



Government of **Western Australia**
Department of **Justice**
Office of the Commissioner for Victims of Crime

Journey through the criminal justice system

DISCUSSION PAPER 3

Improving experiences for
victim-survivors:

Review of criminal justice
system responses to
sexual offending

Journey through the criminal justice system

DISCUSSION PAPER 3

Discussion Paper 3 looks at the criminal justice system from investigating a sexual offence, charging a person with a sexual offence, the court process and all the way to the time an offender is released from custody. Victim-survivors may go through some or all of this process.

All victim-survivors' experiences are different. In this paper we look at the main interactions that victim-survivors have with the criminal justice system, and we ask if processes are working well and look at some options for reform. The journey we outline is specific to adult complainants of sexual offences. The process is different for children.

The Department of Justice respectfully acknowledges the traditional custodians of the land being the first peoples of this country.

We embrace the vast Aboriginal cultural diversity throughout Western Australia and recognise their continuing connection to country, water and sky. We pay our respects to Elders past, present and emerging.

The Department is committed to fostering respectful partnerships with our Aboriginal colleagues, clients and those in our care.

Support

Reading about sexual violence can be upsetting, particularly for victim-survivors. You may want to read this paper with a support person or check in with someone about how you are feeling afterwards. If reading this discussion paper is upsetting, please ask for support from a person you trust or contact one of the support services below.

1800 RESPECT 1800 737 732

Women's Domestic Violence Helpline (WA) 1800 007 339

Men's Domestic Violence Helpline (WA) 1800 000 599

Crisis Care 1800 199 008

Mensline Australia 1300 789 978

Lifeline Australia 13 11 14

Our focus

The Attorney General has asked the Office of the Commissioner for Victims of Crime to look at the experiences of victim-survivors who have experienced sexual offending in the criminal justice system in Western Australia (WA) (the Review) to see what is working well, what can be improved and to recommend options for reform. In particular, the Attorney-General has asked us to look at:

- the experience of adult victim-survivors (regardless of their age when the relevant sexual offending occurred) with the criminal justice system
- factors which contribute to under-reporting of sexual offences, and why people report but do not continue with the formal legal process
- alternative and innovative processes or procedures for receiving, investigating and resolving (through prosecution or otherwise) sexual offence complaints that are consistent with victim-survivors' interests and the interests of justice – for example, restorative justice processes.

A big part of the Review is consulting with the public to hear their views on what works well now and what can be improved.

Who can make a submission

Any person or organisation is welcome to make a submission to the Review. We are interested in hearing from sexual offending victim-survivors as well as their families and loved ones.

We are also interested in hearing from people who work with sexual offending victim-survivors and/or who work in the criminal justice system.

The Discussion Papers

We have written four Discussion Papers that focus on different parts of the criminal justice system. We summarise the content of each discussion paper below.

Discussion Papers 2, 3 and 4 ask questions that you may want to answer when you submit your response (see how to make a submission on page 5). You can answer as many or as few questions as you like. You can also write your submission in your own words, without responding to the specific questions in the Discussion Papers.

The Discussion Papers contain information that is relevant to the questions we are asking. The final report will contain a more detailed discussion, including research and the outcomes of public consultation.

Discussion Paper 1 Overview

Discussion Paper 1 includes background information that may help you think about the issues involved and answer the questions in Discussion Paper 2, 3 and 4. There are no questions in Discussion Paper 1.

Discussion Paper 2 Reporting sexual offences

Discussion Paper 2 looks at why some people choose not to report their experience of sexual offending, the police reporting process and some options for improving the reporting process.

Discussion Paper 3 Journey through the criminal justice system

Discussion Paper 3 looks at sexual violence victim-survivors' journeys through the criminal justice system – from the time of reporting to the police, to the time an offender is released from prison. This paper includes questions about each stage of this process, and asks what went well, what did not go well, and how things could be improved.

Discussion Paper 4 Alternatives to the criminal justice system

Discussion paper 4 looks at processes outside the criminal justice system, which may help victim-survivors to heal after a sexual offence as well as holding perpetrators accountable. This paper includes some examples of alternative models used in other places. We ask for your opinion on what models could work in WA.

