



**SOUTH-EAST MONASH  
LEGAL SERVICE INC.**

ADVOCACY COMMUNITY EMPATHY



## SUBMISSION

Prepared by South-East Monash Legal Service Inc. for the  
**Australian Law Reform Commission**  
In relation to the Inquiry into

## **Justice Responses to Sexual Violence**

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## **Our organisation**

Established in 1973, South-East Monash Legal Service ('**SMLS**') is a community legal centre that provides free legal advice, assistance, information and education to people experiencing disadvantage in our community within the City of Greater Dandenong, the City of Casey and the Shire of Cardinia. SMLS operates a duty lawyer service at various courts in Victoria, including Dandenong Magistrates Court, the Children's Court, Federal and Family Court and provides legal representation at courts and tribunals such as the Victorian Civil and Administrative Tribunal, Fair Work Commission, Federal Circuit and Family Court, and Victims of Crime Assistance Tribunal.

SMLS has one of the oldest clinical legal education programs in Australia, in partnership with Monash University's Faculty of Law, whereby law students undertake a practical placement at the legal service as part of their undergraduate degree. SMLS has an extensive community legal education program that is developed in response to feedback from the range of community engagement and community development activities that we are and have been involved in.

SMLS provides integrated, wrap around services through our Support Connect Integrated Program, where clients receive legal assistance, assistance from social workers and financial counselling through a partnership with Good Shepherd. SMLS also has a significant policy, advocacy, and law reform program, contributing to reforms in family violence laws and practices, access to civil procedure reforms, employment law, sexual assault and victims of crime, youth law, gambling and electronic gaming machines and other legal topics relevant to our service delivery and the needs of our community.

## **SMLS and matters involving sexual violence**

SMLS has significant experience and expertise providing legal support for individuals who have experienced sexual violence. Our Integrated Services for Survivor Advocacy (ISSA) program is a 30-year-old Health Justice Partnership that supports victims/survivors recover from sexual assault and/or family violence by supporting them to navigate the legal system. The ISSA program is health justice partnership between [South-east Monash Legal Service](#) (SMLS) and the [South Eastern Centre Against Sexual Assault and Family Violence](#) (SECASA). The program provides legal advice, assistance, and representation to victims/survivors of sexual assault, and family members affected by the assault other than the offender. The service specializes in Applications for Assistance to the Victims of Crime Assistance Tribunal. ISSA is supported by SMLS staff, volunteers and Clinical Placement students from Monash University Faculty of Law. The clinic operates on a referral basis from SECASA. An SMLS community lawyer is also embedded into the SECASA team at the Dandenong Multidisciplinary Centre to provide on-site advice and legal assistance. A lawyer will soon be co-located in the SECASA Seaford office due to the high demand and success of the Dandenong MDC program model. Although the bulk of our experience is working with victims of sexual assault, we also have experience providing legal assistance to people using violence in our work in assisting respondents in family violence matters.

SMLS is also a partner in the Victims Legal Service (VLS), a dedicated, statewide, specialist legal service for victims of crime that launched in March 2023. The scope of the current VLS is to provide free legal

advice and support to people who have suffered injury or loss because of a violent crime, including sexual offences, and who need help to obtain financial assistance through the Victims of Crime Assistance Tribunal (VOCAT) or compensation from the person who committed the crime through a Restitution and Compensation Order under the Sentencing Act 1991 (Vic). We note that these programs will change when the Financial Assistance Scheme (FAS) comes into operation.

SMLS is a provider of employment law services for victims of sexual harassment, through our Advocacy against Sexual Harassment (AASH) Program, a confidential free legal assistance Victoria-wide to low-income workers experiencing vulnerability or disadvantage. The program aims to empower and support workers to navigate the complex, multijurisdictional and sensitive nature of sexual harassment and discrimination claims, including assistance with advocacy and litigation. Our program is Trauma-informed and culturally sensitive, and we build on our long history of assisting victim survivors of sexual assault, assisting most culturally and linguistic diverse communities in Melbourne. We offer our AASH clients holistic support by providing access to our in-house social work and financial counselling support and further legal help with any other workplace disputes as we know legal issues often come in clusters and we know that clients often face barriers to engaging fully with their legal problem.

We also deliver community legal education on healthy relationships with a focus on young people from a CaLD background with various schools and youth services across the southeast. We provide tailored legal education to various community groups and organisations across the region, focussing on women and gender diverse people on temporary visas.

SMLS maintains extensive knowledge of the unique needs and experiences of victim/survivors and significant expertise in issues such as trauma-informed approaches, and the relevant legal expertise to guide them through complex legal systems. Legal systems are frequently retraumatising, but they can also be rehabilitative. Lawyers and legal services therefore have a considerable responsibility – and opportunity – to help support victims in their recovery.

## **Acknowledgement of Country**

SMLS wishes to acknowledge the traditional custodians of this lands upon which our office are located, the Wurundjeri and the Boon Wurrung peoples. We pay our respects to the Elders past, present and emerging. We acknowledge the people, traditions, culture and strength of Aboriginal and Torres Strait Islander peoples, and the fight for survival, justice and country that has taken place across Victoria and Australia.

We sincerely thank the Traditional Custodians for caring for Country for thousands of generations. SMLS recognises the ongoing impact of colonisation, dispossession and racism experienced by Aboriginal peoples. As a Community Legal Centre, we acknowledge the violence of Australian law and its ongoing role in processes of colonisation. We recognise that sovereignty was never ceded, and that this always was and always will be Aboriginal land.

## Terms of Reference and Scope of Submission

SMLS makes this submission in response to the Australian Law Reform Commission's (ALRC) inquiry into Justice Responses to Sexual Violence and the corresponding Issues Paper (Issues Paper). Many of the questions are outside of the scope of SMLS services. We have only provided comments where we were confident that our expertise was a valuable contribution to the subjects raised.

## Acronyms

SMLS	South-East Monash Legal Service Inc.
CaLD	Culturally and linguistically diverse
CIJ	Centre for Innovative Justice
CLC	Community legal centre
ISSA	Integrated Services for Survivor Advocacy
MDC	Multi-Disciplinary Centre
NESB	Non-English speaking background
SOCIT	Sexual offences and child abuse investigations team
VLRC	Victorian Law Reform Commission
ALRC	Australian Law Reform Commission
VOCAT	Victims of Crime Assistance Tribunal

*Please note, names have been changed in all case studies provided, to protect client confidentiality.*

## **Terminology**

### **Aboriginal and Torres Strait Islander peoples**

We acknowledge that there is diversity in terms of the preferred way that First Nations People identify themselves and that for the sake of consistency we will use 'Aboriginal and Torres Strait Islander peoples' throughout.

### **Sexual violence**

For the sake of consistency, we have adopted similar language as the Australian Law Reform Commission describing sexual violence. We have used the term sexual violence to include all sexual activity that happens without consent. We understand this to include sexual offences and non-offences of a sexual nature such as sexual harassment.

### **Clients who have experienced sexual harm and clients who have committed a sexual harm**

Throughout these submissions we have mainly referred to 'clients experiencing sexual violence' and 'victim survivors', we highlight that our perspective is limited to the overall feedback of our clients and is not intended to be an exhaustive account. We acknowledge there is diversity in terms of the preferred terminology when referring to persons who have experienced a sexual violence. Our chosen terminology is not intended to downplay the seriousness of sexual offences. SMLS recognises that sexual harm is a deeply gendered issue, rooted in structural inequalities and an imbalance of power between women and men and other genders, which is reflected in any gendered language used within this report.

### **Person using violence and Users of Violence**

'Person using violence' is adopted in this submission for the sake of consistency. SMLS acknowledges that the terms 'perpetrator' and like terms are complex, in particular SMLS does not recommend using this term for young people who use violence in relationships, at home or against family members nor for women who use force or violence in the context of being victim-survivors of family violence. SMLS acknowledges that many young people who use violence in a relationship or at home have themselves experienced family violence. The service and justice system often do not recognise or address these experiences, trauma and used behaviours.

## Introduction

We thank the Australian Law Reform Commission for the opportunity to respond to the Inquiry into Justice Responses into Sexual Violence. We have based these submissions on our clients' and lawyers' experiences of the justice system. From what we have seen from our casework, we have identified the following recurring themes. These are not intended to be an exhaustive account of the immense diversity in experiences, backgrounds and wishes of persons who have experienced sexual violence or have committed a sexual offence.

Our clients come from a range of backgrounds and have various lived experiences, many have experienced historical child abuse, have a disability, are from diverse cultural backgrounds and/or recently arrived, or on temporary visas. We have seen that these clients face significant risk of feeling like their story is not believed and lack confidence in the justice system. Our clients are devastated when they feel disbelieved by the legal system, compounding their serious trauma.

From the moment our clients engage with the justice system it is imperative that they are treated in a trauma informed way and provided with the support and acknowledgment they need. Feeling heard and seen is a sense of justice in itself for many of our clients. Many do not wish to restore relationships with the person who committed sexual violence. Our clients largely either have no ties or wish to sever ties as part of their path to recovery. Therefore, the acknowledgement, care and support they receive from an authority or representative within the justice system can be far more therapeutic than an expression of contrition from the person committing sexual harm.

In a considerable proportion of our matters, the person committing sexual violence has not been charged. We hear largely the experiences of those who have sought support and redress outside of the criminal justice system. Whilst our legal practice largely assists the person who has experienced sexual violence, our work also involves assisting persons who have committed sexual violence, through for example our work dealing with intervention order matters. Accordingly, we highlight that any reforms should not compromise an accused's right to a fair trial.

