry commenced on the Ombudsman's own motion partly in response to an understanding that complaints previously investigated by Ombudsman Victoria indicated that there are areas for improvement in the way Government agencies respond to reports of sexual assault, particularly where more than one agency is involved.

Following the proclamation of amendments to the *Police Regulation Act 1958* in November 2004 that established the Office of Police Integrity, members of the Special Project Unit were delegated by Mr Brouwer as Director, Police Integrity, to continue the enquiry on his behalf in relation to those matters specific to Victoria Police under section 86NA of that Act.

The Government's commitment to improving systems for responding to complainants of sexual assault is demonstrated by a number of Government initiatives. These include the reference by the Attorney General to the Law Reform Commission in 2001<sup>4</sup>; the establishment of a Statewide Steering Committee to Reduce Sexual Assault convened jointly by the Office of Women's Policy and Victoria Police; and the establishment within the Department of Justice of a Sexual Assault Advisory Committee aimed at improving the response of the criminal justice system to sexual assault.

It is noted that the Law Reform Commission made 201 recommendations. A number of these recommendations relate to Victoria Police processes and are currently being implemented. They include recommendations about community education, data collection, research, training, the authorisation of briefs and strategies aimed at reducing delay.<sup>5</sup>

It is also noted that the Department of Human Services is undertaking a review of the *Children and Young Persons' Act 1989*. Amongst other things, this Act regulates

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid i – lxxvii.

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professionals required to report child abuse, including concerns about possible sexual abuse. Mandatory reporting is discussed in more detail below at paragraph 3.2.4.<sup>6</sup>

The Department of Education and Training advises it has recently established a Critical Incident Advisory Unit. The functions of the unit will include monitoring incidents, advising school principals and coordinating interagency responses to reports of sexual assault between students in schools.

The object of this enquiry is not to detract from or duplicate the work already undertaken or in the process of being undertaken by others. Rather it recognises the specific role of the Ombudsman in investigating complaints about public administration. The Ombudsman's ability to investigate various Government agencies operating in different but overlapping jurisdictions dealing with sexual assault provides a unique opportunity to identify systemic and cross agency issues.

The objects of this enquiry are to identify ways that may improve the experience of people reporting sexual assault to various Government agencies, to reduce the overall number of complaints in this area and to identify areas for improving the way Government agencies handle such matters.

## 2.2 Enquiry Process

The enquiry is being conducted in a number of phases. The first has been a scoping phase. This has involved three components; an analysis of relevant complaints made to the Ombudsman or Police Ombudsman since 2000; consultation with a number of agencies, service providers and key interest groups; and an invitation to individuals for submissions posted on the Ombudsman Victoria's website and in the media on 11 January 2005. Individuals have been invited to write about their experiences in reporting sexual assault to Government agencies and to make suggestions about how agencies may improve their response to reports of this nature.

The second phase of the enquiry has been the development and distribution of this discussion paper to relevant stakeholders. Key agency representatives will be invited to meet to discuss possible solutions to these issues prior to formally responding to this discussion paper.

It is anticipated that the final phase of the enquiry will be a draft report to the relevant agencies, followed by a report to Parliament.

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<sup>6</sup> The Department's *Technical Options Paper* identifies ten priorities for reform relating to: policy and legislation, strategic management of the children's and family service system including future sector development and continuous quality improvement, wellbeing and safety of Aboriginal children, earlier intervention and prevention, partnerships and coordination of service response across the service system, information sharing, child protection practice, alternative dispute resolution and Children's Court processes, stable care and support for young people. Department of Human Services, 2004.

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## 3 DISCUSSION OF ISSUES

### 3.1 Issues unique to sexual assault

The Law Reform Commission's final report into sexual offences noted that there are unique characteristics associated with sexual offences.<sup>7</sup> The features they identified include:

- Offences are most frequently committed by someone known to the person, generally a family member or friend.
- There is significant under-reporting of sexual offences.
- People are reluctant to report sexual offences for a range of reasons but as sexual offences are typically depicted in the media as a criminal offence committed by a stranger, people are more likely to report an offence involving a stranger than where the accused is known to them. Cases involving a stranger are also more likely to be prosecuted and result in a conviction.
- Because there are usually no eyewitnesses to a sexual offence and often insufficient corroborating evidence, it is more difficult to establish a case beyond reasonable doubt, particularly if the accused exercises the right to remain silent.
- Because many people subject to sexual assault do not tell anyone about their experience until a significant elapse of time, difficulties in obtaining corroborative evidence are exacerbated.
- False misconceptions that women frequently make false allegations of rape and that the evidence of children is unreliable persist despite empirical evidence to the contrary.
- Criminal justice system processes can be particularly traumatic for people giving evidence about sexual offences that have happened to them due to lengthy and vigorous cross examinations undertaken on behalf of the accused.

These characteristics are supported by the themes emerging from this enquiry. It is also clear from this enquiry, to date, that these characteristics are generally poorly understood except by people who work in areas that regularly deal with people reporting sexual assault.

The Project Team was told by several people that these issues cannot begin to be addressed without clear and consistent community education strategies aimed at removing the stigma associated with people who report sexual assault and reinforcing social values based on respectful relationships. People who are particularly vulnerable

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<sup>7</sup>Ibid. at pp 82 – 87.

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to sexual assault such as children and young people, those who have a disability or mental illness, are Aboriginal or come from a home where a language other than English is spoken, may require specific strategies to provide an environment conducive to making a report.

## 3.2 Information management

The issue of what is reported to agencies, who receives the report, how it is recorded and how information is shared was a key topic for discussion in the consultations undertaken by the Project Team.

There are significant inconsistencies between agencies about these processes.

### 3.2.1 When is a report made?

While agencies have systems in place for reporting incidents, in many instances the person receiving the report or becoming aware of an incident has an element of discretion in determining whether what has happened is a 'reportable incident'. For example a teacher in a school will have discretion to determine whether an interaction between two students is 'normal' or 'inappropriate sexualised behaviour'. Different teachers may categorise the same behaviour differently. A disability support worker may have discretion about whether a person who has an intellectual disability is capable of participating in a consensual act and therefore whether the matter should be reported.

Police also have discretion. There is no automatic record made in police stations of people 'walking in' to report a crime. This makes sense for many people wanting police intervention for non-criminal matters but is particularly problematic for people reporting sexual assault. The Law Reform Commission discussed issues in relation to the admissibility and relevance of evidence of 'recent complaint'<sup>8</sup> but the Project Team was told a number of people, in particular indigenous people, report being frightened that Police will not believe them and delay reporting.