How to make a submission

You can make a submission by:

Online:	https://consultations.justice.wa.gov.au/
Email:	experiences@justice.wa.gov.au
Mail:	Improving experiences review consultation Office of the Commissioner for Victims of Crime GPO Box F317 Perth, WA 6000
Phone:	08 9264 9877

Please contact us if you would like to talk about different options for making a submission or participating in the consultation process.

We acknowledge there have been other inquiries and reviews related to sexual violence and violence against women and children. If you do not have time to respond to this Review, you can send us any relevant submission you have made before.

Language used in the discussion papers

In the Discussion Papers we use the term 'sexual offences' or 'sexual offending' to refer to sexual violence that is a crime.

In the Discussion Papers we use the term 'victim-survivor' to refer to people who have experienced sexual offending to recognise both victimisation and resilience. We have used this term because it is familiar. We also use the term complainant to refer to a person who has made a report to police.

We use the term 'perpetrator' to refer to people who have sexually offended against another person. We use the term 'accused' to refer to the person who is alleged to have committed the sexual offence. We use the term 'offender' to refer to people who have been convicted of sexual offences.

We have used the term 'Aboriginal' in recognition that Aboriginal peoples are the original inhabitants of Western Australia.

We acknowledge that not all people prefer or use the terms and acronyms used in the Discussion Papers.

Other terms and acronyms used in the Discussion Papers include:

ALRC	Australian Law Reform Commission
ARO	Alternative Reporting Option
CALD	Culturally and linguistically diverse
MIST	Multiagency Investigation and Support Team
ODPP	Office of the Director of Public Prosecutions
PFK	Preliminary Forensic Kit procedure
PRB	Prisoners Review Board
SARC	Sexual Assault Resource Centre
UK	United Kingdom
VLRC	Victorian Law Reform Commission
VMU	Victim-Offender Mediation Unit
VNR	Victim Notification Register
WA	Western Australia
WA Police	Western Australia Police Force
WALRC	Western Australian Law Reform Commission
WSJT	Women's Safety and Justice Taskforce (Queensland)

The criminal justice system

The criminal justice system is the term used to describe all the processes and organisations that provide a legal response to criminal offending. The criminal justice system is the way that our community upholds legal standards of right and wrong.

The criminal justice system is complex, and we know that many victim-survivors find it confusing and overwhelming.¹ In the following sections we provide some information about the key stages in the criminal justice process and talk about some of the things that we already know are problems for victim-survivors. We also ask questions about each stage of the criminal justice process. We cover the first step in the process – reporting to police – in Discussion Paper 2.

Investigating sexual offences

Once a person has made a report to police, they are referred to as the complainant. In this section of the discussion paper, we may refer to the person who has experienced sexual offending as a victim-survivor or as the complainant. We will refer to the person who caused the harm as the accused.

The investigation process

When a victim-survivor makes a report to police, it is passed on to an officer who is trained in sexual offence investigations. The WA Police has teams of specialist investigators who respond to reports of sexual offences and child sexual abuse. The investigation process is guided by an internal policy called the WA Police Investigation Doctrine.² The investigation process can take a lot of time. We outline some of the stages in more detail below.

Forensic medical examination

A forensic medical examination is a way of collecting evidence from the body of the person harmed.³ Some victim-survivors may attend an examination at the Sexual Assault Resource Centre (SARC) or a hospital to collect forensic samples before reporting to the police but forensic samples will not be provided to police for analysis until a report is made.⁴

A person who attends a forensic examination does not have to make a report to the police.⁵ Police may ask the complainant to attend a forensic medical examination but the complainant can choose whether or not to attend. Police may also ask a complainant to use a Preliminary Forensic Kit procedure (PFK). This is a self-administered, voluntary test and can provide valuable forensic evidence in the first few hours after the sexual offence and before the victim-survivor attends the forensic medical examination.

