

Commissioner for Victims Rights

Submission to SA Royal Commission into Domestic, Family and Sexual Violence



Government
of South Australia

Victims of Crime SA

Acknowledgement of Country

The Commissioner and VOCSA acknowledge the Traditional Owners and custodians of the lands on which we live and work across South Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders, leaders, and respected persons past, present, and future. We value the immense cultural knowledge of Aboriginal people and are committed to reconciliation.

Victim-Survivor Acknowledgement

The Commissioner and VOCSA acknowledge the devastating and long-term impact of domestic, family, and sexual violence (DFSV) on individuals, their families, and communities. Further, we pay our respects to those who did not survive and acknowledge the incredible pain of their friends and families.

We acknowledge all victim-survivors who share their personal experiences with us. The recommendations below are informed by their individual and collective stories.

Introduction

I note the SA Royal Commission has been asked to inquire into the four key areas of prevention, early intervention, response, and recovery and healing. I consider these areas to be equally important, interconnected and overlapping and I will comment on each.

Whilst I will comment on each of the domains, most of my work as Commissioner, sits within the domains of 'response' and 'recovery and healing'. They are therefore the focus of my submission.

Prevention

There is rightly considerable focus on responding to DFSV and protecting victim-survivors of such crimes. There must however be an equal commitment to the four key areas.

I am supportive of all strategies aimed at preventing violence against women and children. It is crucial however, that prevention strategies are inclusive of all victim-survivors in particular, members of the LGBTQIA+ community.

I also suggest, whilst incredibly complex and challenging, the need to condemn violence in all its forms. If men consider violence acceptable in their interactions with other men, violence will remain an entrenched behaviour and this will ultimately undermine strategies aimed at preventing DFSV.

Early Intervention

Programs for people who use violence

There must be greater availability of and access to early intervention and behaviour change programs.

People who use violence, or are concerned about their behaviour, and are motivated to change must be supported. They must be encouraged to address harmful behaviours in a preventative rather than a punitive context. It is critical that a range of supports, and early intervention programs are readily available. Public education campaigns must include information about such.

A phone app would be a discreet way for people, who are concerned about their behaviour and have a desire to change, to access information and advice.

'Don't Become that Man' provides early intervention, wrap-around support and crisis accommodation for men who are concerned about their current controlling behaviour. Men can self-refer or may be referred by other service providers or following SAPOL intervention. Programs and services such as those provided under 'Don't Become that Man' require appropriate and stable funding.

Intervention programs are also available for sentenced prisoners. I understand however, there are a number of issues affecting access to and completion of these programs. The Department for Correctional Services is best placed to advise on these matters.

Medical practitioners and health care providers

Medical practitioners are a crucial point of early intervention for both victim-survivors and people who use violence. In my experience there is little information available at medical practices linking victim-survivors and perpetrators to information and support. The development and distribution of such is important.

Training should also be developed and rolled out to all medical practitioners, not just general practitioners. Training should equip medical practitioners with the skills to identify indicators of DFSV and enable them to refer victim-survivors and people who use violence to appropriate supports.

Trauma screening would provide a valuable tool for medical practitioners and health care providers. Not only would this screening assist practitioners in the delivery of any treatment but would also provide cues for discussions about physical and psychological safety and support needs.

Response

Myths, misconceptions, and stereotypes

Myths, misconceptions, and stereotypes about DFSV persist throughout the community.

Whilst the 2021 National Community Attitudes Survey (NCAS) released by ANROWS shows significant improvements in understanding and attitudes over the last decade, results remain concerning.

- 41% of respondents believe that domestic violence is equally committed by men and women – a significant increase from 23% of respondents in 2009.
- The survey found that whilst 91% of respondents believe violence against women is a problem in Australia – only 47% believe it is a problem in their own suburb or town.
- 1 in 4 respondents believed that a woman who does not leave an abusive partner is partly responsible for the abuse continuing.
- Nearly one quarter of respondents believe that much of what is called domestic violence is a normal reaction to day-to-day stress and frustration.
- 37% thought women going through custody battles often make up or exaggerate claims of domestic violence to gain tactical advantage in their case.