***CLCs, like SMLS, play an important role in providing legal assistance to victim-survivors as part of an integrated response. We will continue to call for strong and consistent legislation to protect and support victim-survivors of sexual violence.<sup>1</sup>***

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<sup>1</sup> SMLS 'Advocating for Change in Australia's Response to Sexual Violence' <https://www.smls.com.au/advocating-for-change-in-australias-response-to-sexual-violence/>

## The nature and extent of sexual violence

South-East Monash Legal Service (**SMLS**) continues to see an urgent need to change social norms on family, domestic and sexual violence (**'FDSV'**). Women who have experienced FDSV are frequently stigmatised and are subjected to 'victim blaming'. These attitudes appear to be culturally entrenched and can create significant hurdles to a woman's willingness and ability to seek help.

There needs to be a continuing sensitivity to any unique experiences of women from culturally and linguistically diverse backgrounds. We see an ongoing need for services to be alert to these cultural differences so that women receive support that is tailored and effective. We also have concerns regarding the limited accessibility to services for women and children based in rural and remote areas. We see an urgent need to develop innovative solutions to improve accessibility.

Early intervention and holistic support are critical. Our lawyers report that many of the clients we see (both victims and people who use violence) are seeking therapeutic support before any contact is made with the criminal justice system.

## Recommendations and Law Reform in Victoria

We reiterate our recommendations to the Victorian Law reform Commission's (VLRC) Inquiry *Improving the Response of the Justice System to Sexual Offences*, many of which are relevant at a Federal level. A summary of our recommendations to the VLRC inquiry are as follows:

1. When considering how the justice system for sexual assault can best respond to sexual harm, we recommend a broader understanding of what agencies fall within the definition of the 'sexual assault system' so that it includes not only those agencies which specifically specialise in responding to sexual harm, but also any other agencies which the person may typically interact with in her recovery. This may include Centrelink, Medicare, NDIA, Office of Housing, Child Protection and the Department of Home Affairs.
2. Persons who have experienced sexual harm should have early access to independent legal assistance. Given the CLC sector's unique position as a trusted source for help to the most vulnerable and hard to reach members of the community, any government-funded integrated service model should incorporate the involvement of the CLC sector in its service design and delivery. With the appropriate resource and support, CLCs are well-placed to offer dedicated and holistic legal support to persons who have experienced sexual harm in matters such as advice on participation in criminal justice system, child protection, family violence, migration, workplace rights, debt recovery, rights under the Victim's Charter. We recommend expanding the recently announced Commonwealth limited pilot program that provides legal advice to sexual violence victim-survivors<sup>2</sup>.

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<sup>2</sup> In the 2022-23 Budget, the Australian Government allocated \$8.4 million over three years to pilot specialized and trauma-informed legal services for sexual offence victims in three locations across Australia. Victoria, through DJCS, applied for and was selected to receive this funding, along with Western Australia and the Australian Capital



3. The establishment of co-located services such as the MDC is an effective model for delivering holistic and multidisciplinary support to persons who have experienced sexual harm. To capture those persons who may nevertheless feel a reluctance to approach an MDC given the presence of police, we recommend the expansion of integrated legal services in traditionally non-legal settings which persons ordinarily interact with such as a health or education settings.
4. We recommend that better collaboration and partnerships between agencies may be achieved through identifying shared objectives; agreeing and clearly articulating the respective roles and expectations of each of the agencies; developing a clear understanding of the agreed policies and procedures in circumstances where there may be any tensions between the objectives and functions of the individual agencies; developing a shared monitoring and evaluation framework; developing a consistent message to persons who have experienced sexual harm regarding the limits of the criminal justice system so as to manage the person's expectations; and incorporating partnership management and coordination in the funding of any partnerships or collaboration between agencies. This partnership development work must be supported through appropriate resourcing, in order to ensure the sustainability and impact of any program delivery.
5. The CLC sector should be supported to explore the potential to convert its administrative data into data that could be used for research purposes, with the view of adding to the body of evidence for the ongoing evaluation of the justice system's response to sexual harm.
6. To prioritise research into what specific barriers there may be to persons from CALD or NESB to reporting sexual harm.
7. We recommend prosecution and police develop best practice in relation to communicating to the person who has experienced sexual harm, decisions not to refer a matter to prosecution and resolution decisions.
8. That a rigorous and independent complaints process be available to persons who have experienced sexual harm if they feel their complaints are not appropriately dealt with by police.<sup>3</sup>
9. We recommend the expansion of SOCIT to meet the heavy workload of sexual assault matters and significantly reduce police investigation time spent, especially when dealing with historical sexual abuse.
10. Although the creation of new offences specific to technology facilitated sexual harm may play an important part in expressly signalling the community's intolerance of the conduct, we recommend further work be done in exploring how website operators may be held accountable for removing and limiting the distribution of sexually harmful content.
11. We support the implementation of specialist training and accreditation for all decision makers dealing with matters regarding sexual harm in all aspects of the justice system, not only those within criminal proceedings.
12. Any restorative and alternative justice models must require that the person who experienced the sexual harm be willing and capable to participate. It also needs to be properly resourced with

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Territory. The pilot projects in these jurisdictions are being managed by the Women's Legal Service in WA and ACT, in collaboration with other partners. In Victoria, the project is being led by WLSV, VLA, and Djirra. For more information, visit <https://ministers.ag.gov.au/media-centre/supporting-victims-and-survivors-sexual-violence-piloting-new-legal-services-models-20-09-2023>

<sup>3</sup> Please see our submission to the Inquiry into the External Oversight of Police Corruption and Misconduct in Victoria, and the Police Accountability Project at Inner Melbourne Community Legal Centre for more detail on this.

trained and accredited specialists; include mechanisms to monitor police referrals to restorative justice to ensure referrals made are appropriate and limited to those most matters where prosecution is not suitable; and be rigorously evaluated.

13. That the criminal justice system continues to be complemented by a victim-centred crimes compensation scheme such as the VOCAT whereby the person who has experienced sexual harm has the benefit of a lower standard of proof and has the invaluable therapeutic opportunity of having their experience acknowledged.<sup>4</sup>

We note that the Victorian Government has implemented some of the recommendations from the VLRC Report. These legislative changes include the *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* which implemented 13 of the report's 99 recommendations along with recommendations from earlier VLRC reports. The Act introduced an affirmative model of consent, criminalised stealthing, made image-based offences indictable, introduced 'ground rules hearings' in all cases where a sexual offence complainant is a witness, in certain circumstances, additional considerations required for courts when considering pre-trial cross examination; these are some of the largest changes to sexual violence legislation in recent history.<sup>5</sup>

Whilst these changes are a step forward to better protecting victims of sexual violence, more change is needed. Critically, legal education and cultural awareness is lacking. There is an urgent need for full funding of Community Legal education in schools and an expansion of programs such as the 'Respectful Relationship' program in Victoria. Young people must be educated in plain English promoting healthy and respectful relationships *alongside* education on their rights and responsibilities, and what is lawful and unlawful. This is where we see the importance of Community Legal Education in schools. Community Legal Centres are ideally placed to support schools with this work.

SMLS provides the 'Sporting Change' program, which is a preventative community development program that contributes to young people engaging constructively in the community. The project integrates sports activities and legal education, that engages risk and vulnerable young people through integrating legal education through sport-based engagement strategies. The project employs a lawyer who provides free legal advice and assistance to secondary students, and an education program that provides tailored legal education to students on their legal rights and responsibilities and fostering social change along the way. This integrated approach has provided young people with increased access to justice, and a greater ability to identify their legal issues, and greater confidence in engaging with their community. For example, a session teaching healthy relationships uses Fencing, where prior to participating in a bout, fencers must tap swords, indicating a willingness to participate and start. We use this as an example to teach the concept of affirmative consent.

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<sup>4</sup> SMLS Submission 'Improving the Response of the Justice System to Sexual Offences Review' <https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-submissions-VLRC-Improving-the-response-of-the-Justice-System-to-Sexual-Offences.pdf>>

<sup>5</sup> For a summary of these legislative changes see VLRC <https://www.lawreform.vic.gov.au/all-projects/implementation/>

We stand with the Federation of Community Legal Centres (Vic) and their extensive work and recommendations surrounding Family Violence Reforms. We refer the ALRC to both the FCLC<sup>6</sup> and our own submission<sup>7</sup> into the ‘Consultation: the next stage of Victoria’s work to end family violence’ which both outline a number of recommendations covering strengthening support for victim survivors.

We call for a national harmonisation of affirmative consent laws;<sup>8</sup> the Commonwealth must work with State and Territory Governments to achieve this. Whilst legislative change will help set the framework for change, this is not enough. There is an immediate urgent need for cultural change in Australia across all sectors of society. From schools, to workplaces, religious groups and community organisations, everyone has a role to play. This work requires investment in public education to increase awareness of the prevalence and types of sexual and family violence and to prevent the epidemic of violence continuing.

### Access to justice and enhancing reporting for victims

Sexual violence is a widespread and gendered issue that illustrates the systemic inequalities and unequal power dynamics that persist in our society. A recent VLRC report found that one in five women over the age of 15 have experienced sexual assault<sup>9</sup> and in many cases of sexual violence go unreported for various reasons including a distrust in the criminal justice system, a fear of not being believed or a fear of retribution. In fact, the same report outlined that 85% of cases go unreported.<sup>10</sup> People using violence are not held to account and victims are left feeling no sense of justice. We see women experiencing FDSV may be reluctant to seek support due to concerns of:

- reprisals from the person using violence;
- losing their children to the care of child protection;
- implications for their visa;
- vulnerability to homelessness and financial precarity if they leave an abusive partner; and
- police involvement.