The Project Team was told that there are particular difficulties for adults who first report their experience of childhood sexual assault some years after it happened or commenced. These statements are supported by an analysis of previous complaints to Ombudsman Victoria. Case studies include examples where a person was asked to go and get more evidence before the police would take action; and where there was no independent corroboration a desk officer decided that there was insufficient evidence that a 'crime' has been committed.

For an adult reporting childhood abuse it may be sufficient to make the person 'give up' when she or he has taken some time to build up enough courage to attend a police station. While the Law Reform Commission (LRC) noted the importance of alternatives to the criminal justice system for people harmed by sexual assault (particularly given the difficulties in proving historic sexual assault beyond reasonable doubt)<sup>9</sup>, the LRC also notes it is in the public interest to encourage people to report sexual assaults to

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<sup>8</sup>Ibid. pp.224-225

<sup>9</sup> Ibid. p. 101.

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ensure a safer environment for everyone<sup>10</sup>. For example, some people who subject children to sexual assault may be multiple offenders and recidivists. Where an offender has committed offences against more than one person, information in one report may corroborate information in others and may strengthen a case against an accused.

### Issues

Should agency employees such as teachers and disability workers have a discretion about reporting some incidents of sexual assault? What types of incidents of sexual assault should be subject to discretionary reporting? What guidelines, if any, should inform the exercise of discretion?

Should Victoria Police be required to record details of every time someone wants to make a report about sexual assault, even where there may be insufficient information to proceed to an investigation or insufficient information to determine whether an offence has been committed?

Are there other alternatives to ensure identification of individual or systemic patterns of possible offending?

What are the resource implications of this? What steps should be taken to protect information about individuals but still enable the cross-matching of data to be used to investigate serial or multiple offenders?

### 3.2.2 What is reported?

Terms such as ‘sexual abuse’, ‘sexual misconduct’ and ‘sexual assault’ are open to broad interpretation and misunderstanding. Lay people reporting sexual assault, professionals, bureaucrats, Police and courts use different terms to often describe the same thing. For example, most lay people would not use terms such as ‘oral penile penetration’ or ‘rape’ to describe male genital contact with their mouth.

Terminology such as ‘victim’, ‘survivor’, ‘perpetrator’, ‘offender’ may be pejorative if not used in an appropriate context. It can be particularly problematic when language such as this is used to describe incidents involving children who instigate sexual contact with other children.

Some agencies do not distinguish incidents involving sexual assault from other incidents. Other agencies cannot distinguish the range of sexual assault incidents; for example all sexual assaults are in the same category and an incident of sexual harassment is categorised in the same way as rape at knifepoint.

Most agencies do not collect information that is readily able to identify and respond to systemic trends, or enable cross agency analysis.

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<sup>10</sup> *Sexual Offences: Law and Procedure – Summary and Recommendations in Plain English* p.2 Law Reform Commission 2004.

Inconsistencies in record keeping include the indexing of records. For example, most agencies track reports using the complainant's name but the Office of Public Prosecutions' data is based on the accused's name.

The Law Reform Commission made recommendations about integrated data systems within criminal justice agencies but other agencies such as the Departments of Human Services and Education and Training were outside the scope of its report.<sup>11</sup>

## Issues

Should all Government Departments be required to collect data using the same classifications and plain language to enable the tracking of systemic issues to do with sexual assault? Should information systems be compatible across all Government agencies to enable meaningful whole of Government analysis?

What are the resource implications of this? What steps should be taken to protect information about individuals but still enable the data to be used in determining systemic issues? What steps can be taken to ensure agencies use the same classifications and plain language? Should data be shared between agencies?

What steps should be taken to ensure privacy principles are adhered to?

Should different terminology be used in relation to children and young people?

What other information management strategies can be used to ensure consistency and clarity for people reporting sexual assault?

### 3.2.3 Inter-agency Liaison

A number of agencies may be involved in information sharing about circumstances involving sexual assault, particularly where the sexual assault involves children. In some circumstances the efficiency and effectiveness of communication between agencies can have significant impact on the welfare of individuals and their families. Communicating reports in a timely way is critical. The Project Team was told that failure to communicate a report of sexual assault in a timely way to Victoria Police may impact on potential forensic evidence gathering. Inappropriate communication may also impact on the probity of potential witnesses. For example a school Principal who repeatedly questions a student may intimidate the student and cause him or her to retract a statement.

Many Government agencies have a legislative framework that informs the release of information between agencies.

Some agencies use Memoranda of Understanding or Joint Protocols to provide a formal procedural framework for information sharing. A Memorandum of Understanding or Protocol is not a contract or legally binding agreement but the Project Team was told having a written understanding between agencies in regular contact was generally considered useful. Many of those consulted identified the roundtable process of

<sup>11</sup> Op.cit. Recommendations 4 & 33.

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negotiating or reviewing Memoranda of Understanding or Protocols as particularly beneficial. This process enabled agencies to understand operational difficulties faced by others and created more collaborative working arrangements.

Consistent with recommendations made by the Law Reform Commission, Victoria Police in conjunction with other agencies including Centres Against Sexual Assault and the Office of Public Prosecutions is currently reviewing the second edition of its *Code of Practice for the Investigation of Sexual Assault*<sup>12</sup>. The Code of Practice is in effect a written understanding between Victoria Police and others involved in sexual offence investigations about the roles and expectations of the various stakeholders.

The Project Team was advised most Memoranda of Understanding and Protocols are negotiated or reviewed on an ad hoc basis.

### Issues

Should the development of Memoranda of Understanding and or Protocols between agencies regularly dealing with reports of sexual assault be subject to more formal regulation?

Should Memoranda of Understanding or Protocols entered into by Government Departments be for a fixed period of time and subject to regular review? Should they be subject to independent audit?

Less formal, inter-agency liaison generally occurs through regular meetings between relevant agencies at a regional level. Representatives from various agencies such as Victoria Police, the local Centre Against Sexual Assault, the Department of Human Services, the Department of Education and Training, Non-Government child protection agencies and local schools attend these meetings. They are reported as being a good forum for resolving local issues. The Project Team was told particular cases are rarely discussed in these meetings but that they work well to sort out ‘glitches’ in protocols. They are also considered beneficial in establishing effective working relationships with employees of other agencies. The more effective the working relationship between middle managers of the relevant agencies the easier it is for concerns such as the attitude of a police officer or skill of a child protection worker to be addressed informally.