Taking the formal statement

A complainant's report is assigned to a police officer who specialises in investigating sexual offences. The investigating officer will contact the complainant to arrange a time for them to make their formal statement. Depending on the complexity of the allegation and the victim-survivor's needs, it may take only hours or it may take days, weeks or months before the victim-survivor makes their formal statement. The victim-survivor will usually attend a police station to give their formal statement but also there are other options. A victim-survivor can give their formal statement at their home or any other location where they feel safe. A victim-survivor can also have a support person, who they choose, present for the process.

Collecting additional evidence

The investigation may involve interviewing the person accused of perpetrating the sexual offence, talking to witnesses and collecting physical evidence from where the offence took place. Police may also want to collect additional evidence from the accused or the complainant such as text messages, emails, social media postings and phone messages. Complainants may be asked to provide police with their phone or other digital device so that information can be downloaded. Depending on the amount of data being downloaded, this process can take several hours to more than a day. Police try to return the phone to the complainant as soon as possible and can provide a replacement phone if needed.

Rights and obligations to provide digital information

Police ask that victim-survivors do not delete information from their digital devices before it is provided to police. The information is provided to the investigating officer who ensures that access to text/images on the digital device is strictly controlled. Police understand that victim-survivors may be reluctant to hand over their digital devices because it may contain personally sensitive or possibly embarrassing text or images on it. Victim-survivors may also be concerned about their privacy and other impacts of providing the information to police. Recent media reporting on high-profile sexual offence cases may increase those concerns.

One possible reform is for complainants to receive their own legal advice about their rights and obligations to provide evidence during the investigation. In the United Kingdom (UK), the Government has pledged to explore how a complainant may be able to access legal expertise and advice about access to their data and third-party material.⁶ A review of a legal assistance pilot project in Northumbria UK found that complainants without legal advocacy were not giving informed consent for access to their private data because they did not understand the request for the data or the consequences.⁷

The Australian Government committed \$8.4 million over three years from 2023-24 to pilot a new legal service delivery model for sexual violence victim-survivors. One of the considerations for this project is providing legal assistance to complainants about access to their private data and information as part of the investigation.

Outcome of the investigation

The main things that the police must decide before filing charges against an accused are:

- can they identify the person accused of the sexual offence
- do they have enough evidence to support the charges against the accused
- is there a reasonable prospect of conviction.

Police may choose to discontinue the investigation without filing charges if:

- they can't identify the person accused of the sexual offence
- they do not have enough evidence to support the charge
- there is not a reasonable prospect of success.

Police may discontinue their investigation for other reasons such as the accused has died or the victim-survivor chooses to withdraw their complaint.⁸ Police may ask a victim-survivor to provide a brief statement confirming that they would like to withdraw their complaint but this is voluntary.

Police will also advise victims-survivors that an investigation can be re-started at any time if they choose to continue with their complaint. Police must talk to the victim-survivor and explain the reason for their decision when they file charges and when they discontinue an investigation.

QUESTIONS

How well is the investigation process working for victim-survivors? How could it be improved?

Should victim survivors receive independent advice and support about what evidence they provide to police?

How well is the police interviewing process working? How could it be improved?

How well is the charging process working for victim-survivors of sexual violence?

You might want to think about:

- if victim-survivors are given the information they need in a way they can understand
- If victim-survivors are able to give their views on whether the sexual offence should be investigated, charged or not
- if victim-survivors are able to make a statement in a way that meets their needs and prioritises their wellbeing
- if victim-survivors have the support they need during the interview process including interpreters or other communication aids.

Prosecuting sexual offences

A prosecution begins when a person is charged with an offence.⁹ In WA, the Office of the Director of Public Prosecutions (ODPP) is responsible for prosecuting most sexual offences.¹⁰ The ODPP takes over the prosecution when the accused is committed to the District Court WA either for trial or sentencing.¹¹ This section of the paper will follow the prosecution process from the time the accused is committed, and through the court process from trial to sentencing.

