



# Beyond doubt

> The experiences of people with disabilities reporting crime – Research findings





**Victorian Equal Opportunity  
& Human Rights Commission**

Published by the Victorian Equal Opportunity and Human Rights Commission  
Level 3, 204 Lygon Street, Carlton, Victoria 3053. July 2014.

## Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	<a href="mailto:information@veohrc.vic.gov.au">information@veohrc.vic.gov.au</a>
Website	<a href="http://humanrightscommission.vic.gov.au">humanrightscommission.vic.gov.au</a>

## **Beyond doubt: The experiences of people with disabilities reporting crime – Research findings**

Copyright © State of Victoria 2014

This publication is copyright. No part of it may be reproduced by any process except with permission from the Victorian Equal Opportunity and Human Rights Commission (the Commission) or in accordance with the *Copyright Act 1968*.

On request the Commission may give permission for this material to be reproduced provided it is for a purpose consistent with the objectives of the *Equal Opportunity Act 2010* and the Commission is acknowledged as the source.

Contact [communications@veohrc.vic.gov.au](mailto:communications@veohrc.vic.gov.au) for permission to reproduce material from the publication.

## Accessible formats

This document is available for downloading from our website at [humanrightscommission.vic.gov.au/resources](http://humanrightscommission.vic.gov.au/resources) in PDF and RTF. Please contact the Commission if you require other accessible formats.

## Privacy

The Commission complies with Victorian privacy laws and the confidentiality provisions of the Equal Opportunity Act. Our privacy policy is available online at [humanrightscommission.vic.gov.au/privacy](http://humanrightscommission.vic.gov.au/privacy) or by contacting us.

## Disclaimer

This information is intended as a guide only. It is not a substitute for legal advice.

Printed on Precision.

ISBN 978-0-9875444-9-3

# Beyond doubt:

The experiences of people with disabilities reporting crime – Research findings

# Contents

<b>Commissioner’s message</b>	<b>4</b>	<b>Chapter 4: Barriers for police</b>	<b>40</b>
<b>Chairperson’s message</b>	<b>5</b>	Main findings	40
<b>Executive summary</b>	<b>6</b>	Discriminatory attitudes and culture	40
<b>Recommendations</b>	<b>16</b>	Blaming the victim	41
<b>Victoria Police response</b>	<b>18</b>	Problems identifying disability	41
<b>Part 1 – The context</b>	<b>20</b>	Police refusing to take reports	43
<b>Chapter 1: About the research</b>	<b>20</b>	Knowing what adjustments to make	44
The Commission’s interest	20	Decisions about credibility	46
Aim of the project	21	<b>Part 3 – Experiences</b>	<b>49</b>
Other key work	22	<b>Chapter 5: Reporting</b>	<b>50</b>
Methodology	23	Main findings	50
Limitations of methodology	24	Legal obligations	50
Terminology	25	How does Victoria Police receive reports?	50
Project reference group	26	Effective report taking	51
<b>Chapter 2: Prevalence</b>	<b>27</b>	Treating the victim as a person	52
Main findings	27	Ensure the person is safe and feels as safe as possible	53
Are people with disabilities more likely to be victims of crime?	27	Support the person	55
Key facts	28	Consequences of poor experiences	56
Sexual assault	28	<b>Chapter 6: The police interview</b>	<b>57</b>
Family violence	29	Main findings	57
Crime in service settings	30	Legal obligations when conducting investigations	57
Hate crime	30	How do police conduct investigations?	57
What we still don’t know	32	Effective interviewing	58
<b>Part 2 – Barriers across the system</b>	<b>33</b>	Establish rapport	58
<b>Chapter 3: Why don’t people report crime?</b>	<b>33</b>	Ensure security for the victim	59
Main findings	33	Let people tell their story	61
Why don’t victims report?	33	Allow enough time	61
Why don’t people who provide care and support report?	37	Use appropriate communication	62
		Make sure the victim is in control	63
		Ensure support is provided on the person’s terms	64

<b>Chapter 7: Police investigations</b>	<b>70</b>	<b>Chapter 11: Equipping police</b>	<b>104</b>
Main findings	70	Main findings	104
Are police doing their best to solve the crime?	70	Learning and development	104
Taking action	71	Improving knowledge and skills	104
Gathering evidence	72	Current training and support for police members	106
Why don't investigations progress to prosecution?	73	Leading on communications access	109
Keeping people informed	75	Improving access to Victoria Police services	111
What happens if Victoria Police does not pursue an investigation?	77	<b>Chapter 12: Improving access to the courts</b>	<b>112</b>
<b>Chapter 8: Prosecutions</b>	<b>79</b>	Main findings	112
Main findings	79	Access to courts	112
Legal obligations of the court	79	Improving the law	112
Support to victims and witnesses with disabilities	80	Minimising trauma and maximising participation	113
Preparing for court	81	Reducing trauma for people with communications disabilities giving evidence in sexual offence cases	114
Experiences at court	81	Clarifying rules of evidence to ensure equity for people with communications disabilities	114
Conduct of the prosecution and defence	83	<b>Chapter 13: A comprehensive approach to safeguarding</b>	<b>117</b>
Why don't prosecutions succeed?	85	Main findings	117
Good practice	85	Risk management versus human rights	117
<b>Chapter 9: Victorian service systems</b>	<b>87</b>	Quality of behaviour support	118
Main findings	87	Lack of communication assessment may lead to use of restrictive practices	119
Legal obligations of service providers	87	Building capacity in safeguarding	120
Incident reporting systems	89	<b>Case studies</b>	<b>128</b>
Investigations in disability services	92	<b>Appendix 1: Key informant interviews</b>	<b>148</b>
Investigations in health services	93	<b>Appendix 2: Focus group interviews</b>	<b>149</b>
Investigations in mental health services	94	<b>Appendix 3: Submissions</b>	<b>150</b>
Lack of confidence in service investigations	94	<b>Glossary</b>	<b>151</b>
Independent oversight	96	<b>Useful contacts</b>	<b>155</b>
<b>Part 4 – The way forward</b>	<b>98</b>		
<b>Chapter 10: Transformation and leadership in police</b>	<b>99</b>		
Main findings	99		
Police culture	99		
The need for 'critical mass'	99		
Getting the foundations right	100		
Coordination and change	101		
Monitoring system performance	103		

# Commissioner's message

The stories in this report put it beyond doubt that there is urgent work to do to ensure that people with disabilities have equitable access to justice and safety.

Reporting a crime is a difficult experience for most; it should never be made more difficult because of negative assumptions and attitudes, a lack of support and minimal provision of necessary adjustments.

We heard from many people who shared their experiences with us. I encourage you to read these case studies to understand better what it is like for many people with disabilities negotiating the complexities of the justice system. I am sure you would agree that it is a daunting prospect for most, it is most certainly made more traumatic when people feel they are not being listened to from the beginning, when they continue to be at risk, and they are not given the support they need.

This report exposes the reality of the experiences of people with disabilities reporting crime. We know that getting the initial contact with victims right is essential. We also know that having the right support can affect the victim's experience of justice and safety in an extremely positive way.

So, when a blind, quadriplegic woman who has been pulled out of her wheelchair and threatened has difficulty convincing police that a crime has occurred, it is obvious that significant change is required to ensure she can achieve justice and be safe. Her contact with police should be empowering, supportive and proactive – this will not only deliver a better service to her – but also improve the chances of police gathering the evidence they need to secure a conviction.

We know that police decision-making about whether to pursue an investigation is affected by a number of factors, including discriminatory attitudes, a lack of understanding about disability, a lack of awareness about what supports are available or required, and assumptions about whether or not prosecutions will be successful.

Police need to - and want to - build their ability to understand different forms of disability and to make reasonable adjustments. This was a clear finding in the research. There is no denying that this will take significant effort and a cultural shift in police. However, we have all seen the transformative power of police when they work to prioritise the needs of victims who require a specialist response. This change can happen.

Thank you to all those who contributed to this research. I would also like to thank the project's reference group, as well Commission staff Michelle Burrell, Wendy Sanderson, Kate Lahiff, Amber Whitcher, Julian Alban, Emma Coetsee and Robert Stewart for commitment and passion for this project.

Yours sincerely



**Kate Jenkins**

Commissioner  
Victorian Equal Opportunity and  
Human Rights Commission

# Chairperson's message

Each year, the Commission produces a number of reports that cover a range of subjects dealing with our areas of responsibility. The aim of our reports is to alert, inform and, ultimately, educate people to bring about change – change for the benefit of not just stakeholders with an interest in the subject matter of a particular report, but beneficial change for all Victorians.

This report clearly shows that people with disabilities in Victoria are routinely denied justice because police and other sections of the justice system are ill equipped to meet their needs. This is simply not right. While there have been examples of improvements and goodwill across systems, there is a lot of work to do, and we must all work together to overcome the impediments and deficiencies in the system. The time to get this right is now.

The report looks in detail at the barriers people with disabilities face in seeking justice as victims of crime. As you read through the report and the case studies, you will get a sense of what it is like for people on the ground. In some cases, simply attempting to make a report can be difficult. Police might not know how to take a report from someone with access needs or may not take a report because they assume that it will not lead to a conviction. Some people with disabilities may find they are not believed or taken seriously, which can lead to shame and embarrassment and mean that they will not attempt to report again. Negative attitudes and stereotyping can also be a problem.

Imagine being abused by the very person charged with the responsibility of supporting you and feeling powerless to redress the situation. For many people, being able to seek help or safety is not currently an option, either because of a lack of awareness of the supports available, a lack of access to seeking assistance, or a level of fear for safety or concern about loss of support. These and other impediments are not an unusual experience for people with disabilities and those who are trying to work with them. It is clear that the present environment needs to be improved significantly to redress this inequality, and that the system needs to step up.

My thanks go to the project reference group, all those who attended meetings to provide valuable input for the report, the staff of the Commission under the guidance of Kate Jenkins, our Commissioner, who all worked so tirelessly to put the report together and, of course, the people who spoke so openly and honestly about their experiences so as to inform the report and ensure improvement for those who follow them.

I commend this report to you and I have no doubt that dealing with the important issues that it raises, it will be read with interest by all who receive it. I hope the recommendations are viewed by all with an open mind and a willingness to continue discussions and hard work so that people with disabilities are soon treated on an entirely equal basis by police, courts, the justice system and in all other areas of life.



**John Searle**

Chairperson  
Victorian Equal Opportunity and  
Human Rights Commission

# Executive summary

Access to justice and safety are basic human rights; however, people with disabilities in Victoria are routinely denied these because police and other parts of our criminal justice system are ill equipped to meet their needs.

In Victoria, the right to equality before the law is set out in the Victorian Charter of Human Rights and Responsibilities (the Charter) and the *Equal Opportunity Act 2010* (Vic). The Equal Opportunity Act also describes the legal obligations requiring duty holders to make reasonable adjustments to accommodate people with disabilities and to take reasonable steps to prevent discrimination.<sup>1</sup>

The Victorian Equal Opportunity and Human Rights Commission (the Commission) undertook this project using the research functions under section 157 of the Equal Opportunity Act. It arose from concerns raised by the Commission's Disability Reference Group that people with disabilities face particular barriers in seeking justice as victims of crime.<sup>2</sup>

Crimes against people with disabilities can include harassment, stalking, burglary, physical violence, financial abuse, family violence, hate crime and sexual assault. However, this report specifically

focuses on crimes against the person. It describes the diverse experiences of Victorians with a range of disabilities reporting crimes to police. It highlights the many barriers they can face – from discriminatory attitudes through to a failure to provide reasonable adjustments – and makes recommendations to improve practice so that better justice outcomes are delivered.

We know that the level of crime experienced by people with disabilities both in Victoria and across Australia is substantial. This is in spite of – and sometimes the result of – systems that are designed to provide support and protection.

National and international studies reveal that people with disabilities are more likely to be victims of crime than other groups in the general population.<sup>3</sup> A growing body of evidence also finds that crime towards people with disabilities starts early.<sup>4</sup> The experience of crime is particularly acute for women with disabilities and people with cognitive impairments.<sup>5</sup>

---

1 *Equal Opportunity Act 2010* (Vic) ss 15, 44– 5.

2 This group provides advice to the Commission on systemic discrimination and human rights issues. It includes members who have direct experience of disability, are parents of children with disability, service providers and advocates.

3 For example, Stop the Violence Project, 'Stop the Violence: Addressing Violence Against Women and Girls with Disabilities in Australia' (Discussion Paper, National Symposium on Violence Against Women and Girls with Disabilities in Australia, 25 October 2013); Krista Jansson, 'Domestic violence, sexual assault and stalking – 2005/06 British Crime Survey' in Kathryn Coleman et al, *Home Office Statistical Bulletin 02/07, Homicides, Firearm Offences and Intimate Violence 2005/2006* (2007).

4 Sally Robinson, 'Enabling and Protecting: Pro-active approaches to addressing the abuse and neglect of children and young people with disability' (Issues Paper, Children with Disability Australia, 2012) 5, 15.

5 Victorian Health Promotion Foundation (VicHealth), *Preventing Violence Against Women in Australia: Research Summary* (2011) 5; Margaret Camilleri, *[Dis]abled justice: why reports of sexual assaults made by adults with cognitive impairment fail to proceed through the justice system* (PHD Thesis, The University of Ballarat, 2010); Margaret Camilleri, 'Enabling Justice: New Ways Forward – Pathways to Change' (Paper presented at National Victims of Crime Conference, Adelaide, 23 – 24 September 2008) 2.



The risk of violence against people with disabilities in residential or supported living environments is also well established in international and national reports and research.<sup>6</sup> The research indicates that “people with a disability are more likely to experience abuse in a service setting than people without a disability, with some studies also finding that the largest group of individuals who perpetrate sexual abuse against people with an intellectual disability are staff in services.”<sup>7</sup> However, the Department of Human Services (DHS) advises that this does not reflect DHS data.<sup>8</sup>

The current data on prevalence is ad hoc and there is a need to build the evidence base to understand trends on people with disabilities experiencing crime in Victoria. This is essential to developing effective prevention and early intervention initiatives, and to ensuring the resources of the system are effectively targeted.

### Snapshot: People with disabilities experiencing crime

- The Australian Bureau of Statistics data from 2012 shows that people with disabilities or a long-term health condition experienced higher levels of violence than other groups in the preceding 12 months.<sup>9</sup>
- VicHealth estimates that 90 per cent of Australian women with an intellectual disability have been subjected to sexual abuse; more than two-thirds of them before turning 18 years of age.<sup>10</sup>
- An Australia-wide survey of 367 family violence agencies found that nearly one in four women and girls with disabilities live with violence.<sup>11</sup>
- Despite one in five Australians having a disability, Victims Support Agency (VSA) data shows that people with disabilities comprise between two and five per cent of recorded victims of crime in Victoria.<sup>12</sup> This under-representation suggests that cases are either not reported, are not making it through the justice system or that disability has not been identified.

6 Jonathan Goodfellow and Margaret Camilleri, 'Beyond Belief, Beyond Justice: The difficulties for victim/survivors with disabilities when reporting sexual assault and seeking justice' (Final report of Stage One of the Sexual Offences Project, Disability Discrimination Legal Service, 2003) 46–7.

7 Lynne Coulson Barr, 'Safeguarding People's Right to be Free from Abuse: Key considerations for preventing and responding to alleged staff to client abuse in disability services' (Occasional Paper No.1, Disability Services Commissioner, 2012) 8. "See review of research by Goodfellow, J and Camilleri M (2003) Ibid; RA Bowman et al (2010) 'Sexual abuse prevention: a training program for developmental disabilities service providers', Journal of Child Sexual Abuse: Research, treatment, & Program Innovations for Victims, Survivors, & Offenders, vol. 19. no. 2, 119-127; Mahoney A & Poling A (2011) 'Sexual abuse prevention for people with severe developmental disabilities', Journal of Developmental and Physical Disabilities, vol. 23, no. 4, 369-376.; Cambridge P et al (2010) 'Patterns of risk in adult protection referrals for sexual abuse and people with intellectual disability', Journal of Applied Research in Intellectual Disabilities, vol. 24, no. 2, 118-132; Victorian Law Reform Commission (2004) Sexual Offences: Final Report, Victoria, Australia."

8 Information provided to the Commission by the Department of Human Services, 3 June 2014. The department also notes that people living in the community may also experience abuse.

9 Australian Bureau of Statistics 2013, *Personal Safety Australia 2012*, 'Table 11a: Experience of violence during the last 12 months, Disability Status: Relative Standard Error', data cube: Excel spreadsheet, cat. no. 4906.0, viewed 11 March 2014 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02012?OpenDocument>>.

10 VicHealth, above n 5, 5.

11 Stop the Violence Project, above n 3, 7–8.

12 Information provided to the Commission by the Victims Support Agency, 28 October 2013.

## Victorian equal opportunity and human rights obligations

### Victoria Police

Under the Equal Opportunity Act, Victoria Police have obligations not to discriminate and to make reasonable adjustments when taking a report.<sup>13</sup> Charter rights to equality before the law and freedom of expression, including the right to receive information, apply when police take a report.<sup>14</sup>

When police investigate crimes, they are generally not delivering a service under the Equal Opportunity Act. However, Victorian law and Victoria Police policy does require they adjust their practices to meet the diverse needs of victims.<sup>15</sup> Ongoing police communication with the victim is a service and Victoria Police's obligations to make reasonable adjustments under the Equal Opportunity Act apply.

### Service providers

The Equal Opportunity Act binds all disability, mental health and Supported Residential Services (SRS). This applies to unfavourable treatment because of a person's disability, and to systems, policies and practices that are not reasonable and may disadvantage people with disabilities. This can include policies that fail to respond appropriately to crimes against people with disabilities.

Service providers also have legal obligations under the Charter to provide an abuse-free environment and to observe human rights when responding to allegations and conducting investigations.

## Courts

Under the Equal Opportunity Act, a court hearing is not a service because it is considered a public activity rather than a service to a particular individual. However, people with disabilities have a right to equal access to courts. Courts are bound by the Charter to act compatibly with human rights and give proper consideration to human rights when they are exercising their administrative functions.<sup>16</sup>

In addition, the courts have functions under Part 2 of the Charter, which sets out all of the rights.<sup>17</sup> While courts are not always obliged to take into account all of the human rights in the Charter, they have a clear role and obligation to ensure that people with disabilities have equal protection before the law. This right can only be realised through the work of the courts and other bodies in the justice system.

It is important to remember that the court is impartial. This is a central tenet of our legal system. This long standing legal principle is complemented by the right to a fair trial provision in the Charter.

## Barriers to reporting crime

I wasn't told about any other way I could make a complaint ... To be honest, I did not think of going to the police.<sup>18</sup>

People with disabilities face significant and complex barriers when it comes to reporting crime to police. In some cases, a lack of access to information means that victims do not know how or where to report a crime. In fact, some people, especially those living in environments that are socially isolating, may not make a report because they do not know that what has happened to them is a crime.<sup>19</sup>

In other cases, the emotional toll of making a report, as well as feelings of shame or embarrassment, can prevent people from reporting a crime.<sup>20</sup> A fear

16 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 4(1)(j), 38.

17 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 6(2)(b).

18 Case study: Antoinette (person with disabilities).

19 Key informant interview, Dr Margaret Camilleri (7 August 2013); Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 4.

20 Survey participant (Easy English); case study: Bella (person with disabilities); case study: Leonne (person with disabilities). See also South Eastern Centre Against Sexual Assault and Family Violence, *Feelings after Sexual Assault* (2011) 1 <<http://www.secasa.com.au/assets/Documents/feelings-after-sexual-assault.pdf>>.

13 *Equal Opportunity Act 2010* (Vic) ss 44–5.

14 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8, 15.

15 See Victoria Police, *Victoria Police Manual* (31 January 2014); Victoria Police, *Code of practice for the investigation of sexual assault* (2005) <[http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media\\_ID=1717](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=1717)>; Victoria Police, *Code of practice for the investigation of family violence* (2014) <[http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media\\_ID=464](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=464)>.

of retribution could also stop people from reporting a crime, particularly if the alleged perpetrator was a family member or support worker.<sup>21</sup>

Many participants said police had been disrespectful to them because of their disability, which made a significant difference to their experience of reporting.<sup>22</sup> People with communications disabilities face considerable barriers at all points in the criminal justice system.<sup>23</sup>

People with disabilities in regional Victoria said there were advantages to living in a small community, especially when police had good relationships with local support services. However, the downside of being known was particularly felt by those whose credibility was questioned by police.

Families and carers of people with disabilities also told of the challenges of reporting crime, especially the fear of negative repercussions for the victim.<sup>24</sup> In some cases, family members decided against reporting to avoid potentially re-traumatising the victim – particularly when the prospects of a successful prosecution are slim.<sup>25</sup>

Barriers to reporting crime both for people with disabilities and for people who provide care and support is of grave concern. Not only does it reduce the sense of safety for people who have experienced crime, it can also put them at greater risk of experiencing crime in the future.<sup>26</sup>

## The importance of credibility

Just because I have mental health issues does not mean I am ‘hysterical’, not credible and that my feelings should be discounted.<sup>27</sup>

One of the strongest findings of this study is that people with disabilities fear that they will be seen as lacking credibility when they report a crime to police.

Research indicates that police are likely to assume that a prosecution will not succeed because the court may think the person lacks credibility. This becomes a self-fulfilling prophecy as cases are then not fully investigated and prosecuted.<sup>28</sup>

Research also shows that police members make decisions about a person’s credibility very early on. This sets the course for the entire response and the victim’s journey through the criminal justice system, from initial report to interview, investigation and prosecution.<sup>29</sup>

When police have a good understanding of disability, when they believe victims and take their reports and the investigation seriously, victims report higher levels of satisfaction with police practice and the justice system.<sup>30</sup>

However, this study found that the experience of reporting crime is too dependent on the police member who happens to receive the initial report.

Of particular concern are the stories of police refusing to take reports. This can amount to unlawful discrimination under state and federal anti-discrimination laws.

They asked if I could describe the person who did it and I said, “No, I’m blind.” The police officer said, “Well, don’t bother calling us then.” He didn’t seem to understand that I could give him information from the sounds that I had heard or that there might be other witnesses ... I rang the local police twice after this and both times I was told, “Don’t bother calling if you’re blind.”<sup>31</sup>

21 For example, case study: Michelle (person who provides care or support); focus group 3, people who provide care or support (2 September 2013); focus group 6, Independent Third Person Program volunteers (11 October 2013).

22 For example, case study: Leonne (person with disabilities); case study: Kathleen (person with disabilities); case study: Michael (person with disabilities); case study: Mark (advocate); case study: Blue Star (person with disabilities); case study: Gary (police); focus group 1, advocates (10 July 2013); key informant interview, Victoria Legal Aid (19 July 2013); key informant interview, United Voices for People with Disabilities (29 August 2013); Disability Advocacy and Information Services Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 11.

23 For example, key informant interview, Communication Rights Australia (31 July 2013).

24 Key informant interview, Communication Rights Australia (31 July 2013).

25 For example, key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

26 Office of the Public Advocate, *Violence against people with cognitive impairments: Report from the Advocacy/Guardianship Program at the Office of the Public Advocate, Victoria* (2010) 4.

27 Survey participant (person with disabilities).

28 Camilleri, *[Dis]abled justice*, above n 5, 233.

29 Ibid.

30 Irina Elliott, Stuart Thomas and James Ogloff, ‘Procedural justice in contacts with the police: the perspective of victims of crime’ (2012) 13 (5) *Police, Practice and Research* 437, 437–449. The aim of this study was to examine victims’ perceptions of procedural justice in interactions with police. In-depth, semi-structured interviews were conducted with 110 participants who had reported a crime, either personal or property, to the Victorian police in the last year. Seventy per cent of participants were victims of violent crimes. Disability status of participants is unknown.

31 Case study: Blue Star (person with disabilities).

## Learning and capability in the police

I didn't know what cerebral palsy was before this. I've never dealt with cerebral palsy. I didn't receive much training about disability at the academy, maybe a day or so. Cerebral palsy was never in our role play.<sup>32</sup>

Police generally base their responses on their previous work with people with that type of disability.<sup>33</sup> While this may help police to make adjustments, there is also a risk that police will make generalisations about types of disability.

Given the diverse and complex nature of disabilities, police cannot be expected to know everything about every disability. However, they do need to have the knowledge base to address the needs of people with disabilities when they deliver services to the community. Accordingly, there was strong consensus among study participants that effective leadership, cultural change and building police capability is an urgent priority.

To assist people with disabilities to report crime, police first need to be able to identify and understand that there are different forms of disability, and that people experience them differently, and work out how to make adjustments to meet different access needs. Police members, advocates, victims, families and carers all said this was a major challenge.<sup>34</sup>

Police acknowledged that 'telling by looking at people' was an inexact science that could lead to over-identifying or under-identifying disability. For example, we heard several cases where police incorrectly assumed that a person had an intellectual disability.<sup>35</sup>

Unsurprisingly, experienced police members felt more confident while newer members described examples of seeing a person with a disability for the first time.<sup>36</sup> As a result, police responses are inconsistent.

At the reporting stage, participants told us that police failing to identify a person's disability can

32 Focus group 13, police (November 2013).

33 See also Marie Henshaw and Stuart Thomas, 'Police encounters with people with intellectual disability: prevalence, characteristics and challenges' (2011) *Journal of Intellectual Disability Research* 1, 5.

34 Key informant interview, Victoria Legal Aid (19 July 2013); key informant interview, Scope (11 November 2013); key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013); key informant interview, United Voices for People with Disabilities (29 August 2013); Camilleri, *[Dis]abled justice*, above n 5, 185, 187.

35 Key informant interview, Dr Margaret Camilleri (7 August 2013); key informant interview, Communication Rights Australia (31 July 2013).

36 Focus group 13, police (November 2013).

lead to negative assumptions and result in negative treatment.<sup>37</sup>

This led to some people with disabilities, as well as those who support them, being discouraged from reporting a crime or needing to educate police during the reporting process, adding another burden to an already stressful experience.<sup>38</sup>

For others, it meant that police did not make reasonable adjustments to meet their access needs.<sup>39</sup>

### Principles of first police contact with people with disabilities

Throughout this study, we heard from many people who had good experiences when reporting crime to police. Based on this and other research, police can demonstrate best practice when taking a report of crime by:

- recognising and understanding disability, so that reasonable adjustments can be made
- treating the victim as a person by showing patience, respect and belief
- ensuring the person *is* safe and *feels* as safe as possible
- consistently supporting the person through the process.

Under the Equal Opportunity Act, police need to make reasonable adjustments when they take a report from a person with disabilities.<sup>40</sup> At the reporting stage, reasonable adjustments might include flexibility about where a report is taken in order to overcome barriers around physical access to a police station.

For those who do make a report, the ability to communicate becomes crucial to giving a complete and accurate interview, as well as understanding developments as the investigation proceeds.

Once in contact with police, participants told us that communication was a major barrier. This was the case for people with mild or moderate communication disabilities through to people who are non-verbal.

A person came into the police station but they couldn't verbalise their disability or write. I had no idea what they wanted and I couldn't communicate or understand what they were saying.<sup>41</sup>

37 Case study: Mark (advocate).

38 Case study: Michael (person with disabilities); case study: Frances (person who provides care or support).

39 Focus group 2, service workers (12 August 2013).

40 *Equal Opportunity Act 2010* (Vic) ss 44–5.

41 Focus group 13, police (November 2013).

Auslan interpreters reported that despite Victoria Police policy, this adjustment is not always provided when needed.<sup>42</sup> In contrast, police focus group participants generally reported good access to Auslan interpreters.<sup>43</sup>

While the Victoria Police Manual advises that interpreters can be called where required, it does not specify other types of communication support that should be provided, such as Augmentative and Alternative Communication.<sup>44</sup> It also does not explain that other accommodations can be made to a standard interview format.

A lack of information and the ad hoc nature of various support services can hamper police in their ability to promote good communication for people with disabilities at the reporting and interview stages. This can also have a profound impact on the effectiveness of their investigations, and therefore prosecutions.

However, when police are able to make reasonable adjustments by adapting interview and communication techniques, investigations can proceed with the same rigour afforded to other victims of crime. This significantly improves levels of satisfaction as the conduct of investigations is as important to victims as a successful prosecution.<sup>45</sup>

## Coordination and leadership in police

There is a critical need to provide clarity on the roles and expectations of police working with people with disabilities – a victim cohort with specific needs.

The research found that there is inconsistent police practice in working with people with disabilities. This is partly attributable to the volume and complexity of procedures that police must follow, however, the research also found that police members often don't know where to find the guidance that already exists.

In other cases, it was clear that there is no clear guidance on what kind of assistance might be required, no advice on where to get the assistance (or clear guidance of the credibility of particular forms of evidence), and no clear referral pathways for people with complex needs. Further, police don't consider they have a source of specialist assistance to help them put policies into practice.<sup>46</sup> There does not appear to be a formalised structure for implementing statewide practice and policy change as it relates to people with disabilities specifically. Police members were not aware of such a structure.

We found that the lack of clarity in process, expectations, and on assistance and referral pathways affects the confidence and outcomes for police and for people with disabilities who have experienced crime.

## Improving accessibility within Victorian courts

People with disability feel that the court system does not uphold a basic human right to be heard and [to ensure that] what they have to say is taken seriously.<sup>47</sup>

Our research focused on police interaction with people with disabilities. However, it became clear that other parts of Victoria's criminal justice system, such as the courts, are not accessible to many people with a disability. This has a flow-on effect on policing – as victims and police lack confidence that a report will proceed to a successful prosecution. For this reason, we also discuss these issues in this report.

42 Focus group 5, Auslan interpreters (10 October 2013).

43 For example, focus group 11, police (November 2013); focus group 10, police (November 2013). However, a participant in Focus group 8 noted that they sometimes let a family member or support person interpret because "with Auslan interpreters, we have to wait for them to come from Melbourne – it might be that the interpreter can come up next week – by this time the message or evidence is clouded". Focus group 8, police (November 2013).

44 The Victoria Police Manual includes Policy Rules and Procedures and Guidelines. Policy Rules are mandatory, minimum standards police members must apply. Non-compliance with or departure from a Policy Rule may be subject to management or disciplinary action. Procedures and Guidelines are not mandatory requirements on their own; however, they support the interpretation and application of the Policy Rules. Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Interviewing specific categories of person'* above n 15, 7.

45 Elliot, Thomas and Ogloff, 'Procedural justice in contacts with the police: the perspective of victims of crime', above n 30, 437.

46 Focus group 13, police (November 2013).

47 Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 25.

We found that while some progress has been made, basic adjustments are not always made to adapt court practices and facilities to meet the access needs of people with sensory, physical, learning or communication disabilities.<sup>48</sup>

Given the oral nature of our court system, people with communication disabilities can face significant barriers. While the *Evidence Act 2008* (Vic) allows a witness who cannot speak adequately to give evidence by any 'appropriate means', it does not provide guidance about what these are and courts remain cautious about using Augmentative and Alternative Communication.<sup>49</sup>

People with disabilities who have experienced sexual assault can experience additional challenges when they give evidence in court. For example, difficulties with communication can greatly exacerbate the stress and ordeal of retelling a traumatic experience, especially under aggressive questioning during cross-examination. Prosecutors making the court aware of a person's disabilities in advance is one way of ensuring the legislative protections for witnesses are better utilised.