Myths pertaining to sexual assault also persist. These include:

- Genuine victims report sexual assaults immediately
- Genuine victims sustain physical injuries at the time of the offence
- Genuine victims resist and fight off the violent offender
- Memory of sexual assault should be clear, coherent, detailed, and specific
- Many people lie and fabricate reports of sexual offences
- Genuine victims end relationships and contact with the offender

The criminal justice system and criminal justice professionals are not immune to these myths, misconceptions, and stereotypes. When embedded in the criminal justice system victim-survivors are deeply impacted, their confidence eroded and access to justice diminished. Myths and misconceptions

only serve to disempower, shame, and blame victim-survivors and contribute to under-reporting, high case attrition and low rates of conviction.¹

As a consequence, perpetrators are not held accountable and are free to cause further harm.

A toolkit, similar to the guidance provided by Crown Prosecutions Service, UK could be developed to address myths, misconceptions, and stereotypes.²

This should be readily accessible to all criminal justice practitioners and provide current and accurate information on:

- responses to trauma
- victims' needs
- victims' rights
- unique needs and experiences of priority populations
- trauma-informed practices
- information countering myths and misconceptions
- information on linking victims to supports.

I would suggest the development of separate toolkits for domestic and family violence and sexual violence. As Commissioner, I am considering commencing work on the latter.

Independent Advisor/Advocate

Victim-survivors experience the criminal justice system as complex, confusing, frightening, and difficult to navigate. Victim-survivors describe engagement with the criminal justice system as disempowering and confronting. As such they need and expect holistic, consistent, and practical support.

Most jurisdictions have a range of support services for victim-survivors, including specialist services for victim-survivors of FDV and victim-survivors of sexual violence.

We are very fortunate in SA to have many excellent agencies – government, non-government and not-for-profit – addressing the diverse needs of victim-survivors of DFSV. As well, there are many very committed people working in the sector.

It is however, incredibly concerning that 2 in 5 respondents of the National Community Attitudes Survey said they would not know how to access domestic violence services.

These, however, are not necessarily connected and there are not always strong referral pathways between services. Most do not address victim-survivors' needs holistically and thus, victim find themselves navigating multiple supports and systems.

Victim-survivors often experience services or agency confusion and fatigue and are traumatised by retelling their story.

Access to an independent advocate or adviser could assist in overcoming this and many other issues faced by victim-survivors throughout their engagement with the criminal justice system.

In this context I am not talking about a legal advocate rather, counsellors or social workers who provide victim-survivors with independent information about their justice options enabling victim-survivors to make informed decisions. Further the advocate/adviser can assist with access to practical and emotional supports. Essentially the advocate/adviser's role is to support, guide, and empower victim-survivors.

In England and Wales independent sexual violence advocates have been available since 2007.

¹ Patrick Tidmarsh and Gemma Hamilton 'Misconceptions of sexual crimes against adult victims: Barriers to justice' (2020) No 611 *Trends & issues in crime and criminal justice*

² [Rape and Sexual Offences - Annex A: Tackling Rape Myths and Stereotypes | The Crown Prosecution Service \(cps.gov.uk\)](#)

Evaluations of this model indicate that advisors improve victim-survivors experience of and engagement with the criminal justice system and can improve outcomes for victim-survivors.

An English evaluation found cases where victim-survivors were supported by a specialist adviser - were 42 per cent less likely to result in police taking 'no further action'.³

The Victorian Government has recently announced the introduction of Justice Navigators for survivors of sexual violence as part of its Changing Laws and Culture to Save Women's Lives package.

This model would also be of benefit to victim-survivors of FDV.

The Australian Institute of Family Studies has identified a role similar to an adviser as one of the three key reforms that could improve the experience of the justice system for complainants. Participants in that study said that such a role would:

- give them access to a person who was independent from others involved in the criminal justice system and focused solely on their concerns
- address the confusion about who was responsible for communicating with the complainant (as discussed in Chapter 17)
- help with the workloads of police and prosecutors in following up with people, especially when cases take so long to progress
- potentially provide support after the case had ended.

Having access to an independent advocate or adviser has been shown to improve engagement with the criminal justice system by

- assisting victims to make police reports
- addressing fears and concerns
- providing information to help victims make informed decisions, particular when asking for charges to be withdrawn
- provide support through the court process
- assist victims to deal with "painful court outcomes"
- provide information about compensation
- influence practice and policy within organisations

Whilst the primary focus is on supporting a victim through the criminal justice process, the adviser should ideally also address any interrelated issues of housing, Centrelink, Child protection.