When a sexual offence is prosecuted the case is between the State of Western Australia and the accused. The ODPP represent the State of Western Australia. The victim-survivor is not a party to the case but will often be a witness in a trial, especially in cases involving sexual offences. The ODPP has published a policy for victims of crime, which sets out how the ODPP interacts with victim-survivors and the rights of victim-survivors during the prosecution process.¹² Under this policy, consultation with victim-survivors is essential. The ODPP communicate with victim-survivors usually by phone or email through the state prosecutor or paralegal assigned to the case.

Prosecution decisions

When the ODPP take over the prosecution of the sexual offence, they assess the evidence collected during the investigation to decide whether the prosecution should continue. The ODPP first assess whether the evidence establishes a 'prima facie case' to prosecute the offence.¹³ Even if a prima facie case exists, the ODPP will only continue a prosecution when it is in the public interest to prosecute the offence.¹⁴

When deciding if it is in the public interest to prosecute, the ODPP will consider if the case has a reasonable prospect of conviction, the interests and views of victim-survivors and other factors, which are set out in their policy.¹⁵ The ODPP acknowledges that the decision to proceed with some prosecutions is a difficult one, and the decision may not always match the interests and views of victim-survivors.¹⁶ The decision not to proceed with a sexual offence prosecution can be very hard for a victim-survivor.

If a victim-survivor is unhappy with the ODPP decision to discontinue specific charges or the prosecution as a whole, they may ask for a review of the decision. The ODPP policy and guidelines for victims of crime sets out the process for the review.¹⁷ The review is conducted internally by a different state prosecutor who independently assesses the evidence and considers any particular concerns about the original decision which have been expressed by the victim or the investigating officer.

The review may result in the decision to discontinue being reversed, or the decision may be confirmed, and the victim-survivor is given reasons for the decision, which they can request to be in writing.

One option for reform is to introduce an external review process or some other external governance for police and prosecutorial decision-making on sexual offence charges. In its 2021 report, *Improving Justice System Responses to Sexual Offences*, the Victorian Law Reform Commission (VLRC) recommended an independent and high-level panel that includes multi-disciplinary expertise to review police and prosecution decisions after any internal review. The panel would have the power to make recommendations about individual cases and systemic issues but would not be able to overturn a decision by police or prosecution.¹⁸

The Women's Safety and Justice Taskforce (the WSJT) in Queensland recommended the Queensland Police Service and the Office of the Director of Public Prosecutions establish a clear, robust, transparent and easily accessible internal 'right of review' process for victim-survivors of sexual violence such as that in place in WA.¹⁹ The WSJT also recommended establishing an independent board to enable systemic oversight of the investigation and prosecution of sexual offences, which would have particular focus on prosecutions that did not progress.²⁰

Both internal and external review processes are designed to promote transparency and accountability in decision-making about prosecutions and give victim-survivors a way of challenging decisions that can profoundly affect them. When evaluating the option of an external process, the need to ensure the independence of the ODPP's decisions in the criminal justice system is an important consideration.

QUESTIONS

How well is the prosecution process working for sexual offence victim-survivors?

How can it be improved?

You might want to think about:

- if victim-survivors are provided with the information they need in a way they can understand
- if victim-survivors are given enough opportunity to provide input into decisions on their case
- how well the internal review process is working and if other models should be considered.

Going to court

Most sexual offence cases are heard in the District Court of WA. The District Court is based in Perth but conducts court hearings in regional locations.²¹ If the person accused of the sexual offence(s) pleads guilty, the case goes to a sentencing hearing. If the accused pleads not guilty to the sexual offence(s) the case goes to a trial and there may also be other hearings to prepare the case for trial.

Many victim-survivors find going to court and the trial process distressing. Research has identified five victims' justice needs as: participation, voice, validation, vindication and offender accountability (taking responsibility).²² Victim-survivors' justice needs are not always met through the trial process.

In Discussion Paper 4, we talk about alternative justice options that may better meet victim-survivors' justice needs. In this section we talk about the current trial process, the measures in place to protect victim-survivors' interests and ask how well these are working.