Changes made under the sexual assault reforms should transform how victim survivors participate in the prosecution; for example, by providing opportunities to give evidence in special hearings. In practice, not all those who are eligible for special hearings receive one if police do not identify the person's disability during the investigation.<sup>50</sup>

The *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases* is also a welcome initiative.<sup>51</sup> However, discriminatory assumptions about the credibility of witnesses with disabilities remain. More effort is needed to address negative attitudes among legal practitioners, court personnel, police and jurors and to ensure that appropriate standards of conduct are met at all times.

A successful prosecution remains the exception rather than the rule when the victim has a disability. Police members we interviewed consistently identified challenges in presenting evidence to the court as the biggest barrier to gaining a conviction. Some felt the Evidence Act tied their hands and was not flexible enough to meet the requirements of people with disabilities, particularly those with communication disability. Others felt that defence lawyers would vigorously pursue the argument that the victim lacked credibility.

Prosecutions can and do succeed when agencies adjust their practices to meet the access needs of people with disabilities and when they assess these needs prior to the hearing.

However, for many people with disabilities, getting 'a win' is as much about the right to participate in court as it is about the court outcome. As one participant told us, "It's about the right to go through it ... It's about the process of being heard."<sup>52</sup>

### Improving safeguarding in services

It is important to remember that most disability services are delivered in a way that does not put people at risk of violence. However, as recent high-profile cases have shown, abuse can occur.

People with disabilities may be socially isolated because of the environments they live in – such as may exist in residential facilities, mental health wards, rooming houses and in an SRS – and face very specific barriers to justice because the crime they experience happens behind closed doors.

48 For example, case study: Kim (person with disabilities); focus group 10, police (November 2013); Office of Public Prosecutions Victoria, Submission No 20 to Parliament of Victoria Law Reform Committee, *Parliamentary Inquiry into Access and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*, 9 September 2011, 10; key informant interview, Communication Rights Australia (31 July 2013); Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 17; key informant interview, Aboriginal Family Violence Prevention and Legal Service Victoria (9 December 2013).

49 *Evidence Act 2008* (Vic) ss 31(1)–(2).

50 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

51 State of Victoria, Department of Justice, *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases* (2013) <<http://www.justice.vic.gov.au/home/justice+system/charter+of+advocacy+-+prosecuting+or+defending+sexual+offence+cases>>; The Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases provides a guide for prosecutors and defence practitioners about good conduct in relation to court proceedings for sexual offences. The Charter is also intended to help prosecutors explain to victims of sexual offences what they can expect from both prosecutors and defence practitioners in relation to court proceedings.

52 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

People in these settings can experience violence and other crimes at the hands of staff or another resident. In some services, this violence may become normalised because it happens frequently or because staff justify their actions as an appropriate way to manage challenging behaviour.<sup>53</sup>

In group environments, actions may be tolerated that would not be tolerated in another environment. As a consequence, assaultive behaviour might be minimised in these environments.<sup>54</sup>

People with disabilities can also be subjected to unnecessary use of restrictive practices, if communication assessments and behaviour supports have not been put in place by staff.<sup>55</sup>

Participants told us that services where violence and abuse is normalised are more likely to treat crimes involving people with disabilities as 'incidents' requiring an internal investigation, rather than as matters to be reported to the police. Where a crime is reported, the police may be unlikely to investigate and, in fact, may refer the matter back to the service for internal review.<sup>56</sup>

In cases where police accept a report but decide not to proceed, people with disabilities and service staff remain unaware that victims can seek a review of the police decision.<sup>57</sup> This leaves people reliant on service investigations, which participants told us may or may not happen.<sup>58</sup>

It is crucial that service investigations are robust, comprehensive and conducted by skilled investigators and do not occur in place of police investigation. However, while detailed incident reporting systems operate across Victoria's disability and mental health services, some participants identified shortcomings in these systems and investigations.<sup>59</sup>

While independent oversight of services is crucial, the Commission heard that existing mechanisms may not be able to respond quickly enough or at all in all circumstances.

The introduction of *the Interagency Guideline for Addressing Violence, Neglect and Abuse* (IGUANA guideline) is an important step in recognising abuse and reporting crime.<sup>60</sup> However, it is only one part of the picture.

---

53 Key informant interview, Dr Patsie Frawley (5 July 2013).

54 Key informant interview, Senior Practitioner – Disability (22 November 2013).

55 Key informant interview, Dr Jeffrey Chan (14 November 2013); key informant interview; Senior Practitioner – Disability (22 November 2013).

56 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013); key informant interview, Disability Justice Advocacy (15 October 2013); Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13; key informant interview, Scope (11 November 2013). We were also told that this is an issue in schools. Key informant interview, Disability Discrimination Legal Service (12 July 2013).

---

57 People have the right to request a review of the decision in sexual assault or family violence matters through a case review. They are supposed to be informed of this verbally, and in writing. Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 24; Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 27; key informant interview, Disability Services Commissioner (23 October 2013).

58 For example, key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013). See also Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 3. The Disability Services Commissioner told us that in the majority of staff-to-client assaults, the service does undertake an investigation. Key informant interview, Disability Services Commissioner (23 October 2013).

59 Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 3; Focus group 2, service workers (12 August 2013); key informant interview, Dr Jeffrey Chan (14 November 2013); key informant interview, United Voices for People with Disabilities (29 August 2013).

60 Office of the Public Advocate, *Interagency guideline for addressing violence, neglect and abuse (IGUANA)* (2013) <<http://www.publicadvocate.vic.gov.au/publications/539/>>; Key informant interview, Communication Rights Australia (31 July 2013).

A comprehensive approach to safeguarding requires a focus on preventing discrimination and crime before it occurs, empowering people to know, pursue and achieve rights, and to take proactive steps to ensure quality safeguarding and monitoring are in place, and sit within a human rights framework. This starts with stronger guidance and training to embed better practice across the system with dedicated training on reporting crime and police processes, and support to do so.

### **Registration of those working with adults with disabilities**

While effective safeguarding is a clear priority for government and services alike, and there are already policies and procedures in place that achieve this, the challenge remains in ensuring this happens at an individual service level in a highly devolved and complex service system.

While criminal and referee check requirements are important tools that services use now to screen applicants, they may not reveal instances of alleged abuse, which did not result in criminal charges.

Disturbingly, several key informants told us that, due to a perceived lack of consequences, some perpetrators act with impunity and others move between services.<sup>61</sup>

In Victoria, as in other states, there is no independent mechanism to determine whether abuse has occurred and the suitability of staff to continue to work with disability clients, such as exists for out-of-home carers of children. This is a clear gap in the existing regulatory framework for the prevention of abuse in disability services.<sup>62</sup>

Establishing a system requirement where both volunteers and paid employees working with adults with disabilities be registered before undertaking such roles would require consultation with the service sector, relevant unions, people with disabilities, their families and carers. It would also require legislation and a budget allocation to support the scheme. This means it would take some time to establish. However, there are steps that could be taken now to move towards a full registration scheme while focusing on areas of highest risk.

In order to reduce the risk of perpetrators moving between services, the Commission is calling on the Victorian Government to establish a register of persons prohibited from working (or volunteering) with people with disabilities. This could be the first step in establishing a more comprehensive registration scheme over time.

### **Making justice for all a reality**

This report draws on and seeks to contribute to the efforts of many advocates, service providers and police who promote the right of people with disabilities to live free from violence and discrimination.

A number of the Commission's recommendations (see page 16) are designed to support Victoria Police to fulfil its commitment to better meet the needs of people with disabilities reporting crime. The recommendations focus on eliminating discrimination against people with disabilities by police members; improving access to police services, especially in relation to communication; and building greater understanding of disability across the police force to provide police members with the information, advice and support they need to do their job.

A central recommendation is to develop a Code of Practice for responding to victims and witnesses with disabilities. There are currently two Codes of Practice for Victoria Police – *Code of Practice for the Investigation of Family Violence* and *Code of Practice for the Investigation of Sexual Assault*. The development and implementation of these codes has resulted in significant cultural change within police and increased confidence of victims to report crime.<sup>63</sup>

In common with the existing codes, our recommended code would respond to victims of crime that require a specialist response. Further, experience shows that the consultation and cooperative effort in the development of a Code of Practice utilises existing expertise, builds important community relationships and works to build consistent support and referral pathways, all of which enhance police capability and build trust in the system.

61 Key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Dr Margaret Camilleri (7 August 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); key informant interview, United Voices for People with Disabilities (29 August 2013); key informant interview, Dr Jeffrey Chan (14 November 2013).

62 Coulson Barr, above n 7, 22.

63 State of Victoria, Victims Support Agency, *Measuring Family Violence in Victoria Victorian Family Violence Database Volume 5: Eleven-year Trend Analysis 1999-2010* (2012) 27–8 <<http://www.victimsofcrime.vic.gov.au/utility/for+professionals/research+reports/victorian+family+violence+database+volume+5+eleven-year+trend+analysis+1999-2010>>.



The Commission acknowledges the important role that police play in upholding the rights of people with disabilities and the commitment shown by the leadership of Victoria Police and frontline police in improving their services to this group. We appreciate the cooperation and support provided by Victoria Police throughout this study and look forward to working together to implement the report's recommendations.

The Commission also recognises that Victoria Police is only one part of a complex system and that achieving lasting change requires a consistent effort across the system, at a local and statewide level. These issues intersect with the justice system in its entirety as well as human services systems, including the disability, health and mental health systems.

To ensure that people with disabilities are able to access justice on an equal footing requires a coordinated whole of government commitment to improving responses throughout the service system. Accordingly, this report makes recommendations regarding those areas where we have established a clear link with issues relating to the incidence and reporting of crimes against people with disabilities, and aims to bring them together in a coordinated way. We consider that both the Victoria Police Disability Action Plan and the State Disability Plan should consider actions from this report in their implementation.

The recommendations in this report aim to establish clear processes for support and referral and to build community and organisational partnerships to assist Victoria Police to increase capability, to understand the expectations about making reasonable adjustments and to do its job more effectively.

While the recommendations in this report deal with victims of crime with disabilities, their implementation will also assist the justice system to respond to the needs of offenders with disabilities, and therefore lead to a more equitable justice system. Our goal is to ensure that Victoria has an accessible, consistent and comprehensive system to respond to the experience of crime that considers the preferences and needs of the victim of crime and empowers the victim to participate more fully in the process.

Access to justice for people with disabilities should not be a matter of luck. It is a basic right for everyone.

# Recommendations

## Victoria Police

Victoria Police should demonstrate its commitment to ending disability discrimination by including the following actions in the Victoria Police Disability Action Plan (due for release in 2014).

Victoria Police should:

1. Develop a Code of Practice for responding to victims and witnesses with disabilities, and amend the Victoria Police Manual to put the code's standards into operation. The code should specify legal obligations for reasonable adjustments, guidance on how to make adjustments, as well as support options, including access to services and information, and referral pathways.
2. Modelled on the existing Victoria Police Family Violence Advisor role, Victoria Police should develop a complementary network of Disability Advisors and work with people with disabilities and relevant organisations to build and share practice knowledge, and strengthen community partnerships across the state among all police members.
3. Under the Victoria Police Education Master Plan, develop a comprehensive, career-long, learning strategy for all police members to equip them to deliver equitable services to Victorians with disabilities. This should focus on capacity to identify and understand disability, and make adjustments. This should include police of all levels of the organisation throughout their careers, including at points of recruitment, advancement and across the range of roles, including as duty officers, Sexual Offences and Child Abuse Investigation Teams, prosecutors and in leadership.
4. Develop a bystander response for police members who witness discrimination. This should include training for senior sergeants, and local area commanders on a proactive approach to challenging discriminatory stereotypes and language.

5. Gain and maintain Communication Access accreditation according to the advice of Scope. Using a staged approach, Victoria Police should achieve accreditation across the state by 31 December 2017. In the first instance, Easy English versions of Victoria Police standard forms and written information for victims should be made available. These should also be made available in Auslan video on the Victoria Police website. This work should commence immediately.

## Victoria Police and the Office of the Public Advocate

6. Update the Independent Third Person 'ready reckoner' to improve the identification of people who have disabilities and uptake of Independent Third Persons for victims of crime. All police members should be required to complete compulsory online learning and testing on use of Independent Third Persons by June 2015, and then on an ongoing basis at least every three years.

## Victoria Police and Department of Justice

7. Establish a centralised booking system for Augmentative and Alternative Communication for use by Victoria Police, Office of Public Prosecutions, Victorian Legal Aid, Victorian Courts and tribunals, Victims Support Agency and other justice agencies. This model should be developed in a way that ensures it is adaptable to other systems.

## Department of Justice

8. In cooperation with other departments, statutory agencies and Victoria Police, undertake trend analysis of the prevalence of crime against people with disabilities in Victoria to inform improvements to responses, including early intervention and prevention, and to assist in improving and streamlining cross-sectoral supports.

9. Examine options for amending the *Criminal Procedure Act 2009* (Vic) to:
  - a. provide for special hearings for indictable offences involving an assault, injury or threat of injury
  - b. extend special hearings to people with communication disabilities
  - c. consult with relevant stakeholders including judicial members and the legal profession on options for reform.

### Judicial College of Victoria

10. Amend the Uniform Evidence Manual to clarify that people with communication disabilities are included in the definition of a vulnerable witness contained in section 41(4) of the *Evidence Act 2008* (Vic) and that Augmentative and Alternative Communication may be used by the courts under section 31 (2) the Act.
11. Collaborate with the Victorian Equal Opportunity and Human Rights Commission to develop educative resources that specifically address making adjustments for people with disabilities. Over time, this should form part of a broader suite of resources to assist the courts to meet the diverse needs of people across all attribute groups.

### Court Services Victoria

12. Prioritise disability accessibility and drive implementation consistently across jurisdictions. Priorities include hearing loops and space for mobility aides in court rooms across jurisdictions.

### Victoria Police, Department of Health and Department of Human Services

13. In order to improve consistency of response when a crime against a person with disability occurs in a service setting, and to reflect the standards in the Victims of Crime Operating Procedures and the recommended Code of Practice, local arrangements such as Standard Operating Procedures should be enhanced to provide for stronger, minimum standards around response times, communication on progress and status of matters. These should be reflected in associated protocols with the Department of Human Services and Department of Health and in practice directions to service staff.

### Department of Human Services and Department of Health

14. Building on existing efforts, and as part of a comprehensive approach to safeguarding, the Department of Human Services and Department of Health should:
  - a. issue comprehensive practice guidelines on when and how to report to police, how to effectively and proactively engage with police, navigating the criminal justice system, services and referral pathways, empowering victims to make choices about the process, appeal and review options, and minimum standards for conducting service investigations
  - b. deliver training for departmental and funded services staff on preventing, recognising, responding to and reporting violence, abuse and family violence, including focused efforts to support management to strengthen supervision and recruitment processes
  - c. promote prevention, rights awareness and improved response by continuing to support peer-led education, advocacy and self-advocacy by people with disabilities.

### Victorian Government

15. The Victorian Government should prohibit persons who have been found to have abused, assaulted or neglected a client of a disability, mental health and other service for people with disabilities from working or volunteering in such services by placing them on a register of unsuitable persons. This scheme should include an independent mechanism to determine the suitability of persons to continue to work with adults with disabilities. Subject to evaluation, it should be the first step in the development of a more comprehensive registration scheme for those delivering services to adults with disabilities.
16. Consistent with the Charter of Human Rights and Responsibilities, and recognising that a lack of communication supports may lead to the unnecessary use of restrictive interventions, the Department of Human Services and Department of Health should ensure all service users who require a communication assessment and plan have one, and that this is implemented and monitored. To achieve this, the Victorian Government should ensure that this is resourced and priority should be given in the first instance to people subject to restrictive interventions.

# Victoria Police response

Victoria Police acknowledges and commends the work the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) has achieved in producing *Beyond doubt: The experiences of people with disabilities reporting crime*.

Victoria Police is committed to improving the outcomes for people with disabilities when they come into contact with police and *Beyond doubt* reiterates the importance of this commitment.

Victoria Police recognises its role as the first point of contact and entry to the justice system for people with disabilities, whether as victim, witness or accused and acknowledges the overrepresentation of people with a disability as victims of violent and sexual crime within the justice system.

*Beyond doubt* emphasises the important role police play in ensuring people with disabilities feel safe, secure, valued and supported. The research highlighted that when police service delivery successfully meets the needs of people with a disability it can have a significant impact on their experience with the justice system and on their feelings of safety and security in the community.

While the report acknowledges that the majority of police members aim to deliver the best possible service to people with disabilities, it does illustrate examples where police service delivery has not been at the level expected. It is incumbent upon Victoria Police to do all it can to ensure that police service can be relied upon.

Victoria Police is committed to providing its members with the support and skills they require in order to respond to the needs of people with disabilities and to ensure that people with disabilities feel safe and supported in the community.

To achieve this, Victoria Police has considered the findings of *Beyond doubt* and has begun to incorporate the recommendations in key strategies and plans. We look forward to continuing to work positively with VEOHRC to better meet the needs of people with disabilities.

## Using communications tools



Research suggests that one in 500 Victorians have communication disabilities. Speech Pathology Australia note that these can range from a “subtle impact on someone’s ability to understand what others say, to a complex communication disability that affects all aspects of spoken communication and results in the need to use a communication aid or device”.

This is an example of communication board symbols developed on the topic of ‘police’ by Communication Disabilities Access Canada.

# Part 1 – The context

## Chapter 1: About the research

The Victorian Equal Opportunity and Human Rights Commission (the Commission) is an independent statutory body that has functions under the *Equal Opportunity Act 2010* (Vic), the *Racial and Religious Tolerance Act 2001* (Vic), and the Charter of Human Rights and Responsibilities (the Charter).

The Commission's functions include resolving disputes about equal opportunity and vilification issues, providing education about human rights and equal opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission reports to the Attorney-General on the operation of the Charter and, at the request of public authorities, conducts compliance reviews.

### The Commission's interest

This project was undertaken using the Commission's research functions under section 157 of the Equal Opportunity Act. It arose from concerns raised by the Commission's Disability Reference Group that people with disabilities face particular barriers in seeking justice as victims of crime.<sup>64</sup>

Equality considerations in policing are of particular concern to the Commission because:

- people with disabilities may be more likely to experience violent and sexual crime than other people
- barriers to reporting crime prevent victims from accessing other stages of the justice process
- crimes against victims with disabilities are less likely to be successfully prosecuted.

<sup>64</sup> This group provides advice to the Commission on systemic discrimination and human rights issues. It includes members who have direct experience of disability, are parents of children with disability, service providers and advocates.

This engages the Equal Opportunity Act, Charter rights, and other human rights protected by domestic and international law.<sup>65</sup>

### Equal Opportunity Act

Under the Equal Opportunity Act, Victoria Police:

- must not discriminate against people with disabilities when they deliver police services, including receiving reports of crime and engaging with the person in the follow-up to the report
- have a legal obligation to make reasonable adjustments for people with disabilities when they report crimes so that they can access police services

<sup>65</sup> People with disabilities have rights under the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) including equality and non-discrimination, security, access to justice, access to information, and protection from inhuman or degrading treatment. *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008). On 11 April 2014, the CRPD adopted General Comment No 1 (2014) on Article 12: Equal recognition before the law, which reaffirms state obligations relating to key principles under Article 12 and offers guidance on meeting these obligations, including the obligation to provide supports to exercise legal capacity including support people, peer support and advocacy and assistance with communication. The Comment outlines that key workers – including police officers and the judiciary – should be trained to recognise people with disabilities as equal before the law and give the same weight to complaints and statements as they would to people without disabilities. The Comment also specifies that supporting legal capacity may include recognition of diverse communication methods, such as allowing video testimony, procedural accommodation and other assistive methods. Committee on the Rights of Persons with Disabilities, *General Comment on Article 12: Equal Recognition before the law*, 11<sup>th</sup> sess, UN Doc CRPD/C/11/4 (30 March-11 April 2014) <<http://www.ohchr.org/Documents/HRBodies/CRPD/GC/DGCArticle12.doc>>.

- have a positive duty to take proactive steps to eliminate discrimination as far as possible.<sup>66</sup>

The federal *Disability Discrimination Act 1992* (Cth) also makes it unlawful to discriminate against people with disabilities in the provision of a service.<sup>67</sup>

## Charter of Human Rights and Responsibilities

The Charter requires public authorities, including Victoria Police and the Office of Public Prosecutions (OPP), to consider and protect human rights when they make decisions.<sup>68</sup> These agencies have a legal obligation to act compatibly with human rights when they set policies and procedures, handle complaints, investigate crimes, and make decisions about whether or not to lay criminal charges against a person. In making these decisions, Victoria Police and OPP have opportunities to promote the rights of people with disabilities.

Relevant Charter rights include equality before the law, which includes the right to equal protection of the law; and freedom of expression, which includes the right to receive information in appropriate formats. Human rights are not the only consideration, but they are part of the decision-making framework that all public authorities must apply.

In addition to these rights, service providers bound by the Charter, including government-run or funded disability and mental health services, must also ensure the protection and promotion of the rights of clients. Rights engaged when people are abused, neglected or subject to violence include rights to security of the person, right to life and protection from inhuman or degrading treatment.<sup>69</sup>

## International human rights

People with disabilities also have rights under the United Nations *Convention on the Rights of Persons with Disabilities* including equality and non-discrimination, security, access to justice, access to information, and protection from inhuman or degrading treatment.<sup>70</sup> Further rights are contained in the *International Convention on Civil and Political Rights*; *Convention on the Rights of the Child*, and the *Convention on the Elimination of All forms of Discrimination Against Women*.<sup>71</sup>

## Aim of the project

This project tests the hypothesis that police services are not delivered on equal footing for people with disabilities who are victims of crime, compared to those without disability.

We aimed to:

- explore what factors have an impact – both positive and negative – on the initial contact between a person with disabilities and police when a crime is reported
- gain a better understanding of the environments in which crimes against people with disabilities occur and how this affects the reporting process
- identify what is and isn't working well across the justice process including reporting, police interviewing, investigations and prosecutions.

This included looking at the factors that might determine if a report is or is not made, including how the attitudes, experience and knowledge of police officers inform the interaction. We also wanted to examine how factors such as interviewing and evidence-gathering techniques, evidentiary requirements, court procedures and attitudes of the judiciary also affect police services.

66 *Equal Opportunity Act 2010* (Vic) ss 15, 44–5.

67 *Disability Discrimination Act 1992* (Cth) s 24.

68 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 4(1)(b)(d), 38. See *Momcilovic v The Queen* [2011] HCA 34, 128.

69 *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 9–10, 21.

70 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008) art 5, 13, 14, 15, 21.

71 *International Convention on Civil and Political Rights*, opened for signature 16 December 1966 A/RES/2200A (XXI) (entered into force 23 March 1976); *Convention on the Rights of the Child*, opened for signature 20 November 1989, A/RES/44/25 (entered into force 2 September 1990); *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

## Other key work

Other important work that provides context to this research includes:

### *Victorian State Disability Plan 2013 – 2016*

The second goal of the Victorian State Disability Plan (upholding rights and promoting participation) includes a number of strategies to “improve the practical application of human rights,” “better enable people with a disability, families and carers to exercise their rights,” and “improve responses to violence and sexual assault”. The plan is underpinned by two, two-yearly implementation plans.<sup>72</sup>

### *Interagency Guideline for Addressing Violence, Neglect and Abuse*

The Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA), produced by the Office of the Public Advocate (OPA) in consultation with a number of key organisations, is a good practice guideline for organisations, staff members and volunteers working with adults who are at risk of violence, neglect or abuse.<sup>73</sup> The guideline states the action that should be taken if violence, neglect or abuse is reported to, witnessed by, or suspected by a staff member or volunteer.<sup>74</sup>

### *Disability Services Commissioner, Occasional Paper No 1. Safeguarding People’s Right to be Free from Abuse: Key considerations for preventing and responding to alleged staff to client abuse in disability services.*

Published in June 2012, this paper provides a safeguarding framework, with four levels of strategies to prevent and respond to alleged staff-to-client abuse in disability services. This framework is being used by The Department of Human Services (DHS), the National Disability Services and by individual disability services organisations to inform the development and implementation of approaches to safeguarding people’s rights to be free from abuse.<sup>75</sup>

### *Disability Services Commissioner guidance for services on investigations (forthcoming)*

The Disability Services Commissioner (DSC) is currently producing a resource for services with guidance on the key factors required in investigations into alleged staff-to-client assaults or unexplained injuries.

### *National Disability Services ‘Zero Tolerance’ project*

National Disability Services is leading ‘Zero Tolerance’ – a national project to develop a framework for service providers so people with disabilities can exercise choice and control while remaining safe from risk of abuse, exploitation and neglect. A summary report on findings from national consultations undertaken in 2013 is available and a series of practice advice sheets are being developed, the most recent of which is on recruitment of staff in disability services.<sup>76</sup>

### *Voices Against Violence research project*

The Voices Against Violence research project, undertaken by Women With Disabilities Victoria in partnership with OPA and the Domestic Violence Resource Centre, examined the circumstances of women with disabilities of any kind (physical, sensory, intellectual, acquired brain injury, dementia and mental ill-health), who had experienced violence.

A series of reports, released in May 2014, make recommendations on legal, policy and service sector reform. These recommendations have been considered in the development of this report.<sup>77</sup>

72 State of Victoria, Department of Human Services, *Victorian State Disability Plan 2013 – 2016* (2012) <<http://www.dhs.vic.gov.au/about-the-department/plans,-programs-and-projects/plans-and-strategies/disability-services/victorian-state-disability-plan-2013-2016>>.

73 Office of the Public Advocate, *IGUANA*, above n 60.

74 See also Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 26, for a discussion of case studies of abuse and neglect in services which provided important context for the development of the guideline.

75 Coulson Barr, above n 7.

76 National Disability Services, *Zero Tolerance: Preventing and responding to abuse & neglect of people in funded disability services* (2013) <<http://www.nds.org.au/projects/article/171>>.

77 Delanie Woodlock et al, *Voices against Violence Paper One: Summary Report and Recommendations* (Women with Disabilities Victoria, Office of the Public Advocate, Domestic Violence Resource Centre, 2014).



## Major inquiries

This report was informed by the Victorian Parliament *Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*. This found that people with intellectual disability and cognitive impairment are more likely to experience barriers when seeking access to the justice system.<sup>78</sup>

Earlier this year, the Australian Human Rights Commission (AHRC) published *Equal Before the Law: Towards Disability Justice Strategies*.<sup>79</sup> This report found that “access to justice in the criminal justice system for people with disabilities ... is a significant problem in every jurisdiction in Australia”.<sup>80</sup> Key recommendations include the development of jurisdictional Disability Justice Strategies, which include principles and actions that are concerned with appropriate communications, early intervention and diversion, increased service capacity, effective training, enhanced accountability and monitoring, and improved policies and frameworks.<sup>81</sup> The South Australian Attorney-General’s Department has recently launched a Disability Justice Plan for 2014–17.<sup>82</sup> Actions in that strategy, and in *Equal Before the Law*, complement many of the recommendations in this report.

In addition, the AHRC has begun work on developing a national list of programs and services that assist people with disability in the criminal justice system.<sup>83</sup>

Other key pieces of work of relevance currently underway at the national level include the Royal Commission into Institutional Responses to Child Sexual Abuse, and Australian Law Reform Commission *Inquiry into Equality, Capacity and Disability in Commonwealth Laws*.

## Methodology

This study focused on people with disabilities who have been victims of crimes against the person in the last two years in Victoria. These crimes include assault, sexual assault, indecent assault, causing serious injury and family violence.

Ethics approval for the research was granted by the Department of Justice Human Research Ethics Committee.<sup>84</sup>

We used a qualitative approach that entailed:

- **twenty-seven in-depth case study interviews** with people who had experienced crime, supported someone to report a crime, or worked in the justice system. Participants were invited to describe positive and negative aspects of reporting to police and to provide their thoughts on good practice
  - thirteen interviews were with people with disabilities
  - seven were with people who provide care and support
  - two were with police members
  - two were Independent Third Persons (ITP)
  - two were Advocate Guardians
  - one was a disability advocate<sup>85</sup>
- **thirteen focus groups**
  - five police focus groups
  - three with ITPs
  - two with people who provide care and support
  - one with Auslan interpreters
  - one with people with disabilities
  - one with disability advocates

**Sixty-one people** took part in the focus groups. Of these, 24 were police members

78 Of 47 recommendations made by the Committee, 11 related to police interactions with victims with disabilities. The Victorian Government tabled its response in September 2013 noting in principle support for these 11 recommendations. Parliament of Victoria, Law Reform Committee, *Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers* (2013) xxix-xxxvi <<http://www.parliament.vic.gov.au/lawreform/article/1461>>; Victorian Government, *Whole of Victorian Government response to the Law Reform Committee Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers* (2013) <<http://www.parliament.vic.gov.au/lawreform/article/1461>>.

79 Australian Human Rights Commission, *Equal Before the Law: Towards Disability Justice Strategies* (2014) <<http://www.humanrights.gov.au/publications/equal-law>>.

80 Ibid. See also Philip French, Julie Dardel and Sonya Price-Kelly, ‘Rights Denied: Towards a national policy agenda about abuse, neglect, and exploitation of persons with cognitive impairment’ (Report, People with Disability Australia, 2009) for a national perspective on abuse and neglect.

81 Australian Human Rights Commission, above n 79, 6–7.

82 See Government of South Australia, Attorney-General’s Department, *Disability Justice Plan (2014–17)* <<http://www.agd.sa.gov.au/initiatives/disability-justice-plan>>.

83 See Australian Human Rights Commission, *Access to justice in the criminal justice system for people with disability* (5 March 2014) <<https://www.humanrights.gov.au/access-justice-criminal-justice-system-people-disability>>.

84 Ethics approval number CF/13/3512.

85 Case studies can be found in Part 5. Two case studies do not appear in the publication.

- **twenty-four key informant interviews** with those with specialist knowledge of disability, crime victimisation and reporting. These included disability organisations, police, academics, legal services, the DSC, Senior Practitioner – Disability in the Office of Professional Practice<sup>86</sup> and OPA. The list of key informants can be found in Appendix 1
- **a confidential survey** that included specific survey instruments for people with disabilities, those who provide care and support, and an Easy English survey. There were 63 respondents
  - fifty two were from people with disabilities, including nine people requiring Easy English
  - eleven were people who provide care and support

The survey ran from 7 June to 15 November 2013. It was available online, in print or by telephone. It asked respondents about their experience of crime, reporting crime and the police response<sup>87</sup>
- **submissions** received from the Victorian Ombudsman, Mental Health Legal Service, Speech Pathology Australia, Disability Advocacy and Information Service Inc. (DAIS), Law and Justice Forum and Ryan Thorneycroft
- **examination of aggregate de-identified data** from DHS and the Department of Justice Victims Support Agency.

To supplement this data, the Commission undertook a legislative and policy review, reviewed relevant research and completed a comparative analysis of other jurisdictions to identify potential policy solutions.

## Limitations of methodology

Qualitative research based on interviews with small numbers of people has a number of inherent limitations, as outlined below. Despite these limitations, the consistency of the messages we received in this research provides powerful evidence of the need to improve justice services to achieve equality.