Support Services

Many of the available supports for victim-survivors of domestic and family violence are only funded to provide support to medium and high-risk victim-survivors. More supports should be available to victim-survivors who may be deemed lower risk. It is crucial that all victim-survivors can access information and supports to make informed decisions, including about their involvement with the criminal justice system, and maximise their safety before violence escalates.

I acknowledge the important work of the DV Crisis Line but hold some concerns that the name of this service may be limiting. Victim-survivors may not use the service if they do identify as being in 'crisis.'

Further, consideration should be given to a more generalist support line, particularly given the possible introduction of Coercive Control legislation.

³ <https://www.lawreform.vic.gov.au/publication/improving-the-justice-system-response-to-sexual-offences-report/12-supporting-people-who-have-experienced-sexual-violence/>

Security upgrades for victim-survivors of domestic and family violence are an important mechanism for increasing safety and perceptions of safety. I am however, concerned about the length of time many victim-survivors wait for additional security to be installed on their homes.

The Escaping Violence Payment is another important mechanism of support for victim-survivors. I note however, that the payment is available if a person is 'planning to change or have changed their living arrangements withing the last 12 weeks'. I would advocate for an extension of this period.

Escaping is not always planned. Many victim-survivors are simply focused on 'getting out' and getting safe. It often takes some time for the full financial burden to be realised. At times when victim-survivors reach out for financial support the 12-week period has expired.

People with Disability

Studies consistently report that both children and adults with disability are disproportionately vulnerable to serious and violent crime, and sexual assault. Research reveals that women with disability face an increased risk of various forms of violence, including physical and/or sexual violence by a cohabitating partner.⁴

Crimes against people with disability are reported at a much lower level and result in fewer prosecutions and convictions. When reports are made it has been concluded that victim-survivors with disability are "less likely to obtain police intervention, legal protection or preventative care" (UN, 2006b, p.2). It must be noted that this may not always be due to a lack of desire or disregard for people with disability but rather a lack of awareness as to how to facilitate participation and assist people with disability.

Most Australian jurisdictions have introduced Intermediary programs (or similar) to help witnesses to communicate their best evidence. Intermediaries are often drawn from allied health professions including speech pathology, social work, psychology, and occupational therapy and undertake rigorous training in order to become accredited. The role of the intermediary is to carefully assess the communication needs of the witness and inform police and the court of the best ways to communicate, so the witness can provide their best evidence.

In South Australia there is a Communication Partner scheme. For a variety of reasons Communication Partners are underutilised. The current model should be examined with a focus on ensuring visibility and accessibility of Communication Partners/Intermediaries from the time of report and throughout criminal proceedings.

First Nations People

It is well documented that First Nations people are overrepresented as victim-survivors of DFSV. They face unique risk factors that must be considered in the context of the impact of colonisation and disruption to cultural practices, values, and identity. These contribute to high levels of victimisation as well as additional barriers in seeking help and obtaining support as victim-survivors, including but not limited to:

- fear or distrust of the criminal justice system and other government agencies,
- lack of awareness or access to culturally safe and responsive services
- fear of putting their connections to extended kinship and family networks at risk
- fear of disruption of connection to land

The unique needs of First Nations people must be considered and, their voices must be central in designing and implementing prevention and response strategies. I therefore make no further recommendations.

⁴ [Specialist approaches to managing sexual assault proceedings: an integrative review \(nsw.gov.au\)](https://www.nsw.gov.au/specialist-approaches-to-managing-sexual-assault-proceedings-an-integrative-review)

CALD Communities

There are many issues for victim-survivors from CALD backgrounds and may deter people reporting DFSV and seeking support. These include but are not limited to

- language barriers, lack of availability of interpreters
- isolation, being rejected by their community or family
- religious or cultural beliefs about divorce
- a lack of knowledge and trust about legal rights
- distrust of authorities
- concerns about being deported or losing children
- fear of losing VISA
- insufficient access to financial support.

The unique issues facing CALD victim-survivors should be explored by those with greater knowledge and expertise in this area.

Inclusive responses

I do not dispute that women are disproportionately victim-survivors of domestic and family violence and that with good reason service provision has focused on such. I am however, concerned about the lack of inclusive services.