We do not discuss the sexual offence laws or jury directions as these are the subject of a separate review by the WALRC. More information on that review is available on their website: Discussion Paper - Project 113: Sexual Offences (www.wa.gov.au)

Special witness measures

Victim-survivors participate in trials as a witness for the prosecution. They do not have any other active role. One of the main features of a sexual offence trial is usually the giving and testing of the victim-survivor's oral evidence. Evidence consists of evidence in chief led by the prosecutor, and cross-examination by the lawyer for the accused (the defence). Reforms have introduced special witness measures to reduce the distress victim-survivors may experience when presenting their evidence in the courtroom.

The *Evidence Act 1906* (WA) (the Evidence Act) contains provisions for the evidence of children and special witnesses.²³ In any hearing for a serious sexual offence²⁴ a judge must make an order declaring that a person who is the victim of the serious sexual offence and is giving evidence is a special witness unless that person does not wish to be declared a special witness.²⁵ An order can also be made for a person to be declared a special witness if, when giving evidence, they are likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence.²⁶

Some of the arrangements that can be made for a special witness giving evidence include:

- a support person
- a communicator
- the ability to give evidence by video-link from outside the courtroom
- a screen so that the person can't see the accused.²⁷

Evidence Act 1906 (WA) protections

There are protections contained in the Evidence Act that prevent evidence about the victim-survivor's sexual reputation or disposition (natural tendency to act a certain way) being raised by the defence.²⁸ Evidence of the victim-survivor's sexual experience can only be raised by the defence when the judge gives permission.²⁹ The Australian Law Reform Commission (the ALRC) noted that there is little guidance in law or by judges about the meaning and scope of terms such as reputation, disposition or experiences.³⁰ The ALRC also noted that the issue of admitting evidence of sexual experiences in particular is important for victim-survivors because it can cause re-traumatisation and victim-blaming.³¹ The ALRC recommended that Federal, state and territory legislation should provide that the complainant must not be cross-examined, and the court must not admit any evidence, as to the sexual activities—whether consensual or non-consensual—of the complainant, other than those to which related to the charge, without leave of the court.³²

The Evidence Act also contains provisions to protect the records of victim-survivors' counselling sessions whether they relate to the sexual offence or not.³³ A victim-survivor's counselling records (known in the Evidence Act as protected communications) can't be disclosed without leave of the court. This means that the defence lawyer for the accused can't get the counselling records from the person who provided the counselling without permission from the court.³⁴ If a defence lawyer applies for the counselling records, they must provide legitimate forensic reasons that must be more than a 'digging expedition'.³⁵ If the court considers the defence has raised legitimate reasons for the request, the court convenes a hearing that is also attended by the prosecutor to decide the issue.³⁶

There may be times where the prosecutor's decision about the protected communications does not match the wishes of the victim-survivor. Legal Aid NSW provide a Sexual Assault Communications Privilege Service to provide legal advice and representation to victim-survivors of sexual assault who want to prevent the disclosure of protected communications or to release their protected communications in an informed way.³⁷

A victim-survivor's counselling records can't be presented or used in any way during the trial unless the defence lawyer has already received permission from the court to obtain the counselling records from the person who provided the counselling.³⁸

Although we ask in this Discussion Paper how well the current protections in the Evidence Act are working and how they can be improved, we note that the Evidence Act is currently under review and is being rewritten.

Cross-examination

Research has consistently found that victim-survivors in sexual offence trials report that the interrogative, complex questioning of cross-examination is one of the most stressful parts of the trial.³⁹ Cross-examination aims to test the accuracy of victim-survivors' version of events and their credibility. The Evidence Act limits what the defence can ask the victim-survivor in cross-examination.