Systemic issues in this area are currently addressed through the Statewide Steering Committee to Reduce Sexual Assault. Senior agency representatives currently meet at this forum on a regular basis. The Project Team was told that the Statewide Steering Committee has specific terms of reference and is not a standing committee. The Project Team was also told that there are no formal structures in place for communicating issues raised in local liaison meetings to either the Statewide Steering Committee or any other Statewide network. Agencies generally use their internal line management reporting systems for communicating issues raised at a local level and informal interagency communication systems are relied on to address local issues that have a systemic impact.

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<sup>12</sup> See [www.police.vic.gov.au](http://www.police.vic.gov.au) for more information

## Issues

Should there be a standing inter-agency committee established to address Statewide systemic sexual assault issues? If so, which agency should auspice a standing committee?

Should there be more formalised communication structures between regional liaison groups and any Statewide standing committee?

### 3.2.4 Mandatory reporting

#### *Provisions under the Children and Young Persons Act 1989*

Under existing proclaimed provisions of the *Children and Young Persons Act 1989* primary and secondary school principals and teachers, nurses, doctors and police must report to Child Protection services when:

*[they] form the belief on reasonable grounds that a child is in need of protection [because] the child has suffered, or is likely to suffer significant harm as a result of sexual abuse and the child's parents have not or are unlikely to protect, the child from harm of that type.<sup>13</sup>*

While the legislation lists other professionals such as social workers and psychologists who could be required to report, these provisions are not yet proclaimed. Some people told the Project Team more professionals should be mandated to report concerns. Others said that in general the legislation has little impact on the practice of professionals. There was consensus that the proclamation of the Act and associated publicity has increased the voluntary reporting of suspected child abuse by non-professionals such as neighbours, extended families etc.

The Project Team was told in rural areas teachers may be reluctant to report concerns about possible sexual assault because they fear their identity will become known to the child's family. On the other hand it was suggested that fear of civil litigation encourages some teachers to report even where Child Protection services' intervention is unnecessary.

## Issues

Are professionals sufficiently aware of their responsibilities under existing mandatory reporting provisions?

What strategies, if any, should the Department of Human Services adopt to reduce the amount of resources spent responding to agencies or individuals that over-report as part of a risk management strategy?

What strategies, if any, should the Department of Human Services adopt to encourage appropriate reporting in rural areas, whilst preserving anonymity?

<sup>13</sup> *Responding to child abuse* Department of Human Service 2003. See also section 64 of the *Children and Young Persons' Act 1989*

### *Policy requirements of the Department of Human Services*

The issue of mandatory reporting also arises for some employees of the Department of Human Services. While not mandated by legislation, employees in disability residential services operated by the Department are required by policy to report incidents of sexual assault to Victoria Police irrespective of the consent of the person subject to the abuse.<sup>14</sup> The Project Team was advised that this was discriminatory in that other people subject to sexual assault can choose whether or not to involve police. In fact the majority (estimated to be between 83% and 90 %) of women identifying as being sexually assaulted choose not to involve police.<sup>15</sup> The Project Team was told the policy was particularly problematic when there was no likelihood of a criminal justice intervention, for example when there is no independent corroboration of a possible assault between two residents with an intellectual disability. In such cases the Project Team was told Victoria Police intervention may not be in the best interests of either resident. It was suggested that once a matter had been reported to police, some services considered they were absolved from having to do anything else such as providing appropriate human relations education or ensuring alternative outlets for sexual expression for adults who have an intellectual disability. Others the Project Team spoke to expressed the view that automatic Police involvement was a good thing in that it provided external accountability for disability services.

### Issues

Does the mandatory reporting to Victoria Police of sexual assault in Disability Services unfairly discriminate against adults who have an intellectual disability?

Are other agencies more appropriate for receiving reports of sexual assault in some circumstances? If so, which ones?

What strategies, if any, should Victoria Police adopt to reduce the amount of resources spent responding to agencies or individuals that over-report as part of a risk management strategy?

### 3.2.5 The role of the media

A number of people that the Project Team spoke to commented on the negative role of the media. Some people identified the media as a reason why people are discouraged from reporting sexual assault to authorities. It has also been argued that media reporting about sexual assault may be a powerful tool in reinforcing or changing perceptions of people subject to, or accused of, sexual assault as demonstrated by recent coverage in

<sup>14</sup> See *Reporting Allegations of Physical or Sexual Assault to the Police* Departmental Instruction June 1993 Department of Human Services and Draft Departmental Instruction November 2004

<sup>15</sup> *Sexual Offences: Law and Procedure – Discussion Paper*. Victorian Law Reform Commission 2001 p.21.

relation to ‘spiked drinks’<sup>16</sup>. It may also play a role in community safety campaigns as demonstrated by the recent domestic violence campaign, where calls to a hotline received almost 40,000 calls in seven months, 12 per cent of which related to sexual assault. Callers, in particular those from rural and remote areas, were provided with a way to talk through issues and seek advice.<sup>17</sup>

## Issues

Should Government agencies involve the media in community education about sexual assault? Which agency, if any, should take a leadership role in this area?

### 3.3 Parallel Processes

Discussions about sexual assault ordinarily reflect a number of competing interests; the public interest in providing community safety and deterring crime; the individual interests of people who have been subject to sexual assault; and the need to provide fairness and due process to an accused. In some instances agencies face significant challenges in balancing all or some of these competing interests as outlined below.

#### 3.3.1 Agency employees accused of sexual assault

The Project Team was advised that there are significant challenges for agencies when an employee is accused of sexual assault, particularly when the employee is a teacher, human services worker or police officer in a position of trust with others who may be vulnerable. An appropriate management response such as standing the person down may be problematic and costly during a lengthy investigation. Ensuring an appropriate degree of confidentiality for an accused employee is also an issue. In some cases police may initially investigate a report of sexual assault involving an employee of an agency without the knowledge of the agency.<sup>18</sup>

Under the *Victorian Institute of Teaching Act 2001* the public interest in ensuring children are not exposed to improper conduct takes precedence over the right to confidentiality of an accused teacher. Under this Act<sup>19</sup> schools have an obligation to report actions taken against registered teachers in response to allegations of misconduct to the Victorian Institute of Teaching. Under the same provision schools and police are required to make a report to the Institute if a registered teacher has been charged or found guilty of a sexual offence.

In an attempt to address this issue for other people working with children, the Department of Justice is proposing that employees and volunteers are assessed prior to

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<sup>16</sup> The Project Team was informed that a recent (as yet unpublished) study on drug facilitated sexual assault revealed that approximately 3% of adults have unexplained drugs in their system. A much larger percent of young women reporting sexual assault have high to very high levels of alcohol in their blood.