## The sample

Research based on voluntary participation necessarily contains some limitations such that findings cannot be extrapolated to the broader community. We had a small sample, which is not representative of all people with disabilities

<sup>86</sup> Formerly the Senior Practitioner.

<sup>87</sup> The survey offered participants the option of making further comments in free text boxes. Some respondents did not answer every question. Therefore, in some instances, the number of answers to certain questions does not always match the total number of responses received.

who have experienced crime in Victoria. It is also possible that people who have had negative experiences will be more likely to volunteer in research of this kind. The report, including case studies, should be read with this in mind.

Further, the anecdotal nature of the data cited means there is difficulty in forming a comprehensive picture of the multiple service systems that people with disabilities may interact with. This limitation may lead to a disproportionate representation of DHS and other providers which could be misleading.

The Commission recognises that research on victims of crime has the potential to re-traumatise. This may have influenced the decision not to participate in the research. Barriers that people face in reporting crime may also have prevented them from participating in, or accessing information about, the research. Some of these barriers were mitigated by the provision of communication support and flexible interview arrangements. Others, such as fear, shame and the closed nature of much of the disability service system were outside the Commission's control.

## Project scope

Research participants raised many issues that did not fit the original scope of the project. Some of these, such as court processes and the disability, health and mental health systems have been included in this report because of the clear impact that they have on police processes and decision-making. However, because we did not ask specifically about these issues, it is likely that our research does not reflect the broad range of perspectives that exist.

Further, people spoke of the system as a whole when their contact may have been with sub-sets of the system, for example, disability services or particular providers of services. Therefore, extrapolating across the entire system should be treated with caution.

Some issues raised have not been included in this report, but may benefit from further research. For instance, financial abuse is an under-researched, under-policed and under-prosecuted area, but is outside the scope of this report's focus on crimes against the person.<sup>88</sup>

<sup>88</sup> See John Chesterman, *Responding to violence, abuse, exploitation and neglect: Improving our protection of at-risk adults* (Report for the Winston Churchill Memorial Trust of Australia, 2013).

## Identifying research participants

The Commission promoted participation through disability support networks, the Commission's website and the media, as well as directly inviting key informants to participate.

These methods may have led to either over-reporting or under-reporting compared to a random sample. However, this method was considered the most appropriate means of engaging participants based on the nature of the issue.

### Aboriginal people

The Commission values the contribution of the key informants from First Peoples Disability Network and Aboriginal Family Violence Prevention and Legal Service Victoria for providing invaluable knowledge and insight into the experience of Aboriginal people with disabilities reporting crime.

While effort was made to recruit participants, this sample included only one survey respondent and two case study participants who self-identified as Aboriginal or Torres Strait Islander.

### People from culturally and linguistically diverse backgrounds

The Commission is aware that people with disabilities from culturally and linguistically diverse backgrounds (CALD) face additional barriers to reporting crime, and actively sought participation from various CALD disability advocacy groups in Victoria. Twelve survey participants and three case study participants came from a CALD background.

### Women

Thirteen case study interviews concentrated on the reporting experiences of women with disabilities as victims of crime.<sup>89</sup> Nineteen survey respondents describing their experience of reporting crime identified themselves as female.<sup>90</sup>

### Children

This project did not include children with disabilities due to ethical considerations. However, we heard from parents, ITPs and Auslan interpreters about the experiences of children with disabilities reporting crime.

## Terminology

A glossary of terms can be found on page 151.

### Disability

The term 'disability' is used in this report. This reflects the language in the Equal Opportunity Act and the *Convention on the Rights of Persons with Disabilities*. The definition of disability in the Equal Opportunity Act includes:

- total or partial loss of body function or a body part
- the presence of organisms (such as HIV or Hepatitis C) that may cause disease or disability, malformation or disfigurement of the body
- mental or psychological diseases or disorders
- conditions or disorders that may result in a person learning more slowly
- a disability that may exist in the future (including because of a genetic predisposition to that disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability.<sup>91</sup>

The Commission uses a social definition of disability. This recognises that while a person may have a disability, it is society's reaction that has the disabling effect.<sup>92</sup>

The term 'cognitive impairment' is used where the primary material used that term. Otherwise the specific disability is referred to, including mental health disability, intellectual disability and acquired brain injury.

The Commission appreciates that some members of the Aboriginal community do not use the term 'disability' and prefer 'special needs', reflecting the strengths and abilities of people. We also acknowledge that Aboriginal people may be unwilling to disclose disability due to stigma or misunderstanding, and that Aboriginal people face significant barriers in accessing support services.

### Victim survivor

We use 'victim survivor' to describe people who have experienced sexual assault, in line with the Centres Against Sexual Assault (CASA). For other crimes, the term 'victim' is used.

We recognise that the word 'victim' is problematic as it may perpetuate stereotypes about people with disabilities being vulnerable or lacking agency.

89 In total, we conducted case study interviews with 21 women; however, several of these described the experience of males with disabilities.

90 Of the 52 survey respondents describing their own experience, 19 were female, 17 were male, one was other, and 15 did not state their gender.

91 *Equal Opportunity Act 2010* (Vic) s 4.

92 "Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others." *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008) Preamble.

### **Police member**

Victoria Police use the term 'police member.' As most participants in the research used 'police officer', these terms are used interchangeably in the report.

### **Augmentative and Alternative Communication**

This refers to any type of communication other than speech. Unaided Augmentative and Alternative Communication does not use any props or devices, and includes body language, facial expression and the more formal use of manual sign. Aided Augmentative and Alternative Communication does use props or devices, such as voice output communication aids and communication boards.

### **Project reference group**

This work was supported by a reference group, whose members included representatives of the OPA, DSC, Victoria Police, Victorian Advocacy League for Individuals with Disability (VALID), Department of Justice Community Operations and Victims Support Agency, Women with Disabilities Victoria, Federation University Australia, and the Commission's Disability Reference Group.

# Chapter 2: Prevalence

## Main findings

- The prevalence and nature of crimes against people with disabilities is still largely unknown.
- Limited studies of prevalence at a national level combined with smaller research pieces paint a severe picture of crime against people with disabilities. Evidence suggests that women are at greater risk of particular crimes.<sup>93</sup>
- Despite one in five Australians having a disability, available victim data indicates that people with disabilities are not accessing the justice system at a comparative rate to people who do not have disabilities.<sup>94</sup> This under-representation suggests that cases are either not reported, are not making it through the justice system or that disability has not been identified.
- Various studies suggest that people with intellectual disabilities are more likely to be victims of sexual crimes.<sup>95</sup> Research also identifies particular risks in residential settings where people are socially isolated, and greater risk of abuse by staff, although these factors may also mean the crime is less likely to be reported.<sup>96</sup>

93 “In comparison to women without disabilities, women with disabilities experience violence at a higher rate, for longer periods, from more perpetrators, and in more severe episodes.” Women with Disabilities Victoria, Written submission to provide comment to The Victorian Parliament’s Family and Community Development Committee, *Inquiry into Social Inclusion and Victorians with a Disability*, February 2014, 12.

94 Information provided to the Commission by the Victims Support Agency, 28 October 2013.

95 Hillary Brown, June Stein and Vicky Turk, ‘The sexual abuse of adults with learning disabilities: Report of a second two-year incidence survey’ (1995) 8(1) *Journal of Applied Research in Intellectual Disabilities* 3–24; Moira Carmody, ‘Invisible victims: Sexual assault of people with an intellectual disability’ (1991) 17(2) *Australian and New Zealand Journal of Disabilities* 229–36.

96 Goodfellow and Camilleri, above n 6, 46–7.

## Are people with disabilities more likely to be victims of crime?

It is difficult to determine the rate of crime against people with disabilities in Victoria because Victoria Police does not capture information and record the disability status of victims of crime, except in some family violence and hate crime incidents, which are discussed below. Nor does it capture information about reasonable adjustments required.

The Victims Support Agency does record disability, and its data indicates that people with disabilities comprise between two and five per cent of victims of crime in that service system. This is a relatively new data system and does not necessarily reflect the true numbers coming into contact with victim support system. This is because disability is not a mandatory field, may only be recorded where the disability is apparent (or assumed) or where the person voluntarily identifies disability. The figures have increased consistently over time; however, this may be because of better recording than increasing prevalence. It is not possible to rely on these figures when looking at overall prevalence as they may also be affected by other factors, such as a reluctance of people with disability to contact the service, or a lack of knowledge of the service.

**Figure 1: Percentage of victims of crime with disability**

Year	Proportion of victims of crime with disabilities
2009–10	<1%
2010–11	3%
2011–12	3%
2012–13	<5%

Source: Victims Support Agency<sup>97</sup>

97 Information provided to the Commission by the Victims Support Agency, 28 October 2013.

## Key facts

It is not the intention of this study to determine the prevalence of crime against people with disabilities. However, an understanding of how crime happens to people with a disability provides important context for improving justice responses is essential to:

- understanding the extent and nature of the problem
- developing appropriate responses and prevention strategies
- monitoring the effectiveness of initiatives and strategies.

Significant local and international research reveals that people with disabilities are more likely to be victims of crime than the general population, and that women with disabilities are at particular risk of being targeted.<sup>98</sup> For example, we know that women with disabilities are more likely to experience partner or sexual violence, of great severity, and over a longer period of time, than women without a disability.<sup>99</sup>

Crimes can range from harassment, stalking, burglary, physical violence, sexual assault, financial abuse, family violence and hate crime. Sexual assault is the most studied. Hate crime is probably the least understood or researched.

- The Australian Bureau of Statistics (ABS), Personal Safety Survey data from 2012 shows people with disabilities or a long-term health condition experienced higher levels of violence than other people in the preceding 12 months. The prevalence rate for people with a disability is 7.9 per cent compared to 5.4 per cent for the general population.<sup>100</sup>
- A recent review of international and national research by the Disability Services Commissioner (DSC) found that people with disabilities, particularly people with an intellectual disability, cognitive, communication and/or sensory impairments, high support needs and behaviours of concern, are much more likely to experience abuse, including physical and sexual assault, than the general population.<sup>101</sup>

98 VicHealth, above n 5, 5; Stop the Violence Project, above n 3; Jansson, above n 3.

99 State of Victoria, Department of Human Services, *Victoria's action plan to address violence against women & children 2012-15* (2012) 26 <[http://www.dhs.vic.gov.au/for-business-and-community/community-involvement/women-in-the-community/preventing-violence-against-women/action-plan-to-address-violence-against-women-and\\_children](http://www.dhs.vic.gov.au/for-business-and-community/community-involvement/women-in-the-community/preventing-violence-against-women/action-plan-to-address-violence-against-women-and_children)>.

100 Australian Bureau of Statistics, above n 9.

101 Coulson Barr, above n 7, 8.

- A South Australian study found that people with an intellectual disability were approximately three times more likely to be victims of assault, sexual assault and robbery compared with people who do not have an intellectual disability.<sup>102</sup>
- VicHealth estimates that 90 per cent of Australian women with an intellectual disability have been subjected to sexual abuse, more than two-thirds of them before they turned 18 years of age.<sup>103</sup>

## Sexual assault

Substantial work by Dr Margaret Camilleri has highlighted that adults with cognitive impairment (intellectual impairment, mental illness and dementia), and particularly women, are more at risk of sexual assault.<sup>104</sup>

Various international and national studies report that between 50–90 per cent of people with intellectual or psychosocial disability experience sexual assault.<sup>105</sup> This is a significant variance, and much more than the 10.6 per cent of Australians who an ABS survey found had experienced sexual assault since the age of 15.<sup>106</sup>

Victorian Independent Third Person (ITP) data illustrates that for victims with a cognitive impairment who had used an ITP more than once, 69 per cent had experienced sexual assault. A further 25 per cent had experienced other crimes against the person.<sup>107</sup>

102 Carlene Wilson and Neil Brewer, 'The incidence of criminal victimisation of individuals with an intellectual disability' (1992) 27(2) *Australian Psychologist*, 114–117, 115.

103 VicHealth, above n 5, 5.

104 Camilleri, *[Dis]abled justice*, above n 5; Camilleri, 'Enabling Justice', above n 5, 2.

105 French, Dardel and Price-Kelly, above n 80, 16.

106 Australian Bureau of Statistics 2013, *Personal Safety, Australia 2012*, 'Table 1: Experience of violence, Type of violence', data cube: Excel spreadsheet, cat. no. 4906.0, viewed 12 March 2014 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4906.02012?OpenDocument>>.

107 Data from 1 July 2005 and 30 June 2010. Office of the Public Advocate, *Breaking the cycle: Using advocacy-based referrals to assist people with disabilities in the criminal justice system* (2012) 99 <<http://www.publicadvocate.vic.gov.au/research/255/>>.

There is also evidence from the United Kingdom that suggests that women with disabilities, regardless of age, sexuality, ethnicity or class, are assaulted or raped at a rate at least twice that of women without disabilities.<sup>108</sup> Robust studies confirm that non-sexual abuse from partners is experienced by a significantly higher proportion of women with disabilities in England and Wales, as compared to women without disabilities.<sup>109</sup>

## Family violence

In 2011–12, Victoria Police recorded 1,318 family violence incidents against people with disabilities.<sup>110</sup> This represents 2.6 per cent of all family violence incidents recorded by police of that year.<sup>111</sup> Although Victoria Police Family Violence Incident Reports have had a disability field since 2005, it is not mandatory and may only be collected where a disability is apparent, assumed or where a victim volunteers the information. In addition, participants told us that police do not necessarily recognise family violence where disability is present.<sup>112</sup> Therefore this figure is likely to under-represent the true prevalence of family violence against people with disabilities.

Results of a national survey of 367 family violence agencies found that violence is present in the lives of approximately 22 per cent of women and girls with disabilities using those services.<sup>113</sup> The research did not capture the incidence of violence for women with disabilities who do not access family violence services, therefore the actual incidence rate may be much higher.

Internationally, a small-scale study found that more than half of women with disability in the United Kingdom experienced domestic abuse during their lives.<sup>114</sup>

As noted earlier, we know that women with disabilities are more likely to experience partner or sexual violence, of greater severity, and over a longer period, than women without disability. Women with disabilities who are dependent on their carer for access to, and communication with, the outside world, their home, to administer medication and support their mobility are particularly vulnerable and isolated when their carer is also their abuser. Abuse of women with disabilities may also manifest by having equipment, food and medication withheld.<sup>115</sup>

A 2010 report analysed 86 reported cases of abuse in Victoria over the past 10 years and found people of all ages with a range of cognitive impairments experience physical, sexual, psychological, emotional violence, financial abuse and neglect.<sup>116</sup> In 64 of the 86 cases that were analysed, the perpetrators were partners or relatives.<sup>117</sup>

Violence against women comes at enormous personal and social cost. Each year, violence against women costs Australia \$13.6 billion.<sup>118</sup> By 2021, the national figure is expected to rise to \$15.6 billion with Victoria's share estimated to be around \$3.9 billion.<sup>119</sup>

---

108 Gill Hague et al, 'Making the links – Disabled women and domestic violence' (Report, Women's Aid Federation of England 2008) 17.

109 Jansson, above n 3, 62.

110 Information provided to the Commission by Victoria Police, 18 April 2013.

111 Victoria Police recorded 50,382 family violence incidents in 2011–12. Victoria Police, *Crime Statistics 2011/12* (2012) 128. <<http://www.police.vic.gov.au/crimestats/ebooks/1112/index.html#/1/>>.

112 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013); key informant interview, Senior Rights Victoria (19 November 2013).

113 Stop the Violence Project, above n 3, 7–8.

114 See Hague et al, above n 108, 16–7.

---

115 State of Victoria, Victims Support Agency, *Measuring Family Violence in Victoria*, above n 63.

116 Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 26, 4.

117 Ibid 13.

118 National Council to Reduce Violence against Women and their Children, *The Cost of Violence against Women and their Children* (2009) 4 <<http://www.dss.gov.au/our-responsibilities/women/publications-articles/reducing-violence/national-plan-to-reduce-violence-against-women-and-their-children/economic-cost-of-violence-against-women-and-their-children>>.

119 Ibid.; Victorian Government, *A Right to Respect: Victoria's Plan to Prevent Violence Against Women 2010–2020* cited in State of Victoria, Department of Planning and Community Development, *A Right to Safety and Justice Strategic Framework to Guide Continuing Family Violence Reform in Victoria 2010–2020* (2010) 7 <[http://www.dhs.vic.gov.au/\\_data/assets/word\\_doc/0003/644412/ARighttoSafetyandJustice.doc](http://www.dhs.vic.gov.au/_data/assets/word_doc/0003/644412/ARighttoSafetyandJustice.doc)>.

## Crime in service settings

Violence against persons with cognitive impairment is reported to be particularly associated with institutional and other congregate supported living environments.<sup>120</sup>

Various studies suggest that people with intellectual disabilities are more likely to be victims of sexual crimes. Studies also identify particular risks in residential settings where people are socially isolated and at greater risk of abuse by staff.<sup>121</sup> As noted by People with Disability Australia, studies found that more than 20 different types of abuse and neglect were reported, “including emotional, psychological and mental abuse, sexual abuse, failure to provide basic requirements, abusive behaviour management practices”.<sup>122</sup>

Further, in 2010–11, three per cent of complaints to the DSC and six per cent of all complaints reported by service providers involved alleged or actual abuse by staff.<sup>123</sup> DSC acknowledges that only a proportion of allegations or incidents are recorded as complaints.<sup>124</sup>

In 2011–12 the Office of the Public Advocate (OPA) reported a three-fold increase in abuse and violence that Community Visitors reported over three years. In 2012–13 they identified 209 issues of neglect, abuse and assault. Of these:

- one hundred and four were in disability services
- sixty-six were in residential services
- thirty-nine were in mental health settings.

In the same period OPA received 22 notifications of people with a disability or mental illness being at serious or imminent risk.<sup>125</sup>

Based on a small sample of research, the Victorian Mental Illness Awareness Council found that “85 per cent of females felt unsafe during hospitalisation, 67 per cent reported experiencing sexual or other forms of harassment during hospitalisation and almost half (45 per cent) had experienced sexual assault during an in-patient admission.”<sup>126</sup>

Children with Disability Australia also reports that children and young people with disabilities experience abuse and neglect at higher rates than their peers who do not have a disability. Abuse and neglect occurs in all places where children live their lives.<sup>127</sup>

## Hate crime

Hate crime is “a crime wholly or partly motivated by, grounded in, or aggravated by, bias or prejudice towards particular groups of people”.<sup>128</sup> Internationally, there is growing evidence that people are targeted by strangers in a range of locations because of their disabilities. The United Kingdom collects the most comprehensive data on hate crime. Between January and December 2010, United Kingdom police recorded 1,569 hate crime offences perceived to have been motivated on the basis of disability.<sup>129</sup>

In an online survey conducted by Scope United Kingdom, more than half (56 per cent) of the respondents said they had experienced hostility, aggression or violence from a stranger because of their disability.<sup>130</sup>

120 French, Dardel and Price-Kelly, above n 80, 17.

121 Brown et al, above n 95, 3–24; Carmody, above n 95, 229–36; Goodfellow and Camilleri, above n 6, 46–7.

122 Conway R.F., Bergin L. and Thornton K. (1996). Abuse and adults with intellectual disability living in residential services. Canberra: National Council on Intellectual Disability; Community Services Commission and Intellectual Disability Rights Service. (2001). Crime prevention in residential services for people with disabilities. A discussion paper. Community Services Commission and Intellectual Disability Rights Service cited in French, Dardel and Price-Kelly, above n 80, 20.

123 Coulson Barr, above n 7, 3.

124 Ibid.

125 Office of the Public Advocate, *Community Visitors Annual Report 2012–13* (2013) 4–5.

126 Victorian Mental Illness Awareness Council, *Zero Tolerance for Sexual Assault: A safe admission for women* (2013) 4.

127 Robinson, above n 4, 10.

128 Gail Mason, ‘Hate crime laws in Australia: Are they achieving their goals?’ (2009) 33 *Criminal Law Journal* 326, 326–27.

129 This was approximately three per cent of all 48,127 hate crime offences recorded in the period. Deborah Lader, ‘The extent of and perceptions towards hate crime’ in Kevin Smith (Ed.) et al, *Home Office Statistical Bulletin 06/12, Hate crime, cyber security and the experience of crime among children: Findings from the 2010/11 British Crime Survey: Supplementary Volume 3 to Crime in England and Wales 2010/11* (2012) 25–6.

130 Scope UK (2011) cited in Equality and Human Rights Commission (Great Britain), *Hidden in plain sight: Inquiry into disability-related harassment* (2011) 77.



## Hate crime in Victoria

Victoria Police refers to hate crime as prejudice motivated crime. Although most commonly associated with racist or homophobic crimes, this classification has been expanded to include disability.<sup>131</sup> To date, police data has shown very low numbers of prejudice motivated crime against people with disabilities.<sup>132</sup> This may be due to people's reluctance to identify their disability as the motivation for crime, because police do not interpret a crime as prejudice-motivated or because the crimes are not reported.

This report does not address hate crime in detail, mainly because it would require its own methodology. However, we asked respondents to our survey if they thought they were targeted because of their disability. Of 27 people with disabilities who answered this question, only three said yes, the crime was motivated by prejudice against people with disabilities (11 per cent). Of the remainder:

- seventeen said yes, because the perpetrator thought I was vulnerable or an easy target (63 per cent)
- four did not know why they were targeted (15 per cent)
- three did not think they were targeted because of disability (11 per cent).<sup>133</sup>

Similarly, most key informants we interviewed did not identify hate crime. Some police described how people with disabilities might be targeted for fraud, groomed for sexual exploitation or to commit offences, but did not identify hate crime as such.<sup>134</sup>

Some literature distinguishes between 'hate crime,' which is perpetrated by people without connections to the victim, and 'mate crime,' which is:

The hostile acts of perpetrators who are 'insiders', sharing domesticity to some degree, there is a mutual relationship. The disabled person [*sic*] may cling to the relationship, wanting the hostility to stop but welcoming the company and feeling part of a family or group. These situations are not opportunistic, they are calculated.<sup>135</sup>

Victims may be even less likely to report mate crime because of the value they place in the relationship with the perpetrator.<sup>136</sup>

We heard that hate crime incidents may be hitting the justice system through applications for Personal Safety Interventions Orders.<sup>137</sup> We were also told that hate speech towards women with disabilities was likely to target their gender and their disability.<sup>138</sup>

Hate crime against people with disabilities is an important human rights issue that requires further research and deep analysis.

---

131 *Sentencing Act 1991* (Vic) s 5(2)(daaa) provides that in sentencing an offender "a court must have regard to whether the offender was motivated (wholly or partly) by hatred for or prejudice against a group of people with common characteristics with which the victim was associated or with which the offender believed the victims was associated".

132 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

133 Survey (people with disabilities).

134 Focus group 9, police (November 2013); focus group 11, police (November 2013); focus group 13, police (November 2013).

---

135 Pam Thomas, 'Mate crime': ridicule, hostility and targeted attacks against disabled people' (2011) 26(1) *Disability and Society* 107, 108.

136 Ryan Thorneycroft, Submission No 5 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 23 October 2013, 53.

137 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

138 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013); key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013); key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

## What we still don't know

There is too much about the prevalence of crime against people with disabilities that we don't know. Without a true picture, most discussions about crime and people with disabilities focus on vulnerabilities, drawing attention away from the essential work of improving systems, preventing crime and responding to crime when it occurs.<sup>139</sup>

Based on the literature, this is what we know:

- crime against people with disabilities is higher than for the general population. In some environments, on the evidence available, it appears widespread
- a growing body of evidence also finds that crime towards people with disabilities starts early<sup>140</sup>
- the experience of crime is most severe for women, people with cognitive impairments and people with communication disabilities. Research also identifies particular risks in residential settings where people are socially isolated, and greater risk of abuse by staff, although these factors may also mean the crime is less likely to be reported.<sup>141</sup>

These are the things we don't know:

- we know less about the experience of people with physical disabilities than those with cognitive impairment – and we don't know if their experiences are the same
- as a general observation we know very little about men with disabilities as the majority of studies have focused on the experience of women
- exposure to crime in mainstream living environments (where most people with disabilities live)
- most of our knowledge comes from service providers – people who don't access or haven't been recognised by service providers are invisible and their experiences are unrecorded
- whether the experience is different for people from culturally and linguistically diverse backgrounds
- the experience of Aboriginal people with disabilities reporting crime.

---

<sup>139</sup> French, Dardel and Price-Kelly, above n 80, 21.

<sup>140</sup> Robinson, above n 4, 5, 15.

<sup>141</sup> Goodfellow and Camilleri, above n 6, 46–7.

# Part 2 – Barriers across the system

## Chapter 3: Why don't people report crime?

### Main findings

- Most crimes against people with disabilities go unreported, largely because significant and multifaceted barriers prevent people with disabilities reporting crime.
- Specific barriers exist for people with communications disabilities, at all points in system.
- For those living in environments that are socially isolating additional barriers exist because these crimes occur behind closed doors.
- People with disabilities and the people who provide care and support to them lack knowledge of how and when to report a crime, whether the conduct is criminal and knowledge of their rights. Some are fearful of repercussions for the victim and for themselves.

### Why don't victims report?

- In the surveys for people with disabilities, 30 people responded to the question about telling the police a crime had occurred. Of these, 11 did not report the crime to police.<sup>142</sup> Among survey respondents who provided care and support, two out of 11 said the crime was not reported to police.<sup>143</sup>
- Of 27 case study interviews with 13 victims of crime and four family members of a victim of crime, all but two had reported. However, several more told us they had experienced other crime that they had not reported to police. We also spoke with one person with disabilities and two family members who were not sure if a crime had occurred.

<sup>142</sup> Survey (people with disabilities); Survey (Easy English).

<sup>143</sup> Survey (people who provide care and support).

## Lack of access to information

We heard that many victims do not know *when, how, who and where* to report a crime.<sup>144</sup>

I wasn't told about any other way I could make a complaint. I could not think of anywhere else to take the matter. To be honest, I did not think of going to the police.<sup>145</sup>

People may not report to police because they do not know that what has happened is a crime.<sup>146</sup> Victims may not have been educated about crime, or violence may be normalised in their home environment. Or "consumers may be unclear of their rights and the process for reporting and workers may be unclear about their obligations".<sup>147</sup>

If people with disabilities do not have access to appropriately communicated information on reporting processes, service staff become the contact point for reporting crime rather than the police.

Very few [people] would be aware of external contact numbers or other avenues of reporting ... This reflects the difficulty of access and the lack of awareness amongst people with higher support needs. They have no communication, there's no teaching around using a telephone, and there are so few contact points.<sup>148</sup>

## The emotional toll of reporting

I had reported before and it killed me. I didn't expect people would believe me and I hated giving a statement because I got so terrified.<sup>149</sup>

Feeling ashamed, embarrassed or feelings of self-blame can prevent people from reporting crime.<sup>150</sup> One case study participant said that a history of abuse meant, "I thought I probably deserved it."<sup>151</sup> This "reaction may prevent victims [survivors] from speaking out about the assault".<sup>152</sup>

144 Case study: Janet (Independent Third Person); focus group 11, police (November 2013); case study: Michelle (person who provides care or support).

145 Case study: Antoinette (person with disabilities).

146 Key informant interview, Dr Margaret Camilleri (7 August 2013).

147 Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 4.

148 Key informant interview, Dr Patsie Frawley (5 July 2013).

149 Survey participant (person with disabilities).

150 Survey participant (Easy English); case study: Bella (person with disabilities); case study: Leonne (person with disabilities).

151 Case study: Bella (person with disabilities).

152 South Eastern Centre Against Sexual Assault and Family Violence, above n 20, 1.

Others did not report because they do not want their family to find out.<sup>153</sup> Some victims reported but the emotional strain of re-telling their stories led them to withdraw the complaint.

She found it difficult. Once they have gone to the police, and talked to the police – and the police are always very, very kind – once they've started talking, and the police explain you'll have to re-tell all this over again – some of them just pull out. They just can't. She can't handle it going to court.<sup>154</sup>

## Previous interaction with police

Lots [of people] have had dealings before where there wasn't a good outcome or they weren't listened to.<sup>155</sup>

Victims with a criminal history may perceive that police won't believe them or take them seriously.<sup>156</sup> Fear of police following up past fines or wrongdoing also deters some people from reporting crime.<sup>157</sup> In addition, where a previous allegation did not 'get up' or was found to be 'false' it may appear as a false report on the system, and mean that police may be unwilling to investigate another matter.<sup>158</sup>

Unsurprisingly, people who had been assaulted by police were reluctant to seek help from police for other crimes.<sup>159</sup> Focus group participants provided an example of a client who alleged that when he reported his stolen wallet he was assaulted by police before being thrown out of the station. When he was later assaulted on the street by a group of young men, he was aggressive toward police and refused to speak with them. "It was due to the client's past experience that he did not report the second incident."<sup>160</sup>

153 Case study: Alexis (person with disabilities). See also Case study: Laura (police); Focus group 2, service workers (12 August 2013).

154 Case study: Janet (Independent Third Person).

155 Case study: Mark (advocate).

156 Focus group 3, people who provide care or support (2 September 2013).

157 For example, Focus group 3, people who provide care or support (2 September 2013).

158 Camilleri, *[Dis]abled justice*, above n 5, 57–8, 74–7, 192–5.

159 Case study: Phillip (person with disabilities).

160 Focus group 3, people who provide care or support (2 September 2013).

## Previous contact with police by people with mental health disability

### **Mental Health Act 2014 (Vic) Section 351 orders**

When conducting the research, the police power to apprehend a mentally ill person fell under Section 10 of *the Mental Health Act 1986* (Vic). On 1 July 2014, this was replaced by Section 351 of the *Mental Health Act 2014* (Vic).

Section 351 permits police to apprehend a person if they are satisfied that the person appears to have a mental illness and because of the person's apparent mental illness, the person needs to be apprehended to prevent serious and imminent harm to the person or another person.<sup>161</sup> In the previous Act, it specified that this power also applied to protective services officers.

The police officer is not required to exercise any clinical judgment as to whether the person has mental illness.<sup>162</sup> Under the previous Act, the police or protective services officer had to have regard to the behaviours and appearance of the person.

The police officer has all the powers necessary to apprehend the person under Section 351.<sup>163</sup> Under the previous Act, the apprehending police officer could only use such force as was reasonably necessary.

A police officer must, as soon as practicable, arrange for the person to be taken to a medical practitioner or mental health practitioner.<sup>164</sup>

I don't call the police anymore, because I don't think they'll do anything to help me ... I worry that if I told anyone that I would end up in that hospital again, or that something bad might happen. They discriminate against you if you have a mental illness.<sup>165</sup>

For some participants, police awareness of their mental health disability led to negative treatment.

The police are part of the problem really. They ask you if you are on any medication, and then they treat you differently when you say yes, you become a risk in their eyes. I don't really trust them.<sup>166</sup>

161 *Mental Health Act 2014* (Vic) s 351(1).

162 *Mental Health Act 2014* (Vic) s 351(2).

163 *Mental Health Act 2014* (Vic) s 351(7).

164 *Mental Health Act 2014* (Vic) s 351(5).