Every individual is different. The justice system must recognise this individuality in its response to sexual violence. Some women who experience FDSV oppose the prosecution of the person using violence or do not report the crime to police. Some want to continue living with the person using violence. There may be cultural or financial reasons for these choices. Often it is because they do not feel comfortable or do not trust the police or have confidence in the criminal justice system. The women may assess their choices as being the safest option of their family. Some women however feel a loss of

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<sup>6</sup> Federation of Community Legal Centres VIC ‘Consultation: the next stage of Victoria’s work to end family violence’ 2024

[https://assets.nationbuilder.com/fclc/pages/835/attachments/original/1710478504/250225\\_FCLC\\_Submission\\_-\\_Family\\_Violence\\_Reforms.pdf?1710478504](https://assets.nationbuilder.com/fclc/pages/835/attachments/original/1710478504/250225_FCLC_Submission_-_Family_Violence_Reforms.pdf?1710478504)

<sup>7</sup> SMLS Submission ‘Submission into the Next Stage of Victoria’s Work to End Family Violence’

<https://www.smls.com.au/wp-content/uploads/2024/05/SMLS-Submission-the-next-stage-of-Victorias-work-to-end-family-violence-.pdf>

<sup>8</sup> SMLS and FCLC (Vic) Joint Submission ‘Submission to the Inquiry into Consent Laws’

[https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission\\_to\\_the\\_Inquiry\\_into\\_consent\\_laws\\_\(Federation\\_and\\_SMLS\)\\_FINAL.pdf?1684207404](https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission_to_the_Inquiry_into_consent_laws_(Federation_and_SMLS)_FINAL.pdf?1684207404)

<sup>9</sup> VLRC Report ‘Improving Justice System Response to sex Offences Report September 2021’

[https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf)

<sup>10</sup> *Ibid*

control to service providers and lose their sense of independence. Others cannot afford to live as a single mother. We see a continuing need to ensure that women feel empowered and supported regarding their choices.

Many of the clients we have who have experienced sexual violence are through our ISSA partnership with SECASA. We often see clients who have initially not reported to police, but through assistance from SECASA have felt supported to report. The process is made simpler for Victim Survivors as some SECASA offices (including those in Frankston and Dandenong) are co-located in multi-disciplinary centres with Victoria Police Sexual Offences and Child-abuse Investigation Teams (SOCIT). We support the integrated multi-disciplinary nature of these centres in providing more holistic support to victim survivors compared to local police stations.

Often our clients do not have enough information on how to report to the police and are alienated from the process. If a report has been made to the police, they are unsure if charges have been laid. Despite victim sharing avenues, many Victim Survivors are unable to get updates on their complaint and are not told if the person using violence has been released on bail. Orange Door and other support agencies are often unable to help complainants obtain this information and/or judgements from the court. This adds to clients' anxiety and frustration when they have no idea of the outcome of their own complaint.

Typically, in Victoria, victim survivors who do make a report will receive a three-page document titled "Notice to the Victim- Important Information" from police in relation to their rights and options, including generalised referrals to other services. This document is in English with no translated options available. Many of our clients do not speak English. Whilst further information may be available online, many of our clients do not use the internet to access this type of information and/or it is not in a language they can understand. Whilst there are some support services that can assist victim survivors, such as InTouch, they are underfunded. Greater resourcing is needed to promote education on preventing and reporting sexual violence across Australia to instigate cultural change.

Our lawyers report that one of the first hurdles to overcome is to explain the definition of family violence, intervention orders and sexual violence to clients. Sexual violence frequently occurs within relationships. Often the first step is to help support clients understand that what has happened is illegal. This may be because of cultural and/or societal norms which have incorrectly created ideas on what is and is not lawful. Concerningly, we have experienced community leaders improperly advise victims that what has happened to them is acceptable and to return to their relationship, to the person using violence of violence- including sports coaches, religious leaders and online influencers. A whole of society approach (for example community organisations, schools, religious groups, language schools, sport clubs, cultural organisations) is needed to dismantle victim blaming and gender imbalance to prevent and respond to sexual violence.

Reporting to police at a police station is not always an option and there must be supported avenues for reporting through other means. We have seen one of the most successful ways of reporting safely is having co-location of services such as legal advice available at family violence services, maternal child

health services, hospitals, schools, courts and SECASA and doctors' offices. Options for online reporting must also be available.

We have also had some clients advise us that that when they have made a report to police the police have taken no action or have told the victim to apply for their own intervention order as there are no 'immediate safety concerns'. Clients are left feeling disappointed by this as they often want the police to apply for an intervention order on their behalf. Clients often feel scared to apply for an intervention order on their own as they do not know whether they will be successful, whether they will be believed or how the other party will react to them applying for an intervention order.

We see a need for specialised reporting in multi-disciplinary centres with social workers working alongside police officers. Our lawyers' experience is that often police officers do not look at victims 'holistically' and they may not have the skills to get the right information out of clients or the skills to create a safe place so that clients feel comfortable making a report. Specialised SOCIT teams working with social workers and in multidisciplinary centres such as those situated with SECASA can help build rapport and trust with victims/survivors and can be a key step in helping clients feel comfortable in reporting to police. Having this wraparound service also ensures that if there are other support services that a victim may need, then they can be referred onto their local community legal centre or support service which can be beneficial for the client to feel heard and validated and empowered to take the next steps they need to.

Those working in the industry and profession (police, magistrates, lawyers and social workers) must also be upskilled and educated to recognize, prevent and respond to sexual violence in a trauma informed culturally safe way. <sup>11</sup>

### **Case study- Mandy**

*"I couldn't have done this without your information, effort and empathy."*

*"I really appreciate the advocacy and how you have given me some hope to pick myself up again after my tragic experience."*

When Mandy sought legal assistance from SMLS last year, it had been decades since the long running violence and abuse first began in the 90s. The violence included many degrading acts of physical abuse, sexual abuse, financial abuse, stalking, threats to kill and coercive control.

The SMLS Integrated Services for Survivor Advocacy (ISSA) team advocated and supported Olivia over the course of a year to make an application with the Victims of Crime Assistance Tribunal (VOCAT). SMLS secured \$48,000 in compensation. Mandy hopes, and we hope too, that this assistance will give her an opportunity to heal through the awarded counselling and medical treatment. She also hopes to

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<sup>11</sup> SMLS and FCLC (Vic) Joint Submission 'Submission to the Inquiry into Consent Laws'  
[https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission\\_to\\_the\\_Inquiry\\_into\\_consent\\_laws\\_\(Federation\\_and\\_SMLS\)\\_FINAL.pdf?1684207404](https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission_to_the_Inquiry_into_consent_laws_(Federation_and_SMLS)_FINAL.pdf?1684207404)

pursue her lifelong personal and professional goals that had been out of her reached from her so long ago.

*“I still have my moments, but I will make use of the opportunity to keep healing, that you have awarded to me.”*

## Police Responses to Reports of Sexual Violence

Our clients have varied responses to reporting to police. Whilst some feel unheard or even report rude and judgmental behaviour from police officers, those that make complaints to SOCIT typically have a more positive interaction and response. Our experience is that the SOCIT team have more specialised training and are more trauma informed than other police departments. Our experience indicates that a victim who directly reports to SOCIT may have a more positive experience of the justice system.

One method to improve relationships of victims with police and is a more diverse police force. To build trust within different communities to encourage people coming forward to report sexual violence to police, we must have a police force with greater diversity and cultural awareness and understanding with officers from a range backgrounds (including CALD, gender, socio economic and sexual orientations). With that diversity we also need training and education the prevalence and types of family violence and sexual violence. Over the last 10 years or so we are seeing a more diverse police force, however it is still predominantly white, male Australians. This change is a slow process. The entrenched racism and sexism within the police force in itself is a barrier to recruiting a more diverse staffing cohort. Many women, gender and culturally diverse people have lived experience of racist and sexist policing, many people feel unsafe seeking help from this system, let alone working within it. No changes to police departments will have the lasting cultural change that is needed without an independent and robust police complaints mechanism such as a Police Ombudsman. This oversight must be independent, well resources, accountable and transparent.

Our lawyers and clients report that police fail to inform victim survivors if proceeding with charges and often do not provide them with copies of their own statements and documents. Often, clients find it hard to get evidence that they have made a police report or spoken to police. Our clients' experiences are often that they do not receive a business card or contact details, or even the name of the person that they have made a report to. This is particularly problematic as it is important for victims to have a copy of their statement as when they make a victim impact statement or a claim for compensation their original report will often help jog their memory on details that they may forget which creates inconsistencies and confusion in future claims for compensation or statements. If a victim survivor wants a copy of their own police statement, they must make a Freedom of Information (FOI) request which creates major delays as the current processing time for a FOI request can be over 39 weeks.

A trauma informed approach to making a police report of any kind, but particularly a report in relation to sexual violence would be the ability control where and when a victim survivor can make a report- to make an appointment with a specialised police team, (such as SOCIT) and be able to request a police officer (for example a complainant may prefer a female plain clothes officer, and to make a report at a

location other than at a police station and at a safe time for the complainant when the offender is not home).

Another major barrier for many of our clients seeking support and information is that police documents provided on how to report a crime or the process once a report has been made, court documents and resources are only in English. If you do not speak or read English, it is nearly impossible to interact with the criminal justice system without further assistance. For example, the Family Violence Intervention Form is not only in English, but it also includes legal jargon, which our English-speaking clients have difficulty understanding. The complex terms must be in plain English, and consideration must be made for those that are deaf, blind or have other disabilities.

An added complexity is that there are often no direct translations for many of the complex legal words into other languages, as many of these legal concepts may be foreign to other countries or cultures. This not only applies to information for victim survivors but also for people who may use violence, legislation explanatory statements must be made clear in plain English, as well as translated in other languages to educate people of their rights and responsibilities.

Information that is made available must also be culturally informed and adapted to what each community needs. Resourcing grass roots organisations to help in this information and education sharing is critical as they are best suited to adapt the resources to suit their local communities.