<sup>17</sup> Article by Misha Shubert in *The Age* Monday 24 January 2005

<sup>18</sup> Victoria Police Manual VPM Instruction 113-5

<sup>19</sup> See section 27

commencing work in non teaching areas that work with children.<sup>20</sup> Successfully screened individuals would be provided with an assessment notice that declares the person is eligible to work with children based on an assessment of her or his criminal or professional disciplinary history.

A number of concerns about the inadequacy of police checks were raised with the Project Team. As a police check only reveals convictions, a prospective employer has no way of knowing whether a person may have been the subject of numerous allegations and police investigations, or charges arising from allegations, only that no charges have been successfully prosecuted. In relation to checking professional registration bodies, the Health Services Commissioner noted a number of people who work with vulnerable individuals are not required to be registered with a professional body. This includes employees such as counsellors, social workers, or disability support workers.

In an attempt to overcome this issue, the Department of Human Services in its *Technical Options Paper* has suggested that a central register of persons employed in Child Protection Services should be established. This paper suggests more stringent probity checks are required for prospective employees that include checks of the applicant themselves, the person's referees and past employers.<sup>21</sup>

Neither of these proposals address issues for other vulnerable groups.

The Victoria Police Manual Instructions require police investigating other police officers to notify the person's Divisional Manager.<sup>22</sup>

In other areas there is more discretion. Under the Victoria Police Manual Instructions, police have discretion about whether to notify the regulatory bodies of doctors, nurses, teachers, solicitors, barristers, dentists, taxi drivers, and others where a person has been charged with an offence.<sup>23</sup> The instruction requires police to balance the public interest with the individual's interests in the particular circumstances of each case. The Project Team was told agencies have no way of knowing in what percentage of cases this discretion to report was exercised. There was some concern expressed to the Project Team that police may be conservative in reporting to other agencies out of fear of breaching privacy laws.

The Project Team was advised that others also 'hide behind' privacy laws to inappropriately withhold information from those with whom it is in the public interest or an individual complainant's interest to share the information. The Project Team was provided with an example where, instead of notifying police or properly investigating a complaint about an employee accused of sexual assault, an agency accepted the

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<sup>20</sup> See Discussion Paper and Exposure Draft Bill about checks proposed for people working or volunteering with children at [www.justice.vic.gov.au/](http://www.justice.vic.gov.au/)

<sup>21</sup> Op.cit.37

<sup>22</sup> Op.cit. VPM Instruction 201.6

<sup>23</sup> Ibid. VPM Instruction 113.5

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employee's resignation and agreed to keep the allegations 'private' if contacted by future employers.

Privacy laws are designed to regulate the way agencies collect and transfer information about individuals and improve public administration. Data is able to flow between agencies that is necessary for an agency to perform its statutory functions or that is in the public interest to do so.<sup>24</sup>

The Privacy Commissioner, Mr Paul Chadwick told the Project Team that some agencies needed to improve their understanding of privacy legislation and the Privacy Principles. He notes that in Information Privacy Principle 2, various categories of disclosure are permitted. These include where an organisation reasonably believes that the disclosure is necessary to lessen or prevent a serious and imminent threat to an individual's life, health, safety or welfare, or prevent a serious threat to the public health, safety or welfare, or where an organisation suspects there has been unlawful activity and the information is necessary for investigating the matter or reporting it to relevant authorities.

It is noted the majority of agencies the Project Team consulted were very sensitive to the potential harm to a person who was wrongly accused. It should also be noted that there is little data about 'false reports' of sexual assault. While perceptions of the amount of 'false reports' is anecdotally considered high (up to 50%) by Criminal Investigation Unit Detectives, the available research suggests it is more likely to be between 1.4%<sup>25</sup> and 7% of all reported cases.<sup>26</sup>

Notwithstanding concerns about the rights of accused, some agencies face dilemmas that arise from issues that are specific to sexual assault as identified above.<sup>27</sup> Because there are difficulties in establishing a case 'beyond reasonable doubt' due to lack of independent corroboration and the accused's right to remain silent, many cases do not proceed to prosecution. Some offenders are able to prey on the sexual vulnerability of others and avoid being charged with sexual offences.

For example, the Project Team was told a number of people reported being sexually assaulted by taxi drivers but that very few taxi drivers are convicted of sexual assault due to difficulties in obtaining independent corroborative evidence and establishing that an offence has occurred beyond reasonable doubt. The Taxi Directorate may receive sporadic information about drivers who are charged with offences, but will not identify a pattern of behaviour that makes a person unsuitable to be a taxi driver unless passengers lodge a complaint with the Directorate.

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<sup>24</sup> See [www.privacy.vic.gov.au](http://www.privacy.vic.gov.au) for more information

<sup>25</sup> Op.cit. 111 - 112

<sup>26</sup> The Australian Centre for the Study of Sexual Assault has recently been commissioned to undertake research into why complainants withdraw from police investigations that may provide more up to date data on this question.

<sup>27</sup> Para.3.1 above

## Issues

What duty, if any, should agencies have to continue to investigate complaints of sexual assault involving employees who resign after an allegation has been made?

Should employers inform future employers or others about unsubstantiated allegations of sexual assault made against an individual? What privacy considerations should be taken into account when previous employers are contacted?

Should all public sector employees who work with people vulnerable to sexual assault, including human service workers and taxi drivers, be subject to other forms of pre-employment vetting? If so, what sort of vetting tests should be considered?

### 3.3.2 Child protection issues

#### *Child protection within a family*

Sexual assault counsellor advocates told the Project Team in order to assist someone who had been subject to sexual abuse it was important for her or him to be separated from the perpetrator of that abuse. Where a child is at risk of sexual assault by an adult family member and unable to be protected in the home, Child Protection Services will intervene. In some cases an adult accused of abuse may agree to move out of the family home. Where an accused refuses to leave voluntarily the child is likely to be removed to a more protective environment pending the outcome of legal proceedings. In the absence of other members of the family being subject to domestic violence it is rare for police to use immediate arrest powers or intervention orders to forcibly remove the abusive adult. Supported accommodation services are built around the needs of children subject to sexual abuse rather than abusive adults forcibly removed from their homes.

More complex issues arise when parents discover one child in a family is sexually assaulting a sibling. While the parents may be wanting to protect a child subject to abuse by another child, the reported lack of appropriately skilled intervention services in this area may mean the child vulnerable to abuse is again removed from the family while the child exhibiting abusive behaviour remains.

#### Issue

Should further consideration be given to strategies used in domestic violence situations such as removing an abusive family member from a family home rather than a child subject to sexual abuse? If so, what strategies could be considered?