165 Case study: Kayla (person with disabilities).

166 Case study: Kayla (person with disabilities).

People told us they did not report because they had experienced negative treatment from police applying their powers under the Mental Health Act, or they feared being subject to an order in the future.<sup>167</sup> For example, a person was warned that if she made any further reports, she would be "taken away and locked up".<sup>168</sup>

### **Crimes occur 'behind closed doors'**

Some participants spoke of the dangers of social isolation in some residential settings for people with a disability. For those in environments that are socially isolating, crimes may go unreported because of the nature of the service setting.<sup>169</sup>

People [clients and staff] don't necessarily identify things as crimes, clients won't say, 'I am a victim of a crime.' It is not explicit in services or policies what to call a crime – there is that 'greyish area', where things get managed internally.<sup>170</sup>

We heard a range of views about the way services take action when staff are accused of assault. It is clear that some services do take action, such as dismissing staff for misconduct and reporting to police; however, Villamanta Disability Rights Legal Service also told us:

There is often no consequence if a staff member assaults a client. These are 'invisible' crimes. There is a presumption the client does not have the capacity to understand the crime.<sup>171</sup>

For similar reasons, family violence also often occurs in a setting where a person can be easily isolated, such as the home, and can also go unreported, even where it becomes apparent to a service. Where action is taken, it may not consider the ongoing risk to the person.

167 Case study: Kayla (person with disabilities); case study: Phillip (person with disabilities).

168 Case study: Kathleen (person with disabilities).

169 For example, key informant interview, Dr Patsie Frawley (5 July 2013); key informant interview, Women with Disabilities Victoria (1) (9 July 2013); key informant interview, Associate Professor Keith McVilly (18 July 2013).

170 Focus group 2, service workers (12 August 2013).

171 Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

Because it happened in the home, the day service was not confident taking the client to the doctor. In this case, the day service called the mother of the client and conducted a case conference rather than working with the client herself to make a safety plan ... the family's response was to withdraw the client from the service ... [in the end], the day service involved police.<sup>172</sup>

Even if a crime is reported, it may not result in a prosecution:

In the end, the perpetrator got away with saying it was consensual ... there was no comprehension of how her experience of disability directly affected whether a crime had occurred, and not much interest to investigate the crime, because of issues around her credibility. It was a terrible experience.<sup>173</sup>

## Fear

### Fear of negative consequences

Our study confirmed previous research that reliance on the perpetrator and fear of losing supports are common reasons for not reporting.<sup>174</sup>

The perpetrator had done unspeakable things. None of the victims wanted to do him in. They said he was nice, and he bought them ice cream.<sup>175</sup>

Participants described fear of losing their home, children, friends and being placed in a more restrictive environment.<sup>176</sup>

There is the issue of the kids, support workers, accommodation, pensions. Victims stay because they think it is better than not having anything.<sup>177</sup>

---

172 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

173 Key informant interview, Professor James Ogloff (30 July 2013).

174 For example, case study: Michelle (person who provides care or support); focus group 3, people who provide care or support (2 September 2013); focus group 6, Independent Third Person Program volunteers (11 October 2013).

175 Focus group 7, Independent Third Person Program volunteers (1 November 2013).

176 For example, case study: Mark (advocate); focus group 1, advocates (10 July 2013); focus group 2, service workers (12 August 2013); focus group 6, Independent Third Person Program volunteers (11 October 2013); focus group 7, Independent Third Person Program volunteers (1 November 2013); focus group 13, police (November 2013).

177 Focus group 6, Independent Third Person Program volunteers (11 October 2013).

This fear is particularly strong if, as is often the case, the person is reliant upon the alleged offender for support, as either as a paid or unpaid carer, or family member.

In situations where there is sexual assault, a lot of the time the perpetrator is a staff member or family member and so the victim feels threatened that if they say something, they will be in trouble.<sup>178</sup>

They're frightened. They have the fear of God put into them.<sup>179</sup>

### Fear of not being believed

People with disabilities fear they will not be believed when they report a crime. Unfortunately, for many, this is because when they have reported previously (to police or in services) their matter was not taken seriously.

We need to start from the basis that if someone has taken this seriously enough to come and tell me about it, then I need to explore this no matter how inarticulate the person may be. For people with disabilities (in particular) approaching someone they don't know who is an authority figure is quite a big thing – if they're prepared to do this, then there is more than likely something behind it that warrants investigation.<sup>180</sup>

The sad truth is that not once, not twice but three times I have had such bad experiences with police.<sup>181</sup>

---

178 Case study: Mark (advocate).

179 Case study: Janet (Independent Third Person).

180 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

181 Case study: Blue Star (person with disabilities).

The “fact that people may have difficulty describing their experiences does not necessarily mean that they are incompetent informants”.<sup>182</sup> Nevertheless, we heard consistent reports of police assuming people lacked credibility.<sup>183</sup> This confirms previous research.<sup>184</sup>

Credibility was a consistent theme in this research and is discussed throughout the report.

## Why don't people who provide care and support report?

### Failure to identify it as a crime

People may be reliant on family, carers or staff to assist them to report. If these ‘gatekeepers’ do not recognise that a crime has occurred, do not want to see what happened as a crime, or if they do not know how to report, crimes go unreported.

This raises questions about how well we are investing in efforts to support the autonomy of people with disability to maintain agency over what happens.

Some people with disabilities might not have the skills or capacity to make a complaint or engage in complaint making, and so third parties become much more important in complaint process, but do we disempower victims by having other people speak for them?<sup>185</sup>

## Crime viewed as an ‘incident’

Where a person who does not live in an institutional living arrangement, would call being whacked ‘assaulted’ or being tied up ‘being unlawfully detained’ it may be defined quite differently within a system. Crimes against the person become ‘incidents’ which are defined by the internal response that follows an incident.<sup>186</sup>

If crimes are treated as ‘incidents’ they may first be dealt with internally.<sup>187</sup> “This is indicative of the way crime is classified (or not) for some people in some settings.”<sup>188</sup>

In group homes, in particular, something might be a crime, but is not viewed by service providers to be serious enough to report to police. It might end up that there is a discussion with a carer who gets moved on to another service, but it almost never goes further.<sup>189</sup>

The Victorian Ombudsman noted:

Complaints received by this office have also identified concerns with incident classification. Many of these complaints have concerned people who are incapable of reporting crimes themselves. It has been our experiences that incorrect classification of incidents has been the greatest hindrance to the reporting of possible crimes against people who lack the capacity to act on their own behalf.<sup>190</sup>

---

182 Ann-Christin Cederborg and Michael Lamb, ‘Interviewing alleged victims with intellectual disabilities’ (2008) 52 *Journal of Intellectual Disability Research* 49, 50.

183 For example, key informant interview, Disability Discrimination Legal Service (12 July 2013); key informant interview, Women with Disabilities Victoria (1) (9 July 2013); key informant interview, Communication Rights Australia (31 July 2013).

184 “Perceived victim credibility has been one of the most frequently found factors to influence the police decision to charge a perpetrator of sexual assault (e.g. Schuller & Stewart 2000). Heenan and Ross (1995) found that police in Victoria often disbelieved victims due to perceived inconsistencies in their accounts, lack of corroborating evidence, mental health or psychiatric issues, or if they were ‘known’ to the police.” Carolyn Taylor et al, *Policing Just Outcomes: Improving the Police Response to Adults Reporting Sexual Assault Final Report* (2012) 171. See also Federation of Community Legal Centres, *Making Rights Reality Access to Justice for Sexual Assault Survivors with Cognitive Impairment* (2012) 12–4; Melanie Heenan and Suellen Murray, ‘Study of reported rapes in Victoria 2000–2003’ (Summary research report, Statewide Steering Committee to Reduce Sexual Assault, Office of Women’s Policy, Department of Victorian Communities, 2006).

185 Key informant interview, Dr Nicole Asquith (24 July 2013).

---

186 Key informant interview, Dr Patsie Frawley (5 July 2013).

187 Camilleri, *[Dis]abled justice*, above n 5. Referred to in Key informant interview, Dr Margaret Camilleri (7 August 2013).

188 Key informant interview, Dr Margaret Camilleri (7 August 2013).

189 Case study: Michelle (person who provides care or support).

190 Victorian Ombudsman, Submission No 1 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 8 July 2013, cover letter, 2.

## Violence becomes normalised

In group environments, actions may be tolerated that would not be tolerated in another environment. As a consequence assaultive behaviour might be minimised in these environments.<sup>191</sup>

We were told that in some services, violence may become normalised where the seriousness of client-on-client violence is seen to be mitigated by disability. Some told us, “It is only when a staff member gets assaulted that there is action taken against the client.”<sup>192</sup>

There is a built-in tolerance that people with mental illness will experience violence.<sup>193</sup>

There was physical harm, scratching until they bled, intimidation, punching, and they were left to try and protect themselves. There was a lack of record keeping from staff members, because the abuse was constant and wasn't considered abnormal.<sup>194</sup>

Where crimes are reported, police may attend to subdue residents rather than to pursue an investigation.<sup>195</sup> We also heard of similar experiences in the school setting.<sup>196</sup>

If police are called to an incident, they may think that the victim is already in a supported environment, so it is not necessary to engage violence response services.<sup>197</sup>

In supported living, I would say that mainly police officers are called in to bring a violent situation under control, doing the job of a security guard rather than as an officer of the law. In that setting, their role is almost solely to ‘calm people down’ and contain a violent situation rather than following up a crime that might have been committed. This comes back to issues of attitudes, as well as the complexity of pursuing these cases. If you walk into these situations things can become very complex – so that even well-meaning and dedicated police officers will be unlikely to pursue cases because there are layers of things making it difficult.<sup>198</sup>

This can contribute to a victim's perception that police are ‘on the side of’ service workers and there is no point reporting crime.<sup>199</sup> In addition, ignoring minor incidents and cultures of violence may contribute to the escalation of violence against people with disabilities in these settings.

## Behaviour management

Violence committed by staff against residents may also become normalised.

In a recent project, we spoke to parents, staff, and people who live in residential services. We showed them various scenarios where staff members display various behaviours. We asked them, “what would you call that [the behaviour]?” Very few identified what those scenarios are about: for example, threatening behaviour, assault, etc.<sup>200</sup>

In these settings, violence can be justified as ‘behaviour management’ or even seen to be in the person's ‘best interest’.

We condone a lot of behaviour as necessary, which could be otherwise considered criminal, whether as behaviour management strategies, or ‘this is the best way work with them’. A lot of things occur which are really assault, even if the [behaviour management] strategy is condoned. But, as such, they generally don't proceed to the police.<sup>201</sup>

---

191 Key informant interview, Senior Practitioner – Disability (22 November 2013).

192 Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13.

193 Key informant interview, Professor James Oglhoff (30 July 2013).

194 Key informant interview, Communication Rights Australia (31 July 2013).

195 Key informant interview, Dr Patsie Frawley (5 July 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

196 Key informant interview, Disability Discrimination Legal Service (12 July 2013).

197 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

---

198 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

199 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

200 Key informant interview, Dr Patsie Frawley (5 July 2013).

201 Key informant interview, Dr Patsie Frawley (5 July 2013).



Service environments are complex, and the workforce may not have adequate support, skills and training to manage these complexities. Those reliant on casual or less experienced staff face particular challenges to ensure practices for their clients that are consistent with human rights.<sup>202</sup>

There are minimal qualifications required to work in residential settings – Certificate III or IV in Community Sector Work – these are probably some of the most qualified staff on the block. The majority of direct staff are doing what they can with little resources (training etc.), but there are circumstances where we need to make a clear public statement about where the line is with respect to acceptable and unacceptable practices. Staff might not know – and we may have failed to communicate it.<sup>203</sup>

Recent data indicates that 93 per cent of ongoing staff in Department of Human Services managed residential disability services are qualified with a Certificate IV with some staff holding higher qualifications.<sup>204</sup>

### Fear it will be too hard on the victim

In some cases, family members decide against reporting to avoid potentially re-traumatising the victim – particularly when the prospects of a successful prosecution are slim.<sup>205</sup>

I spoke to a parent who had a daughter with a disability. They were sure the daughter had been molested. They said no one would believe her and it probably wouldn't get anywhere. That is true.<sup>206</sup>

By contrast, we were also told that even if the victim does not want a report made service staff are compelled to report.

No matter what crime it is, it has to be reported to the police – the preference is to encourage them to do it. Other times I will say, I understand you don't want to report, but I'm sorry I have to do it for you.<sup>207</sup>

### Fear of repercussions

Families may also fear repercussions for themselves or their child. Some may fear being labelled as 'troublemakers'.<sup>208</sup>

Key informants also described service workers fearing repercussions.

Sometimes it might involve the staff member saying, 'I can't say anything and please don't identify me, but please speak to this other person. Management doesn't want me to talk and I can't be involved.'<sup>209</sup>

Alternatively, we heard of positive changes in some services, where the culture of reporting or speaking up was actively promoted.

[Our service] is taking a stance on this and saying it's not about substantiated or unsubstantiated, it's acknowledging that there's a trauma for this client. Our policies need to tackle all these things – issues of rights and the need for advocacy.<sup>210</sup>

The aim is to effect change at the systemic levels. Abuse is not a new thing. When organisations are transparent, the outcome is better. We have to take the media hit for now despite that we have done more to shine the spotlight on this issue of abuse.<sup>211</sup>

As noted by Ottmann et al "management has a critical role to monitor practice, solicit and act on client (and staff) input, enforce accountability and provide the necessary support for teams and staff to feel comfortable to report issues of concern".<sup>212</sup>

Progress in ensuring that crimes in services are appropriately reported (and prevented) is described in Chapter 9.

202 See for example, key informant interview, Dr Patsie Frawley (5 July 2013).

203 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

204 Information provided to the Commission by the Department of Human Services, 3 June 2014.

205 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

206 Case study: Frances (person who provides care or support).

207 Key informant interview, Scope (11 November 2013).

208 Case study: David (person with disabilities); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

209 Key informant interview, Communication Rights Australia (31 July 2013).

210 Focus group 2, service workers (12 August 2013).

211 Key informant interview, Dr Jeffrey Chan (14 November 2014).

212 Goetz Ottmann et al, 'Safeguarding Children and Adults with Disabilities in Disability Services: A Delphi Study' (Report, Uniting Care Community Options/Deakin University Research Partnership, May 2014) 18–9.

# Chapter 4: Barriers for police

## Main findings

- Police members face challenges identifying disability, understanding different forms of disability and working out how to make adjustments to meet access needs.
- Gaps in initial training and ongoing professional development leave some police unable to meet these challenges. In other cases, discriminatory attitudes and negative police culture can undo the good work of training.
- Police responses are inconsistent. In some cases, police members refuse to accept reports. In other cases reasonable adjustments, which are especially important for people with disabilities affecting communication, are not made. This may amount to discrimination under Victorian and federal anti-discrimination laws.

Police members and others make decisions about a person's credibility very early on. This sets the course for the victim's journey through the criminal justice system. Police are likely to assume that a prosecution will not succeed because the court may think the person lacks credibility. This becomes a self-fulfilling prophecy when cases are not fully investigated and prosecuted.<sup>213</sup>

## Discriminatory attitudes and culture

Sometimes stereotypical attitudes create the barrier:

The victim had a cognitive disability and had their bag snatched – police in the area colloquially referred to this incident as the 'spaz bag' case.<sup>214</sup>

<sup>213</sup> Camilleri, *[Dis]abled justice*, above n 5, 233.

<sup>214</sup> Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

[A person ] was gang raped ... When he went to the police they said, are you spastic? He said he will never speak to the police again.<sup>215</sup>

While such examples appear extreme, discriminatory attitudes among police can be more subtle, but no less harmful. In our study, we were told that police commonly adopt the approach of treating people with disabilities as 'childlike'.<sup>216</sup> If police do not see people with cognitive disabilities as 'childlike' and in need of protection, we were told they instead seem to view them as the complete reverse: 'inherently bad' unpredictable and as someone deserving of suspicion.<sup>217</sup>

Discriminatory attitudes may be exacerbated if the person with disability is Aboriginal, from a culturally and linguistically different (CALD) background, or otherwise different.<sup>218</sup> Poor attitudes towards carers were also reported.<sup>219</sup>

When interviewing police members, we found that in some cases derogatory language, negative or paternalistic stereotypes, or simply a 'what's the point?' culture had become the norm. The risk is that this may undo the good intentions or training of individual police members.

<sup>215</sup> Key informant interview, Scope (11 November 2013).

<sup>216</sup> Key informant interview, Scope (11 November 2013); Camilleri, *[Dis]abled justice*, above n 5, 185.

<sup>217</sup> Victorian Legal Aid highlighted that the significance of these inaccurate conceptualisations of cognitive disability is that it affects how police will respond to that person. In the former category, police will fail to treat the person with dignity and respect; in the latter, police will be far less likely to believe the person. People with mental illness are typically categorised in the second category and never in the first. Key informant interview, Victoria Legal Aid (19 July 2013).

<sup>218</sup> Key informant interview, Aboriginal Family Violence Prevention and Legal Service Victoria (9 December 2013); key informant interview, Senior Rights Victoria (19 November 2013).

<sup>219</sup> Key informant interview, United Voices for People with Disabilities (29 August 2013).

Disturbingly, junior members felt unable to challenge this culture. For example, when discussing the use of the label 'nuff nuff' to describe people with mental health disabilities, a police member told us, "We use the word in the van. We don't use the word in public, only in private among other members."<sup>220</sup> Another said, "It is like a coping mechanism, we use acronyms all the time."<sup>221</sup>

When asked if they would challenge another police member using such language, or similar homophobic or racist terms another (junior) police member said, "It would depend on who said it. If I was with a superior then no."<sup>222</sup>

Such terms are not sanctioned by Victoria Police, which has stated its commitment to tackling this sort of prejudice. This is discussed further in Chapter 11.

## Blaming the victim

The worst part is that what I have heard from police is that it was my fault because I let him in, and because I didn't have someone with me.<sup>223</sup>

In some instances, police believe that the person with disability brought the crime upon themselves. Key informants told us that unlawful restrictive interventions are used in schools, health, mental health and disability services but this is viewed as a 'behaviour management' issue.<sup>224</sup>

When there are challenging behaviours, the police reaction is lukewarm. They're either not interested or it's considered too hard ... Photographs of bruising and finger marks on a child were taken to the police. The school didn't even pretend it hadn't happened. Instead they told the police, If you were us, you'd do the same thing. The police just accept that. It's all accepted as behaviour management.<sup>225</sup>

People with disabilities may sometimes be blamed for 'attracting' prejudice-motivated or street-based crime if they are in the wrong place at the wrong time.

From anecdotal evidence around disability hate crime, it appears that a lot of people with disabilities are being asked, not only by their families but by the presenting police officer, that they should self-exclude themselves from the community or other activities in order to avoid victimisation or prejudice. For example, they might be told, 'Stop going down to the shop. Stay at home; you're safe at home'.

It is about victim blaming ... and it affects whether they will be believed or trusted when they tell their story.<sup>226</sup>

## Problems identifying disability

[Many] officers sitting at front desks around Victoria, I know ... don't have the skill to deal appropriately with the situation.<sup>227</sup>

Focus groups revealed how some police struggle when faced with very challenging situations, with little support.

We will be called because there is a woman in her pyjamas at the bus stop, and we will arrive and she has no proof of identity, no idea where she lives. For us, there's no record of her, there's nowhere to go. You can't just Google 'woman in her pyjamas at the bus stop.' You just do your best to work out who she is, where she came from. It is sometimes a case of networking our intelligence. Someone might know her. You might have a record of her, but there's no way of finding out what to do with her.<sup>228</sup>

The main point is, there is nowhere to go. There is just us. You don't sit there wondering 'do they meet this criteria or that criteria?'<sup>229</sup>

Unsurprisingly, more experienced police felt more confident while newer members described examples of seeing a disability for the first time.

I didn't know what cerebral palsy was before this. I've never dealt with cerebral palsy. I didn't receive much training about disability at the academy, maybe a day or so. Cerebral palsy was never in our role play.<sup>230</sup>

---

220 Focus group 13, police (November 2013). 'Nuff nuff' is a derogatory term used to refer to people with intellectual or mental health disability.

221 Focus group 13, police (November 2013).

222 Focus group 13, police (November 2013).

223 Case study: Leonne (person with disabilities).

224 Key informant interview, Disability Discrimination Legal Service (12 July 2013); key informant interview, Dr Patsie Frawley (5 July 2013); key informant interview, Victoria Legal Aid (19 July 2013).

225 Key informant interview, Disability Discrimination Legal Service (12 July 2013).

---

226 Key informant interview, Dr Nicole Asquith (24 July 2013).

227 Key informant interview, Dr Nicole Asquith (24 July 2013).

228 Focus group 10, police (November 2013).

229 Focus group 10, police (November 2013).

230 Focus group 13, police (November 2013).

Police were more likely to know the disability status of a person if they had previous contact with them as an offender or if the person had a mental health disability and had been subject to contact under the Mental Health Act.<sup>231</sup> Victorian research also indicates that police feel more confident in interactions where the person with disability is an alleged offender.<sup>232</sup>

Police described existing systems for people with some disabilities to volunteer for their disability status to be registered with the local police station, so that police respond appropriately.<sup>233</sup> Others explained that if the person had previously reported a crime at the same station, then the police members may have some background information that will help them to respond. Generally, however, the disability status of victims of crime is not recorded in the Victoria Police Law Enforcement Assistance Program (LEAP) database.<sup>234</sup>

Sometimes you are on a shift and you'll be lucky because there's someone who has had experience with that person, but there's nowhere that is captured or quantified. So, it is up to chance – out of 50 people who could have been there, and it's just luck that they were on shift.<sup>235</sup>

For some people, the advantage of living in a small community was that police had good local knowledge, including relationships with relevant support services. As noted in a police focus group:

I've found as well, in our town, which in the scheme of things is a relatively small area, there'll be someone who can assist with that, be it family or friends or things, because we know the community.<sup>236</sup>

However, the downside of being known was particularly felt by those whose credibility was questioned by police. For example, in rural towns there is risk that police “will have preconceived ideas about their disability and capacity. This may be a view shared by the community the person lives in”.<sup>237</sup>

The parents were in direct contact with the officer pursuing the investigation. The parents were providing the officer with misleading information. It seemed that the belief in the person with intellectual disability really reduced over time. The parents would tell the police, “He makes things up. You know us, we wouldn't do that.” It was really a small-town relationship between the parents and the police.<sup>238</sup>

### How do you know, if you don't know?

Focus groups told us most people will self-disclose disability or police will rely on observation.<sup>239</sup>

Physical disability is easier because you can see it. But low function, cognitive impairments is difficult.<sup>240</sup>

It was acknowledged that ‘telling by looking at people’ was an inexact science which could lead to over-identifying or under-identifying disability. This confirms previous research that found, despite police reporting they are competent in identifying intellectual disability, “when there isn't a prior formal contact recorded on police records, intellectual disability is actually rarely recognised or otherwise picked up”.<sup>241</sup>

We heard several cases where police incorrectly assumed a person had an intellectual disability.<sup>242</sup>

I have cerebral palsy, but it should be understood that I am intelligent even though I cannot speak and have some weird behaviours.<sup>243</sup>

They need to treat me as a person first, not see me through the prism of a person with disability. They should not make assumptions about my intellectual capacity just because I am in a wheelchair.<sup>244</sup>

231 Focus group 10, police (November 2013).

232 In relation to people with intellectual disability. Henshaw and Thomas, above n 33, 5.

233 The voluntary register is for people with, and parents and guardians of people with, mental illness, intellectual disability, acquired brain injury, neurological disorder or personality disorder. See Victoria Police, *Voluntary Disclosure of Personal Information Regarding a Mental Disorder and/or Disability* (2013) <[www.police.vic.gov.au/retrievemedias.asp?Media\\_ID=100221](http://www.police.vic.gov.au/retrievemedias.asp?Media_ID=100221)>; focus group 10, police (November 2013).

234 Unless the person has been a victim of a prejudice-motivated crime, and disability was the motivating factor, and this was recorded by police into the LEAP system as per the Victoria Police Prejudice Motivated Crime Strategy. Victoria Police, *Crime Prevention & Community Safety: Prejudice Motivated Crime* (last updated 23 September 2013) <[http://www.police.vic.gov.au/content.asp?Document\\_ID=32278](http://www.police.vic.gov.au/content.asp?Document_ID=32278)>.

235 Focus group 10, police (November 2013).

236 Focus group 11, police (November 2013).

237 Case study: Kathleen (person with disabilities); key informant interview, Dr Margaret Camilleri (7 August 2013).

238 Focus group 1, advocates (10 July 2013).

239 Focus group 9, police (November 2013).

240 Focus group 9, police (November 2013).

241 Henshaw and Thomas, above n 33, 3.

242 Key informant interview, Communication Rights Australia (31 July 2013).

243 Case study: David (person with disabilities).

244 Survey participant (person with disabilities).

Research with Victoria Police shows in some instances participants “were either confusing mental illness and intellectual disability, or generalising and referring to intellectual disability as a mental illness”.<sup>245</sup> We also found that police members did not necessarily identify mental health disability, even though it was probably the most common disability they encounter.<sup>246</sup>

Key informants and police members stressed that Victoria Police’s recent investment to improve member capability around mental health disability has focused on incident management, rather than victims.<sup>247</sup>

More work is required on police interactions with people with mental illness. In my opinion, police and lay people [*sic*] still believe that having a mental illness means you have less intelligence. Police need to be trained on these issues and be able to communicate effectively with people with disabilities and mental illness.<sup>248</sup>

## Police refusing to take reports

Several people told us of police refusing to take reports.<sup>249</sup>

There was no investigation, they didn’t interview anyone. No one came to see me, and no one gave me a crime number – they didn’t in any of these cases.<sup>250</sup>

This includes refusal based on a stereotype about a person’s credibility, the setting of the crime or because a person couldn’t communicate.

They asked if I could describe the person who did it, and I said, “No, I’m blind.” The police officer said, “Well, don’t bother calling us then.” He didn’t seem to understand that I could give him information from the sounds that I had heard, or that there might be other witnesses ... I rang the local police twice after this, and both times I was told, “Don’t bother calling if you’re blind.”<sup>251</sup>

245 Henshaw and Thomas, above n 33, 9.

246 Focus group 11, police (November 2013).

247 For example, focus group 11, police (November 2013); focus group 13, police (November 2013).

248 Key informant interview, Professor James Ogloff (30 July 2013). This was reiterated in focus group 10, police (November 2013) and focus group 13, police (November 2013).

249 For example, case study: Deborah and John (person who provides care or support); case study: Alexis (person with disabilities); case study: Leonne (person with disabilities); case study: Kathleen (person with disabilities); case study: Phillip (person with disabilities); case study: Blue Star (person with disabilities).

250 This person reported three separate incidents of being pulled from her wheelchair in a public place. None of which were investigated by police. Case study: Blue Star (person with disabilities).

251 Case study: Blue Star (person with disabilities).

In other cases, factors other than a person’s disability caused police to refuse a report. This included police not responding to victims they had labelled a ‘nuisance’ a victim’s multiple calls for help being ignored because of a history of offending, and another’s report being doubted because of her sexual history.<sup>252</sup>

The victim was quite well known – to put it bluntly, he was quite a crook ... this meant he wasn’t taken too seriously. But you have to put their offending history aside and understand that reporting sexual assault has to be taken very seriously.<sup>253</sup>

## Refusing reports by treating crimes as a service issue

Even if there is a mandatory reporting requirement to police, the police may take a statement but they will often not pursue the matter further.<sup>254</sup>

Participants told us of cases where police refused to accept or investigate a report of abuse or violence in a setting, instead pushing the matter back to the system.<sup>255</sup> Or they may tell the person with disability to adjust their behaviour.<sup>256</sup>

252 Another person with disabilities described calling the police several times and being told to “stop wasting valuable police time” and “get back to bed”. Case study: Kathleen (person with disabilities); case study: Joanne (Advocate Guardian); focus group 1, advocates (10 July 2013).

253 Case study: Laura (police).

254 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

255 Key informant interview, Disability Discrimination Legal Service (12 July 2013); key informant interview, Women with Disabilities Victoria (2) (3 September 2013); key informant interview, Disability Justice Advocacy (15 October 2013); Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13; key informant interview, Scope (11 November 2013).

256 “Quarmby found that, in regards to disability, there was very strong evidence to suggest that police officers were telling victims to change their behaviour rather than taking a report.” Key informant interview, Dr Nicole Asquith (24 July 2013). See Katharine Quarmby, ‘Getting away with murder: disabled people’s experiences of hate crime in the UK’ (Scope, Disability Now, UK Disabled People’s Council, 2008).

Through reviews of incident reports submitted by disability services to the Department of Human Services, the Disability Services Commissioner has identified inconsistencies in police responses to incidents of alleged staff-to-client assaults.<sup>257</sup> Themes identified from these reviews have been “variability in police practice and timelines for the initial response by police, communication about the status of the police investigation, and police telling services to proceed and investigate and to bring the findings back to them”.<sup>258</sup>

In one case, Disability Justice Advocacy described how police refused to investigate a report against a worker because a WorkSafe investigation was already underway.<sup>259</sup>

In another example, Scope attended a police station with a client, who was told to complain to the Department of Health rather than make a report to police.

I said, “Look, you need to take the disability out of this – this is a person who has been punched and this is a report of assault. I said, “Look, I’ll be in the interview too, it’s OK.” At the end of the interview, the police member said, “Thanks so much that’s the best education I’ve had.” She didn’t seem to have had any education about disability ever.<sup>260</sup>

These cases show that some police discriminate by refusing to take a report because of a person’s disability. This is unlawful under equal opportunity laws.

## Knowing what adjustments to make

Another prevalent issue was a failure to make reasonable adjustments so a person with disability can access police services. This is also discrimination under the *Equal Opportunity Act 2010* (Vic).<sup>261</sup>

Members from Sexual Offence and Child Abuse Investigation Teams (SOCIT) tended to have more knowledge around how to make adjustments and much more confidence in understanding different types of disability. While acknowledging the

<sup>257</sup> The Disability Services Commissioner has been providing independent review and monitoring of incident reports relating to allegations of staff-to-client assault and unexplained injuries since June 2012. Two hundred and eighty-one incident reports have been reviewed. Disability Services Commissioner, 2013: *Our Year in Review* (2013) 11.

<sup>258</sup> Key informant interview, Disability Services Commissioner (23 October 2013).

<sup>259</sup> Key informant interview, Disability Justice Advocacy (15 October 2013).

<sup>260</sup> Police will often ask, “Do you think this person has capacity to make the complaint they’re making?” Key informant interview, Scope (11 November 2013).

<sup>261</sup> *Equal Opportunity Act 2010* (Vic) s 45.

challenge, most felt reasonably well equipped for this work. Arguably, this is because they receive more dedicated training on these issues and practise those skills more frequently.<sup>262</sup> Even so, some people acknowledged that ‘learning on the job’ was a big requirement.

In contrast, while a few general duties police had established contacts with services that could provide information or practical assistance, most we spoke to felt isolated and ill equipped to do this. Areas of particular challenge identified by general duties police included:

- complex communication needs, especially if the person was non-verbal
- intellectual disability or other cognitive impairment
- mental health
- autism spectrum disorder, attention deficit hyperactivity disorder (ADHD) and behavioural disabilities.
- multiple and complex disabilities.<sup>263</sup>

## Lack of physical access

Being able to get to the police station is the first challenge some people face to reporting. Reasons cited were a lack of independent access, residing in closed environments and mobility issues.<sup>264</sup> Some survey participants were able to get to the police station only with assistance from family or support people.<sup>265</sup>

Arriving at police stations, some people faced difficulties with the station infrastructure. For example, “In terms of the physical process, going to the police station and coming up to a big counter ... can be intimidating”.<sup>266</sup>

Victoria Police are working towards improving the physical access to stations.