### [Prosecution Responses to Sexual Violence](#)

Our clients and lawyers report that typically their interactions with prosecution lack a trauma informed approach. There is a general lack of communication, support and consultation with victim survivors. Our lawyers report that there is little to no ongoing communication with complainants in the lower courts, despite complainants requesting updates. Communication is lacking surrounding decisions on whether to proceed or not on charges, reasons for and copies of decisions are not provided, and who or what witnesses are being called. For a victim this is concerning and creates a lack of confidence in the system. One of the most significant moments for many victims is when they are not told why a case is not being pursued or when there has been a finding of not guilty. Victims report that this invalidates their feelings and leaves them feeling unheard and not believed. Having regular communication and information would help inform their decisions around proceeding with victim compensation or civil litigation. It is understandable that a victim survivor would want to know if a person using violence is going to jail or if they are at risk of seeing them in public. However, we do caution against a blanket approach of giving information to all complainants, as this is not always wanted, or trauma informed. If a trial is proceeding, a greater understanding of a victim survivor's needs is key to improving the justice system response. A victim survivor may or may not want regular updates on the trial and any decisions made by prosecution and the reasons for withdrawing some or all charges. A greater sensitivity is needed particularly when charges are being dropped when a trial has already commenced.

Whilst there is an OPP solicitor and Victims and Witness Assistance Service (VWAS) social worker in the upper courts, there is not this same service in the lower courts. There are Court network volunteers who

are able to provide some support to victim survivors attending court, however as a volunteer service their availability and referrals and information still lack resourcing.

The Victims of Crime Commissioner (VCC) can review complaints in relation to decisions of prosecution, it is unclear how often these are made and the outcome of these complaints. A victim survivor of sexual violence is often unwilling to pursue a complaint as they have already been left feeling not believed and that the justice system is working against them. A complaint to the VCC can be retraumatising and it does not guarantee justice or that a matter will be reopened or retried. To further understand work of the VCC and their powers over complaints relating to prosecution decisions we recommend regular auditing of prosecution decisions to identify patterns which affect the decision on whether or not to prosecute.

We call for mandatory trauma training across all prosecution not just those that typically deal with sexual violence or in the specialist courts.

## **Trial Process**

### **'Special measures': procedural changes**

Our lawyers report that the remote witness facility is a positive option for those clients who are witnesses and are not comfortable being behind the wall in Court with the Respondent on the other side, as this can be traumatising and cause them anxiety and distress. However, unfortunately, the remote witness facility is not available at all courts including regional courts.

There remains an urgent need for Magistrates to be more trauma informed as well as educated on up-to-date sexual violence issues and concerns, particularly technology related crimes. Whilst magistrates in the specialist family violence courts have training in family violence matters, all magistrates must be specially trained in violence and sexual violence, given the epidemic of violence against women and children in this country.

Whilst some changes have been made to legislation to better protect witnesses, for example changes to the rules surrounding cross examinations,<sup>12</sup> more work can be done to ensure victim survivors feel protected and confident in the criminal justice system. In 2021 ANROWS examined these legislative changes and made a series of recommendations on further reform, many of which remain relevant, including:<sup>13</sup>

*Recommendation 1: Provide greater clarity and encouragement for judges to use the full suite of available judicial interventions and adjustments irrespective of whether litigants are eligible for the Scheme, including their use in conjunction with mandatory or discretionary application of the Scheme. Complainants need wraparound support.*

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<sup>12</sup> From 10 September 2019, lawyers must conduct all cross-examination where there has been allegations of family violence and personal cross examination has been banned. See s102NA *Family Law Act 1975* (Cth)

<sup>13</sup> ANROWS Submission 'Re: Review of the ban on direct cross-examination under the Family Law Act 1975 (Cth)' 28 May 2021 <https://anrowsdev.wpenginepowered.com/wp-content/uploads/2023/04/ANROWS-Direct-cross-examination-review-submission.pdf>



*Recommendation 2: Provide judges with domestic and family violence professional development and support to help ensure procedural fairness and evidence-based, safety-focused decision-making relating to the discretionary application of the Scheme and the use of interventions and adjustments.*

*Recommendation 3: Set out in section 102NA of the Family Law Act 1975 (Cth) that safety of victims and survivors must be the guiding consideration in the exercise of judicial discretion. The National Risk Assessment Principles for Domestic and Family Violence (2018) provide a good basis for evidence-based judicial decision-making in this area.*

*Recommendation 6: Ensure that geographic location does not impact the availability of alternative means of giving testimony or other safety measures.*

The ANROWS report further identified the need for a greater awareness of abuse happening in the court room and a manipulation of court processes and systems abuse:

*ANROWS evidence continues to emphasise the impact on women experiencing domestic and family violence when courts, knowingly or unknowingly, permit abusive behaviours to take place. One self-represented litigant interviewed for the Wangmann et al (2020) study complained that while the judge did prevent the father from asking certain questions in his personal cross-examination of her, he did not “address . . . the fact that there was family violence being played out in the court . . . the impact on me and my family was almost irrelevant” (p. 145). Another research participant described the legal systems abuse she endured as worse than anything her former partner had done to her, which included rape, because it meant that she had “no faith in the law at all anymore” (Wangmann et al., 2020, p. 145). Losing faith in the protective power of the law can have serious consequences for women with experiences of domestic and family violence (Salter et al., 2020). In a research report entitled, “A Deep Wound Under My Heart”: Constructions of Complex Trauma and Implications for Women’s Wellbeing and Safety From Violence, participants “spoke extensively of their contact with the family court system and the ways in which their ex-partners manipulated court processes as part of campaigns of harassment and control” (Salter et al., 2020, p. 106). This evidence, which also examined the women’s experiences with criminal justice processes, found similar themes emerging from the women’s encounters with the Family Court. The themes were that the women were “frequently not believed or supported, disempowered and then left all the worse for the legal process, all of which is re-traumatising” (Salter et al., 2020, p. 107).<sup>14</sup>*

We see an urgent need for resourcing of support services for victims - before court, during court proceedings, and after judgement. Many victim survivors may need longer ongoing support and may only be ready to accept this support much later in their journey after the court proceedings are over. There should be ongoing support and this support must be as integrated as possible to prevent or limit the potential for retraumatising a victim by having them repeat their story over and over again. Victim survivors need to feel a sense of continued support.

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<sup>14</sup> *Ibid*

## Cross-examination and the law of evidence

Cross examination can be distressing and retraumatising for many victim survivors. It can be one of the reasons why many do not come forward to make a complaint. The *Justice Legislation Amendment (Sexual Offences and Other Matters) Act 2022* implemented the VLRC recommendation surrounding the additional considerations a court must make in relation to pre-trial cross examination of a witness who has cognitive impairment or is complainant in a proceeding that relates to a charge for a sexual or family violence offence.<sup>15</sup> Whilst in family law and family violence matters a witness cannot be cross examined by a person using violence<sup>16</sup> or cross examined in certain sexual offence cases<sup>17</sup> these are fairly recent changes and we reiterate Recommendation 10 of our joint submission to the ‘Inquiry into Current and proposed sexual consent laws in Australia’<sup>18</sup> that the Commonwealth Government work with State and Territory Governments to improve the criminal legal system’s response to victim survivors, including reducing the risk of re-traumatisation of victim-survivors during cross examination and ensuring a respectful environment in court.

We reiterate our position as outlined in our joint submission with FCLC:

*While there are currently limits (in the Victorian context) on improper questioning during cross-examination, the VLRC recommended further reforms to ensure that victim-survivors feel respected at trial.<sup>19</sup> For example, the VLRC recommended that a ‘ground rules hearing’ take place before a victim-survivor gives evidence. This involves the prosecutor, defence counsel and judge discussing what needs to happen at trial to ensure the proper and respectful treatment of the victim-survivor.<sup>20</sup> It was suggested that this cover the rules and tone of cross-examination, including the parameters of questioning so it is not improper or irrelevant and the scope of questions (particularly for sensitive topics to reduce retraumatisation), as well as any other ways to establish a sensitive and respectful environment.<sup>21</sup> It was also considered that there should be a focus on the victim-survivor’s needs and preferences.<sup>22</sup> The victim advocate or the victim-survivor’s legal representative should be entitled to be involved in this discussion.<sup>23</sup> Having these discussions early will make it easier for judicial officers to stop inappropriate questions, and help ensure the respectful treatment of victim-survivors.<sup>24</sup>*

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<sup>15</sup> Recommendations 45 and 46 of the Report, reiterated in the VLRC Sexual Offences report.

VLRC Report ‘Improving Justice System Response to sex Offences Report September 2021’

[https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf)

<sup>16</sup> S102NA *Family Law Act 1975* (Cth) introduced by *Family Law Amendment (Family Violence and Cross-examination- of Parties) Act 2018*

<sup>17</sup> S123 *Criminal Procedure Act 2009*

<sup>18</sup> SMLS and FCLC (Vic) Joint Submission ‘Submission to the Inquiry into Consent Laws’

[https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission\\_to\\_the\\_Inquiry\\_into\\_consent\\_laws\\_\(Federation\\_and\\_SMLS\)\\_FINAL.pdf?1684207404](https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission_to_the_Inquiry_into_consent_laws_(Federation_and_SMLS)_FINAL.pdf?1684207404)

<sup>19</sup> VLRC Report, p.456, 460.

<sup>20</sup> Ibid, p.461.

<sup>21</sup> Ibid, p.461, 463.

<sup>22</sup> Ibid, p.462.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid, p. 461.

There has been some positive law reform in Victoria prohibiting the introduction of victim sexual history or mental health history. Building on this, we call for greater training of all lawyers including criminal defence lawyers to be trauma informed and ensure that a court room is safe for victims. We support the VLRC recommendation that *The Victims' Charter Act 2006 (Vic)* be amended that 'the right to be notified of applications to introduce confidential communications or evidence of sexual history and, as recommended, the right to be heard on those applications and to funded legal advice and representation for those applications'.<sup>25</sup>

We have concerns about the ability of people who use violence to examine complaints under an application to retain possession of a firearm and also the ability to possess a firearm in general. In Victoria under a final Intervention Order, a Respondent becomes a prohibited person under the *Firearms Act 1996*, which means they must surrender any firearms they possess and are banned from owning a gun for the period of the IVO plus 5 years. However, the respondent is able to make an application<sup>26</sup> within 3 months of the final IVO to be considered a 'non-prohibited person' through the Magistrates' court. This can lead to a hearing where the Respondent can ask the AFM any question they like, which can be extremely re-traumatising. Urgent reform is needed to prevent the respondent being able to call on and examine an AFM as a witness, and also remove the notification of the ability to appeal the prohibited person classification to keep possession of a firearm.