Research by the Australian Institute of Health and Welfare indicates that “most LGBTIQ+ people experience some form of violence in intimate partner and/or family relationships in their lifetime”⁵. Many of the barriers faced by LGBTIQ+ people when seeking help are also shared with members of the general population. They do however, face additional barriers including “the historical framing of domestic, family, and sexual violence as ‘violence against women’”. This has limited services to support people who are not cisgender women (including trans women; gay, bisexual, or trans men; non-binary people).⁶

Court Delays

Significant court delays exacerbate difficulties for victim-survivors and as a result some victim-survivors disengage from the criminal justice system.

Some victim-survivors are unable to endure the timeframes with one victim describing it as “a kick in the guts” and her sole reason for requesting a discontinuance.

Victim-survivors expect timely justice yet too often experience considerable delay.

This consistently features in reports as a major issue for victim-survivors – causing them to lose confidence in the criminal justice system and to suffer a secondary injury.

The time taken to finalise defended matters ranging anywhere between two and seven years (or more).⁷

One victim after having her second trial date vacated and relisted a year later expressed her frustration and stated that she did everything required of her but the system in no way supported her.⁸

Another victim was distraught at having to wait 12 months for her matter to be adjudicated only to be told it was to be withdrawn.

⁵ [LGBTIQ+ people - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au)

⁶ [LGBTIQ+ people - Australian Institute of Health and Welfare \(aihw.gov.au\)](https://www.aihw.gov.au)

⁷ [Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings_An-Integrative-Review_05.pdf \(aija.org.au\)](#)

⁸ [Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings_An-Integrative-Review_05.pdf \(aija.org.au\)](#)

When matters are unresolved victim-survivors feel as though they are “suspended in mid-air”⁹ unable to move forward with their lives.

Delayed resolution may also mean delayed access to compensation and consequently delayed treatment.

Too often victim-survivors perceive timeframes as dictated by the needs of defendants not their needs.

We must re-examine resourcing and processes in order to reduce delays including ensuring defence are unable to delay proceedings as a deliberate tactic to maximise pressure on victim-survivors.¹⁰

Character references

Victim-survivors and advocates are calling for good character references to be abolished for convicted sex offenders - stating it's a harmful myth that good character can coexist with such crimes.

For them, these serve to minimise the impact of the offending and undermine their trauma experiences and the resultant harm.

Victim-survivor ██████████ states that the eradication of good character references would be indicative of a legal system “that prioritises the safety and well-being of survivors over the reputation of perpetrators,”

I believe a number of jurisdictions are considering this proposal.

Independent Legal Representation (ILR)

The South Australian Government, at the time of writing this submission, is consulting on a draft Bill to criminalise coercive control. This Bill formally recognises the diverse and often more subtle forms of domestic and family violence that none-the-less have immediate and ongoing impacts for victim-survivors.

We must not however, think that legislative reforms in and of themselves are sufficient to protect or deliver justice to victims and survivors

We have seen the difficulty in prosecuting the offence of strangulation with a large number of matters being withdrawn at the request of victim-survivors. We must examine their reasons for not proceeding and ascertain if more can be done to support them through the criminal justice process.

Whilst criminalising coercive control is philosophically sound, the application of the legislation is likely to be complex and I, for one, am concerned about raising victim’s expectations.

I have concerns about proving the elements of the offence. Research on the implementation of coercive control legislation in other jurisdictions identifies the ability to evidence the offence as a pervasive problem.

Police may not have the expertise or the time and resources to undertake appropriate enquiries. This may be exacerbated in rural and remote areas.

If the Bill passes, I would suggest access to independent legal advice to assist victim-survivors to collect and compile necessary evidence.

Access to independent legal representation should extend beyond the circumstances outlined above.

The introduction of independent legal representation for victim-survivors of sexual violence has been canvassed in numerous Australian inquiries and support for such is increasing.

⁹ ['Like being suspended in mid-air': The enduring impact of ongoing delays in Australia's courts - ABC News](#)

¹⁰ [Specialist-Approaches-to-Managing-Sexual-Assault-Proceedings An-Integrative-Review 05.pdf \(aija.org.au\)](#)

Indeed, many members of the public as well as victim-survivors are shocked when they realise that they are not entitled to their own lawyers in criminal proceedings.

It is difficult for victim-survivors to comprehend that prosecutions are on behalf of the State and in the public interest rather than solely on their behalf.

They expect prosecutors to 'fight' for them - to display the same passionate advocacy as defence lawyers do for their clients.

Most do not understand - a prosecutor's role is to assist the court to reach a sound decision based on the evidence rather than pursue a conviction at all costs.