The court may disallow a question if the question is an 'improper question' and is:

- misleading
- unduly annoying
- harassing
- intimidating
- offensive
- oppressive or repetitive.⁴⁰

Unlike evidence laws in other states and territories, the Evidence Act does not provide any examples of improper questions. The judge and to some extent the prosecutor must also enforce the provision for it to have any protective value for the victim-survivor. The VLRC suggested that issues remain with the style of cross-examination used by defence barristers.⁴¹ Research has also found that complainants in sexual offence trials can be more prone to making mistakes or providing inaccurate responses by cross-examination questions that are closed, leading, repeated and/or complex.⁴² Defence lawyers may also use cross-examination to raise myths and misconceptions about sexual offending.⁴³ We talk more about these myths in Discussion Paper 1.

Ground rules hearings

One option for reform is a recommendation from the VLRC to establish ground rules hearings for all sexual offence trials. Ground rules hearings focus on getting right the communication between the witness and the person questioning them, and it helps structure that interaction in a way that is respectful of their needs and abilities.⁴⁴

The VLRC recommended that:

'...before the complainant is called to give evidence, that the judicial officer, prosecution and defence counsel discuss and agree to:

- a. the style and parameters of questioning so that questioning is not improper or irrelevant
- b. the scope of questioning including questioning on sensitive topics and evidence to reduce re-traumatisation
- c. the preferences and needs of complainants...'⁴⁵

Specialist courts for sexual offending

Another possible option for reform is to introduce specialist courts or lists for sexual offending.⁴⁶ In WA, sexual offending is dealt with by the courts in the same way as most other offending. There is no specialist court or specialist list currently available for sexual offending. Specialist courts may offer benefits to both victims (by improving court processes) and offenders (by focusing on rehabilitation).⁴⁷ Specialist courts may be better able to meet victim's justice needs by minimising the risk of secondary victimisation.

New Zealand sexual violence court pilot

New Zealand has developed a sexual violence court pilot in the Auckland and Whangarei District Courts. The sexual violence court pilot aims to minimise the risk of secondary victimisation for victim-survivors by reducing delays and improving the courtroom experience for victim-survivors.

It works as a list of serious sexual violence cases that are being heard within the District Court by a jury. A set of Best Practice Guidelines are used to guide judges who are given specialised training in sexual violence offending. An evaluation of the sexual violence court pilot found that stakeholders considered the pilot to be successful in improving timeliness and trial management practices and reducing the risk of secondary victimisation.

QUESTIONS

How well are the special witness measures working? How can they be improved for victim-survivors or sexual offending?

How well are the Evidence Act 1906 (WA) provisions working to protect victim-survivor privacy and wellbeing? How can they be improved?

Should victim-survivors have access to independent legal advice in relation to protected communications? What model of support may work?

Does the cross-examination process maintain victim-survivors' right to be treated with dignity and respect? How can it be improved?

Should WA introduce ground rules hearings? What model may work?

Should WA introduce specialist sexual offence courts? What model may work?

Sentencing

The accused is sentenced for the sexual offence either when they plead guilty to the offence or are found guilty of the offence by a jury following a trial. The sentencing hearing is about what sentence (punishment/penalty) the offender will receive for committing the offence. The prosecutor and the defence will make submissions to the judge about an appropriate sentence. A victim-survivor may also submit a victim impact statement. The judge will take all the information into consideration and decide on the sentence.

The Law Reform Commission WA is considering the penalties for sexual offences as part of their review of sexual offence laws. You can find more information on their website: Discussion Paper - Project 113: Sexual Offences (www.wa.gov.au).

In this section we look at the sentencing process and ask if it can be improved for victim-survivors.

The sentencing process

Some victim-survivors may be surprised and distressed to discover that the sentencing process is all about the offender. The VLRC identified that victim-survivors need the following information to prepare themselves for the sentencing process:

- the purposes of sentencing and how these relate to the offenders' circumstances
- the duties of the prosecutor at a sentencing hearing
- the purpose and use of maximum sentences and sentence types
- the role of victim impact statements
- the option of applying for compensation or restitution as an additional order against the offender.⁴⁸

If the accused is found guilty of certain sexual offences, the court must make a lifetime restraining order against the accused unless the victim-survivor does not want the restraining order made.⁴⁹

Victim impact statements

A victim impact statement is usually a written document that details the personal harm suffered by a victim-survivor as a direct result of the offence. Personal harm means physical or psychological harm.⁵⁰ It is a chance for the victim-survivor to speak in their own voice about the impact of the offending but it is not compulsory for a victim-survivor to provide a victim impact statement if they do not want to. Victim-survivors may have the option of reading their statement out in court.