We are having a lot of building stock replaced, but some of it is still very challenging in terms of disability access. All our new police stations have to meet the physical disability standards. In many of our new buildings, we have things like ramps, accessible toilets, lower counters, auto doors.<sup>267</sup>

<sup>262</sup> Focus group 11, police (November 2013).

<sup>263</sup> Focus group 8, police (November 2013); Focus group 10, police (November 2013).

<sup>264</sup> Case study: Vicki (Independent Third Person); case study: Mark (advocate).

<sup>265</sup> Survey participant (person with disabilities); Survey participant (Easy English).

<sup>266</sup> Focus group 3, people who provide care or support (2 September 2013); focus group 4, Independent Third Person Program volunteers (10 October 2013).

<sup>267</sup> Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

The expense of replacing physical infrastructure can often be overcome by police changing practice. Unfortunately, these reasonable adjustments are not always made.

A client was trying to speak to police at the police station, but the police sit behind bars [at that station], they couldn't even really hear each other, and they refused to come out and talk straight to her.<sup>268</sup>

### Lack of communication access

Communication is essential to reporting, and also throughout the justice system. While the Victoria Police Manual advises that interpreters can be called where required, it does not specify the other types of communication support that should be provided.<sup>269</sup> As noted by Speech Pathology Australia:

People with severe communication disability may communicate via a communication aid or device, or use one in combination with speech. This is known as Augmentative and Alternative Communication. It includes anything from a simple picture symbol choice board through to a complex speech-generating device. People may use Augmentative and Alternative Communication because of limited ability to understand or produce verbal information, or (more frequently) both.

People with moderate or mild communication disability, including language disorders that affect understanding and/or use of spoken language, may also face significant barriers. Many people may not consider this group as having a disability, as their difficulties are often subtle, and they are likely to have no other form of 'visible' disability (for example, physical limitations). Nevertheless, they can be significantly disadvantaged when reporting a crime, because their communication disability compromises their ability to tell a story or event in a logical and sequential manner, and may also affect their comprehension of instructions or questions.<sup>270</sup>

268 Focus group 2, service workers (12 August 2013).

269 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Interviewing specific categories of person'* above n 15, 7.

270 Speech Pathology Australia, Submission No 3 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 12 September 2013, 3–4; key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Scope (11 November 2013).

### People who are non-verbal are even more isolated

The people we were advocating for had no ability to yell out for help; it was purely body language. They weren't able to take themselves to safety or to get assistance.<sup>271</sup>

Basically, if you don't have any way to express yourself, you are automatically disempowered in any relationship.<sup>272</sup>

For those with communication disabilities, even expressing the need to contact police may not be possible, either because they have never been equipped to communicate or have no access to an independent person who can communicate with them.<sup>273</sup> One participant told us that Community Visitors did not use communication assistance, so they could not make their complaint confidentially. They explained, "It was lucky I had someone visiting me who could assist me to communicate with the community visitors."<sup>274</sup>

### Ongoing lack of communication support

In some cases, lack of communication support meant police did not take a report.

The family went to the police initially, and the police said that because your daughter cannot talk, we've got no witnesses and so we can't do anything about it. This is going on, it's standard...<sup>275</sup>

In other cases police used a support person "to manage the communication", or tried to modify their own communication to allow the person to make a report.<sup>276</sup>

When reports were accepted, communication remained a significant barrier to giving a complete and accurate interview. In many cases, it is not the person's disability that prevents them from giving a successful interview but the failure of police to allow a person to communicate in the way that best suits them, because they are ill equipped for the task.

271 Key informant interview, Communication Rights Australia (31 July 2013).

272 Key informant interview, Dr Patsie Frawley (5 July 2013).

273 Case study: Vicki (Independent Third Person); case study: David (person with disabilities).

274 Case study: David (person with disabilities).

275 Key informant interview, United Voices for People with Disabilities (29 August 2013).

276 Case study: Mark (advocate); focus group 11, police (November 2013).

We found a wide variation in knowledge and equipment that police might use to assist with communication. SOCITs described having picture boards, tablets, and other communication aids, communications training and having reasonable access to supports. This reflects the specialist role they play in managing cases for people with disabilities.

However, general duties police did not have the same knowledge.<sup>277</sup> This creates a problem when they are the first point of contact, for example at the station counter or when attending in the police van.

Another time, a person came in to the police station but they couldn't verbalise their disability or write. I had no idea what they wanted and I couldn't communicate or understand what they were saying.<sup>278</sup>

### Lack of Auslan interpreters

The only time a deaf person will get an interpreter is if they push really hard. Unless it's SOCIT, or a really serious crime.<sup>279</sup>

Despite Victoria Police policy, Auslan interpreters told us this adjustment is not always provided when needed.<sup>280</sup> In contrast, police focus group participants generally reported good access to Auslan interpreters.<sup>281</sup>

Last Christmas, I got a phone call from a deaf person who wanted to go to a police station – she was very distressed. She didn't know how to book an interpreter. She was at a police station, and they were refusing to ring an interpreter. She wanted to report assault – domestic violence.<sup>282</sup>

It was hard to communicate with police, and I know police [are] not keen to organise [a] sign language interpreter. I will feel like a burden to police for reporting this crime.<sup>283</sup>

Auslan interpreters described cases where police used insufficiently qualified interpreters, or inappropriately relied on family members, including children, to interpret.<sup>284</sup>

I have seen cases where the person's husband is used as the interpreter, even when he was the perpetrator.<sup>285</sup>

They told us that police do not engage Auslan interpreters because of the cost, effort and a lack of knowledge about the process.<sup>286</sup> Or police might not think qualified interpreters are essential due to a lack of understanding about how deaf people communicate.<sup>287</sup>

Often the police can't be bothered, either. They think it will be quicker to do it without an interpreter.<sup>288</sup>

Police see writing to deaf people as sufficient. But, when a person goes to police it's often in very emotional circumstances [that you wouldn't want to be writing], and a deaf person may not have the language and the jargon for talking to police [in writing or in English].<sup>289</sup>

### Decisions about credibility

Access to justice requires access to the legal system. Progression through the criminal justice system rests heavily on being believed and being believable at every stage. Primarily, this progress is reliant on an assessment of how successful the case is likely to be and how credible the witness is.<sup>290</sup>

Police generally base their responses on their previous work with people with that type of disability.<sup>291</sup> While this may help police to make adjustments, there is also a risk that police will make generalisations about types of disability.

277 For example, focus group 13, police (November 2013).

278 Focus group 13, police (November 2013).

279 Focus group 5, Auslan interpreters (10 October 2013).

280 Focus group 5, Auslan interpreters (10 October 2013).

281 For example, focus group 11, police (November 2013); focus group 10, police (November 2013). However, a participant in focus group 8 noted that they sometimes let a family member or support person interpret because "With Auslan interpreters, we have to wait for them to come from Melbourne – it might be that the interpreter can come up next week – by this time the message or evidence is clouded." Focus group 8, police (November 2013).

282 Focus group 5, Auslan interpreters (10 October 2013).

283 Survey participant (person with disabilities).

284 Focus group 5, Auslan interpreters (10 October 2013).

285 Focus group 5, Auslan interpreters (10 October 2013).

286 "Because the bookings for Auslan interpreters don't go through a central agency, it would seem like a very complex process to someone who didn't know the system." Focus group 5, Auslan interpreters (10 October 2013). Regarding cost, see also Case study: Deborah and John (person who provides care or support); focus group 5, Auslan interpreters (10 October 2013).

287 Focus group 5, Auslan interpreters (10 October 2013).

288 Focus group 5, Auslan interpreters (10 October 2013).

289 Focus group 5, Auslan interpreters (10 October 2013).

290 Goodfellow and Camilleri, above n 6, 53–4.

291 See Henshaw and Thomas, above n 33, 5.



He thought I didn't know what was going on, that I was making the story up. He wanted to find out if I had a brain, if I knew what was going on. He was asking [my support worker] whether I was taking my medication. Even today, I feel that it's low, it's unfair.<sup>292</sup>

Police may think people with disabilities are lying if they cannot explain things in a clear narrative.<sup>293</sup> Or they may question the person's capacity to even know that a crime has occurred.<sup>294</sup> This leads some police to believe there is insufficient evidence for the case to succeed and they will not deploy the resources for an investigation.<sup>295</sup>

Consequently, the less able or less 'normal' a victim was perceived to be, the more difficult it was for them to access justice.<sup>296</sup>

### Credibility is determined early

Decisions about a person's credibility are made quickly, in some cases upon first contact with the victim. Police appear likely to assume that a prosecution will not succeed because the court may think the person lacks credibility. This decision determines how far the person will get through the criminal justice system.

The notion that cases involving adult victims with cognitive impairment will present specific difficulties appears to have informed part of the police repertoire of assessing such cases. This suggests an element of 'self fulfilling prophecy' in that such cases do not proceed and hence will affect police decisions, particularly in relation to deciding the level of resources and time to be devoted to investigating the case.<sup>297</sup>

### Credibility in sexual assault matters is particularly profound

Just because I have mental health issues does not mean I am 'hysterical', not credible and that my feelings should be discounted.<sup>298</sup>

Police have significant discretion when assessing the credibility of witnesses. Accordingly, the Victoria Police *Code of Practice for the Investigation of Sexual Assault* emphasises that when dealing with victim survivors with a cognitive impairment or a mental health disability "it is important for police to remain impartial, objective and patient during the full course of the investigation. It is important not to make assumptions when assessing either the evidence or the credibility of the parties involved".<sup>299</sup>

Nevertheless, in 2012 the *Policing Just Outcomes* research reported that evidence given by people with intellectual disability or mental health disability has low credibility. These cases are therefore less likely to go forward to prosecution unless there are independent witnesses.<sup>300</sup>

For people living in environments that are socially isolating the likelihood of there being a witness among co-residents that the legal system considers credible is low. If the alleged perpetrator is a family member, carer or staff member there may be no witnesses, or anyone willing to confirm the incident.

Police decision-making is focused on corroboration to back up the person with disabilities' story. While this is the case for all victim survivors, it is especially so when there are "perceived victim-related problems of particularisation, consent, character, reliability of memory, and credibility and competency 'in the box'".<sup>301</sup>

Not only does this mean that people with disability are less likely to see justice done than others, it also entrenches the idea of the 'ideal victim' among police, the courts and the general community.<sup>302</sup>

292 Case study: Leonne (person with disabilities).

293 One police officer explained the challenge people with disabilities, particularly people with communication disabilities, face in being believed. Case study: Gary (police). See also case study: Mark (advocate).

294 "For example, a young woman alleged she had been raped; police suggested it was likely to be 'kids experimenting'. The signs of physical injury did not indicate it was experimentation." Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

295 Case study: Alexis (person with disabilities); case study: Kathleen (person with disabilities); case study: Blue Star (person with disabilities).

296 Camilleri, *[Dis]abled justice*, above n 5, 232.

297 Ibid 233.

298 Survey participant (person with disabilities).

299 Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15.

300 This confirms previous research. Taylor et al, above n 184. See for example, Sue Ellen Murray and Melanie Heenan, 'Reported rapes in Victoria: Police responses to victims with psychiatric disability or mental health issue' (2012) *Current Issues in Criminal Justice* 23, 353–68; Camilleri, *[Dis]abled justice*, above n 5; Camilleri, 'Enabling Justice', above n 5; Heenan and Murray, above n 184. See also Federation of Community Legal Centres, above n 184, 12, 14.

301 Taylor et al, above n 184, 191. In relation to children with disability and particularisation, see focus group 10, police (November 2013). See also Camilleri, *[Dis]abled justice*, above n 5, 235–9.

302 "The concept of ideal versus non-ideal victims that has been reported in much of the literature was evident in police decision-making." Taylor et al, above n 184, 12.

We had a client with cerebral palsy and who is non-verbal. She had a regular taxi driver who would assist her into the house. One time the taxi driver assisted her out of her chair, onto the bed and raped her. The police interviewed the perpetrator who said the sex was consensual. The police did not interview the victim. The client used a communication aid to explain what had happened. The communication was not in a format that the police could use in their investigation. The main reason why the police did not take on the case was because they believed the victim was unreliable.<sup>303</sup>

## Assumptions about credibility and the court system

No one signs up to this job to not act, but sometimes you just know that things are never going to go forward.<sup>304</sup>

Belief in the victim is the necessary foundation for many of the positive elements of police practice discussed throughout this report. If the victim does not feel believed, it will be impossible for police to gain their trust. In contrast, believing the victim can mitigate dissatisfaction even if prosecution does not occur:

If people come to us and tell us their story, and we believe them, and they know they've been believed, and they know that we've heard them, sometimes that's enough for them. And, we have explained to them why it can't get to court.<sup>305</sup>

Being doubted following a crime reduces the confidence people have in the justice system, and may contribute to them not reporting future crimes.<sup>306</sup> Further, when action is delayed or not taken, further violence is likely to be perpetrated.<sup>307</sup>

An expectation that even when police believe the victim, there is an assumption the person will lack credibility in the court system, breeds a culture of low expectations among police. These low expectations reduce the effort placed into investigations, with knock-on effects on police morale.

The police know that the matter may get through the first few stages of investigation, but will be prevented from going further. The police attitude is, "Why go through all the steps to eventually get thwarted?"<sup>308</sup>

---

303 Key informant interview, Disability Justice Advocacy (15 October 2013).

304 Focus group 9, police (November 2013).

305 Focus group 11, police (November 2013).

---

306 "She has made many complaints to our local police station which have never been followed through. She feels very let down by the police and doesn't have confidence that they can keep her safe." Case study: Deborah and John (person who provides care or support). See also AHRC, above n 79, 19.

307 See for example, Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 26, 4, 26.

308 Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

# Part 3 – Experiences

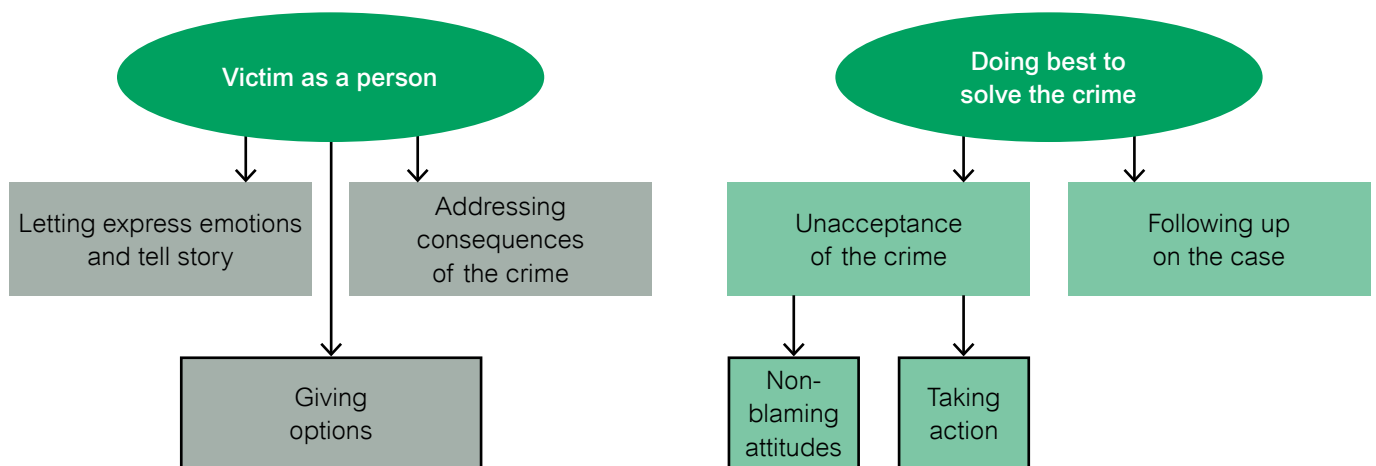
Part 2 identified common barriers to police services; however, barriers permeate throughout the criminal justice system. In this part we look at people's experiences at each stage of the process through reporting, interviews, investigations and prosecutions.

In studies we have undertaken, the general response from victims of crime is that their experience with police is OK. Victims need procedural justice – to be treated sincerely and with respect. Police understand procedural justice; we just need to make sure these principles are carried forward into police practice.<sup>309</sup>

It is clear that at every stage, police should follow the principles of procedural justice. This includes doing their best to solve the crime, treating the victim as a person and making consistent and fair decisions. This enhances the cooperation of victims with police and builds trust in the legal system. It may also help reduce the trauma associated with the crime, including secondary victimisation.<sup>310</sup>

Because of the importance of procedural justice, we have used the conceptual framework at Figure 2, developed by Elliott, Thomas and Ogloff to analyse the experiences reported to us.

**Figure 2: Thematic map representing procedural justice**



Source: Irina Elliott, Stuart Thomas and James Ogloff, 'Procedural justice in contacts with the police: the perspective of victims of crime' (2012) 13 (5) *Police, Practice and Research* 442.

<sup>309</sup> Key informant interview, Professor James Ogloff (30 July 2013).

<sup>310</sup> Secondary victimisation was first identified in 1980, when it was noted that victims interpreted professional detachment by police investigators as rejection. Elliot, Thomas and Ogloff, 'Procedural justice in contacts with the police: the perspective of victims of crime', above n 30, 437–40.

# Chapter 5: Reporting

## Main findings

- The experience of making a report to police is too dependent on the individual police member who happens to be behind the desk, taking the call or first attending the scene.
- How police respond shapes the rest of the process and can determine if victims proceed to successful interview, investigation and prosecution.
- For a better and more consistent reporting process, police need to:
  - recognise and understand disability, so that reasonable adjustments can be made
  - treat the victim as a person by showing patience, respect and belief
  - ensure the person *is* safe and *feels* as safe as possible
  - support the person through the process.
- When police have a good understanding of disability, believe victims and take the report seriously, higher levels of satisfaction with police practice are reported.
- When people have a negative experience of reporting to police, they are likely to avoid reporting crime in the future.

## Legal obligations

The process of Victoria Police taking a report is considered a service under section 44 of the *Equal Opportunity Act 2010* (Vic). The obligations not to discriminate and to make reasonable adjustments therefore apply.<sup>311</sup> This can include flexibility about where a report is taken, allowing breaks, modifications to communication, or working with Auslan interpreters or communication support workers.

<sup>311</sup> *Equal Opportunity Act 2010* (Vic) ss 44–5.

The Charter of Human Rights and Responsibilities rights to equality before the law and freedom of expression, including the right to receive information, also apply.<sup>312</sup>

In addition, the *Victims' Charter Act 2006* (Vic) states that all victims of crime are to be treated with courtesy, respect and dignity by investigatory agencies, prosecuting agencies and victims' services agencies.<sup>313</sup>

## How does Victoria Police receive reports?

The Victoria Police Manual sets out the process and standards for taking reports.<sup>314</sup> Depending on the type of crime and the way an incident is reported, a report can be taken at a crime scene, over the telephone or at a police station. In some cases, the police must attend the scene, such as if urgent police attendance is required, there is evidence at the scene, or the victim is distressed or asks the police to attend.<sup>315</sup>

All reported incidents must be recorded as an offence unless there is credible evidence to suggest that a crime has not occurred.<sup>316</sup>

<sup>312</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 8, 15.

<sup>313</sup> *Victims' Charter Act 2006* (Vic) s 6(1). However, section 22 of the Act provides that this does not create a legal right or civil cause of action.

<sup>314</sup> The Victoria Police Manual includes Policy Rules and Procedures and Guidelines. Policy Rules are mandatory, minimum standards police members must apply.

<sup>315</sup> Victoria Police, *Victoria Police Manual 'Policy Rules: Crime reporting and investigations'* above n 15, 2.

<sup>316</sup> *Ibid.*

- Of 27 case study interviews, we spoke directly with 13 victims of crime, and four family members of a victim of crime. Of these, all but two had reported. However, several more interviewees told us they had experienced crime previously, and not reported to police. We also spoke with one person with disabilities and two family members who were not sure if a crime had occurred.
- The remaining case study interviewees described reporting experiences they had observed as Independent Third Persons (ITPs), advocates, Advocate Guardians and police.
- Case study participants reported to police in a variety of ways. Most commonly, people attended the station or reported by telephone. Other people told us the police attended the crime scene, or visited the victim's house. One victim submitted a written report to police.
- Of 13 focus groups, one was composed of victims of crime. The remaining 12 focus groups shared observations of victims reporting crime to police.
- In the survey for people with disabilities, 19 people had reported to police. Of these 11 needed help to do so. Another 11 people did not report the crime.
- Among survey respondents who provided care and support, nine experienced reporting. Two made the report on behalf of a person with disabilities, six supported a person to report, and one described how another carer made a report.

## Effective report taking

Reporting crime to police can be difficult. "It takes a lot of courage to report."<sup>317</sup> People may fear the process will be traumatic, tiring and draining.<sup>318</sup>

Unfortunately, those who overcome barriers to reporting are not guaranteed a positive experience. While some people in the Commission's small sample reported good practice, overwhelmingly, participants had negative experiences. What is clear is that despite police procedures and policies, the service people received largely depended on the police member they encountered on the phone, at the desk or who first attended the scene.

For those who report, this first interaction may well determine the rest of their journey through the criminal justice system. This is most obvious where police refuse to accept a report. In addition, if that

<sup>317</sup> Survey participant (person with disabilities).

<sup>318</sup> Focus group 5, Auslan interpreters (10 October 2013); focus group 7, Independent Third Person Program volunteers (1 November 2013).

first interaction is poor, it may compromise chances for an effective investigation.

The Commission heard clear messages from victims, carers and police about what would make the reporting process better and more consistent. There was consensus that when taking a report, police need to:

- recognise and understand disability, so that reasonable adjustments can be made
- treat the victim as a person by showing patience, respect and belief
- ensure the person *is* safe and *feels* as safe as possible
- support the person through the process.

## Recognise and understand disability so adjustments can be made

Police do not always correctly identify that a person has a disability or understand its manifestations. When taking reports this can lead to negative treatment.<sup>319</sup> Participants described the distress caused by police not believing they had a disability.

The policewoman I reported to was very patronising to me. I asked if there was an Indigenous officer I could speak to, or who could explain to her what initiation bangles are and how important they are. She didn't believe I was Aboriginal, or Maori, or Koori. She also didn't believe I was blind, or quadriplegic, or that my dog is a guide dog.<sup>320</sup>

Mocked me and ignored my concerns. Stated that I did not have a disability ... Refused to allow me to see a doctor who could explain my symptoms and tell them what was happening.<sup>321</sup>

This resulted in some people being discouraged from the process, or needing to educate police throughout the reporting process, adding another burden during a stressful time.<sup>322</sup>

At the beginning of the interview the police officer was really patronising but by the end of it he knew how to communicate with me and could understand me. This was because I worked with him through the interview.<sup>323</sup>

Importantly, failing to recognise disability at first contact may reduce opportunities to engage properly in the process at later stages. For example if people are not referred for a video and audio recorded evidence (VARE) interview.

<sup>319</sup> For example, case study: Mark (advocate).

<sup>320</sup> Case study: Blue Star (person with disabilities).

<sup>321</sup> Survey participant (person with disabilities).

<sup>322</sup> Case study: Michael (person with disabilities); case study: Frances (person who provides care or support).

<sup>323</sup> Case study: Michael (person with disabilities).

When I asked the police member why the man hadn't given his evidence by VARE, because he had a disability, the police member said, "Oh he's always been like that." He didn't recognise it as a disability because the man had always presented that way.<sup>324</sup>

## Treating the victim as a person

### Decisions about credibility

Being treated sincerely and with respect is the key to procedural justice.<sup>325</sup> For some, this was achieved:

They treated me with respect and with empathy. They kept me up-to-date with all details. They believed me.<sup>326</sup>

However, many participants said disrespectful treatment made a significant difference to their experience of reporting:<sup>327</sup>

The police officer said, "I am telling you, no one will be interested." It felt like I had rung up and complained that my fish and chips were cold.<sup>328</sup>

In particular, being patronised, assuming incapacity or being treated 'like a child' made for a negative experience:

I have mild cerebral palsy and sometimes use a lightwriter to communicate. One of the police talked down to me, being rude. He was talking to me like I was four, and asking where my money was. He called me disabled. They should have treated me with some dignity.<sup>329</sup>

324 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

325 Key informant interview, Professor James Ogloff (30 July 2013). Procedural justice is discussed further in Chapters 6 and 7.

326 Survey participant pPerson with disabilities).

327 For example, case study: Leonne (person with disabilities); case study: Kathleen (person with disabilities); case study: Michael (person with disabilities); case study: Mark (advocate); case study: Blue Star (person with disabilities); case study: Gary (police); focus group 1, advocates (10 July 2013); key informant interview, Victoria Legal Aid, (19 July 2013); key informant interview, United Voices for People with Disabilities (29 August 2013); Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 11.

328 Case study: Alexis (person with disabilities).

329 Case study: Michael (person with disabilities).

### Talk to the person, not their support person

In some cases, police spoke to a support person rather than the victim, compounding feelings of being patronised:

They did not take me seriously because I was in a wheelchair. They ignored me and spoke to my support people instead. I think they thought I had an intellectual disability.<sup>330</sup>

Police ... listen [to] her but ignore me, they say I [did] not tell [the] truth but I say yes [it's] all true [what] happen[ed to] me.<sup>331</sup>

Police told us that they will speak with a support person if they are having trouble working out what is happening.<sup>332</sup> We heard that this occurs more frequently when the victim is non-verbal:

Police will often leave it up to advocates to manage the communication, because they know it's the best way to deal with it. On occasions, police have said, "OK, you know this person better than us, you can inform us." This can be good and bad. Sometimes they just ignore the person and speak to me instead. I will say to the police, "You need to speak to them, not me."<sup>333</sup>

This advocate also explained that police may also refuse his presence because they "assume I'm a meddler and just making their job harder for them".<sup>334</sup>

### Listening and taking the report seriously

My advice to police would be: Listen to what the person is saying. Do not patronise them, ask them what they would like and need. Call them. Go and see them. More importantly – believe the person, especially a person with disability.<sup>335</sup>

[T]hough the police acted according to the law they did not show much consideration for the person's distress so the whole experience was very negative for them. Their anxiety and fear was exacerbated by the feeling of not being taken seriously. More acknowledgment of the trauma of what had happened would have improved their experience of reporting the crime.<sup>336</sup>

Effective listening was essential to a good experience:

They listened and took what I told them seriously.<sup>337</sup>

330 Survey participant (person with disabilities).

331 Survey participant (person with disabilities).

332 Focus group 13, police (November 2013).

333 Case study: Mark (advocate).

334 Case study: Mark (advocate).

335 Case study: Blue Star (person with disabilities).

336 Survey participant (person who provides care or support).

337 Survey participant (Easy English).

If police did not take the matter seriously, participants usually felt this was because of their disability:

But speaking to police on this matter and others I feel as though I'm just not 'normal' enough to be taken seriously.<sup>338</sup>

Ensuring respect requires police to believe the victim in the first instance. In other words, capacity should be assumed unless there is clear evidence to the contrary.<sup>339</sup>

When belief was demonstrated, satisfaction was very high:

I am so pleased I reported this incident. I couldn't believe how it made me feel. I felt like this heavy weight had been lifted off my shoulders. I couldn't believe they believed me; they didn't blame me. The police actually went and spoke to him. After I reported, I could walk past him with my head held high. I wanted to let him know I'm not someone to be messed with.<sup>340</sup>

## Ensure the person is safe and feels as safe as possible

Victoria Police codes of practice for sexual assault and family violence instruct police to ensure that the victim is (and feels) safe.<sup>341</sup> Police members we interviewed were very mindful of safety.

After a call from a carer, if that person is safe, we would organise the interview for the next day or morning. If they aren't safe, then the process is different as we need to ensure immediate safety as a priority. Carers and accommodation needs to be sorted out first before the police work. For example, if the carer is the perpetrator – you have to contact the family, other support or the carer's agency to put things in place for safety. It is dynamic, we all work together.<sup>342</sup>

However, in our survey, while the same number felt better or worse after reporting, very few felt safer.

In terms of safety, most felt the same or worse.<sup>343</sup>

Deborah's frustration is that she has made many complaints to our local police station which have never been followed through. Deborah feels very let down by the police and doesn't have confidence that they can keep her safe.<sup>344</sup>

Women told us that the gender of the person taking the report was important.

Once, two policewomen came when I was having trouble in the neighbourhood, and they were OK. It made me feel better that they were women, and I had other people with me, which helped too.<sup>345</sup>

For me, when I had to express that, even to a man, well, there is a barrier. I find I can't express myself in front of a man as much as I can in front of a woman. I don't want to offend anybody.<sup>346</sup>

Victims can also feel safer by being able to bring:

a safe person such as a family member or friend before putting me through a process. They need to explain the process to me so that I understand and feel comfortable as I am already violated.<sup>347</sup>

For some people with disabilities, safety extends to trust that supports, including support workers, will be with them throughout the process:

If I thought there was a problem with someone and I was interviewing them, I would not split them from the person who supports them.<sup>348</sup>

338 Survey participant (person with disabilities).

339 Being listened to and being believed are two of the core needs of victim survivors throughout the criminal justice system. Nicole Bluett-Boyd and Bianca Fileborn, 'Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions' (Research Report No 27, Australian Institute of Family Studies, 2014) 21.

340 Case study: Bella (person with disabilities).

341 Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 2; Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 9.

342 Focus group 9, police (November 2013).

343 In our survey for people with disabilities we asked, 'Did you feel better after you told police about the crime?' Of the 17 people who answered this question, six felt better, six felt worse and five felt the same. Of 16 people in the survey for people with disabilities, who answered the question "Did you feel safer because you told police?", two felt safer, six felt the same, six felt worse and two were not sure. Of two people who responded to this question in the Easy English survey, one said they weren't sure and one said they felt worse.

344 Case study: Deborah and John (person who provides care or support).

345 Case study: Kayla (person with disabilities).

346 Case study: Leonne (person with disabilities).

347 Survey participant (person with disabilities).

348 Case study: Leonne (person with disabilities).

For some people this requires an acknowledgement from police of the importance of their supports, for example, understanding the importance of a person's assistance dog to their physical and emotional wellbeing and independence.

## Recognise family violence

Victoria's family violence response has undergone significant reforms in recent years, including the introduction of the *Family Violence Protection Act 2008* (Vic) and development of the *Victoria Police Code of Practice for Investigating Family Violence*.<sup>349</sup>

This code recognises that some groups, including women with disabilities, experience significantly higher rates of violence.<sup>350</sup> It also recognises that people with disabilities who do report violence:

[A]re more likely to be disbelieved and the impact of the violence is more likely to be underestimated. It is important that the police approach to a person with a disability is not informed by negative stereotypes; but that police take the time to listen, acknowledge and respect even if there is insufficient evidence to prosecute.<sup>351</sup>

Much of the crime that participants described to us could constitute family violence, and should receive a response from police consistent with the code.<sup>352</sup> However, participants reported this was not always the case.