## Interpreters

Many of our clients are from Non-English-Speaking Backgrounds (NESB) and require an interpreter. Whilst most courts provide interpreters, we come across situations where we cannot access an interpreter for a rare language, and a shortage of interpreters including Auslan interpreters.

The VLRC report heard from Sexual Assault Services Victoria and their experience that "there was no 'systematic process for how police respond when someone wants to report, and they need an interpreter'<sup>27</sup>. They described examples of police refusing to provide Auslan interpreters, police using friends of victim survivors to interpret, and police taking statements from people with limited English language skills.<sup>28</sup>" In our experience, we have also seen police use family members or even children of victims to translate for the victim.

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<sup>25</sup> Recommendation 9 VLRC Report 'Improving Justice System Response to sex Offences Report September 2021' [https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf)

<sup>26</sup> s189 *Firearms Act 1996*

<sup>27</sup> Submission 17 (Sexual Assault Services Victoria). VLRC Report 'Improving Justice System Response to sex Offences Report September 2021' [https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf)

<sup>28</sup> Ibid

We have also seen an occasional issue with interpreters accepting a ‘job’ when it is not the language they are trained to interpret. This can have profound consequences, including contributing to the over-representation of First Nations people in the criminal justice system.<sup>29</sup>

*Delayed access to an interpreter can also leave Aboriginal women in particular in vulnerable situations. Caitlin Weatherby-Fell, the CEO of the Top End Women's Legal Service, says delays in hearing cases due to interpreter shortages can be particularly dangerous for women who experience domestic, family and sexual violence.*<sup>30</sup>

This is a “form of systemic racism”<sup>31</sup>, and as Caitlin Weatherby-Fell, the CEO of the Top End Women's Legal Service, describes it, ‘It's this rhetoric of white Australia saying that English is the only language and if you live here, that's the language that you should speak — as opposed to acknowledging that there are languages that have existed for thousands of years.’<sup>32</sup>

We have also had reports from our lawyers of interpreters struggling to convey what sexual violence is, refusal to use precise language, or misinterpret or skip over important legal concepts, including marital rape. Often, we only notice these issues if a relative has overheard the interpretation and reported back to us or if our own lawyers can understand the client’s native language and have noticed inconsistencies in what is being translated. Having a highly skilled interpreter contributes to a more positive experience for victim/survivors.

Adequate funding, training and resourcing is needed to recruit interpreters, particularly of First Nations languages, however careful consideration must be placed in why it is difficult to attract interpreters in the first place, including the distrust of a system which has contributed to the ongoing harm experienced by First Nations people. We see the need for further training of interpreters in basic legal concepts, particularly concepts surrounding family violence and sexual violence and perhaps the need for specialist accredited interpreters. We support VLRC Recommendation 61 for a review of language

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<sup>29</sup> ABC Listen, Kristina Kukolja, ‘Justice, but not in my language: Aboriginal interpreter shortage in NT courts’ 9 January 2024 <<https://www.abc.net.au/listen/programs/lawreport/aboriginal-interpreters-/102961146>>  
ABC News, Kristina Kukolja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

<sup>30</sup> ABC News, Kristina Kukolja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

<sup>31</sup> Leanne Liddle, Director of the Aboriginal Justice Unit in the Territory Attorney General's Department quoted in ABC News, Kristina Kukolja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

<sup>32</sup> ABC News, Kristina Kukolja, ‘Chronic shortage of Indigenous interpreters in Australia's legal system risks violating human rights’ 11 August 2023 < <https://www.abc.net.au/news/2023-08-11/law-report-investigates-indigenous-court-interpreter-shortages/102696730>>

service arrangements, including investing in the training of and extending the pool of interpreters dealing with FDSV.<sup>33</sup>

### Specialisation and training of Judges and Counsel

We support the further training of all the judiciary on sexual violence and family violence. Magistrates regularly change court locations and specialisations. This is not an issue happening in a vacuum and there is an opportunity for all magistrates and judges to reflect, be aware of and respond to perceived or real threats of sexual violence in a culturally safe and trauma informed manner. There will always be cultural nuances to family and sexual violence that requires continued training and understanding by those working in the sector, and these can vary from each court location. We work and service one of the busiest family violence courts in Victoria and we see the need for a bench that is culturally attuned to the community it serves. We also see benefits of a stable bench to provide consistency and continuity of service to the community, rather than a bench that is changing regularly on a rotational basis. We continue to call for the Commonwealth Government to work with State and Territory Governments to ensure that best practice training is delivered to police, judicial officers, first responders and legal professionals on an ongoing basis.<sup>34</sup>

### Case Study - Steph

*Our client 'Steph' was seeking 6 intervention orders from family and community members who have threatened her with forced marriage and death threats. On two occasions a magistrate was dismissive of Steph's experiences and concerns; dismissing the client's concerns as quote 'a cultural' issue. This client was left feeling invalidated and let down by the process. Our lawyer was concerned with the magistrate's views of what they considered acceptable or 'cultural' differences and persisted on putting forward Steph's real and valid fears of harm.*

There is also an urgent need for further funding and resourcing of community legal centres to be able to continue to provide specialist legal advice and representation in sexual violence matters (both criminal and civil). Across the sector, centres are facing a critical breaking point of trying to service as many clients as possible and having to turn away vulnerable people.<sup>35</sup> Family and sexual assault lawyers are

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<sup>33</sup> VLRC Report 'Improving Justice System Response to sex Offences Report September 2021'

[https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC\\_Improving\\_Justice\\_System\\_Response\\_to\\_Sex\\_Offences\\_Report\\_web.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf)

<sup>34</sup> SMLS and FCLC (Vic) Joint Submission 'Submission to the Inquiry into Consent Laws'

[https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission\\_to\\_the\\_Inquiry\\_into\\_consent\\_laws\\_\(Federation\\_and\\_SMLS\)\\_FINAL.pdf?1684207404](https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1684207404/Submission_to_the_Inquiry_into_consent_laws_(Federation_and_SMLS)_FINAL.pdf?1684207404)

<sup>35</sup> Amy Dale, LSJ Online 'The time to act is now': call for urgent funding to address violence against women' 30 April 2024 <https://lsj.com.au/articles/the-time-to-act-is-now-call-for-urgent-funding-to-address-violence-against-women/>

Nino Bucci, The Guardian 'National Legal Aid calls for \$300m funding increase to keep Australian women safe' 30 April 2024 <https://www.theguardian.com/australia-news/2024/apr/30/national-legal-aid-calls-for-300m-funding-increase-to-keep-australian-women-safe>

particularly susceptible to vicarious trauma and burnout and this is turning many away from the specialty.<sup>36</sup> Our lawyers on the duty lawyer lists dealing with FVIO are dealing with such a great demand for advice that they are reaching capacity every day, and are having to rush through 10, 15 or even more clients on their daily list and left feeling exhausted and like they are unable to provide the level of care and expertise they could if they were better resourced and supported to have more lawyers on the duty lists.

There is a need for further education and mandatory professional development of all lawyers to better recognise and respond to family and sexual violence and should form part of law school curriculum. These issues are not occurring in a vacuum and the legal profession well placed to recognise and assist in a trauma informed way, contributing to cultural and societal change. At a minimum, lawyers that appear in family violence, sexual violence matters should have training to provide assistance in a culturally safe and trauma informed manner. We support the VLRC Recommendations that the Government should fund and develop training for police, judges, lawyers' magistrates on the prevalence, of sexual violence, the effects of trauma and the barriers to disclosure,<sup>37</sup> and that only accredited counsel that have been trained may appear for the prosecution or legal aid cases.<sup>38</sup>

## Sentencing

Our clients' experiences surrounding Victim Impact Statements (VIS) varies depending on what support they have had prior to and during the preparation of a VIS. Some informants have sent our clients who are a victim of horrific sexual violence home to prepare a VIS with no further support or assistance in preparing a statement. This can be extremely distressing for some, as they do not know what to write or how to structure their statement to express what they would like to say. The VIS process is not user friendly and does not take into consideration language, cultural and literacy barriers. When supported to do so, victims often find the process therapeutic. However, there is a greater need for resourcing for Victim Services, including the resourcing of building partnerships with legal assistance services to ensure that liens can receive holistic support including legal advice regarding their VIS. At Court, our experience is that Magistrates do give VIS appropriate consideration and victims are given the choice to read out or have their VIS read out for them.

We recommend independent legal advice for victim survivors during the entire court process, including pretrial and trial period, to support and provide advice on the legal processes and procedures, and the

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Giovanne Torre, National Indigenous Times NIT 'Funding to tackle family and domestic violence welcome, but falls short' 1 May 2024, <https://nit.com.au/01-05-2024/11146/funding-to-tackle-family-and-domestic-violence-welcome-but-falls-short>

Dechlan Brennan, National Indigenous Times NIT' Djirra criticises Victorian budget for "failure" to invest in Indigenous women and children's safety', 13 May 2024 <https://nit.com.au/13-05-2024/11361/djirra-criticises-victorian-budget-for-failure-to-invest-in-indigenous-women-and-childrens-safety>

<sup>36</sup> Kate Lyons, The Guardian 'I couldn't do it any more': family lawyers quit amid burnout and pain of billing DV victims' 20 May 2024, <https://www.theguardian.com/society/article/2024/may/20/i-couldnt-do-it-any-more-family-lawyers-quit-amid-burnout-and-pain-of-billing-dv-victims>

<sup>37</sup> Recommendation 69 VLRC Report

<sup>38</sup> Recommendation 71 VLRC Report

victims options and assist with preparing their VIS. We also recommend improving the sentencing process with greater communication with victims and providing them with updates and outcomes of hearings.