What strategies are available to parents where one child is sexually abused by a sibling?

#### *Child protection at school*

The Project Team was told about a shortcoming in the existing framework for child protection which relates to children who may be in a protective environment at home, but subject to sexual assault outside the home, for example sexual assault between students at school. The Project Team understands that Child Protection Services and Victoria Police are unlikely to intervene in these cases and that sometimes neither child is formally interviewed.

While the establishment of the Critical Incident Advisory Unit within the Department of Education and Training may provide a more consistent response, the Project Team was advised that the response of schools to incidents involving sexual assault between students varies. The Project Team was provided with examples where the parents of students subject to a sexual assault were advised to keep their child at home or to change schools. In some examples the instigators were subject to temporary suspension, in others there were no apparent repercussions for the instigators.

Subject to broad governance direction by the school council, the responsibility for student welfare at any school lies with the Principal. While the Department of Education and Training provides access to some sample policies<sup>28</sup>, a Principal has significant autonomy in the development and implementation of policies to deal with incidents between students. Principals may be the investigator, judge and jury on any matter at the same time as being the person with a significant duty of care to provide students with a safe environment. The Project Team has been advised the actions taken by a Principal in response to a sexual assault can have significant long-term impact on the future behaviour of students. Whether the person reporting an incident is believed; terminology such as 'victim', 'perpetrator'; how an incident is classified, such as 'serious' or 'trivial'; and behaviour intervention strategies adopted by the Principal will affect not only the students involved but others witnessing the events as they unfold.

## Issues

Where Child Protection Services and Victoria Police have ceased or had no involvement in investigating incidents between students, is the Principal of a school the most appropriate person to investigate and respond to incidents of sexual assault between students? What other person would be more appropriate?

What standards, if any, should exist about how investigations are conducted and incidents are responded to? How should these standards be monitored or audited?

### *Child protection as a community issue*

There was consensus amongst people consulted by the Protect Team that the issue of incidents between children is increasingly problematic when the incident involves children under 10 years of age. In the criminal justice system children under 10 are not considered capable of forming the necessary criminal intent to commit a sexual offence.<sup>29</sup> Notwithstanding this, 'normal children's sex play' and 'problematic sexual behaviour' in children under 10 is apparently becoming harder to differentiate. A number of people told the Project Team that, over the last ten years or so, they had observed an increasing incidence of sexualised behaviour in this age group. While there are some therapeutic intervention programs that deal with adolescents who perpetrate sexual abuse, the Project Team heard from a number of sources that there is a scarcity of specialists trained to work with sexualised behaviour in children under 10. The Project Team was advised that there is research evidence to suggest that lack of early

<sup>28</sup> See [www.sofweb.vic.edu.au/](http://www.sofweb.vic.edu.au/)

<sup>29</sup> See *Crimes Act 1958* s45.

intervention in young people who sexually assault others correlates with sexual predatory behaviour in some adults.

#### Issue

Is the incidence of inappropriate sexualised behaviour in children under 10 a systemic issue? If so what strategies should be adopted to address this issue? Which Government agency should have lead responsibility for implementing these strategies?

### 3.3.3 Other duty of care issues

The Project Team understands that some agencies are placed in a difficult position in fulfilling their obligations to provide services to potentially abusive individuals while protecting others, in particular, agencies that provide services to adults in 24 hour care such as Corrections, Juvenile Justice, Disability Services, and Hospitals. The incidence of sexual assault in these services is difficult to determine. Most agencies do not collect data specifically about sexual assault. Anecdotal data provided to the Project Team by the Health Services Commissioner is restricted to incidents where a person has lodged a complaint with a health service. While that data suggests there are a relatively small number of complaints each year, the Project Team was informed that the incidence of sexual assault in psychiatric units attached to general hospitals is sufficiently high to cause some mental health consumer groups to call for 'female only' wards.

A number of sources told the Project Team of instances where a person with an intellectual disability who was subject to an assault was required to change residences. In examples where the instigator of the assault was re-located the Project Team was told that while staff were warned about the person, new house-mates and their families were not.

#### Issues

Should agencies that provide services to adults in 24 hour care be required to keep data about incidents involving allegations of sexual assault?

Should agencies offer female only residential options?

In what circumstances is it appropriate to move a person subject to sexual assault?

What responsibility, if any, do agencies have to warn someone in care about others with whom they are residing who have a history of sexual assaulting others?

## 3.4 Police Investigation Process

As stated above a significant number of the recommendations of the Law Reform Commission were aimed at improving Police response to complaints of sexual assault. People the Project Team spoke to were generally supportive of these recommendations but raised other issues as outlined below.

### 3.4.1 Communications issues

The Project Team was told people who report sexual assault to Victoria Police frequently complain about what they are told and how Police communicate with them. Professionals who support complainants identified that the attitude of the police officer who initially received a report about sexual assault was extremely important. One agency told the Project Team it was relatively common to hear complainants say that if their first report was made to a general duties officer the person did not feel that she or he was believed or taken seriously. This agency told the Project Team that it was also relatively common for parents of children aged between 13 and 16 to report that the initial receiving officer inferred that their daughter was a ‘slut’. The Law Reform Commission identified police training particularly for general duties and criminal investigation units as an important strategy in changing attitudes and improving communication with complainants.<sup>30</sup> The Commission also identified that written information in a range of languages should be provided to complainants when they first report a sexual assault about the investigative process and available support services.<sup>31</sup>

Other common complaints identified by the Project Team relate to the information complainants receive in the course of an investigation and when a decision is made not to authorise a brief of evidence for prosecution. The Law Reform Commission also identified this as an area of concern and made a number of recommendations about improving the provision of information in writing to complainants.<sup>32</sup> The Project Team was told the number of complaints in this area would reduce if informants provided regular updates about the progress of the investigation. Training and shift work commitments mean informants may not be available when complainants try to contact them. A further barrier to regular communication is that not all members of Victoria Police have access to email.

#### Issues

Would complainants have improved communication about the progress of their investigation through email?

Should all Victoria Police members have access to email? If so, what are the resource implications of this?

Are there other ways of improving communication?

Another barrier to improved communication with complainants is that generally the informant will be the only person with a working knowledge of the complainant’s case. In responding to various Law Reform Commission recommendations Victoria Police are considering a number of strategies to improve their investigation response to people reporting sexual offences. One of the strategies under consideration is the notion of an investigation team that combines the expertise of criminal investigation detectives with

<sup>30</sup> Op.cit. 123 -124

<sup>31</sup> Loc.cit.