Overall, there seems to be big gaps in identifying family violence, and in responding to it appropriately and safely.<sup>353</sup>

Another informant who had worked in group home and residential settings commenting on family violence intervention orders (FVIOs) said, "I have seen no reference to them at all and no attempt to make people aware of them either."<sup>354</sup>

Or police may not treat these cases as family violence if the victim is not the 'usual fit'.

Police say they struggle with it. They're used to family violence being about young couples, or children, but not thinking about the older person.<sup>355</sup>

Police may also assume that removing a perpetrator of family violence will have a negative impact if the victim is reliant upon them for their daily care.<sup>356</sup>

If police are called to an incident, they may think that the victim is already in a supported environment, so it is not necessary to engage violence response services.<sup>357</sup>

Or police assumptions about credibility leads them to believe the alleged perpetrator over the victim.

There is another woman who has repeatedly called the police, but they just come and ask her if everything is alright and the daughter will say, "Yes, everything's fine." Or we hear stories about the child saying, "She's confused, she has dementia," and the police just accept that.<sup>358</sup>

Some police may not follow up because of assumptions that violence is just part of life in some communities or settings.

The police don't initiate or encourage follow-up for anyone but particularly for Aboriginal people. Police culture is that family violence is "just fighting and there's nothing we can do".<sup>359</sup>

This approach goes against all we have learnt about effective policing of family violence and sexual assault in the past 20 years. Indeed, for people who may be particularly at risk or who may struggle to navigate the legal system the community expects the police to do more, not less.<sup>360</sup>

349 Victoria Police, *Code of practice for the investigation of family violence*, above n 15.

350 Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 3. The Commission notes the role of the Violence Against Women and Children Strategy Group (VAWC Strategy Group), Crime Department to improve policing responses to issues of inter-personal violence involving all victims, including those with disability.

351 Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 12.

352 Family violence is defined as behaviour that is physically, sexually, emotionally, psychologically or economically abusive; or is threatening, coercive, or in any other way controls or dominates a family member and causes that family member to feel fear for the safety or wellbeing of that family member or another person. 'Family member' has a broad interpretation that includes someone who is regarded as being like a family member due to circumstances including any form of dependence or interdependence or the provision of any responsibility or care, whether paid or unpaid. *Family Violence Protection Act 2008* (Vic) ss 5, 8.

353 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

354 Case study: Michelle (person who provides care or support).

355 Key informant interview, Seniors Rights Victoria (19 November 2013).

356 Key informant interview, Seniors Rights Victoria (19 November 2013).

357 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

358 Key informant interview, Seniors Rights Victoria (19 November 2013).

359 Key informant interview, Aboriginal Family Violence Prevention and Legal Service Victoria, (9 December 2013).

360 See also Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 26, 26.



## Seeking intervention orders

### What is an intervention order?

Intervention orders are designed to protect people who have experienced violent, threatening or abusive behaviour.

- A family violence intervention order (FVIO) helps to protect people from family members (and others who are like family, including paid carers), and is made by a Magistrate under the *Family Violence Protection Act 2008*.
- A personal safety intervention order (PSIO) helps to protect people from someone, other than a family member, and is made by a Magistrate under the *Personal Safety Intervention Orders Act 2010*.

The court may place any conditions on an intervention order that appear to the court necessary or desirable in the circumstances, such as prohibiting the respondent from being within certain distance of the affected person.

Several people can apply for an intervention order, including the affected person or a police officer.<sup>361</sup> Under various circumstances, an interim intervention order may also be made.<sup>362</sup>

Intervention orders are one option police have to help people feel safer. Participants told us that police did not always provide people with disabilities with information about intervention orders, or assist them to apply for one. ITPs said the inconsistent approach to intervention orders for people with disabilities is “dependent on police leadership at the police station and their attitude to family violence”, in addition to “manpower and resources”.<sup>363</sup>

I tried to convince the police officer to apply for an intervention order on the client’s behalf, as the officer had been present and taken a statement. However, the police officer replied that the client could do it herself. I told the client to walk over to the court right away, and then rang the court to let them know she was on her way – but the court told me that it was already too late [it was after 4pm]. This guy is in the community somewhere, and incidents had happened, including threats to kill and assaults.<sup>364</sup>

361 *Personal Safety Intervention Orders Act 2010* (Vic) s 45.

362 *Personal Safety Intervention Orders Act 2010* (Vic) ss 15, 67; *Family Violence Protection Act 2008* (Vic) ss 45, 81.

363 Focus group 6, Independent Third Person Program volunteers (11 October 2013).

364 Focus group 3, people who provide care or support (2 September 2013).

With another case, police were saying, “We will take out intervention orders and we will prosecute.” I said to them, “I wish we would hear more of this” – police are not usually so supportive of people with disabilities, and not usually so proactive.<sup>365</sup>

For some participants, it was only when the matter was finalised that they truly felt safe.

I did feel safer after speaking to police, but really, it was only after the perpetrator was behind bars that I felt safe. Police took out an intervention order for me, but it just felt like a piece of paper; it didn’t make me feel much safer. If the perpetrator got drunk or took drugs the order would have been useless and there was a strong chance he would have just turned up anyway.<sup>366</sup>

Participants also raised that family violence intervention orders had been used to ‘force the issue’ when no other action had been successful to ensure the safety of people in group homes or residential settings experiencing violence from co-residents and staff.<sup>367</sup>

## Support the person

[T]he way they were supported assisted them to move through a very traumatic period of their lives with eventually a positive result.<sup>368</sup>

Reporting can compound distress. Police that remember this and support the victim through the process get better results.

My experience with the police was fantastic; they were practical and sympathetic the whole way through.<sup>369</sup>

Types of support include meeting immediate needs, displaying empathy and making appropriate referrals to other services.

Two young police officers came over to my house. They told me they were going to take me to the Centre Against Sexual Assault (CASA), and asked if there was someone I would like there with me for support. I called a friend, and he met me there. The police carried me in a blanket to the car. When they finally brought me home, they made the bed for me.<sup>370</sup>

They bought me dinner. Put me in a motel for the night. Organised for me to get a bus ticket to go home (400km away).<sup>371</sup>

365 Focus group 3, people who provide care or support (2 September 2013).

366 Case study: Kim (person with disabilities).

367 Key informant interview, Dr Jeffrey Chan (14 November 2014).

368 Survey participant (person who provides care or support).

369 Survey participant (person with disabilities).

370 Case study: Kim (person with disabilities).

371 Survey participant (person with disabilities).

However, these supports are not consistently available.

My personal experience [is] there is no support for people who are victims of stalking i.e. emergency accommodation, counselling etc in small rural regional communities.<sup>372</sup>

## Referrals to specialist services

The Victims' Charter Act specifies that police should provide victims with information about, and (if appropriate) referrals to, relevant support agencies.<sup>373</sup> Participants described positive instances where this had occurred. Others told us these referrals are not always made.

This client has so many issues, and it would have been apparent to the police that he was highly anxious – so I don't believe that the police didn't know, just that they were totally unsupportive in that process. The police should be getting people the support they need, doing the referrals to support, making sure people know their rights. It shouldn't be our job, it is the job of the police. We can quote the Victims' Charter to police, but that should not be our job, it should be automatic for police.<sup>374</sup>

General duties police were frustrated by the lack of easy access to adequate services available to them, stating "a referral pathway for people with disabilities doesn't exist".<sup>375</sup> Some tried to find local agencies or relied on colleagues with existing relationships, but often there were no appropriate services available.<sup>376</sup>

Local links to services or advocates delivered good support; however, these were largely reliant on individual networks.<sup>377</sup>

## Having a support person present increases the chance of a successful report

The vast majority of people who report have had someone else involved and helping them, case workers or parents, which has an impact.<sup>378</sup>

The presence of a support person can increase the chance of a report being made because of the practical and emotional support they provide.

Definitely having a good support worker who can invest the time ... even something as simple as driving them to the police station. Even to get the train to the police station can be a barrier but if the support worker says, "Right, we're going on this day", and if the support worker is present it will be more likely to happen.<sup>379</sup>

But also because it may change the way police respond to the report.

[W]ith support it went further, but it wouldn't have if we hadn't supported him.<sup>380</sup>

So, it really makes a difference having someone with them to just say, "No, he wants to report a crime."<sup>381</sup>

It may be the response improved because police were more comfortable with a person without disabilities, or because the support person acted as an independent check on police process. Regardless of why this happens, meeting legal obligations to take reports fairly should not be dependent on having a support person present.<sup>382</sup>

## Consequences of poor experiences

It is evident that there is a wide variance in quality of service when people with disabilities report crime. Several participants said as a consequence they will not report future crimes.

I felt bullied and I regret making the report.<sup>383</sup>

What really frightens me the most about this whole saga is that if something really bad happened to me in the future I wouldn't call the police.<sup>384</sup>

This is of great concern, as it not only reduces the sense of safety for people who have already experienced crime, it may also increase their risk of experiencing crime in the future.<sup>385</sup>

372 Survey participant (person with disabilities).

373 *Victims' Charter Act 2006* (Vic) s 7. The Victoria Police Code of Practice for the Investigation of Family Violence also requires referrals to support services. Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 44.

374 Focus group 3, people who provide care or support (2 September 2013).

375 Focus group 10, police (November 2013).

376 Focus group 11, police (November 2013).

377 Focus group 11, police (November 2013).

378 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

379 Focus group 3, people who provide care or support (2 September 2013).

380 Focus group 3, people who provide care or support (2 September 2013).

381 Key informant interview, Scope (11 November 2013).

382 Camilleri, *[Dis]abled justice*, above n 5, 163.

383 Case study: Kathleen (person with disabilities).

384 Case study: Blue Star (person with disabilities).

385 Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 26, 4.

# Chapter 6: The police interview

## Main findings

- The interview is an integral part of the investigation, both for a successful prosecution and also the level of satisfaction that victims feel with the police process.
- Consistent support is a vital element of a good response in the justice system. Support needs will differ between individuals, with some only needing a supportive interviewer. Others may require additional supports, including emotional support or an advocate. Some people may not want any support and this must be respected.
- The interview experience is dependent on the individual police member(s) with whom the victim has contact. Specialist training on working with people with disabilities significantly improves the quality of interview.
- When police make reasonable adjustments by adapting interview techniques, investigations can proceed with the same commitment shown to victims without disability.

## Legal obligations when conducting investigations

The *Victims' Charter Act 2006* (Vic) provides legislated standards. These include:

- recognising the impact of crime on the victim
- recognising that all persons adversely affected by crime should be treated with respect by investigatory agencies, and should be offered information to enable them to access appropriate services
- reducing the likelihood of secondary victimisation.<sup>386</sup>

Section 6 of the Act obliges Victoria Police to take into account and be responsive to the particular needs of people with disabilities, and other attributes, when investigating and prosecuting

<sup>386</sup> *Victims' Charter Act 2006* (Vic) s 4.

crimes.<sup>387</sup> Thus, while police are generally not delivering a 'service' under the *Equal Opportunity Act 2010* (Vic) when investigating crimes, they are still required by Victorian law and Victoria Police policy to adjust their practices to meet the diverse needs of victims.<sup>388</sup> How police communicate with the victim also continues to be a service to them, and Victoria Police's obligations to make reasonable adjustments under the Equal Opportunity Act apply.

Victoria Police obligations under the Charter of Human Rights and Responsibilities (the Charter) also apply in all stages of the police process.

## How do police conduct investigations?

The Victoria Police Manual (VPM) sets out the process and standards for investigation. They include responsibility to investigate all reports of crime effectively and consistently, and to ensure investigations are "appropriately conducted, having regard to the nature and type of crime".<sup>389</sup> The VPM contains additional requirements for investigating specific crimes including assaults, sexual offences, prejudice motivated crime, offences at schools and serious crimes. It is supplemented by the *Code of Practice for the Investigation of Sexual Assault* and *Code of Practice for the Investigation of Family Violence*.<sup>390</sup>

<sup>387</sup> Including race, sex, gender identity, age, cultural or linguistic diversity, religion and sexual orientation. *Victims' Charter Act 2006* (Vic) s 6.

<sup>388</sup> See for example Victoria Police, *Code of practice for the investigation of family violence*, above n 15; Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15.

<sup>389</sup> Victoria Police, *Victoria Police Manual 'Policy Rules: Crime Reporting and investigations'* above n 15, 1. In addition, the Victoria Police Blueprint 2012–15 includes "responding promptly, investigating thoroughly and prosecuting swiftly" and "upholding human rights" as key priorities for 2012–15. Victoria Police, *Victoria Police Blueprint 2012–15* (2012) 5.

<sup>390</sup> Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15; Victoria Police, *Code of practice for the investigation of family violence*, above n 15.

Depending on the seriousness and nature of the crime, investigations may be conducted by a uniform member or specialist unit such as a Sexual Offences and Child Abuse Investigation Team (SOCIT). Alternatively, they may be handed over to a specialist unit after initial inquiries have been completed.<sup>391</sup>

The police informant manages the entire investigation, lays the charges against the accused person and compiles the brief of evidence.<sup>392</sup> Their role is to gather information that is as accurate and complete as possible, with a view to gaining a conviction.

Police must take a statement from all victims “at the first practicable opportunity”, with the aim that “any person interviewed or providing a statement is provided with appropriate support to ensure that there is fairness in process and their human rights are respected”.<sup>393</sup> This statement should be taken using video audio recorded evidence (VARE) if the person has a cognitive impairment or is a child.<sup>394</sup>

The VPM does not guide police on how to conduct interviews beyond these procedural directions. More specific advice is provided for police members interviewing victims of sexual assault or family violence.<sup>395</sup>

In this chapter, we focus on treating the victim as a person during police interview(s). In Chapter 7 we examine investigation processes and ask the question – are police doing their best to solve the crime?

## Effective interviewing

Giving a statement is damn difficult. I didn't even understand what a statement is.<sup>396</sup>

A good interview is crucial to a successful prosecution. People with disabilities may face additional barriers, such as communication, attention or memory difficulties, low self-confidence and the effects of discrimination.<sup>397</sup> This does not mean that victims with disabilities are not competent, but it does mean that interviewers may need to modify their practice.<sup>398</sup>

391 Victoria Police, *Victoria Police Manual 'Policy Rules: Crime reporting and investigation'* above n 15, 5–7.

392 *Ibid.*, 7.

393 Victoria Police, *Victoria Police Manual 'Policy Rules: Interviews and statements'* above n 15, 1, 3.

394 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Visual audio recorded evidence'* above n 15, 2.

395 Victoria Police, *Code of practice for the investigation of family violence*, above n 15; Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15.

396 Survey participant (person with disabilities).

397 Martine Powell, Michelle Mattison and Keith McVilly, 'How to interview witnesses with communication impairment' (2013) 67(2) *Australian Police Journal* 72, 72.

398 *Ibid.*

Drawing on previous research, police policies and the stories told to us, the following principles form the basis of effective interviews. They are by no means exhaustive:

- establish rapport
- ensure security for the victim
- let people tell their story
- allow enough time
- use appropriate communication
- make sure the victim is in control ensure support is provided on the person's terms.

Participants reported varied quality of interviews, showing once again that the experience of the system is dependent on the individual police member(s) with whom the victim has contact and that police do not always follow best practice. However, where police had received specialist training on working with people with disabilities, the quality of interviews was significantly better.

## Establish rapport

In order to gain the confidence of the victim, interviewers should develop rapport with the person prior to the interview. This can improve recall, build the victim's belief in the process and their own competence, and can reduce the anxiety and stress that may lead to poorer communication.<sup>399</sup> The interviewer also learns about the victim's needs, abilities, communication style and strengths. This may require seeking advice or assistance from professionals or from the victim's support network.<sup>400</sup>

Where people have a cognitive impairment or an ABI [acquired brain injury], police may need to interview more than once; they need to get to know the person and build some trust in order to properly understand what has happened, but police are rarely trained or resourced to do this.<sup>401</sup>

Police were aware of the importance of getting to know the victim.

First there is a rapport-building process. The purpose of this is two-fold: to put people at ease and also find out what they are like – what the best way to communicate is. We use this approach for all victims.<sup>402</sup>

399 Ministry of Justice (UK), *Achieving Best Evidence in Criminal Proceedings: Guidance on interviewing victims and witnesses, and guidance on using special measures* (2011) 70; Powell, Mattison and McVilly, above n 397, 73.

400 Powell, Mattison and McVilly, above n 397, 76.

401 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

402 Focus group 9, police (November 2013).

Several participants confirmed that police met with them prior to interview to get to know them, learn about their needs and how their disability may affect the way the interview needs to be done.<sup>403</sup> Others reported that police did not seek enough information about the person's abilities or needs.<sup>404</sup>

Before the interview, it seemed like the investigating officers really only knew what I had had the chance to explain to them about autism.<sup>405</sup>

This had negative consequences for the investigation, particularly if failure to recognise a disability meant that police did not take a statement by VARE.<sup>406</sup>

### What is a VARE?

A VARE is an audio visual recorded statement taken by police in accordance with section 366 of the *Criminal Procedure Act 2009* (Vic). This applies to victims or witnesses of a sexual offence or an indictable offence that involves an assault or injury or threat of injury. The person making the statement must be under 18 years of age or have a cognitive impairment (including mental health disability, intellectual disability, dementia or acquired brain injury).

Only police who have successfully completed the VARE training course can conduct a VARE.<sup>407</sup> The VARE is used as evidence-in-chief, meaning that the victim does not have to give direct testimony in court.<sup>408</sup>

## Ensure security for the victim

The interview should be planned to maximise the security and comfort of the victim, by giving consideration to where, when and who conducts

the interview. The VPM specifies that an interviewer should be the same sex as a victim of sexual assault unless requested otherwise.<sup>409</sup> In some cases female victims were interviewed by men and may not have been given the option to state a preference prior to the interview.<sup>410</sup>

Interviews are best conducted when the victim is focused (giving consideration to meals and medication and its effects) and in a private, secure room with ample space and no distractions.<sup>411</sup>

I think most of the victims haven't been in a police station before, and it can be very intimidating.<sup>412</sup>

SOCIT interview rooms are designed to feel like a lounge room rather than a police station.<sup>413</sup> Orientation to the space can also overcome intimidation and give a sense of control.

Police show the victim where the interview will be, and how the camera will show the interview on a screen in another room. Also, the SOCIT members don't wear a uniform, which helps.<sup>414</sup>

Participants reported that police rearranged interview rooms to suit the needs of victims or used the space flexibly.<sup>415</sup> Some appreciated that police came to their house to take a statement,<sup>416</sup> although this will not be suitable for all people.<sup>417</sup>

403 Case study: Linda (person with disabilities).

404 Case study: Laura (police).

405 Case study: Julie and Beau (person who provides care or support).

406 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013). Further, while the quality of evidence obtained using VAREs has improved in recent years, if the technical quality of the VARE, or the quality of the questioning by police in the interview is not to a suitable standard, this creates significant problems for the prosecution. Office of Public Prosecutions Victoria, above n 48, 8; key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

407 Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 26.

408 *Criminal Procedure Act 2009* (Vic) ss 366–8.

409 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Sexual offence investigations'* above n 15, 2.

410 Focus group 6, Independent Third Person Program volunteers (11 October 2013).

411 Department of Justice (U.S.), Office of Justice Programs, Office for Victims of Crime, *Victims With Disabilities: The Forensic Interview – Techniques for Interviewing Victims with Communication and/or Cognitive Disabilities TRAINER'S GUIDE* (2011) 14–15 <[www.ovc.gov/publications/infores/pdfxt/VictimsGuideBook.pdf](http://www.ovc.gov/publications/infores/pdfxt/VictimsGuideBook.pdf)>. For victims of sexual assault, the Victoria Police Manual instructs police to “conduct the interview in a private, comfortable setting”. Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Sexual offence investigations'* above n 15, 2.

412 Focus group 4, Independent Third Person Program volunteers (10 October 2013).

413 Focus group 4, Independent Third Person Program volunteers (10 October 2013).

414 Focus group 2, service workers (12 August 2013); focus group 4, Independent Third Person Program volunteers (10 October 2013).

415 Focus group 11, police (November 2013).

416 Case study: Kim (person with disabilities).

417 For example, one participant described a victim feeling safe only when she reached the police station and could see the door had been locked. Focus group 7, Independent Third Person Program volunteers (1 November 2013).

## Sexual Offences and Child Abuse Investigations Team (SOCIT)

### What is a SOCIT?

Sexual Offences and Child Abuse Investigation Teams (SOCITs) are teams of specialist detectives who are trained to investigate sexual assault and child abuse.

Their role is to:

- investigate crime
- apprehend offenders
- work in partnership with other services to ensure an empathetic, professional and comprehensive response to victims of sexual assault and child abuse
- initiate prevention and reduction strategies.

They deal with a case from the time of disclosure, through the investigation process and then on to court. This means that victims can establish an ongoing relationship and trust with one or two police members and won't have to continually retell their personal experiences.

### SOCIT co-location with other services

There are 27 SOCIT units in Victoria, which vary in size depending on their location and work requirements.<sup>418</sup>

In three locations, SOCITs are located at multidisciplinary centres with other services that work with victims of sexual assault, including Child Protection, Department of Human Services (DHS) and Centres Against Sexual Assault (CASA) counsellors/advocates.<sup>419</sup> These agencies work collaboratively to provide an integrated response to victims of sexual assault from a single location.

Several participants told us that these centres work well, as they remove the need to attend a police station, limit potential contact with perpetrators and provide a link to other agencies.

[It is] less police-like and has nicer furnishings and softer facilities. Walking someone with a disability through the police station and through to an 'unacceptable' interview room makes it so difficult. Almost like a walk of shame.<sup>420</sup>

<sup>418</sup> Victoria Police, *About Sexual Offences and Child Abuse Investigation Teams* (12 July 2012) <[http://www.police.vic.gov.au/content.asp?document\\_id=36237](http://www.police.vic.gov.au/content.asp?document_id=36237)>.

<sup>419</sup> Multidisciplinary centres (MDCs) are located in Frankston, Geelong and Mildura. Three further MDCs will be established in Bendigo, Latrobe Valley and Metropolitan Melbourne. See *Ibid*.

<sup>420</sup> Focus group 9, police (November 2013).

### Does SOCIT provide a better service?

SOCITs are generally acknowledged as providing an improved service for victims of sexual assault and child abuse.

SOCIT is fantastic. They are considerate, thoughtful, experienced. Even the men are quite good. They just seem to know how to handle the person with a disability. Even when they are probing to get answers, they're so good at it, if the person doesn't understand the question they will try different words or sentences until the person understands.<sup>421</sup>

SOCITs are also able to provide more flexibility in terms of time taken and utilise less formal arrangements, such as special rooms and wearing plain clothes. SOCITs are expected to work closely with other organisations, including DHS, CASA and other police services, such as Criminal Investigation Units and the Sexual Crimes Squad.

### Limitations

Despite specialist training, SOCIT members still spoke about "being thrown in the deep end" when it came to alternative methods of communication and working with people with communication disabilities and disabilities such as autism spectrum disorder.<sup>422</sup> SOCIT members also talked about being "self-taught because of the high impact victims we get in SOCIT" and the need to undertake significant research to meet the basic requirements of the job.<sup>423</sup>

Some participants felt that the reliance on SOCITs in processing all sex-related crime and child abuse meant that the knowledge of general members in working with victims of sexual assault had diminished. This was seen as a problem both for victims, and for SOCIT members who spoke of having to 'undo' the damage some first contact police had done before referral to the SOCIT through lack of skill.<sup>424</sup> Participants also noted that the focus on specialisation in SOCIT units had resulted in a broader lack of focus on the victim among general police members.<sup>425</sup>

<sup>421</sup> Focus group 4, Independent Third Person Program volunteers (10 October 2013).

<sup>422</sup> Case study: Laura (police).

<sup>423</sup> Case study: Laura (police).

<sup>424</sup> Case study: Laura (police).

<sup>425</sup> Focus group 9, police (November 2013).

Some participants observed that there were fewer female police officers in SOCITs than had been employed in the Sexual Offences and Child Abuse Units (SOCAs).<sup>426</sup> This is of particular significance given the number of victims of sexual assault in our study who spoke of the importance of having a female officer present during the reporting process. It is possible this changed gender makeup is a result of an increased focus and prioritisation by Victoria Police on sex crime and the resulting status that working for a SOCIT affords.<sup>427</sup>

In addition, some participants felt that the move from SOCAs to SOCITs had created a stronger focus on pursuing criminal investigations and process at the expense of supporting the victim.<sup>428</sup> This was reinforced by participants who spoke about their cases not being pursued because of their disability, and feeling “utterly alone” despite being engaged through the SOCIT process.<sup>429</sup>

Despite these criticisms, many participants spoke of positive experiences with SOCITs. The focus of Victoria Police on integrated support, including through expansion of multidisciplinary centres, is also positive.

## Let people tell their story

Interviewers need to allow victims to give a full account of their experience to produce complete and accurate evidence, and for the person to feel satisfied with the process.

Police need to be aware that where they are confronted with a person with complex communication needs, you can't be allowed to (or allow yourself to) discount their comprehension, their emotional needs and their legal rights – you need to take extra steps to change your interview style, taking into account a more psychological approach. This means getting them to tell the narrative of what has happened rather than trying to extract the facts from them. By contrast, the typical police style of interviewing is to extract the facts in the most efficient way possible.<sup>430</sup>

426 Key informant interview, Office of the Public Advocate (26 November 2013).

427 The increased focus by Victoria Police on responding to violence against women and children, including sexual assault, is outlined in the Victoria Police, *Living free from violence – Upholding the right: Victoria Police Strategy to Reduce Violence against women and children 2009-2014* (2009).

428 Key informant interview, Office of the Public Advocate (26 November 2013).

429 Case study: David (person with disabilities).

430 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

Letting people “tell their full story (not only aspects directly relevant to the case) may be beneficial in releasing negative emotions and relieving the stress associated with the crime”.<sup>431</sup>

## Allow enough time

Depending on the individual, interviews may take longer. Interviewers should:

- anticipate that the interview may be conducted over multiple sessions
- schedule breaks in the interview<sup>432</sup>
- allow extra time for the victim to consider and respond to questions.

Police were aware of the importance of allowing extra time with people with disabilities.<sup>433</sup> However, several people believed police could not afford to take the time needed.<sup>434</sup>

A big issue that people with disability have to always put up with, is that 90 per cent of time we see a lot of words and say, “Whatever. Hang on, what does that mean?” We need time to go through things. People are always rush, rush, rush. Slow down. It's hard for people to understand that. They'll say, “She's lost the plot.”<sup>435</sup>

Where insufficient time or breaks were allowed this usually led to exhaustion for the victim, coupled with a sense that they had not been able to provide accurate information.

The interview process took a long time – about five hours. Both myself and the advocate believed they would have got more information in this interview if my son had been provided with more breaks and more support.<sup>436</sup>

Several participants described their relief at being able to tell their story over multiple interviews.<sup>437</sup>

431 Elliot, Thomas and Ogloff, ‘Procedural justice in contacts with the police: the perspective of victims of crime’, above n 30, 447.

432 Department of Justice (U.S.), above n 411, 20, 22.

433 For example, focus group 9, police (November 2013); focus group 10, police (November 2013).

434 Case study: Leonne (person with disabilities); Survey participant (person with disabilities).

435 Case study: Leonne (person with disabilities).

436 Case study: Julie and Beau (person who provides care or support).

437 Case study: Melanie (person with disabilities). This participant also told us that when people return for additional interviews they should be able to add information to their statement rather than having to re-live parts of previous interviews again.

## Use appropriate communication

In some cases police did not know how to communicate with people with disabilities, or needed to be educated throughout the interview process.<sup>438</sup> This could lead to misunderstandings for both parties.

They seemed to always come back to [the] same issue with different words to try to make me change my mind from what I said the first time. It confused me.<sup>439</sup>

Communication difficulties may be minimised by using simple, transparent, concrete language and avoiding figures of speech.<sup>440</sup> Interviewers may also need to communicate non-verbally.

[O]nce with SOCIT with a little child with very limited verbal skills the police member sat on the floor and did the interview through play.<sup>441</sup>

[A]nother with SOCIT where the person had very limited communication but could draw. The person was able to draw the picture and then the police asked which picture represented who. In this case, the police weren't able to get as much as they required or what they wanted but the police officer was very good at getting the person to be able to say that there had been an injustice against them.<sup>442</sup>

Police told us they try to adjust their communication to suit the person, and may seek external support and guidance to modify practice.<sup>443</sup>

We were liaising with the individual's local police station where they were proactively involved and ensured the person had full access to justice, also involving the SOCIT unit to assist in this process. We were heavily involved in ensuring the individual had full access to justice by frequently being in contact via phone and email, preparing letters about how interviews should be conducted, highlighting the importance that two cameras were filming different angles of the statement to alleviate any potential questioning as to the authenticity of the information provided in the statement.<sup>444</sup>

438 For example, case study: Julie and Beau (person who provides care or support); case study: Leonne (person with disabilities); case study: Michael (person with disabilities).

439 Case study: Leonne (person with disabilities).

440 Powell, Mattison and McVilly, above n 397, 75.

441 Focus group 6, Independent Third Person Program volunteers (11 October 2013).

442 Focus group 6, Independent Third Person Program volunteers (11 October 2013).

443 For example, focus group 9, police (November 2013); focus group 11, police (November 2013).

444 Key informant interview, Communication Rights Australia (31 July 2013).

## Ask the right questions

Police need to be flexible and tailor their questioning. Some interview techniques are appropriate for people with certain disabilities but not for others. For example, as a general rule, people with intellectual or communication disabilities should be asked open-ended questions in a logical sequence.<sup>445</sup> In contrast, people with autism spectrum disorder may respond better to more specific questions.<sup>446</sup>

### Interview questions

Open-ended questions encourage narrative, produce richer, more accurate responses from people with disabilities<sup>447</sup> and maximise the chance for successful prosecution.<sup>448</sup> Open questions include 'invitations', such as, "Tell me everything that happened", which encourage free-recall narrative responses from the victim. Open questions can produce more specific responses by breaking the request into smaller pieces, such as, "What was the first thing that happened?"<sup>449</sup> These questions can be followed by 'directives', another type of open question that can elicit detail based on what has already been said – for example, "What colour was that shirt?"<sup>450</sup> Practising these types of open questions in the rapport-building, pre-interview stage, will increase the chance of eliciting lengthier, richer responses in the interview.<sup>451</sup>

Interviewers should avoid asking focused questions, including 'suggestive' or 'option posing' questions that may imply that there is a preferred response.<sup>452</sup>

445 Powell, Mattison and McVilly, above n 397, 75.

446 The National Autistic Society, *Autism: A guide for criminal justice professionals* (2011) 21–22 <<http://www.autism.org.uk/cjs>>.

447 Cederborg and Lamb, above n 182, 50.

448 Martine Powell and Rebecca Steinberg, 'Overcoming barriers to best practice interviewing' (2012) 4(1) *Investigative Interviewing: Research and Practice* 5, 6.

449 Powell, Mattison and McVilly, above n 397, 76.

450 Cederborg and Lamb, above n 182, 52.

451 Powell, Mattison and McVilly, above n 397, 76.

452 Cederborg and Lamb, above n 182.



## Avoiding leading questions

Victoria Police Deputy Commissioner Tim Cartwright told the Commission that the evidential burden poses a challenge to the way that Victoria Police conducts interviews.