## Civil proceedings and other justice responses

### Workplace laws

We refer to our joint submission ‘Addressing sexual harassment in Victorian workplaces’ with WEstjustice<sup>39</sup> and note that many of our recommendations remain relevant despite the implementation of recommendations related to the Respect@Work Report. Gender imbalance in the workplace remains a significant underlying cause of sexual harassment and more is needed to be done to break down the gender and power imbalances at play across Australian workplaces. We also endorse WEstjustice’s submission to this inquiry.

Our lawyers’ report that clients’ experiences and willingness of reporting or not reporting workplace sexual violence (including sexual harassment) is dependent on a number of factors. These factors include:

1. The reaction or support from an employer in relation to a complaint of sexual violence in the workplace
  - a. If there is an obvious gender and power imbalance, or a culture of toxicity and a culture of victim blaming at the workplace, a client who has experienced sexual violence may be unwilling or apprehensive to make a complaint. A deterrent to making a complaint is the risk of the victim survivor losing their job or being moved to another team (rather than the person using violence being moved or terminated from their employment). Conversely, if there are trauma-informed safe practices at the workplace that encourage a victim survivor to come forward and they are provided the support needed to go through the processes of a complaint, this contributes to a greater level of engagement with the internal complaints processes of a workplace.
  - b. If the employer/workplace does not conduct an investigation when a complaint is made, or the victim survivor perceives that their employer or a third-party investigator is not conducting an appropriate investigation, has not been properly supportive or engaged in trauma informed procedures, makes a finding that no sexual harassment occurred or did not take reasonable prompt action in the eyes of the client (for example, continuing to employ the person using violence even if there is a finding of sexual harassment), this can have a severe impact on a victim survivors’ willingness and ability to continue working at that workplace, and can lead to soured relations. Often a victim survivor will feel like they have no choice but to resign.

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<sup>39</sup> SMLS and WEstjustice Joint Submission ‘Submission: Addressing sexual harassment in Victorian workplaces’ [https://www.smls.com.au/wp-content/uploads/2021/08/210809-WJ\\_SMLS\\_Submission\\_Vicgovt\\_addressing\\_sexual\\_harassment.pdf](https://www.smls.com.au/wp-content/uploads/2021/08/210809-WJ_SMLS_Submission_Vicgovt_addressing_sexual_harassment.pdf)

- c. Anecdotally, our lawyers see that some clients are more likely to take further legal action against the employer and the person harassing them to obtain a sense of justice if no outcome is achieved through internal procedures or if their complaint has been ignored. This is particularly so if victimisation or an adverse action occurs in relation to the complaint.
2. The fear of re-traumatisation
    - a. A fear of not being believed, the stigma attached to making a complaint, and the possibility of re-traumatisation can result in victim survivors being unwilling to make a complaint or engage in the civil justice system or can lead to disengagement of a complainant.
    - b. The legal proceeding process can also be re-traumatising, and many clients carefully consider making a complaint and taking legal action alongside the need to appear in person or on camera and have to engage in a scary and unknown legal process and potentially face their perpetrator or an unsupportive employer.  
*We recommend trauma informed practice training for all court (including front of desk staff, registrars, members and magistrates) and tribunal (including AHRC, VEORHC, VCAT (Victorian Civil and Administrative Tribunal) and other State and Territory tribunals) staff who handle sexual harassment complaints.*
  3. A delayed and prolonged complaint processes in both Federal and State and Territory jurisdictions deters complainants from taking civil remedy measures
    - a. Access to justice is delayed by severe backlogs at the Federal, State and Territory human rights commissions and tribunals.
    - b. Civil complaints of sexual violence are often delayed by criminal proceedings that run simultaneously as many jurisdictions will wait for the criminal proceedings to be finalised before scheduling conciliations.
    - c. There are also lengthy delays in civil proceedings and scheduling a conciliation scheduled takes time. Our clients are left feeling unheard and whilst they wait for proceedings to commence, they have to continue working in the workplace, take unpaid leave or feel forced to resign. If a matter is not successful under state (for example VEOHRC) and federal tribunals (AHRC and FWC) then the complainant has to either decide to pursue the matter in court, which takes more time, money and energy, or 'give up'.
  4. Costs to commence legal proceedings and the risk of adverse costs orders
    - a. The cost involved in making a civil complaint in relation to sexual harassment or civil claim of sexual assault is prohibitive and remains a barrier to civil justice remedy options available to a victim survivor. Many victim survivors are not in a position to be able to make a claim. As discussed above, legal proceedings are complex and difficult for self-represented litigants to navigate.
    - b. The potential for facing adverse costs in the Federal Circuit and Family Court or Federal Court poses a significant obstacle for victim-survivors seeking justice, particularly those in low-wage or unstable employment situations. This risk involves the prospect of having to cover the legal expenses of the perpetrator or their employer if the victim-survivor's claim is unsuccessful, deterring many from pursuing legal action. The Federal



Government has introduced a proposed equal access costs framework aimed at eliminating the possibility of costs being imposed on victim-survivors. We support this initiative and are anticipating the passage of the Australian Human Rights Commission Amendment (Costs Protection) Bill 2023 into law, particularly following the Senate Standing Committee on Legal and Constitutional Affairs' February 2024 report recommending its approval by the Senate.

5. The need to request a suppression order for complaints made through the AHRC.
6. Limitation of Remedies, Enforcement of orders and Settlement agreements
  - a. The remedies available for sexual harassment are limited and often do not sufficiently correlate with the trauma suffered by the victim.
  - b. In the Fair Work Commission, under the *Fair Work Act* 2009 an individual can make an application for an Order to stop Sexual harassment. This deals with sexual harassment that has occurred and is at risk of continuing to occur. We note that these orders are largely untested. If, for example, the risk is no longer there or the employee is no longer working for the employer, such an application would fail. The individual would need to look at other avenues such as the AHRC and other anti-discrimination bodies to make a complaint.
  - c. Provisions that protect the right to commence investigations/proceedings for discrimination and sexual harassment at the workplace separate from other workplace or dismissal proceedings, so settlement deeds for dismissal proceedings cannot oust this right would better protect individuals. This is already the case for workers' compensation and compulsory superannuation contributions, both of which cannot be contracted out of in a deed of settlement or release.
  - d. Even with a deed of settlement or court awarded order, enforceability of compensation is a barrier to justice faced by many victim survivors. There is no quick and guaranteed avenue for enforcement, and the only options available are lengthy court proceedings to try enforce an order, which may further traumatise a victim survivor and lead to disengagement from the civil justice system. Enforceability also comes at the cost of the victim survivor themselves which may or may not be recovered.
  - e. The misuse of NDAs in sexual harassment settlements has been the topic of conversation and reporting both domestically and internationally, and many recommendations and guidelines have been developed across Australia to uphold legal professional standards.<sup>40</sup> There remains a need for regulated or standardised Non-Disclosure Agreements in workplaces when it comes to sexual harassment matters. NDAs are often misused; working to protect the employer's reputation and in turn (advertently or inadvertently) the person using violence' reputation with little regard to the sense of justice afforded to the victim.<sup>41</sup> The Victorian Government established a Ministerial Taskforce on Workplace Sexual harassment to develop reforms that will

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<sup>40</sup> Regina Featherstone and Sharmilla Bargon, The University of Sydney Law School, 'Let's Talk about Confidentiality' 6 March 2024 < [https://rlc.org.au/sites/default/files/2024-03/Let%27s%20talk%20about%20confidentiality%20final\\_0.pdf?utm\\_source=beehiiv&utm\\_medium=newsletter&utm\\_campaign=the-most-trusted-brand-in-australia-is](https://rlc.org.au/sites/default/files/2024-03/Let%27s%20talk%20about%20confidentiality%20final_0.pdf?utm_source=beehiiv&utm_medium=newsletter&utm_campaign=the-most-trusted-brand-in-australia-is)>

<sup>41</sup> *Ibid*

better prevent and respond to sexual harassment in workplaces including limiting the use of NDA's. The Taskforce made a number of recommendations, including introducing legislation to restrict the use of NDAs using international models for reform including the Irish Employment Equality (Amendment) (Non-Disclosure Agreements) Bill 2021 and lessons from the United Kingdom and United States. The Victorian Government has accepted this recommendation in principle.<sup>42</sup> These workplace reforms should be harmonised across all Australian States and territories to create a consistent approach to the problems created by the misuse of NDAs.

## Compensation schemes

SMLS has been providing Victim legal support since 1995. Much of this work is legal advice and assistance of victim survivors of sexual violence including representation in claims for compensation to the Victims of Crime Tribunal (VOCAT)<sup>43</sup>. Whilst we successfully make applications to VOCAT for a claim of compensation, we do have clients who are out of time to make a claim<sup>44</sup>. There are numerous reasons and barriers for delays in reporting abuse and violence. A summary of our concerns with the new FAS (Financial Assistance Scheme) scheme and the Victims of Crime (Financial Assistance Scheme) Act 2022 and our calls for law reform include:

1. Remove the requirement for mandatory police reporting;<sup>45</sup>
2. Remove the requirement to take into consideration the character and past criminal activity of the victim-survivor;<sup>46</sup>
3. Enshrine within the Act the prescribed categories of primary victims exempt from any requirement to prove injury;<sup>47</sup>
4. Remove the requirement for 'exceptional circumstances' for recovery-related expenses;<sup>48</sup>
5. Oppose the requirement to repay interim assistance payments;<sup>49</sup>
6. Introduce mandatory referral to legal representation when appealing a decision;
7. Introduce a requirement that victim recognition meetings are conducted by someone with authority and standing, who holds the same or similar weight as a Tribunal member.

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<sup>42</sup> Victoria Government, Ministerial Taskforce on Workplace Sexual Harassment, <  
<https://www.vic.gov.au/ministerial-taskforce-workplace-sexual-harassment>>

<sup>43</sup> To be replaced by the Financial Assistance Scheme in 2024.