Some victim-survivors perceive prosecutors more subdued approach as indicative that the case does not matter to them, and distrust can build.

The range of complex issues confronting victim-survivors of sexual violence can be mitigated by ILR.

O'Connell (2012) who has long championed ILR considers it as a mechanism for redefining victim-survivors' as integral to the criminal justice process rather than mere bystanders¹¹.

Like all victim reforms this has been contested and resisted

At the forefront are concerns about how ILR fits within the established adversarial system

Most models however do not consider the ILR as a secondary prosecutor, rather their role, as Dr Mary Iliadis states is confined to 'specific matters of evidence and procedure that interfere with the privacy and interests of victim-survivors.'¹²

The Victorian Law Reform Commission states ILR benefits victim-survivors by

- giving them a sense of having 'rights, legitimacy and identity' in the justice process
- enabling them to be more involved in the criminal justice process
- helping to reduce their anxiety and potentially encourage reporting and reduce attrition
- ensuring they are provided with the information they need
- improving the quality of testimony by providing support during cross-examination
- acting as a check on other actors in the criminal justice process by, for example, identifying gaps in the information provided and encouraging everyone to take the complainant more seriously
- protecting against inadmissible and inappropriate questions being asked.

Essentially ILR for victim-survivors would reduce power imbalances, protect victim-survivors' rights and amplify victim-survivors' voices.

Victims' Rights

Victims' Rights as outlined in the Declaration Principles Governing the Treatment of Victims in the *Victims of Crime Act 2001* are an essential aspect of any criminal justice response. These rights recognise the impact of crime and that victims have an interest in the criminal justice system. They aim to reduce secondary victimisation and increase victim participation.

Public agencies and officials are required to uphold these rights or principles as far as is practicable. The way the rights are framed however, places the responsibility on the victim to ensure their rights are

¹¹ O'Connell, M. (2012) Commissioner for Victims' Rights: Strengthening Victims' Rights, in H. Morosawa, JP Dussich & GF Kirchhoff (eds). *Victimology and Human Rights Security: New Horizons*, Wolf Legal Publishers, Netherlands.

¹² Dr Mary Iliadis, Victorian Law Reform Commission, The Role of Victims of Crime in the Criminal Trial Process (Report No 34, August 2016).

upheld. For example, a victim is entitled to be kept informed about the progress of the investigation if the victim asks to be kept informed.

This is highly problematic as a victim must first be aware of their rights in order to request observance of such. Further, it places an additional burden on frightened and exhausted victim-survivors. Victim-survivors should not have to fight to have their rights upheld and protected.

When agencies and public officials proactively observe victim's rights it fosters a sense of collaboration and trust. I recommend revising the Declaration to ensure agencies and officials bear the responsibility for observing victim's rights.

Recovery and Healing

All of the above recommendations are inextricably linked to recovery. When victim-survivors are not supported, their needs addressed, or their rights protected - their recovery is impeded.

We need to facilitate safety, including safety in the form of financial independence and secure and stable housing. We must also ensure victim-survivors have access to holistic, long-term social, emotional, and economic supports - not just crisis support.

Recovery and healing can take years and victim-survivors' needs extend well beyond the point of leaving and well beyond the conclusion of criminal proceedings.

Support services cannot therefore be transitory. Victim-survivors need service stability – they need to know how and where to access supports and that those supports will be available when they need them.

We need to ensure that we have a cohesive and connected system of supports with strong referral pathways that alleviates confusion and frustration for victim-survivors.

Cross jurisdictional issues

There are occasions where victim-survivors experience domestic, family, and sexual violence across more than one jurisdiction. Victim-survivors often experience difficulty in reporting and seeking support across jurisdictions. There is a need for increased connectivity for victim-survivors in such circumstances. One victim stated, "I have suffered enough and just need to be helped properly and stopped being pushed from one agency to another."

Conclusion

We often turn to the criminal justice system to provide justice to victim-survivors, but justice is embedded in each of the domains of prevention, early intervention, response, and recovery and healing. Unless we commit to each of these domains we are failing victims-survivors, their families, and the broader community.

We must therefore rethink the current emphasis on crisis and criminal justice responses and ensure funding is consistently available for prevention and early intervention.

Given the four domains cross multiple ministerial portfolios it is critical that we have a coordinated, whole-of-government approach to funding and service delivery.



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