We are limited because we have to be able to meet the rules of evidence and we have to be able to prove a case beyond reasonable doubt. If a victim of crime can't give a reasonable account or recall specifics or has difficulty with communicating then it is very difficult to get a prosecution.<sup>453</sup>

Police were wary of adapting their questions for fear of asking leading questions, or that the interview would not produce the required particularisation.<sup>454</sup>

[W]hen you have a person with a communication board, they might only communicate with yes or no answers, which we can't do because it would be interpreted as us leading the witness. We need a narrative response. Which is a very taxing task for someone who uses a communication board.<sup>455</sup>

Some police also recognised that allowing people to tell their story can lead to the necessary level of detail being provided, if time and patience are afforded.

Our main aim is to get a successful disclosure through the interview ... A story with a start and an end. A lot of our work is to uncover grooming connotations. Kids have been encouraged not to tell and the perpetrators have done things that to other people may not look like anything but to us are very important. We are looking for times and dates – particularisation. We are looking for what the exact offence is, as this is what must be provided in court. With children, this is difficult as those things aren't important to them so you have to encourage them just to talk and tell the story so you can identify dates and times and process through their story.<sup>456</sup>

Encouraging narrative avoids asking leading questions, as the victim tells the story their way, without the intervention of the interviewer.

453 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

454 Focus group 9, police (November 2013); focus group 11, police (November 2013).

455 Focus group 11, police (November 2013).

456 Focus group 9, police (November 2013).

## Make sure the victim is in control

Interviewers can overcome a sense of a power imbalance by ensuring the victim is in control and is valued through the process.<sup>457</sup> People should be empowered to make decisions throughout, such as when breaks are scheduled and who else is permitted in the interview.<sup>458</sup> They should be given as much information as possible about the process and their own interview.<sup>459</sup>

Police investigating sexual assault are also told to “ask the victim if they feel they are able to proceed”.<sup>460</sup> Police must give victim survivors a range of options about how they would like to proceed with a case. This is called the ‘options talk’.<sup>461</sup>

Police are usually happy to explain the process. In some interviews, I ask the victim, “If this happened to your friend, what would you tell them to do?” It is about trying to get across the importance of making the statement. The victim needs to know they are of value, and what happened to them does matter.<sup>462</sup>

The options talk is important, but may be delivered in a way that is confusing or distressing for victim survivors.

It is good to have them [CASA workers who have been trained as Independent Third Persons (ITP)] there for the options talk. The options talk is really important, especially where a case is more complex or the person is very traumatised.<sup>463</sup>

457 Powell, Mattison and McVilly, above n 397, 74.

458 Department of Justice (U.S.), above n 411, 22.

459 The Code of Practice for the Investigation of Sexual Assault goes some way to encourage police to do this by instructing that interviewers should “explain how and why the interview is to be conducted”. Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 15.

460 *Ibid.*, 20.

461 “Police are required, as part of their victim protocol, to provide to victims a range of options open to them when they first seek contact with police. Known as an ‘options talk’, it is formally detailed in the Victoria Police Crime Investigative Guidelines version 1.1 – Sexual Crimes (2010, 78-80), which set out clear and detailed expectations to avoid misuse of this tool.” Taylor et al, above n 184, 126.

462 Case study: Vicki (Independent Third Person).

463 Focus group 11, police (November 2013).

It wasn't until I was sitting there and police asked, "Do you want to press charges?" that it hit. I didn't know there was any other option. I think police need to explain what this means to people. People with disabilities, especially if they have an intellectual disability, might need time to talk to the people who support them and to understand the consequences before they make the decision.<sup>464</sup>

Previous research has found that interviewers may use the options talk to persuade victims to discontinue the process.<sup>465</sup> Interviewers should ensure that they do not create this perception, so that the options talk is genuine. A good example is where one unit developed their own options talk leaflet for victims to take away and think through – to make sure information was consistent and so that the options talk didn't overwhelm people.<sup>466</sup>

## Ensure support is provided on the person's terms

The VPM states that:

Any [mentally disordered] person interviewed or providing a statement should be given appropriate support to ensure that there is fairness in process and their human rights are respected.<sup>467</sup>

However, the VPM does not provide sufficient guidance on what this support could entail, and may contradict the advice in the *Code of Practice for the Investigation of Sexual Assault*, which instructs police to "limit the number of people present".<sup>468</sup> This may partially explain the wide variance in practice people described to the Commission.

Support needs will differ between individuals. In some cases a supportive interviewer will be sufficient. Others may require additional supports. Some people may not want any support and this must be respected.

Where support was provided, there were four groups who provided supports to the police process:

- interpreters and communication support workers
- personal and emotional support (for example families, friends, carers, counsellors or support workers)
- advocates
- ITPs.

In most cases these roles overlapped and, in many cases, people took on extra roles.<sup>469</sup>

## Interpreters and communication support workers

We heard that police do not always work with interpreters and communication support workers during interviews, which can severely compromise this stage of the process.

Participants also described some occasions where police did allow a facilitator to assist the victim. In some cases, while a family member would have been preferred by the victim, this was not possible because of evidentiary issues. Nevertheless having access to communication support was still highly valued.

I remember doing the statement again in Melbourne with a male police officer, and they let me have a facilitator who had to be someone who didn't know what had happened. My speech pathologist facilitated me. I was glad to be facilitated but it was difficult, because I was embarrassed for her to hear what he had done to me. I would have preferred for mum to have facilitated, but because she was the first person I disclosed to, [but] she couldn't. The police were particularly patient and listened to the story and investigated.<sup>470</sup>

Doing it on their own was very stressful:

The policewoman let me type my statement at home, but I had to write independently. It was a nightmare. I got so terrified my vision left me and I couldn't see the stupid letters to write and I made endless errors.<sup>471</sup>

464 Case study: Melanie (person with disabilities).

465 Taylor et al, above n 184, 131–2.

466 Ibid.

467 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Interviewing specific categories of person'* above n 15, 1.

468 Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 20.

469 Focus group 5, Auslan interpreters (10 October 2013); key informant interview, Scope, (11 November 2013); focus group 4, Independent Third Person Program volunteers (10 October 2013).

470 Case study: David (person with disabilities).

471 Case study: David (person with disabilities).

## Emotional support

Some people may need emotional support from family or friends during the interview. The potential of this is recognised in the VPM.<sup>472</sup> However, in some cases this is not possible because the support person is required to provide their own evidence as a witness to the crime, including when they are the first person the victim disclosed to.<sup>473</sup>

For some, having a family member present restricted the information that they were able to give.

I think using family members or close friends can be problematic. While it may be good for a victim or witness to have someone there you know who can help you with communication, in other cases, if there is a woman making a statement about a sexual assault, the last person she probably wants there is her mother.<sup>474</sup>

I had my dad in the room for another interview. I had to stop that one because I couldn't do it with him in the room. It was too stressful and uncomfortable.<sup>475</sup>

For this participant, the presence of a different family member or close friend provided more comfort, although the stress of having to choose who would be allowed in the room created stress.<sup>476</sup>

In some cases, people may prefer having an independent advocate, or an ITP may be required.

## The Independent Third Person

Independent Third Persons (ITPs) perform a vital role in our justice system.<sup>477</sup> They assist people with a cognitive disability or mental health disability during interviews, or when giving formal statements to Victoria Police. The person with a cognitive disability or mental health disability may be an alleged offender, victim or witness.

The ITP program is non-statutory. Rather, the VPM stipulates that an ITP must be present for interviews with victims with cognitive impairment or mental health disability.<sup>478</sup> ITPs are not permitted for interviews with victims with other disabilities.

### The role of an Independent Third Person

An ITP can be a relative, friend or a trained volunteer from the Office of the Public Advocate (OPA).

An ITP provides support and assists in the communication between a person with a cognitive disability or mental health disability and the police. An ITP cannot instruct the person on how to deal with the issue they are facing and cannot provide legal advice. However, an ITP can help by:

- providing assistance to contact a lawyer, relative or friend if requested
- helping the person understand their rights and any legal advice given
- ensuring the person understands the questions asked by police
- asking the police to rephrase a question if they believe the person may have difficulty understanding what is being asked
- requesting a break during an interview if the person is becoming distressed, or unable to concentrate.<sup>479</sup>

ITPs do not attend forensic examinations for rape victims; a CASA worker should be called instead.

The VPM guides police to consider whether a relative or friend will have the necessary objectivity to act as an ITP, and suggests that it may be more suitable for a relative or friend to be present to provide emotional support while a trained ITP ensures objectivity.<sup>480</sup> Police are instructed not to discourage or prevent a relative or friend from acting as the ITP.<sup>481</sup>

472 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Interviewing specific categories of person'* above n 15, 5.

473 Key informant interview, Scope (11 November 2013).

474 Key informant interview, Office of the Public Advocate (26 November 2013).

475 Case study: Melanie (person with disabilities).

476 Case study: Melanie (person with disabilities).

477 The Department of Human Services and the Department of Health contribute funding to the Independent Third Persons program. Information provided to the Commission by the Department of Human Services, 3 June 2014.

478 Victoria Police, *Victoria Police Manual 'Guidelines: Interviewing specific categories of person'* above n 15, 4.

479 Office of the Public Advocate, *Independent Third Persons* (15 October 2012) <<http://www.publicadvocate.vic.gov.au/services/108/>>.

480 Victoria Police, *Victoria Police Manual 'Guidelines: Interviewing specific categories of person'* above n 15, 5.

481 Ibid.

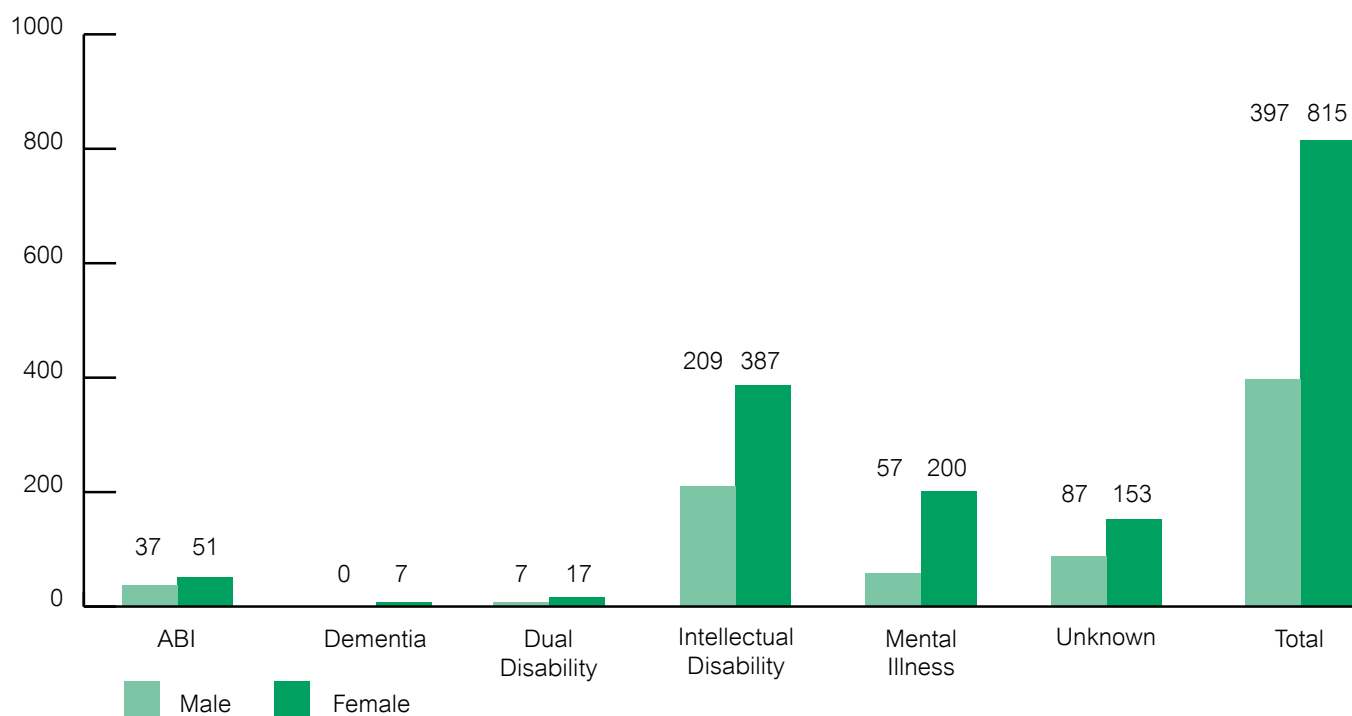
It is not known what proportion of interviews are attended by trained volunteer ITPs compared to a family member or friend. How many interviews with people with disabilities are not attended by an ITP is also not known.<sup>482</sup>

OPA provides a ready reckoner to assist police.<sup>483</sup> However, given that not all police can identify when a person has disabilities, it is likely that ITP volunteers are not called as frequently as they should be.

[Police] will often say, “We didn’t know the person had an intellectual disability so we didn’t feel the need to call an ITP.”<sup>484</sup>

In 2012–13 the ITP program had 269 ITP volunteers and 62 CASA ITP volunteers. These trained ITPs attended 2,442 police interviews. Of these, 7.6 per cent were for victims of crime.<sup>486</sup> Thirteen per cent repeat presentation interviews involved victims.<sup>487</sup> This is likely because of the higher numbers of accused than victims. However, it may also be due to victims choosing to use family members or friends or because police are less concerned that a case will be hindered if a victim did not have an ITP, whereas a case against an offender would be unlikely to proceed if an ITP was not present.<sup>488</sup>

**Figure 3: ITP victim interviews by gender and disability 1 July 2000 to 30 June 2013**



Source: Office of the Public Advocate.<sup>485</sup>

<sup>482</sup> Key informant interview, Office of the Public Advocate (26 November 2013).

<sup>483</sup> Office of the Public Advocate, *Responding to a person who may have a cognitive impairment*. Information provided to the Commission by the Office of the Public Advocate, 22 April 2014.

<sup>484</sup> Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

<sup>485</sup> Information provided to the Commission by the Office of the Public Advocate, 10 December 2013.

<sup>486</sup> Office of the Public Advocate, *Annual Report* (2013) 36.

<sup>487</sup> Office of the Public Advocate, *Breaking the cycle*, above n 107, 97.

<sup>488</sup> Focus group 4, Independent Third Person Program volunteers (10 October 2013).

Contrary to the VPM, the Commission heard of cases where a relative, friend or advocate had not been permitted to provide independent support during an interview. One police member told the Commission that the interviewer will decide who will act as an ITP based on the closeness of the relationships between the victim and the proposed ITP.<sup>489</sup>

While OPA provides training to all OPA ITPs, the Commission heard that the quality of these ITP volunteers varies widely. Some found the service very helpful:

They spoke to me in plain English, they were very calm.<sup>490</sup>

Some had negative experiences. This included ITPs who did not actively support the victim or did not explain their role. Others perceived ITPs to be assisting police rather than the victim.<sup>491</sup>

### Programmatic limitations of the role

ITPs discussed some inbuilt limitations of the role, including the inability to provide referrals to people with disabilities experiencing crime and not being able to offer consistency in support for the person's interaction with police throughout the process.<sup>492</sup> This is because the centralised booking system may lead to different ITPs attending different interviews when a person has more than one interview with police.<sup>493</sup>

Some people prefer to report or be interviewed away from the police station. According to OPA, the choice of venue of a police interview is the choice of police and the ITP will attend at any location the police choose to conduct the interview.<sup>494</sup> In some cases this is not possible because the VARE facilities are at the police station.

---

489 Case study: Laura (police).

490 Focus group 12, people with disabilities (13 November 2013).

491 Case study: Melanie (person with disabilities); focus group 6, Independent Third Person Program volunteers (11 October 2013); case study: Leonne (person with disabilities). Some people said that their ITP waited outside the interview room rather than assisting them. However, this may have been because the ITP was required to do so under the rules of the program contained in Victoria Police policy.

492 In relation to disability services, section 49 (1) of the *Disability Act 2006* (Vic) provides that any person may request services on behalf of a person with disabilities from a disability service provider.

493 Focus group 4, Independent Third Person Program volunteers (10 October 2013).

494 ITPs have attended interviews in hospitals, prisons, mental health facilities, private homes, schools, and support residential services. This includes interviews for suspects, victims and witnesses. Information provided to the Commission by the Office of the Public Advocate, 21 May 2014.

### Relationship with police

ITPs generally reported positive relationships with police. Many told the Commission that police conduct interviews well.<sup>495</sup>

In my experience, the police have been supportive of my role. During the interview, I sit beside the person but not too close. This helps to set the boundary. I tell them if they need to come back for another interview, I can try to be there. I make sure the person is comfortable, has access to water and breaks.<sup>496</sup>

Police described good experiences with ITPs. This usually related to ITPs performing a necessary function for police to avoid problems later in the prosecution process.<sup>497</sup> Negative experiences related to some police members, view that ITPs don't understand either the ITP or police role.<sup>498</sup>

OPA described concerted efforts to build strong relationships and trust between ITPs and police, to increase the likelihood that police will call an ITP when required.<sup>499</sup> They recognised the challenge of balancing this relationship and the need for ITPs to "remain independent enough to do their role", and to manage any tension that may arise when an ITP asserts their right to meet with a person privately before an interview or interrupts to ensure a person understands questions or information from police.<sup>500</sup>

OPA also noted that the ITP program more generally would benefit from the ability to provide referrals to support services and advocates for victims of crime with disability.<sup>501</sup>

---

495 Focus group 6, Independent Third Person Program volunteers (11 October 2013); focus group 7, Independent Third Person Program volunteers (1 November 2013).

496 Case study: Vicki (Independent Third Person).

497 "We have had lots of situations recently where we just haven't been able to get one – so we'll just take a statement without them there and this causes problems later on." Focus group 8, police (November 2013).

498 Focus group 9, police (November 2013). Arguably some police members may not understand the ITP role.

499 Key informant interview, Office of the Public Advocate (26 November 2013).

500 Key informant interview, Office of the Public Advocate (26 November 2013).

501 Key informant interview, Office of the Public Advocate (26 November 2013).

## Advocates

What seems to make the difference is ... when you've got a really committed advocate for the person who is assisting them with the police and the police also putting in the hard yards – but you need both of these things.<sup>502</sup>

Victoria Police Deputy Commissioner Tim Cartwright said, "Advocates are really important."<sup>503</sup> They may be preferred to ITPs because they can provide case management that ITPs cannot.

Advocates can also provide independent advice to the victim and to police, but should not be used as a replacement for a communication support worker.<sup>504</sup>

That sort of process where an advocate can suggest the police try this, go to this service, etc. They could give us some advice about how to communicate, what sort of things we need to be looking for. We've used an advocate before from Melbourne, and they gave some really good advice about communication tools, why this person would need particular things. They also acted as a liaison point between us and the nursing home.<sup>505</sup>

Dr Margaret Camilleri has shown that family members can be effective advocates, and that consistency is key:

The role of an advocate who ensures an allegation of sexual assault is taken seriously by the police is pivotal in cases involving victims with a cognitive impairment ... The ongoing role of the advocate is also crucial in improving the possibility of a successful outcome.<sup>506</sup>

Despite these success stories, one participant told us that they were not permitted to have an advocate present.<sup>507</sup> Advocates also told us of difficulties they faced in trying to support the person throughout the interview process.<sup>508</sup>

---

502 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

503 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

504 Key informant interview, Communication Rights Australia (31 July 2013).

505 Focus group 11, police (November 2013).

506 Camilleri, 'New ways forward – pathways to change', above n 5, 8–9; Camilleri, *[Dis]abled justice*, above n 5, 201–13.

507 Case study: Leonne (person with disabilities).

508 Key informant interview, Disability Justice Advocacy (15 October 2013). The Commission notes that advocates play a complementary, but distinct, role to other supports, including the role of an ITP.

## Consistent, integrated support is essential

Consistency of support, during and beyond the initial report, was an important theme in the research. While everyone agreed that support, including advocacy, was a vital element of a good justice response, it was clear that this is the exception rather than the rule.

The need for consistent, integrated support for victims of crime with disability is a key driver for the Commission's recommendations to develop a Victoria Police Code of Practice for responding to victims and witnesses with disabilities. It is also a key driver for the recommendation to establish Victoria Police Disability Advisors, who will work to build capability, networks, support and referral pathways across the state, and between sectors. This is discussed in Chapter 10.

It is well accepted that the fragmented nature of human services, historic siloing of service categories, limited resources, and complex referral pathways leads to poorer outcomes. This is also the case when people with disabilities seek justice without consistency of appropriate supports, when they need them, and for as long as they need them.

Key informants described positive relationships between sectors, including between sexual assault services and police, and with the family violence sector. Relationships between disability services and these sectors, and with police, were considered less well developed.<sup>509</sup>

While some positive relationships existed at a local level, these tend to be ad hoc and subject to resource limitations, including within Victoria Police which does not have dedicated resources to buy in the necessary supports.<sup>510</sup> There was consensus that getting all these sectors to understand each other better – including the values driving the work, language and terminology, and sector practices – was a priority.<sup>511</sup>

---

509 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013); Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

510 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

511 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013); Key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

### **Making rights reality project**

There are some excellent examples of quality, integrated support being provided; however, these are often ad hoc and limited by resource constraints.

*Making Rights Reality* is an important initiative being trialled by the South Eastern Centre Against Sexual Assault (SECASA), which, if successful, has the capacity to transform the way in which victim survivors of sexual assault with disability receive justice services.

The project aims to increase access to the criminal justice system for people who have been sexually assaulted and have a cognitive impairment and/or communication difficulties. The service provides clients with crisis care, counselling, advocacy, legal information and advice, and support through the justice process, including police investigation, prosecution and crimes compensation processes. Communication support, attendant care or transport is provided as needed to ensure access.

Clients are supported by the SECASA and the Springvale Monash Legal Service together with communication support and Attendant Care/ Support Workers as needed. The program is assisted by involvement of Victoria Police, the Office of Public Prosecutions and OPA.<sup>512</sup>

SECASA workers are also trained ITPs. This outreach focus helps deliver wraparound support to people with disabilities experiencing crime.<sup>513</sup>

Preliminary results indicate that this approach led to improved outcomes. In the first year of this project, there were two convictions out of 60 cases. In addition, seven cases have been supported to apply to the Victims of Crime Assistance Tribunal. As noted by Dr Patsie Frawley, “prior to the program, victims weren’t getting this support or outcome. The qualitative outcomes are very important, in terms of consistency, time and support given to the victim, and supporting rights within the system”.<sup>514</sup>

While this pilot is limited to victim survivors of sexual assault, it provides a good model of integration between service supports and support in the justice process, and if successful, should be considered for statewide rollout, and for other crimes.

---

512 South Eastern Centre Against Sexual Assault and Family Violence, *Making rights reality for sexual assault victims with a disability* (21 October 2013) <<http://www.secasa.com.au/services/making-rights-reality-for-sexual-assault-victims-with-a-disability>>.

513 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

---

514 Key informant interview, Dr Patsie Frawley (5 July 2013).

# Chapter 7: Police investigations

## Main findings

- The conduct of investigations (procedural justice) is at least as important to victims as a successful prosecution. This includes informing victims of reasons that an investigation has been closed and ensuring that they are aware of their right to request a review of the decision in sexual assault or family violence matters.
- Various factors may prevent an investigation from proceeding, including if there is no witness, police concern for the person reporting crime or apprehension about the cost of an unsuccessful prosecution.
- Failure to gather available evidence and maintain accurate records compromises investigations and leads to second-rate justice for people with disabilities.
- Complaints processes are one way Victoria Police gathers feedback; however, not all victims of crime are aware of the option to make a complaint, or request a review of the decision in family violence and sexual assault matters. Other avenues for feedback may also assist Victoria Police to drive improvements.

## Are police doing their best to solve the crime?

Recent research indicates that police willingness to do their best to solve the case and treat the person as an individual is at least as important to victims as a successful prosecution.<sup>515</sup> In that study, the main point of dissatisfaction was not that the alleged offender could not be found or was not charged, “but occurred when participants perceived that the police were not going to do much about their cases”.<sup>516</sup>

Conversely, victims believed that the police were doing their best if they “expressed a genuine personal unacceptance of a particular crime that was reinforced by non-blaming attitudes and taking prompt action, and if the police followed up staying in touch and keeping the victims informed about the progress of their case”.<sup>517</sup>

Participants in our study confirmed this. However, several said they did not receive this treatment. Others remain dissatisfied because they do not consider the offender has been held to account.<sup>518</sup>

I felt that my son was facing discrimination from day one and the case had been placed in the too-hard basket. I believe the nature of my son’s disability meant police didn’t pursue the case with the same vigour they would have with the case of someone without autism.<sup>519</sup>

---

515 Elliot, Thomas and Ogloff, ‘Procedural justice in contacts with the police: the perspective of victims of crime’, above n 30.

516 Ibid 437–49. The aim of this study was to examine victims’ perceptions of procedural justice in interactions with police. In-depth, semi-structured interviews were conducted with 110 participants who had reported a crime, either personal or property, to the Victorian Police in the last year. Seventy per cent of participants were victims of violent crimes. Disability status of participants is unknown.

517 Ibid 446–7.

518 For example, case study: Julie and Beau (person who provides care or support); case study: Bella (person with disabilities); case study: David (person with disabilities).

519 Case study: Julie and Beau (person who provides care or support).



## Taking action

It takes a lot of guts for a victim to come forward and then for the majority of them nothing happens.<sup>520</sup>

Among 27 case studies, we interviewed 14 people with disabilities and six parents/carers.<sup>521</sup> Of these, 15 case study participants had reported to the police. Eight of these reports were for sexual offences, of which three were prosecuted.

In our survey for people with disabilities, 17 out of 43 respondents with disabilities reported on police action following a report. Of these cases:

- five people reported that the police “did nothing”
- charges were laid in five cases
- police investigated but did not lay charges in three cases
- police assisted the person to get an intervention order in one case
- three people did not know what happened.<sup>522</sup>

In our survey people who provide care and support described actions taken by police. Of these:

- police investigated but did not lay charges in four cases
- police assisted the person to get an intervention order in two cases
- charges were laid in one case
- one complaint was withdrawn
- one reported that the police “did nothing”
- one did not know what happened.<sup>523</sup>

## Consistency of effort

The quality and timeliness of investigation is largely dependent on the knowledge, skill and attitudes of the police informant. This was evident for participants who had experienced multiple

---

<sup>520</sup> Case study: Laura (police).

<sup>521</sup> Of these, two parents and one person with disabilities were unsure if a crime had occurred. Other case study participants included police members, advocate guardians and Independent Third Persons, among others.

<sup>522</sup> When asked why they thought charges were not laid, three respondents answered. One said there was not enough evidence, one said there were no witnesses and one said the police didn't think it was a police matter. Survey (people with disabilities).

<sup>523</sup> When asked why they thought charges were not laid, four respondents answered. Three said there was not enough evidence, two said there were no witnesses, one said the victim was not believed and one did not know. Survey (people who provide care or support). Nine respondents answered the question, Did the police take the report seriously? Six participants answered yes. Survey (people who provide care or support).

crimes, and had significantly different experiences depending on the police informant.<sup>524</sup>

It depends on the person you find. They'll say “we're working on it” constantly but they fob you off. There was a police officer who was great during the interview but it has been three years since the report was made and he is still just saying, “We're still investigating”... [however] we do see some cases where police have at least tried. It rests a lot on the personalities of the officers.<sup>525</sup>

Several key informants reported that some police expect advocates to do the legwork on investigations.<sup>526</sup> Victims and family members also felt they had to chase information for police and that more effort earlier in the investigation was needed.<sup>527</sup>

They left and said they would pursue it and ring back, but they never rang back. Another policewoman rang me later and told me my report was not strong enough to go ahead. I was very hurt that she said this, and because it had been a long time since I reported, I got upset about the assault all over again too. When I hung up, I rang my advocate straight away and he said, “That's garbage. Leave it with me,” and he organised a counsellor and an interpreter to come and take my statement, then it went to police. They did the police's work for them.<sup>528</sup>

Following representations to more senior officers, matters were more thoroughly investigated. In other cases formal complaints were made to Victoria Police.<sup>529</sup>

Police have investigated to varying degrees. With a lot of pressure they might investigate thoroughly, but we find that we have to work closely with them. In one case we had to communicate with the Local Area Commander, put pressure on them, and they would put pressure down on the informant to investigate properly.<sup>530</sup>

---

<sup>524</sup> For example, case study: David (person with disabilities). Contrast with case study: Blue Star (person with disabilities) who had a consistently poor response across multiple crimes reported to different police stations.

<sup>525</sup> Key informant interview, Scope (11 November 2013).

<sup>526</sup> For example, key informant interview, Communication Rights Australia (31 July 2013).

<sup>527</sup> Case study: Julie and Beau (person who provides care or support); case study: Michael (person with disabilities).

<sup>528</sup> Case study: Leonne (person with disabilities).

<sup>529</sup> Key informant interview, Disability Justice Advocacy (15 October 2013).

<sup>530</sup> Key informant interview, Communication Rights Australia (31 July 2013). See also key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

## Gathering evidence

### Witness statements

“Witnesses were important to the likelihood of a case being taken forward, and the single most frequent reason ... for authorisation.”<sup>531</sup> This may be challenging in some environments, where witnesses’ credibility is also questioned.<sup>532</sup> For example, witness credibility may be questioned in disability, aged care and mental health services where witnesses may themselves have a disability.<sup>533</sup>

[A] key witness, a person who should have been making a statement, also used a communication device, and were more than likely ... considered by the system as being an unreliable witness because they needed a communication device, despite having no intellectual disability. The informant only got around to taking that person’s statement during the committal stage of proceedings.<sup>534</sup>

Other police members did not see this as such a problem, and reported collecting statements from co-residents in disability services or rooming houses.<sup>535</sup>

### Physical evidence

Collecting physical evidence may be compromised by the location of the crime, or delays in reporting. Interviews may also be delayed.<sup>536</sup> For example, if a crime occurs when a person is a mental health inpatient there might be delay until the person recovers.<sup>537</sup>

The first hurdle is often if the disability service provider has reported or assisted the report they might have delayed and forensic evidence will be gone.<sup>538</sup>

531 Although not necessary for authorisation to occur. Taylor et al, above n 184, 181.

532 Focus group 9, police (November 2013); focus group 10, police (November 2013).

533 “Many cases fall over because the witness, also a person with disability is perceived as unreliable.” Key informant interview, Professor James Ogloff (30 July 2013).

534 Key informant interview, Communication Rights Australia (31 July 2013). Similar examples were provided by focus group 8, police (November 2013).

535 For example, focus group 13, police (November 2013).

536 For example, case study: Bella (person with disabilities).

537 Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 3.

538 Key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013). Similar examples were provided in key informant interview, Communication Rights Australia (31 July 2013).

Advocates reported that in some cases, proper records are not kept by services or police. This seriously compromises investigations.