<sup>44</sup> Currently 2 years under the VOCAT scheme (s29 *Victims of Crime Assistance Act 1996*) and 3 years under the new scheme that will come into effect in 2024.

<sup>45</sup> S31 *Victims of Crime (Financial Assistance Scheme) Act 2022*

<sup>46</sup> S33 *Victims of Crime (Financial Assistance Scheme) Act 2022*

<sup>47</sup> S31 (2) (b) *Victims of Crime (Financial Assistance Scheme) Act 2022* provides that the reporting requirement does not apply to those who are a person in a special reporting category. S3 defines special reporting category means a category of persons prescribed to be a special reporting category;

<sup>48</sup> S10 (3) *Victims of Crime (Financial Assistance Scheme) Act 2022*

<sup>49</sup> S34 (4) (a) *Victims of Crime (Financial Assistance Scheme) Act 2022*

### **Case Study- Olivia**

*Olivia\* was the victim of a violent rape by a distant relative when she was a teenager. The offender was convicted and received a prison sentence. The sexual assault and the lack of support from her family had a devastating effect on Olivia's life. She dropped out school, left home and lived in temporary housing. Olivia suffers from a range of psychological issues including Post Traumatic Stress Disorder, depression, nightmares, and memory loss which are directly linked to assault. Olivia found work in retail but has had difficulty in holding a job due to her mental health. In 2019, Olivia was referred to us by South East Centre for Sexual Assault and Family Violence (SECASA). Olivia thought that she was too late to apply for compensation as the rape had occurred more than 20 years ago, but the counsellor at SECASA told her that she may still be able to make a claim. SMLS was able to help Olivia by lodging an application for assistance with the Victims of Crime Assistance Tribunal (VOCAT) as a primary victim. In early 2020 VOCAT made a final award. Olivia received a cash payment in recognition of her suffering as a victim of crime. Olivia used the cash payment to purchase a second hand car. Olivia also received an award for psychological counselling and yoga classes with a gym near her.*

### **Case study- John**

*John\* was raped by his father from the age of 3 to 14 years. His father was physically violent and often drugged John before the sexual assaults occurred. John was also present on one occasion when his father raped John's little sister. John's parents separated when he was a teenager, and he became estranged from his father. John struggled with significant psychological issues as a result of childhood abuse and sought treatment when he was in his 30s. After years of treatment, John garnered the strength to report the abuse to the police. The police interviewed the offender and were preparing to lay charges when the offender took his life. In his suicide note, the offender made reference to John's allegations of sexual abuse. There was a coronial inquest into the death of John's father and, despite the police investigation that was occurring at the time of the suicide and that the sexual abuse was specifically referenced in the deceased's suicide note, no references to John nor the accusations of abuse were made in the coroner's findings. John was left feeling invisible and unheard by the coronial inquest. Due to the death of his father, no criminal prosecution ensued despite the police view that the prosecution case had appeared strong and likely to result in a conviction. John was therefore denied any recognition through the criminal justice system. John's father died intestate and John's step-mother inherited the entirety of the estate. John and his two siblings were not acknowledged in the distribution of the estate. With support from a lawyer, John lodged a VOCAT application. The Tribunal offered to resolve John's application by way of section 33 determination (i.e., without a hearing) on the basis that all expenses claimed would be paid. However, John felt very strongly that he wished to appear before the Tribunal to "tell his story". Having a chance to be heard was important to him as he felt he had been denied this opportunity through every other legal process he had encountered. Correspondence was sent to the Tribunal explaining that John desired the hearing for therapeutic reasons and to feel that finally, he had been heard and the impact of the crimes upon him had been recognised. He finally was to get his "day in court" which meant more to him than the monetary award he had been offered. John's case illustrates the strength of a system in providing an avenue for emotional healing that could not be equalled by an impersonal, administrative process.*

## Victims' charters

In our Response to the 2022 Consultation on the Victims Charter Guidelines by the Victims of Crime Commissioner we outlined our feedback and concerns to victims' interaction with the Victims Charter. In our submission we discussed that, in our experience, optimising a client's experience with the justice system has a therapeutic possibility of contributing to a client's recovery. This approach must be individualised for each person and preparation and communication is key in ensuring trust is maintained. In our response to the Consultation, we raised the following concerns:

*Our specialist lawyers are often required to relay decisions that are often upsetting and insulting to our clients as they do not acknowledge the majority of the victims' experiences. In these situations, our lawyers balance demonstrating empathy for the client with frank and factual discussions including the systemic issues that resulted in such a decision. They set out all the attempts made to ensure the clients' stories were articulated and put forward and ensure that at a bare minimum we have heard that victim and put forward everything they have wanted to present in the way that it was told to us. Victims look to our system for a sense of 'justice'. 'Justice' means different things for each victim.*

*The Centre for Innovative Justice ('CIJ') have categorised 'justice needs' as follows:*

- *Voice - The need or desire to tell the story of what happened and its impact*
- *Validation - To have others believe and affirm their experience*
- *Information - The need to understand more the circumstances of the crime or harm, about what happened and why*
- *Accountability - May encompass punishment, public acknowledgement, apology/expression of remorse, other forms of recompense/reparation*
- *Relationships - To restore damaged relationships with others involved in or affected by the crime or harm, family members and the community*
- *Prevention - To see that what happened to them does not happen to anyone else and, To address the circumstances that contributed to the crime or harm*
- *Resolution - To feel that what needs to happen in order for the crime to be addressed has occurred<sup>50</sup>*

We also discussed in detail how communication and information sharing is critical for victim 'participation' and a sense of justice:

*Up-to-date, accurate communication is vital to ensure that a victim's rights under the Charter are being upheld. Too often we are hearing clients that have felt that they have not been listened to or feel alienated from the process by police. We recommend further reforms to ensure that victims feel that they are participating and that their rights are being upheld.*

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<sup>50</sup> Centre for Innovative Justice Response to Issues Paper: Improving victims' experience of summary criminal proceedings <[https://cij.org.au/cms/wp-content/uploads/2021/12/cij-response-to-issues-paper-victims-experienceof-summary-criminal-proceedings\\_part-1\\_rj.pdf](https://cij.org.au/cms/wp-content/uploads/2021/12/cij-response-to-issues-paper-victims-experienceof-summary-criminal-proceedings_part-1_rj.pdf)> p4

We agree with the suggestion by the CIJ that best practice may include:<sup>51</sup>

- a. Early and regular contact with the person who has experienced a crime;
- b. Explain the prosecutor's role and duties, the prosecution process, possible outcomes,
- c. manage expectations, express empathy and acknowledgment of the harm experienced by
- d. the victim;
- e. Transparency;
- f. Communicate uncertainty of proceedings;
- g. Forewarn the person that a plea offer may be made in circumstances where a quick
- h. decision has to be made;
- i. Have meetings with WAS regarding the best approach to consult the person; and
- j. Involve police informant if necessary

We see the need for a cultural shift within the police force along with further training in relation to victims and their rights. There does not appear to be mandatory guidelines and manuals for police in dealing with victims, and thus it creates a system where a victim's treatment is dependent on a police officer handling their file and their knowledge and understanding and care of the Charter.

Creating an inclusive and safe space for victim/survivors is an ongoing process of critical self-reflection for agencies and organisations. It cannot be achieved tick box mechanisms such as one-off courses or audits. There needs to be time built into a practitioner's practice for self-reflection, with policies and procedures designed internally to ensure best practice is incentivised and upheld. Whilst the Victims Charter Guidelines may provide a good starting point to establish the standards that agencies should be striving for, in practice this may not be enough to create the changes required to create an empowering, victim-focused system. The next step would be to ensure and enforce compliance. There needs to be regular and ongoing monitoring of compliance with the Charter and tangible consequences if there is a contravention. If a victim is unsatisfied with the way they are treated by police, they can complain to an internal police complaints process. This is intimidating and often retraumatising for victims. Complaints are often unsatisfactorily dealt with, and any further complaints to VOCC (Victims of Crime Commissioner) do not appeal to a victim that is exhausted by a system that continues to treat them as unimportant. A complaint to VOCC often results in an apology or further training, which is not a deterrent for breaches of the Charter, or enough of an incentive for victims to complain to see 'justice.' We do note however that for agencies to be set up for success, there is a need for adequate resourcing and support so that they may achieve 'good practice.'

Some of our clients have reported being well informed by informants and advised of their rights, such as being offered the opportunity to prepare a Victim Impact Statement. However, we are

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<sup>51</sup> Centre for Innovative Justice, *Communicating with Victims about Resolution Decisions: A Study of Victims' Experiences and Communication Needs*, April 2019 <https://cij.org.au/cms/wpcontent/uploads/2018/08/communicating-with-victims-about-resolution-decisions--a-study-of-victimsexperiences-and-communication-needs-1.pdf> p106

*frequently seeing clients report that they are not kept informed in a case where they are listed as a victim and unaware of their rights to a victim impact statement. They suffer the retraumatizing process of calling police for information, to be told that they cannot be provided with any information or being told that they would be contacted by the police officer in charge of the file, never to hear from the station again. They contact SMLS seeking advice and assistance in finding out what is happening, and often we are unable to provide any further information to assist them. There is a lack of communication and cooperation between police and victim services such as community legal centres. Often, police are unwilling to provide us with updates, or our FOI requests take 6-8 months. There is often little opportunity for collaboration with police informants as some are not forthcoming when any request for information is made claiming that they do not want to impinge on the investigation.*

*In family violence matters, we have had situations where we have had to inform clients that we have been advised that there is no intention to charge the alleged person using violence or that charges have been dropped. Often clients feel let down by the system and that there is no sense of justice for these victims and no further information given to them by informants or prosecution. CLCs provide trauma informed services to victims of sexual and family violence, and we agree with the recommendations of the CIJ that prosecution develop best practice in communicating decisions such as prosecution resolutions to victims. We would go further and recommend that police also develop best practice guidelines in relation to communicating decisions not to refer a matter to prosecution.*