The Victim Support Service or the Child Witness Service can help a victim-survivor to write their victim impact statement. It should not be written until the accused has either plead guilty or been found guilty by a jury.⁵¹ A copy of the victim impact statement is provided to the defence lawyer before the sentencing hearing but there are conditions that protect the victim-survivors privacy.

QUESTIONS

How well is the sentencing process working for victim-survivors?

How can it be improved?

You might want to think about:

- if victim-survivors are provided with enough information on the sentencing process and in a way they can understand
- if victim-survivors need more support at sentencing hearings
- if victim-survivors are given enough opportunity to provide a victim-impact statement
- if the form of victim impact statements should be changed and if so how
- if victim-survivors need additional protective measures imposed as part of sentencing.

Post-sentencing

Most offenders who either plead guilty or are found guilty by a jury for a sexual offence that is heard in the District Court are sentenced to imprisonment. This means the offender goes to a correctional facility. Offenders are released from a correctional facility at the end of their sentence or they may be released earlier on parole.

Victim-survivors may feel worried about what happens when the offender is released. In this section we look at what supports are in place to support victim-survivors after the offender has been sentenced and whether the post-sentencing processes, such as parole, consider victim-survivor interests.

Victim Notification Register

Victim-survivors can sign up for the Victim Notification Register (VNR), which is part of the Office of the Commissioner for Victims of Crime, if they want to. The VNR will be able to provide a victim-survivor with the following information:

- details of the sentence imposed on the offender, including their eligibility dates for inclusion in early release programs like home leave or parole
- changes to sentencing of the offender, including any arising from an appeal heard in the courts
- dates for the release of the offender from custody either to bail, to a community supervision order or to freedom
- advice about when the victim-survivor should write to the releasing authorities about any concerns they have about the offender's potential early release
- the completion date of the sentence, or any subsequent return of the offender to custody following a breach of a release order
- notice if the offender escapes from custody and their recapture.⁵²

A victim-survivor can sign up at any time as long as the offender is still under the supervision of the Department of Justice. A victim-survivor can also withdraw from the VNR at any time.

Parole

At some point during their sentence, the offender may be eligible for release from a correctional facility on parole to serve the remainder of their sentence in the community. The offender is usually supervised while on parole and must comply with conditions to remain in the community.

Decisions about whether to release an offender on parole are made by the Prisoners Review Board of Western Australia (the PRB).

Victims-survivors can make submissions to the PRB. A submission must be in writing and must talk about:

- the victim-survivor's opinion of the effect the release of the prisoner will have on them; and/or
- suggestions about the conditions that should apply if the prisoner is released.⁵³

Victim Support Services are able to help victim-survivors with their submission. A victim-survivor only has to make a submission if they want to, or they can choose to have their victim impact statement from the sentencing hearing provided to the PRB. The Victim-Offender Mediation Unit (VMU) can make recommendations to the PRB about the protective conditions that should apply to an offender's release on parole such as an condition that the offender is to have no contact with the victim-survivor.

Other conditions may include exclusions zones such as suburbs, workplaces and local shops or additional people who are not able to contact the victim-survivor. The VMU will talk to the victim-survivor about what conditions they might want.⁵⁴

QUESTIONS

How well is the post-sentencing process working for victim-survivors of sexual offending?

How can it be improved?

You might want to think about:

- if victim-survivors receive enough information about the offender's sentence and possible release in a way they can understand
- if victim-survivors receive enough information about the parole process
- if victim-survivors interests are well represented in the decision-making of the Prisoner Review Board
- how victim-survivors receive support during the parole process and if more is needed.

Support services

In Discussion Paper 1 we talked about the serious impacts that sexual offending can have on the lives of victim-survivors, as well as the fact that moving through the criminal justice system can be a distressing, overwhelming and even re-traumatising experience.