<sup>32</sup> Ibid. Recommendations 9,10,16,17 & 18

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members from Sexual Offence and Child Abuse Units. This strategy would mean more than one person would have information about the progress of the investigation.

### Issues

Should more than one person from Victoria Police have a working knowledge of a case and be responsible for communicating the progress of the investigation to the complainant?

What other strategies could be implemented to improve communication with a complainant about the progress of an investigation?

#### 3.4.2 Evidence gathering

The second edition of the Victoria Police *Code of Practice for the Investigation of Sexual Assault* (currently under review) emphasises the need to inform people reporting recent sexual assault about the need to preserve evidence.<sup>33</sup> It states that the Forensic Medical Officer is the only person who can make the decision as to whether a medical examination ought to be conducted. The Code states the role of the Forensic Medical Officer is to assess and treat the person's immediate medical needs, test for sexually transmitted diseases and pregnancy and collect evidence for use in the police investigation and possible prosecution.<sup>34</sup> The Project Team was informed that Forensic Medical Officers have no role in the ongoing medical support for a person, but may make referrals to other medical practitioners where necessary. The Code sets a recommended two-hour time limit within which a person subject to a recent sexual assault should be conveyed to a Centre Against Sexual Assault. The on-call Forensic Medical Officer is supposed to be contacted by the Police Communications Centre Division at the same time.<sup>35</sup>

Information obtained by the Project Team confirms the finding of the Law Reform Commission that this two-hour time limit is nearly impossible to be met in country areas.<sup>36</sup> The availability of Forensic Medical Officers varies. The Project Team was told some regional centres are not able to attract appropriate medical practitioners who can provide on-call services. In cases where a Forensic Medical Officer is not available, a forensic medical examination is likely to be performed by a registrar in gynaecology and obstetrics who may have no specialist training in obtaining forensic samples. The Project Team was also advised that the involvement of Forensic Medical Officers is contingent on a person agreeing to report the matter to Police and undergo a medical examination within 72 hours of the assault. Some counsellor advocates informed the Project Team this could be problematic. They advised that some people who report sexual assault are ambivalent about involving police. Whilst the majority reporting recent sexual assault want a medical examination to determine their health status

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<sup>33</sup> Op. cit p. 6

<sup>34</sup> Ibid. p.11

<sup>35</sup> Loc.cit.

<sup>36</sup> Op.cit p. 133

including the risk of contracting a sexually transmitted disease, some people may be unable to decide whether to undergo an examination at the behest of police within 72 hours of the assault. Where a person changes her or his mind about involving police after 72 hours have elapsed, critical forensic evidence may be lost.

It was suggested to the Project Team that specially qualified nurse practitioners attached to public hospitals and linked to Centres Against Sexual Assault may be able to perform the functions of Forensic Medical Officers as well as provide any on-going support through the person's contact with the Centre Against Sexual Assault. Subject to appropriate steps to secure a chain of evidence, in the event the person decides to involve police, this option may free up the limited resources of Forensic Medical Officers to focus on assaults where a complainant is committed to a police investigation and other forensic medical examinations.

### Issues

Should consideration be given to training specialist nurse practitioners to perform the forensic examinations currently undertaken by Forensic Medical Practitioners?

#### 3.4.3 Use of Independent Third Persons

The role of the Independent Third Person for police interviews with people who have a cognitive impairment<sup>37</sup> was raised by a number of people consulted by the Project Team. The Independent Third Person Program is auspiced by the Office of the Public Advocate. The Program consists of volunteers selected on the basis of their experience and understanding of people who have a cognitive impairment. Their role is not to act as an advocate but to assist the interview processes between the person with the cognitive impairment and police to ensure the processes are fair and to maximise the interviewee's understanding of what was happening.

The Victoria Police *Code of Practice for the Investigation of Sexual Assault* instructs police to engage an Independent Third Person when interviewing an intellectually disabled or mentally impaired person. In the metropolitan area, police are instructed to obtain a suitable person through the Office of the Public Advocate. Outside the metropolitan area, where a trained person is not available, police are directed to use someone of 'good repute in the community'.<sup>38</sup> The Project Team was told some police were selective in whom they contacted to act as an Independent Third Person. In rural areas police may not call anyone to act as an Independent Third Person even when it is known that the person has a cognitive impairment. In response to this concern the Law Reform Commission recommended that consideration should be given to establishing a central roster system for allocating volunteers.<sup>39</sup> The Commission also recommended

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<sup>37</sup> Such as a mental illness, intellectual disability, acquired brain injury or dementia.

<sup>38</sup> Op.cit para. 57

<sup>39</sup> Op.cit. 329

training for all key stakeholders in the criminal justice system to improve understanding and early identification of someone who has a cognitive impairment.<sup>40</sup>

A number of people raised concerns with the Project Team about current limitations in the role of the Independent Third Person and the need for some people to have access to additional support such as advocates or specialists trained in assisting people with communication impairment. There was no consensus about whether the current role of Independent Third Persons should be extended or additional supports brought in to assist the interview process. Some people noted that increasing the number of people present in an interview could have a negative impact and overwhelm the person with the disability.

### Issues

What access to other supports such as advocacy and communication assistants should a person with a disability have when being interviewed by police?

Should the role of the Independent Third Person be expanded to incorporate these other roles or to identify when further support is necessary?

#### 3.4.4 Complaints withdrawn

The Law Reform Commission noted the disturbing increase in the number of reported cases of sexual assault being withdrawn by complainants from 14% in 1994-5 to 24.8% in 2001-2.<sup>41</sup> In response to one of the Commission's recommendations<sup>42</sup> the Australian Centre for the Study of Sexual Assault is currently reviewing approximately 900 cases to determine the underlying causes of this trend.

It has been suggested that on-going independent scrutiny of the circumstances whereby a complaint of sexual assault is withdrawn may be warranted.

### Issues

Should there be an automatic review of the circumstances when a complainant withdraws a report to the police about a sexual assault?

Is the Office of Police Integrity a suitable body to conduct such a review?

<sup>40</sup> Ibid.