*In criminal matters, victims frequently fall through the cracks for a variety of reasons and can be disconnected from victim service agencies. As there is no lawyer allocated to them as they are not a party to the proceedings. There is no (publicly funded) lawyer to advise a victim like there is in a family violence matter. Unless they are referred to victim service agencies, they are often left out of the loop and are confused and unsure of the system.*

*We recommend that the guidelines further strengthen victims' rights by victims requiring that victims must be consulted in relation to the criminal matter that they are a participant in, such as any changes to court dates or other major changes to the prosecution's charges, and at the very least- to know if, and when an alleged person using violence is being charged.*

### **Case study- Cassie**

*Cassie\* was raped on almost a daily basis by her father from the ages of 3 to 17. The abuse often took place in her parents' bed when her mother was present. Cassie's mother did not approve of the abuse but took no action to stop it or to protect Cassie. Out of jealousy, Cassie's mother would often assault her viciously. When Cassie was 8 years of age she was tied to a chair and stabbed in the eye by her mother. Her mother told her this was "an eye for an eye for stealing her husband". When Cassie was a teenager, her father started to "sell" her sexual services to his friends and acquaintances. She ran away from home regularly and reports were made to the Department of Human Services (DHS) but despite regular respite in foster care, Cassie was usually returned to her father's care. By the age of 17, her*

*father had sold her into sexual servitude at a brothel and although Cassie worked 7 days a week, her earnings were taken by her father. Cassie fled overseas when she turned 18 and worked abroad for many years before her mental health started to deteriorate and she was forced to return to Australia as she could no longer work. Cassie is now in her 40s and suffers serious mental health issues. She lives alone, has never married nor had children – she does not have any friendships or personal relationships. She is agoraphobic and rarely leaves the safe confines of her home. She struggles with hygiene and rarely washes as showering and bathing remind her of her time working in the brothel. She suffers complex post-traumatic stress symptoms and self-harms. She has made countless attempts to take her life. Reminders of her abuse often trigger a suicide attempt. When she was in her thirties, Cassie reported the abuse to the police. An investigation ensued however; no charges were laid against Cassie's parents. The investigating officer believed Cassie however, given her complex mental health issues, felt that taking part in a criminal prosecution would be beyond Cassie's emotional capabilities. Cassie was referred to SMLS by SECASA. Cassie requires a great deal of assistance. As a result of the injury to her eye, Cassie is visually impaired. It is hoped that the VOCAT will assist her in modifying her home to take into account her visual limitations. Her needs in terms of psychiatric and psychological support are extensive. In addition to this, Cassie withdraws from the process regularly, as her self-worth is so fragmented, she does not feel she is worthy of any assistance, and she sabotages her application. She is uncontactable for months on end. She desperately wants acknowledgement and assistance from VOCAT and she needs a lawyer who will support her to obtain the documentation she is not capable of obtaining.*

## Health Justice Partnerships

We recommend a holistic, multi-disciplinary, collaborative and whole-of-system response to sexual violence. Clients who have experienced sexual violence have diverse needs and may require support from different agencies at different times. The impact of the sexual violence may have a flow on effect on many aspects of their lives so that the person experiencing sexual harm may need to interact with services such as Centrelink, Medicare, Office of Housing, Child protection, Department of Home Affairs.<sup>52</sup>

SMLS provides 'Mother's Legal help' (MLH) program in partnership with the City of Greater Dandenong, City of Casey and Shire of Cardinia. The project aims to provide increased access to justice for women and children experiencing family violence through a Health Justice Partnership (HJP) model. SMLS provides early intervention legal assistance to new mothers in the southeast of Melbourne through maternal child health clinics. Timely legal advice and casework for disadvantaged families experiencing family violence provide access to justice, and collaboration between services fosters holistic responses to family violence and improved outcomes for families. This partnership allows maternal child health nurses to refer their patients to SMLS for any legal issues they disclose. We have historically seen that these clients would otherwise lack the capacity or confidence to voluntarily contact a legal service, with their cases otherwise 'falling through the gaps' and usually involving quite significant legal issues. The legal service delivery model should therefore consider partnerships within the community to facilitate access to justice.

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<sup>52</sup> Centre for Innovative Justice 2020:13

## CASE STUDY- Nancy

*Nancy\* was referred to SMLS through our Mother's Legal Help partnership. Nancy came to Australia as a refugee, a single mother of three young children. One of the children was born with a rare medical condition. Nancy's former de-facto partner and father of the three children, Bill\*, had perpetrated extreme family violence against Nancy for many years. Nancy and Bill had also been homeless for approximately ten years, so when Nancy ended the relationship, she was living in crisis accommodation with her children. Nancy and the children's identification documents were destroyed by Bill, so Nancy could not enrol her children in school. Nancy was in significant debt as Bill fraudulently took loans out in her name and had criminal matters before the courts as a result of traffic offences including driving with an expired license. Nancy had no support in Victoria. SMLS's family lawyers assisted Nancy in obtaining an Intervention Order, as well as advising Nancy that she could apply for Sole Parental Responsibility for her three children. Nancy was also referred to our ISSA lawyer, to assist with a VOCAT application to seek compensation for Nancy being a victim of significant family violence perpetrated by Bill. SMLS's lawyers were also able to represent Nancy in court for her upcoming criminal hearing regarding her traffic offences. Nancy was also referred to SMLS's social work team, who linked her with a financial counsellor for her debts, as well as providing her with family violence support services, connecting her with a network of mothers for social support, assisting with Centrelink forms so Nancy can obtain a Carer's benefit, and obtaining new copies of her citizenship certificate and children's birth certificates so they could be enrolled in school.*

## Funding of Community Legal Centres

CLCs such as SMLS are instrumental in providing holistic, integrated support needed for victim survivors of sexual violence. Our comments to the VLRC in relation to the importance of funding CLCs remain relevant at the Federal level:

*One of the strongest themes to emerge from research is the need for dedicated and holistic legal support to persons who have experienced sexual harm. '[A] lack of dedicated legal advice resulted in victims of crime feeling excluded from, or distrustful of, the criminal justice system' (Centre for Innovative Justice 2020: 45). Access to independent legal advice acknowledges that although the person experiencing sexual harm is not a party to the criminal proceedings, she is nonetheless an important participant with their own interests independent of the prosecutor or defence. The lawyer may also play an important educative role for the victim, to explain the proceedings at each step, to advise the client of legal rights in relation to for example self-incrimination and victim impact statements. Furthermore, as found by the CIJ (2020:45), the person experiencing sexual harm should not only have access to independent legal advice regarding the criminal proceedings, but also other intersecting areas of law commonly relevant to persons experiencing sexual harm, including child protection, family violence, migration, workplace rights, debt recovery, rights under the Victim's Charter.*

*Generalist CLCs such as SMLS often provide assistance in a broad range of legal matters. CLCs are also accustomed to working in partnership to broaden the geographical reach of its services. With this broad range of expertise and experience, the CLC sector is appropriately skilled to offer*



*holistic legal assistance to vulnerable and disadvantaged clients who have experienced sexual harm.*

*Persons who have experienced sexual harm should have early access to independent legal assistance, to assist them to make informed choices regarding the reporting process, including the decision whether to report the harm to police. Given the CLC sector's unique position as a trusted source for help to the most vulnerable and hard to reach members of the community, any government-funded integrated service model should incorporate the involvement of the CLC sector in its service design and delivery. With the appropriate resource and support, CLCs may be well-placed to offer dedicated and holistic legal support to persons who have experienced sexual harm in matters such as advice on participation in criminal justice system, child protection, family violence, migration, workplace rights, debt recovery, rights under the Victim's Charter.*

*Recommendation three: Persons who have experienced sexual harm must have early access to independent legal assistance. The CLC sector should be resourced and supported to assist the most vulnerable and hard to reach clients within our community.<sup>53</sup>*

A recent independent review of the National Legal Assistance Partnership (NLAP), which provides Federal and State and Territory funding for Legal Aid Commissions, Community Legal Centres, and Aboriginal and Torres Strait Islander Legal Services has found that current levels of funding are inadequate and insufficient to meet Australia's legal assistance needs.<sup>54</sup> We have signed on to the joint statement from the Victim Legal Service providers in Victoria calling for continued and expanded funding of the VLS. A lack of full funding is resulting in CLCs having to turn away vulnerable clients, unable to cope with the demand. Along with the CLC sector across Australia we call for urgent Government funding of community legal centres to provide legal advice and assistance to victim survivors of family violence.<sup>55</sup>

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<sup>53</sup> SMLS Submission 'Improving the Response of the Justice System to Sexual Offences Review' <https://www.smls.com.au/wp-content/uploads/2021/04/SMLS-submissions-VLRC-Improving-the-response-of-the-Justice-System-to-Sexual-Offences.pdf>

<sup>54</sup> Katie Wand, FCLC, 'Funding Model for legal assistance inadequate, independent review finds' 30 May 2024, [https://www.fclc.org.au/nlap\\_report](https://www.fclc.org.au/nlap_report)

Georgia Roberts, ABC News, 'Legal service funding can't meet Australia's need, independent review finds' 29 May 2024 <https://www.abc.net.au/news/2024-05-29/review-of-legal-services/103903398>

<sup>55</sup> Community Legal Centres Australia Media release: Taking gendered violence seriously means funding services that keep women safe (Media Release: 30 April 2024) <<https://clcs.org.au/media-release-gendered-violence/>>  
Giovanna Torre, National Indigenous Times NIT 'Funding to tackle family and domestic violence welcome, but falls short' 1 May 2024, <https://nit.com.au/01-05-2024/11146/funding-to-tackle-family-and-domestic-violence-welcome-but-falls-short>

Dechlan Brennan, National Indigenous Times NIT 'Djirra criticises Victorian budget for "failure" to invest in Indigenous women and children's safety', 13 May 2024 <https://nit.com.au/13-05-2024/11361/djirra-criticises-victorian-budget-for-failure-to-invest-in-indigenous-women-and-childrens-safety>