Therapeutic support and advocacy can help to reduce the impacts of sexual offending and getting this support during the criminal justice process can improve justice outcomes, reduce attrition and improve victim-survivors overall experience.⁵⁵

In this section we look at the services that are currently available for victims and some options for reform.

Current services

There are free support services in WA that provide information, emotional and practical support to sexual offending victim-survivors as they move through the criminal justice process. Specialist crisis, forensic medical, and ongoing counselling services are provided by SARC for victim-survivors over 13 years, and the Child Protection Unit at the Perth Children's Hospital for victim-survivors aged under 13 years.⁵⁶ Victim-survivors in regional areas can access phone counselling and support services are available in four regional locations. When victim-survivors make a report, police will refer them to these services. Victim-survivors may also access specialist sexual violence counselling and other support services from private practitioners and non-government organisations.⁵⁷

The Victim Support Service provides support to victim-survivors during the time that a case is in court. They provide information about court matters, help with writing a victim impact statement and can arrange a volunteer to accompany sexual offending victim-survivors in the court room. The Victim Support Service refers sexual violence victim-survivors to SARC for counselling and therapeutic services and does not offer these services in house. They can also refer victim-survivors to other support services based on their needs.

The Child Witness Service helps children and families prepare for court and with writing victim impact statements. They also work with the police and the prosecutors to keep the family informed and help them understand the court process. The CWS does not provide therapeutic counselling in house and makes referrals to SARC or the Perth Children's Hospital Child Protection Unit for specialist child sexual abuse counselling services.

Victim advocates

Sexual Assault Resource Centre, Victim Support Service, Child Witness Service and other community organisations provide much needed services to victim-survivors as they move through the criminal justice process but there may be some gaps in the services the organisations can provide. One option for reform is the introduction of a victim advocate service.

Victim advocates provide a single, consistent source of support to victim-survivors through the whole criminal justice process. Victim advocates have specialist knowledge of sexual offending and its impacts on victim-survivors, the criminal justice process and the support services system.⁵⁸ They provide advice to victim-survivors and empower them to make decisions about what to do.⁵⁹ They may also help victim-survivors engage with support services during the criminal justice process as well as helping them communicate and manage relationships with family and friends. Victim advocates don't provide legal advice or therapeutic counselling services but help victim-survivors to engage with these services if needed.

In the UK, sexual offending victim-survivors receive support from 'Independent Sexual Violence Advisors' before during and after the criminal justice process.⁶⁰ The role of a victim advocate can include speaking up for victim-survivors' rights, providing victim-survivors with information in a way they can understand, communicating with different parts of the system on their behalf and providing emotional support.⁶¹

Reviews of this model have found that it is a cost-effective way to improve support for sexual offending victim-survivors.⁶² One review in the UK found that rape victims who received specialist support were much more likely to have their complaint deemed a crime by police and for it to result in charges, and twice as likely for charges to result in conviction.⁶³

The VLRC and WSJT have recommended using victim advocates to improve outcomes for sexual offending victim-survivors.⁶⁴

Justice facility dogs

Another option to support victim-survivors during the court process are justice facility dogs (sometimes called support dogs or courthouse dogs). Justice facility dogs are trained specifically for a court environment and are used in court and other justice settings to reduce the anxiety and stress for witnesses, victim-survivors and other court users.⁶⁵ Reducing stress improves witnesses' ability to communicate and understand the court process.⁶⁶

In WA, the Department of Justice runs the Justice Facility Dog Pilot Program in the Perth Children's Court WA in partnership with Guide Dogs WA. The justice facility dogs (Winston, Hillman and Millie) and their handler work in the public waiting areas and private witness waiting rooms, interacting with victims, witnesses, families and other court users. The justice facility dogs do not enter court rooms while court is in session.

Endnotes

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Improving experiences
for victim-survivors:
Review of criminal justice
system responses to
sexual offending

DISCUSSION PAPER 3



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Department of **Justice**
Office of the Commissioner for Victims of Crime