<sup>41</sup> Ibid. 101

<sup>42</sup> Op.cit. Recommendation 8

### 3.4.5 Non-authorisation of briefs

The standard used by police to authorise a brief for prosecution is the same as that used by the Office of Public Prosecution:

*A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.*<sup>4344</sup>

The issues of discrepancies in authorising briefs of prosecution and the influence of the possibility of an adverse costs award<sup>45</sup> in decision-making processes were raised by several people. In response to these and other issues the Law Reform Commission recommended that Victoria Police review their brief authorisation process, with particular regard to the impact of the possibility of adverse costs on decisions. The Commission suggested consideration should be given to including the specialist Sexual Offence and Child Abuse Units in decision making or delegating a decision to authorise a brief to prosecute a sexual assault case to the officer in charge of a Unit. The Commission recommended that there be training for authorising officers and a quality improvement monitoring process established to ensure a consistent transparent and accountable process for authorising briefs.<sup>46</sup>

The current Victoria Police *Code of Practice for the Investigation of Sexual Assault* instructs members to:

*tell the victim that they have a right to advise the Office of Public Prosecutions, within 28 days, that a decision not to charge has been made and that the Office of Public Prosecutions has the power to review that decision within 60 days of being informed by the victim.*<sup>47</sup>

Complaints reviewed by the Project Team indicate complainants are not always informed of their right to have their matter reviewed by the Office of Public Prosecutions. The Project team was told the Office of Public Prosecutions often provides informal advice to police or opinions on briefs prior to any decision about authorising a prosecution. However, they only receive approximately 25 requests a year from complainants asking for the formal review of a decision not to authorise a brief. In 15 – 25% of these cases, the Office of Public Prosecutions recommend authorisation of the brief.

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<sup>43</sup> *Prosecutorial Guidelines* Office of Public Prosecutions.

<sup>44</sup> Op. cit. VPM Instruction 116-1 para.6.2

<sup>45</sup> See para. 3.5.2 below for further discussion about the impact of adverse costs award.

<sup>46</sup> Op.cit. Recommendations 19,20,21, 22,&23.

<sup>47</sup> Op.cit. para. 73

## Issues

Should there be more independent review of a decision not to authorise a brief for prosecution in sexual assault cases? If so, should the review be conducted by a panel within Victoria Police, the Office of Public Prosecutions or some other body?

Should complainants be automatically notified in writing of their right to have a decision not to authorise a brief reviewed?

## 3.5 Resources

A number of people the Project Team spoke with indicated the number of complaints made by people reporting sexual assault would reduce if there were more specialist resources allocated to this area as outlined below.

### 3.5.1 A Qualified Workforce

The qualifications of public sector employees were raised in discussions with the Project Team in two ways; those employed in workplaces where people are vulnerable to sexual assault and those employed in areas receiving and investigating reports of sexual assault.

The issue of ensuring only suitably qualified people work in areas where people, such as children and those with a disability, are likely to be vulnerable to sexual assault has been discussed above at paragraph 3.3.1.

The Law Reform Commission dealt in some detail with the issue of ensuring only suitably qualified people in the criminal justice system respond to, investigate and determine outcomes of reports of sexual assault.<sup>48</sup> Training issues for others involved in investigating allegations of sexual assault such as Principals, Child Protection Workers and Disability Accommodation workers were outside the scope of the Commission's inquiry.

The need to improve the training of these employees as well as those involved in the criminal justice system was a consistent theme in discussions held with the Project Team. In addition to educating the workforce generally, a number of agencies identified the need to bring a more multidisciplinary perspective to investigations. Some people suggested the benefits of rotating workers from other areas. For example, ensuring child protection workers worked in police Sexual Offence and Child Abuse Units and giving police work experience in Child Protection Services.

The issue of cross-cultural training and training of indigenous people is discussed at paragraph 3.6 below.

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<sup>48</sup> Op. cit. Recommendations 11, 12, 13, 14, 15, 35, 36, 37, 38, 39, 40, 41, 55, 146, 147, 148, 151, 153, 154, 159, 160, 171.

## Issues

Should agencies other than Victoria Police, such as the Department of Education and Training and the Department of Human Services require staff involved in responding to or investigating reports of sexual assault to undergo specialist training?

Should agencies explore rotating secondees from other agencies in specialist areas that deal with investigating allegations of sexual assault? If so, what are the resource implications of this?

### 3.5.2 Costs

As stated above the issue of an award of costs being made against police is reported as being an important factor in some decisions not to authorise a brief to prosecute someone accused of sexual assault. Since the High Court decision of *Latoudis v Casey*<sup>49</sup> an order for costs can be made against police who fail in committal proceedings against a person charged with sexual assault. While the Project Team heard from numerous sources that police were concerned about costs and that investigations and prosecutions were subject to 'budget constraints', it appears that in some cases complainants may be told a case is not proceeding on the basis of the possibility of adverse costs when in fact lack of corroborative evidence is more the determining factor in a decision not to authorise the brief.<sup>50</sup>

The Project Team notes in New South Wales the *Criminal Procedure Act 1986*<sup>51</sup> ensures costs are only awarded where police have been unreasonable or improper or exceptional circumstances should apply.

## Issues

Should the law in Victoria be amended to clarify that costs can only be awarded when police have acted unreasonably or improperly?

## 3.6 Area of particular concern

Most areas of concern that have come to the attention of the Project Team to date have been dealt with in the course of this discussion paper however one area warrants specific mention. This relates to those groups that do not report sexual assault to anyone. These include people where a language other than English is spoken at home, people with communication impairment, young homeless people, people in rural communities, and indigenous people. In speaking to agencies that work with these groups it is apparent that the Victorian community requires a number of strategies to overcome the barriers faced by members of these groups in reporting sexual assault.

<sup>49</sup> (1990) 170 CLR 534

<sup>50</sup> Op. Cit 126 - 127

<sup>51</sup> See section 117

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## Issues

What strategies have agencies adopted to encourage people where a language other than English is spoken at home, people with communication impairment, young homeless people, people in rural communities, and indigenous people to seek support when they are subject to sexual assault? What other strategies could be adopted in this area? What are the resource implications of these strategies?

### 3.7 Concluding Comment

Most Government systems currently in place appear to be developed with a goal of achieving a successful prosecution against a perpetrator of sexual assault. However, as noted by the Law Reform Commission, this goal is rarely achieved.<sup>52</sup> The Commission also notes a criminal justice response is not always available, appropriate and may not be in an individual's best interests.<sup>53</sup>

Whilst some of the issues in this discussion paper reinforce the need for improving the criminal justice system's response to allegations of sexual assault, many of the issues emphasise the need for public sector agencies to think collaboratively and constructively about ways to improve their response to people experiencing sexual assault who do not have a criminal justice option or chose not to engage with the criminal justice system.

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<sup>52</sup> Op. cit pp. 79 -81

<sup>53</sup> See Law Reform Commission's comments in relation to historical sexual offence cases. Ibid. P.101

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## 4 SUMMARY OF ISSUES

### Information management

#### *When is a report made*

1. Should agency employees such as teachers and disability workers have a discretion about reporting some incidents of sexual assault? What types of incidents of sexual assault should be subject to discretionary reporting? What guidelines, if any, should inform the exercise of discretion?
2. Should Victoria Police be required to record details of every time someone wants to make a report about sexual assault, even where there may be insufficient information to proceed to an investigation or insufficient information to determine whether an offence has been committed?
3. Are there other alternatives to ensure identification of individual or systemic patterns of possible offending?
4. What are the resource implications of this? What steps should be taken to protect information about individuals but still enable the cross-matching of data to be used to investigate serial or multiple offenders?

#### *What is reported?*

5. Should all Government Departments be required to collect data using the same classifications and plain language to enable the tracking of systemic issues to do with sexual assault? Should information systems be compatible across all Government agencies to enable meaningful whole of Government analysis?
6. What are the resource implications of this? What steps should be taken to protect information about individuals but still enable the data to be used in determining systemic issues? What steps can be taken to ensure agencies use the same classifications and plain language? Should data be shared between agencies?
7. What steps should be taken to ensure privacy principles are adhered to?
8. Should different terminology be used in relation to children and young people?
9. What other information management strategies can be used to ensure consistency and clarity for people reporting sexual assault?

#### *Inter-agency Liaison*

10. Should the development of Memoranda of Understanding and or Protocols between agencies regularly dealing with reports of sexual assault be subject to more formal regulation?
11. Should Memoranda of Understanding or Protocols entered into by Government Departments be for a fixed period of time and subject to regular review? Should they be subject to independent audit?

12. Should there be a standing inter-agency committee established to address Statewide systemic sexual assault issues? If so, which agency should auspice a standing committee?
13. Should there be more formalised communication structures between regional liaison groups and any Statewide standing committee?

#### *Mandatory reporting*

##### *Provisions under the Children and Young Persons Act 1989*

14. Are professionals sufficiently aware of their responsibilities under existing mandatory reporting provisions?
15. What strategies, if any, should the Department of Human Services adopt to reduce the amount of resources spent responding to agencies or individuals that over-report as part of a risk management strategy?
16. What strategies, if any, should the Department of Human Services adopt to encourage appropriate reporting in rural areas, whilst preserving anonymity?

##### *Policy requirements of the Department of Human Services*

17. Does the mandatory reporting to Victoria Police of sexual assault in Disability Services unfairly discriminate against adults who have an intellectual disability?
18. Are other agencies more appropriate for receiving reports of sexual assault in some circumstances? If so, which ones?
19. What strategies, if any, should Victoria Police adopt to reduce the amount of resources spent responding to agencies or individuals that over-report as part of a risk management strategy?

#### *The role of the media*

20. Should Government agencies involve the media in community education about sexual assault? Which agency, if any, should take a leadership role in this area?

#### *Parallel Processes*

##### *Agency employees accused of sexual assault*

21. What duty, if any, should agencies have to continue to investigate complaints of sexual assault involving employees who resign after an allegation has been made?
22. Should employers inform future employers or others about unsubstantiated allegations of sexual assault made against an individual? What privacy considerations should be taken into account when previous employers are contacted?
23. Should all public sector employees who work with people vulnerable to sexual assault, including human service workers and taxi drivers, be subject to other forms of pre-employment vetting? If so, what sort of vetting tests should be considered?

### *Child protection issues*

24. Should further consideration be given to strategies used in domestic violence situations such as removing an abusive family member from a family home rather than a child subject to sexual abuse? If so, what strategies could be considered?
25. What strategies are available to parents where one child is sexually abused by a sibling?
26. Where Child Protection Services and Victoria Police have ceased or had no involvement in investigating incidents between students, is the Principal of a school the most appropriate person to investigate and respond to incidents of sexual assault between students? What other person would be more appropriate?
27. What standards, if any, should exist about how investigations are conducted and incidents are responded to? How should these standards be monitored or audited?
28. Is the incidence of inappropriate sexualised behaviour in children under 10 a systemic issue? If so what strategies should be adopted to address this issue? Which Government agency should have lead responsibility for implementing these strategies?

### *Other duty of care issues*

29. Should agencies that provide services to adults in 24 hour care be required to keep data about incidents involving allegations of sexual assault?
30. Should agencies offer female only residential options?
31. In what circumstances is it appropriate to move a person subject to sexual assault?
32. What responsibility, if any, do agencies have to warn someone in care about others with whom they are residing who have a history of sexual assaulting others?

## Police Investigation Process

### *Communications issues*

33. Would complainants have improved communication about the progress of their investigation through email?
34. Should all Victoria Police members have access to email? If so, what are the resource implications of this?
35. Are there other ways of improving communication
36. Should more than one person from Victoria Police have a working knowledge of a case and be responsible for communicating the progress of the investigation to the complainant?
37. What other strategies could be implemented to improve communication with a complainant about the progress of an investigation?

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### *Evidence gathering*

38. Should consideration be given to training specialist nurse practitioners to perform the forensic examinations currently undertaken by Forensic Medical Practitioners?

### *Use of Independent Third Persons*

39. What access to other supports such as advocacy and communication assistants should a person with a disability have when being interviewed by police?
40. Should the role of the Independent Third Person be expanded to incorporate these other roles or to identify when further support is necessary?

### *Complaints withdrawn*

41. Should there be an automatic review of the circumstances when a complainant withdraws a report to the police about a sexual assault?
42. Is the Office of Police Integrity a suitable body to conduct such a review?

### *Non-authorisation of briefs*

43. Should there be more independent review of a decision not to authorise a brief for prosecution in sexual assault cases? If so, should the review be conducted by a panel within Victoria Police, the Office of Public Prosecutions or some other body?
44. Should complainants be automatically notified in writing of their right to have a decision not to authorise a brief reviewed?

## Resources

### *A Qualified Workforce*

45. Should agencies other than Victoria Police, such as the Department of Education and Training and the Department of Human Services require staff involved in responding to or investigating reports of sexual assault to undergo specialist training?
46. Should agencies explore rotating secondees from other agencies in specialist areas that deal with investigating allegations of sexual assault?
47. What are the resource implications of this?

### *Costs*

48. Should the law in Victoria be amended to clarify that costs can only be awarded when police have acted unreasonably or improperly?

### *Area of particular concern*

49. What strategies have agencies adopted to encourage people where a language other than English is spoken at home, people with communication impairment, young homeless people, people in rural communities, and indigenous people to seek support when they are subject to sexual assault? What other strategies could be adopted in this area? What are the resource implications of these strategies?