You’re told the police have spoken to the individual and records should exist, but there’s often nothing. It is not written up, there’s no evidence, and this is in spite of abuse, harassment and potentially assault. There is not police documentation.<sup>539</sup>

Staff at [mental health] wards don’t document and sometimes don’t take reports seriously. Uniformed police going to a mental health ward is very challenging.<sup>540</sup>

### Getting the brief authorised

A brief of evidence is a compilation of all documents relevant to the prosecution of a case. Briefs must be approved by ‘authorised persons’ who are more senior officers.<sup>541</sup> When determining if a brief can be authorised, various factors are considered, including that:

- the charge is correctly worded and expresses each point of proof
- the investigation is complete and sufficient relevant details are included
- there is sufficient admissible evidence to charge the accused
- it is appropriate to prosecute.<sup>542</sup>

To get a matter before the court you need compelling evidence – without this it will get knocked on the head. You might prepare the brief at uniform level and it gets knocked on the head then – or maybe you report it to the sergeant then he knocks it on the head.<sup>543</sup>

539 Key informant interview, Communication Rights Australia (31 July 2013); case study: Kathleen (person with disabilities).

540 Focus group 9, police (November 2013).

541 Victoria Police, *Victoria Police Manual ‘Policy rules: Briefs of evidence’* above n 15, 3–4.

542 Victoria Police, *Victoria Police Manual ‘Procedures and Guidelines: Brief preparation and management’* above n 15, 8.

543 Focus group 8, police (November 2013).

Recent changes to the *Evidence Act 2008* (Vic) may increase the authorisation of briefs relating to crimes where the victim has a disability, and education has improved.<sup>544</sup> Nevertheless, police described having to push hard to have briefs authorised where behaviours that form part of a disability were seen to compromise the quality of evidence.

My boss didn't want to authorise the brief because of the nature of the VARE [video audio recorded evidence], but I got medical advice that said that [the victim's] behaviour comes back to the ABI [acquired brain injury], and the trauma he experienced as a child ... In the end I got the brief authorised. Hopefully he'll get his day in court – as will the crook. And the fact that it did get authorised is a definite win, because it was an uphill battle.<sup>545</sup>

## Why don't investigations progress to prosecution?

The police will do nothing and think I am not an important person.<sup>546</sup>

In some cases, even though police make the necessary adjustments to the interview and the victim is believed, the matter may still fail to proceed.<sup>547</sup> Deciding if there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account the availability, competence and credibility of witnesses and the admissibility of any alleged confession or other evidence.<sup>548</sup>

---

544 A requirement for all authorised members to complete the Brief Quality Assurance Course (BQAC) is being introduced. There is also a SOCIT BQAC. Chief Commissioner's Instruction (CCI) 8/13, 'Transition to new summary brief process' was issued on 18 April 2013. This CCI included the requirement that all Sergeants, Work Unit Managers and Senior Sergeants must complete the BQAC within 14 months of the issue of that CCI. Victoria Police, *Victoria Police Manual 'Chief Commissioner's Instruction 08/13 Transition to new summary brief process'* above n 15.

545 Case study: Laura (police).

546 Survey participant (person with disabilities).

547 For example, case study: Gary (police).

548 They must consider whether there is a reasonable prospect of a conviction, and having satisfied that the evidence is sufficient to justify a prosecution, and the public interest – where the circumstances of the case are of a nature that the public would reasonably expect the accused to be held accountable (for example, the seriousness of the offence and the potential deterrence provided by a conviction). Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Brief preparation and management'* above n 15, 8. See also Director of Public Prosecutions Victoria, 'The Prosecutorial Discretion' (Director's Policy No 2, 27 July 2013) 1.

## No witnesses

If there are no witnesses the investigation may stop before it even begins.

A man wanted to report a non-consensual sexual act. He showed us by gesture what happened. I have a book and I have a picture of the human body so I can ask which part of the body the perpetrator touched ... We also got a picture of every member of staff and asked "was it this one?". The police were happy with this as long as they could video the process. But this never went anywhere. The police said they believed the man with disability but they also believed the staff member so it was his word against the other. They needed more evidence but we had nothing else ... just the man's word ... sexual assault like this tends to occur where there are no witnesses ... In all my years I think we have had about six convictions – in all but one there was a witness.<sup>549</sup>

In other cases the decision comes down to who the police consider is more credible – the victim or the alleged offender.<sup>550</sup>

## Concern for the victim may lead to inaction

Several police expressed concern that the criminal justice process could re-traumatise the victim.

Someone has to be capable, or we won't put their case forward – unless we have strong forensic evidence. There is firstly the trauma of eliciting the information for a VARE [video and audio recorded evidence], then the trauma of court, which is pretty traumatic for people with normal functioning, let alone people with lower functioning. Ninety-nine per cent of the time it's not worth it – usually easier to say it's happened, and the parents don't want to put them through the stress of it, so we just move the child from where it happened, and move on ...

[For adults] the number one priority is what the victim wants. We don't tell them it's a nice thing to do, because it's not. It's going to be hanging over their head for 18 months, and we tell the person you'll be cross-examined, you'll be told you're a liar, you'll have your mental capacity questioned.<sup>551</sup>

---

549 Key informant interview, Scope (11 November 2013).

550 Camilleri, *[Dis]abled justice*, above n 5, 245.

551 Focus group 10, police (November 2013).

While double victimisation is a significant risk, the challenge in police decisions based on duty of care considerations is that it reduces victims' agency.<sup>552</sup> For those subject to crimes based in unequal power, such as sexual assault or family violence, further loss of control may cause unintended harm.<sup>553</sup> This is of particular significance for people with disabilities, for whom autonomy is a hard-won right.<sup>554</sup> Thus while the intention may be well-meaning, a more rights-consistent approach would be to actively involve the person with disabilities in that decision.

No one ever asked what we wanted.<sup>555</sup>

## Fear of costs

Yes, it may come back down – “who authorised that brief that cost us 20k?”<sup>556</sup>

The Magistrates' Court has the broad discretion to award costs in criminal proceedings (including against the police).<sup>557</sup> Generally speaking, a successful defendant is entitled to the costs they incurred in defending the prosecution.<sup>558</sup> In contrast, the Supreme Court and County Court only have the discretion to award costs in criminal trials in limited circumstances.<sup>559</sup> A court must not award costs against a person without giving that person a reasonable opportunity to be heard.<sup>560</sup>

Some police members told us that cases may not proceed to prosecution due to the risk of cost orders if the accused is found not guilty. They felt that for a case to go ahead “it has to be very certain”.<sup>561</sup> However, others felt fear of costs was not determinative and you had to “give justice a go”.<sup>562</sup>

There has to be an element of judgement about pursuing a case based on the likelihood of success, where there is a reasonable chance of conviction. This isn't limited to cases where the victim has disability. This has influenced decision-making for about 20 years since a High Court ruling.<sup>563</sup> It has probably provided financial disincentives to pursuing cases, where before that you couldn't have costs awarded against you.<sup>564</sup>

## Withdrawal of complaint

If the victim decides that they do not wish to proceed, the investigator must obtain a signed statement of no further police action. They must also explain to the victim that the investigation may still continue.<sup>565</sup> The investigator must not encourage a victim to request no further police action or to sign a statement of no further police action.

However, some people felt the process was too stressful and they had little choice in a system that does not meet their needs.

The pressure was to not proceed. Although the investigating police officer had said my son was competent, officers senior to the investigating officer then set two more hurdles – they said my son had to have an IQ test in addition to a communications test to do a communication validation. I had thought he would get quite a lot of support through the process, but that's not what happened. His father and I decided that it was too much pressure for him. He was in a really bad way then.<sup>566</sup>

552 Agency and control are important for victim survivors throughout the criminal justice process. Bluett-Boyd and Fileborn, above n 339, 27.

553 For example, Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 9.

554 *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008) Preamble (n).

555 Case study: Julie and Beau (person who provides care or support)

556 Focus group 8, police (November 2013).

557 *Criminal Procedure Act 2009* (Vic) s 401(1).

558 *Latoudis v Casey* (1990) 170 CLR 534.

559 *Criminal Procedure Act 2009* (Vic) s 404.

560 *Criminal Procedure Act 2009* (Vic) s 400(1).

561 For example, case study: Laura (police). See also key informant interview, Dr Patsie Frawley (5 July 2013); key informant interview, Disability Discrimination Legal Service (12 July 2013).

562 Focus group 10, police (November 2013).

563 *Latoudis v Casey* (1990) 170 CLR 534.

564 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

565 Victoria Police, *Victoria Police Manual 'Policy Rules: Crime reporting and investigation'* above n 15, 12.

566 Case study: David's mother (person who provides care or support). See also focus group 8, police (November 2013).

## Keeping people informed

Under the *Victims' Charter Act 2006* (Vic) (the Victims' Charter) people have the right to be told about the investigation at key stages. If details cannot be provided because this would jeopardise the case, victims have the right to be informed about this.<sup>567</sup>

The *Equal Opportunity Act 2010* (Vic) obliges police to make reasonable adjustments for people with disabilities, such as the way information is communicated.<sup>568</sup>

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) also requires information to be provided in suitable formats, for example large font, Auslan or Easy English.<sup>569</sup>

The *Victoria Police Blueprint 2012–15* prioritises respect for victims, including keeping people informed of the progress of their case and “treating them with sensitivity and professionalism”.<sup>570</sup> In addition, the Victoria Police Manual specifies how victims should be kept informed. Under this policy it is mandatory for investigating members to inform the victim of their right to be informed of key events in the investigation, if the victim wishes it.

### During the investigation

Previous research into the experiences of victim survivors of sexual offences shows that the two major issues in the investigation process are the length of time the investigation takes, and the level of communication between police and the victim survivor during that time.<sup>571</sup> Participants in this study shared these concerns.

Some participants reported good practice. This made a significant difference to their views on whether they would report a crime again, and their confidence in the justice system. One victim survivor said she felt she had received better treatment because she had a disability.

567 *Victims' Charter Act 2006* (Vic) s 8.

568 *Equal Opportunity Act 2010* (Vic) s 45. Further, policies and procedures for keeping victims informed must not indirectly discriminate against people with disabilities.

569 Freedom of expression includes the right to receive information. To fulfil this right, information needs to be imparted in a way that the person can understand. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 15(2).

570 Victoria Police, *Victoria Police Blueprint 2012–15*, above n 389, 4.

571 Success Works Pty Ltd, 'Sexual Assault Reform Strategy' (Final Evaluation Report, State of Victoria, Department of Justice, January 2011) 59.

The police officer assigned to my case was fantastic because he was open to contact and kept me informed. There was never a question the matter wouldn't get to court ... I think the police were a bit intimidated when dealing with me because of my disability in a way – I don't think they would have given the same treatment to a woman who didn't have disability. I felt like the police went 'softly, softly'. If I needed information, I could phone my contact at police at any time and he would call me back. I always felt like he was on my side, which you don't really hear with the police.<sup>572</sup>

The importance of having continuity with the same police officer through the whole process is well understood.<sup>573</sup>

Accordingly, it is Victoria Police policy that the police informant is responsible for keeping the victim informed.<sup>574</sup> However, this does not always happen.<sup>575</sup> As noted by the Office of Public Prosecutions (OPP) “some police informants don't call us back, or the victim. Some are fantastic though – and it makes a huge difference”.<sup>576</sup>

Still to this day, I haven't read the statements. I don't know what they have written about me. I was ignored. With all the computers they've got, it doesn't need to take that long. The policewoman was incapable of telling me when she would ring me and be able to tell me. It's not right. Even now, I still don't know what they've done about it. I would like the police to know I don't trust them anymore.<sup>577</sup>

Some had regular information early on, but then the information flow ceased.<sup>578</sup> Others found out about key aspects of the investigation from third parties.

572 Case study: Kim (person with disabilities).

573 Focus group 2, people who provide care or support (12 August 2013); focus group 9, police (November 2013); Camilleri, 'New ways forward – pathways to change', above n 5; Camilleri, *[Dis]abled justice*, above n 5.

574 Focus group 9, police (November 2013).

575 For example, case study: Michael (person with disabilities); case study: Julie and Beau (person who provides care or support); case study: Kathleen (person with disabilities); case study: Linda (person with disabilities); case study: Joanne (advocate guardian); key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

576 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

577 Case study: Leonne (person with disabilities).

578 Case study: Linda (person with disabilities).

I was told that I would be informed once someone was assigned to the case. However, no one called me. Eventually I found out from my son's school that someone had been assigned. It seemed like everything ground to a halt very quickly after the initial interview. It took a really long time before anything was done, even an interview with my ex-partner [the alleged perpetrator]. There were a whole array of excuses from police, including heavy workload and limited time to work on the brief and even personal reasons. I had to keep chasing up to find out what was happening.<sup>579</sup>

There is also a difference between being informed and being involved. Failure to consult was a significant concern for a number of case study participants.

I wanted to understand more about my case. I was told what the outcome was, but I wanted to understand legally how that was allowed to happen. I am involved with the case, so I should know the details. Victoria Police had said, "We're involving you with as much of the process as possible", but I'm not sure that's the case at all, because real involvement would require me to understand all parties' views and operational limitations – what they can and can't do, and why. I think police are saying "We'll tell you information, we'll keep you informed", but they don't have all the information, or they have legal limitations, so they can't tell you much.<sup>580</sup>

## Informing people of the decision to prosecute or not

### Deciding to prosecute

The final decision to prosecute less serious offences ('summary' offences) is made by Police Prosecutions. For more serious offences ('indictable' offences), the decision is made by the OPP.

A large proportion of our total complaints are for a lack-of-action, which is more often actually a problem with a lack of feedback to the victim about what has happened our end. In these cases, the victim might never have been told about the outcome.<sup>581</sup>

579 Case study: Julie and Beau (person who provides care or support). Investigation being hampered by personal issues of the police informant was also identified in Case study: Kathleen (person with disabilities).

580 Case study: Melanie (person with disabilities). See also Case study: Linda (person with disabilities).

581 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

There are specific requirements for informing people about the decision to discontinue an investigation, not lay charges or not authorise a brief.<sup>582</sup> Additional rules apply to family violence and sexual assault cases.<sup>583</sup>

In some cases the informant will confirm details with the carer or family member to be sure the victim understands. Some tell the family member/carer rather than directly communicate with the victim.

We have found that for people with cognitive impairment, the meeting with police can be confusing so the carer delivers the news to them.<sup>584</sup>

Sexual Offences and Child Abuse Investigation Team (SOCIT) personnel told us of the advantages of the case conference method when informing people that a prosecution will not proceed.<sup>585</sup>

When we told the child and her family that the case wasn't going further, we had a case conference. Everyone in her care network knew what was going on, this was good and meant that everyone could support her. This is an emerging practice for us and it is good, it should be encouraged. These cases are so complex and anything you can do with people who are close to the victim is helpful. It is context building for us.<sup>586</sup>

### Giving reasons for decisions

It is important that police inform victims of the reasons why a prosecution will not proceed. This is equally important for people who provide care and support, including family members and advocates.<sup>587</sup> However, not all participants had a positive experience.

582 Victoria Police, *Victoria Police Manual 'Policy Rules: Crime reporting and investigations'* above n 15, 13; Victoria Police, *Victoria Police Manual 'Guidelines- Victim support'* above n 15, 3; Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Brief preparation and management'*, above n 15, 11.

583 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Sexual offence investigations'* above n 15, 5. See also Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 24; Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 26.

584 Focus group 9, police (November 2013).

585 For example, case group 9, police (November 2013).

586 Focus group 9, police (November 2013).

587 For example, key informant interview, Communication Rights Australia (31 July 2013); case study: Julie and Beau (person who provides care or support).

Eventually, after about 12 months with little movement on the case, I was told that the case wasn't authorised to go to court. The SOCIT officer rang me to tell me, and was explaining why, but halfway through the phone call, they got distracted and said they would call back. They didn't – I had to chase them. I told them I wanted to come in and discuss why the case was not going to court. This meeting lasted all of 15 minutes. It felt like the police weren't interested in hearing what I had to say. They told me "It's just not going to happen".<sup>588</sup>

The police won't say it to the victim, but they'll say it to me – "I'm worried that it won't stand up in court." The most common response we get about things not proceeding is that there is not enough evidence to convict. I will then pump the person up, "You did it well, well done." I will tell them it is hard for police – I make them feel like it's absolutely the right thing in case they need to do it [report] again.<sup>589</sup>

### Informing people they may request a review of the decision

People have the right to request a review of the decision in sexual assault or family violence matters through a case review. They are supposed to be informed of this right verbally and in writing.<sup>590</sup> However, some police do not send a letter to people with intellectual disability due to perceived complexities in the information.

We explain to people that they have a right to redress. This is explained in a formal letter, which we send to people who are high-functioning. We don't send the letter to people with cognitive impairments and we don't have an Easy English version. Not many of our materials are in Easy English. Our processes are complex and difficult to understand even for people without disability.<sup>591</sup>

In other cases police may only communicate the decision to the disability service (including if this was the location of the alleged crime). However, the right to a review may not be well understood among staff. As noted by the Disability Services Commissioner:

---

588 Case study: Julie and Beau (person who provides care or support)

589 Key informant interview, Scope (11 November 2013).

590 Victoria Police, *Code of practice for the investigation of sexual assault*, above n 15, 24; Victoria Police, *Code of practice for the investigation of family violence*, above n 15, 27.

591 Focus group, police (November 2013).

When we are doing incident report reviews, we ask if services requested a review of reasons that the police have decided not to investigate. From what we see, it appears that services will often take it on face value that police won't investigate.<sup>592</sup>

### What happens if Victoria Police does not pursue an investigation?

Assuming the victim has been notified of the decision not to prosecute, if the crime occurred in a service, one option is an investigation by the service or relevant government department overseeing that service. Chapter 9 describes these systems in more detail.

Depending on the nature of the allegation, such investigations may already be underway and taking place concurrent to the police investigation.

The significant difference is that in these cases matters which may well be crimes are treated as 'incidents'. So while a thorough investigation by the organisation or department is of benefit, this may still be a second class form of justice, when for any other person a criminal charge would be investigated by police. This is likely to be especially felt when police send the matter straight back to services rather than undertaking a full investigation.<sup>593</sup>

### Victoria Police complaints process

Lack of a police investigation can mean that victims feel they have been denied justice as the alleged perpetrator is not held to account for their actions.<sup>594</sup> In these cases victims may decide to bring a formal complaint about how the police delivered services to them.

Although outside of the scope of this project, some interviewees expressed dissatisfaction with the Victoria Police complaints process. Some advocates had success raising concerns with more senior police members, including having officers disciplined.<sup>595</sup> Others, including victims of crime, did not know they could complain, how to complain or had no success with complaints mechanisms available.<sup>596</sup>

---

592 Key informant interview, Disability Services Commissioner (23 October 2013).

593 For example, key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

594 Case study: David (person with disabilities).

595 Key informant interview, Disability Justice Advocacy (15 October 2013).

596 Case study: Michael (person with disabilities); case study: Alexis (person with disabilities).

Similar concerns were raised as part of the Victoria Police Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training, conducted in 2013.<sup>597</sup>

In its response to these reviews Victoria Police has committed to:

- reviewing the accessibility of current information and feedback on the complaints process
- implementing structured communication and feedback mechanisms
- more effectively communicating the different avenues that people can use to make a complaint
- examining additional accountability and transparency mechanisms
- identifying audit and review regimes to assess outcomes, resolution timelines and ongoing performance monitoring.<sup>598</sup>

This is positive and with adequate focus on the needs of people with disabilities, should lead to improvements. However, police also need to gather feedback without requiring a formal complaint.

## Using feedback to drive improvements

### Legal System Victim Impact Statements

Currently, police performance measures are heavily skewed towards crime statistics and detection rates. While these are valuable, “they do not adequately capture the sheer variety and complexity of what police do today to serve their communities”.<sup>599</sup>

One option that has gained interest in the literature is to develop a Legal System Victim Impact Statement (LSVIS) in addition to current Victim Impact Statements, which assist the court in sentencing decisions. The LSVIS “should emphasise both good and bad behaviours by various actors, beginning with the police and continuing throughout the process”.<sup>600</sup> This feedback could then be used to drive improvements in practice by all agencies, including the courts.

Victoria Police could show leadership by working with stakeholders to develop an initial template in relation to victim-police interactions, based on the aspects of procedural justice that are important to victims when dealing with police.<sup>601</sup> This need not be resource intensive and has the advantage of gathering feedback from a random selection of victims of crime, rather than relying on complaint feedback only.

---

597 Victoria Police, *Equality is not the same: Victoria Police response to Community Consultation and Reviews on Field Contact Policy and Data Collection and Cross Cultural Training* (December 2013) 37.

598 Ibid 38.

599 Irina Elliott, Stuart Thomas and James Ogloff, ‘Procedural justice in contacts with the police: Testing a relational model of authority in a mixed methods study’ (2011) *Psychology, Public Policy and Law* 1, 16.

600 Wexler (2008) cited in Ibid.

---

601 Elliot, Thomas and Ogloff, ‘Procedural justice in contacts with the police: Testing a relational model of authority in a mixed methods study’, above n 599, 16.



# Chapter 8: Prosecutions

## Main findings

- Securing a successful prosecution when the victim has a disability remains a significant challenge in our justice system.<sup>602</sup>
- The *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases* is a welcome initiative; however, discriminatory assumptions about witnesses with disabilities remain. More rigour is needed to dispel these myths among legal practitioners, court personnel, police and jurors.
- Prosecutions can and do succeed when agencies adapt their practices to meet the access needs of people with disabilities, assess these prior to the hearing and ensure the court is aware of them.

## Legal obligations of the court

### Human rights obligations

A court hearing is not a service under the *Equal Opportunity Act 2010* (Vic) because it is considered a public activity rather than a service to a particular individual. However, people with disabilities have a right to equal access to courts as this is consistent with the Charter of Human Rights and Responsibilities (the Charter), public policy, community standards and the need for courts to be leaders in justice.

Courts are bound by the Charter to act compatibly with human rights and give proper consideration to human rights when they are exercising their administrative functions.<sup>603</sup> This means that courts must take into account all human rights, including the right to equality when they are acting in an administrative role. This includes the actions of the registry staff, listing cases and adopting practices and procedures for the administration of the court. Many of the communication and other access issues raised in this report fall into this category.

<sup>602</sup> See Office of Public Prosecutions Victoria, above n 48, 7.

<sup>603</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss 38, 4(1)(j).

In addition, the courts have functions under Part 2 of the Charter, which sets out all of the rights.<sup>604</sup> While courts are not always obliged to take into account all of the human rights in the Charter, they have a clear role and obligation to ensure that people with disabilities have equal protection before the law. This right can only be realised through the work of the courts and other bodies in the justice system.

### Criminal procedure

The *Criminal Procedure Act 2009* (Vic) includes rules relating to witnesses with a cognitive impairment “because of mental illness, intellectual disability, dementia or brain injury”.<sup>605</sup>

For sexual offence cases or indictable offences involving an assault, injury or threat of injury, a cognitively impaired witness may give evidence-in-chief by video and audio recorded evidence (VARE).<sup>606</sup> If this is used, the witness may still be cross-examined in court.<sup>607</sup>

<sup>604</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 6(2)(b).

<sup>605</sup> *Criminal Procedure Act 2009* (Vic) s 3.

<sup>606</sup> *Criminal Procedure Act 2009* (Vic) ss 366–7. When evidence has been pre-recorded using the VARE procedure, the judge should warn the jury not to attach any greater or lesser weight to the evidence because of the alternative procedure that has been used. *Criminal Procedure Act 2009* (Vic) s 375.

<sup>607</sup> *Criminal Procedure Act 2009* (Vic) s 368(1)(c). As part of the Sexual Assault Reform Strategy, the law was amended to prohibit cross examination of children and people with cognitive impairment during committal hearings in the Magistrates' Court. However they may be required to give evidence (and be cross examined) as part of a trial hearing in the County Court. *Criminal Procedure Act 2009* (Vic) s 123. See Success Works Pty Ltd, above n 571, 11.

In addition, for sexual offences, victim survivors with a cognitive impairment can give evidence at a special hearing.<sup>608</sup> Otherwise, special arrangements for all adult victim survivors giving evidence in sexual assault cases apply.<sup>609</sup>

The *Evidence Act 2008* (Vic) also contains provisions for witnesses with disabilities. These, and special hearings, are discussed on page 82.

## Support to victims and witnesses with disabilities

People with disability feel that the court system does not uphold a basic human right to be heard and [to ensure that] what they have to say is taken seriously.<sup>610</sup>

### Assistance at court

Summary offences are heard in the Magistrates' Court and Victoria Police prosecutes the case. Where the accused person has committed a more serious offence ('indictable' offences), the matter is heard in the County Court or the Supreme Court. The Office of Public Prosecutions (OPP) prosecutes cases in these courts.

The OPP has a Witness Assistance Service (WAS) to assist victims, witnesses and families through the prosecution process in the County Court and Supreme Court, and for criminal matters in the Magistrates' Court. A team of social workers,

WAS uses an integrated team approach, including solicitors, prosecutors and police, to assist in the prosecution.<sup>611</sup> WAS prioritises matters that involve sexual assault, deaths and family violence.<sup>612</sup>

Where a person has a cognitive impairment or communication disability, WAS will conduct a needs assessment to determine the level of adjustments required including physical access and communications assistance.

### Court Network

Court Network is a volunteer-based service that provides support, information and referral to all court users, including those with disability. It operates in each of the Melbourne courts including the Magistrates' Court, County Court and Supreme Court, and at regional courts in Ballarat, Bendigo, Geelong, Gippsland, Mildura, Shepparton, Warrnambool and Wodonga.<sup>613</sup>

Specialist Family Violence programs can provide some familiarity with the court environment and support, regardless of disability.

### Centres Against Sexual Assault (CASA)

Victim survivors of sexual assault may have support, including counselling, provided by CASA from the time of the alleged offence, throughout the investigation and prosecution process. This support may continue after the court case.

---

608 The court must direct a special hearing to be held before or during the trial. In deciding when to hold the special hearing, the court must consider the severity of the complainant's cognitive impairment amongst other things. If a special hearing is held, the judge must warn the jury it is routine practice for the evidence of a cognitively impaired person to be recorded at a special hearing before the trial; not to draw any inference adverse to the accused, or give the evidence any greater or lesser weight because of the special hearing. *Criminal Procedure Act 2009* (Vic) ss 369–70, 375.

609 These include giving evidence from another location by closed-circuit television (CCTV), using screens in the courtroom to ensure that the accused person is not visible, allowing a support person to be present when giving evidence and closing the courtroom to the general public. See Office of Public Prosecutions Victoria, *Sex offences and family violence* (2014) <<http://www.opp.vic.gov.au/Witnesses-and-Victims/Sexual-Assault>>.

610 Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 25.

---

611 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013). Witness Assistance Service involvement with victims can include providing information over the telephone, attending legal conferences, or familiarising a victim with the court process and can be maintained over several months (or years), depending on the length of the court process.

612 Under the *Public Prosecutions Act 1994* (Vic) there is a responsibility to give appropriate considerations to the concerns of victims of crime. Victims Strategy and Services (OPP) also produces publications focused on supporting witnesses and victims.

613 Court Network (2013) <<http://www.courtnetwork.com.au>>.

## Preparing for court

Preparing victims for court appears to depend on the availability of specialist supports and the attitudes and experience of key players in the prosecution. This can be very thorough and include preparing the person physically and emotionally for the challenges they will face. It may also include pre-hearing visits to the court so the victim may “see around the space, understand what it would be like on the day, understand about how it would work”.<sup>614</sup>

Prosecutors also play an important role in preparing the court, including judicial members, for matters involving a victim with disabilities. As noted by the OPP:

What works well is the preparation and advising the court – you don’t even need the expert, you just need to find it out and communicate it to the court. Need it all to come together, and have the team and magistrate willing to take the time.<sup>615</sup>

## Getting to court

Victims and prosecutors described the lack of practical support to get to and from hearings, and the significant hurdles this created for people wanting to have their day in court.

Carers need to be very supportive. We have others who come on their own in a cab, have no practical support throughout the trial.<sup>616</sup>

## Experiences at court

We try really hard. The court is not designed to deal with people who are ‘different’. It should, but it doesn’t. We don’t facilitate people properly into the system, or support them to give evidence properly in the process.<sup>617</sup>

Examples were given of failure to make basic changes to facilitate access:

We had the example of a person with cerebral palsy, who had a cramped hand being told to lie it flat on the bible rather than curled – just no understanding of disability at all.<sup>618</sup>

In another case:

An individual with cerebral palsy, the person had involuntary movements and vocalisations due to their disability, along with the heightened anxiety and stress of the situation and also through being in close proximity of the alleged offender. The Magistrate accused him of time-wasting and told him that it was unacceptable in their court.<sup>619</sup>

Or stereotypical assumptions may be made:

She had a diagnosis of dementia but it was relatively recent and she was cognitively fine. Coupled with not speaking English, the Magistrate took one look at her in the wheelchair and adjourned for a neuropsych assessment. It was about the fact that she was in wheelchair. They were there for an intervention order ... You don’t need a neuropsych assessment to get an order!<sup>620</sup>

Physical access may also be an issue:

When I entered the courtroom I accidentally ran over the defence solicitor’s feet. There are many problems with courtroom accessibility. My friend who gave evidence had had a stroke and wasn’t able to sit in the witness stand, he kept falling off the seat – it was terrible. The access to the actual courts is pathetic. This was the biggest challenge for me. There needs to be a ramp installed instead of the stairs. The whole court environment needs to be re-evaluated to support the needs to people with disabilities, to make it more accessible.<sup>621</sup>

---

614 Focus group 2, service workers (12 August 2013).

615 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

616 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

617 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

618 Key informant interview, Communication Rights Australia (31 July 2013). See also Key informant interview, Scope (11 November 2013).

---

619 Key informant interview, Communication Rights Australia (31 July 2013).

620 Key informant interview, Seniors Rights Victoria (19 November 2013).

621 Case study: Kim (person with disabilities).

## Perceptions of credibility as a barrier in the courts

### The Evidence Act

Under the Act the presumption is that every person (regardless of age, disability, race or gender) is competent to give evidence, unless they do not have the capacity to understand a question about a fact, or cannot give an answer that can be understood, and this incapacity cannot be overcome.<sup>622</sup>

Mental health, intellectual or physical disabilities are expressly stated as examples of reasons that may lead to lack of capacity. The court is able to inform itself as it sees fit as to questions of competency including obtaining information from persons with specialised knowledge.<sup>623</sup>

The test of competence in the Evidence Act is deliberately broad to enhance the participation of witnesses so that relevant information is put before the court.<sup>624</sup> Evidence about the credibility of a witness is not admissible unless it is adduced during cross examination and it would “substantially affect the assessment of the credibility” of the witness.<sup>625</sup>

However, as noted by the OPP:

If a witness does not understand the questions being asked of them he or she may give an answer that does not make sense, which may lead a judge or jury to conclude they are not credible or reliable. For example, an intellectually disabled witness may not understand particular words being used by the barrister or judge and they may be easily misled by leading questions or double negatives in either the VARE or during cross-examination.<sup>626</sup>

Other police members told us:

The person has to be able to be cross-examined. She could only answer one question at a time, and focus on one thing at

a time, and the defence would ask a million questions at once, which we might be able to handle, but they wouldn't.<sup>627</sup>

Despite this, “very little support and assistance is currently available to ensure that intellectually disabled witnesses can give their best evidence”.<sup>628</sup>

### Communication access

#### Adjustments for people with disabilities when giving evidence

The Evidence Act includes specific provisions regarding witnesses with disabilities, including that:

- a witness who cannot hear adequately may be questioned in any appropriate way
- a witness who cannot speak adequately may give evidence by any appropriate means
- the court may give directions about the way in which a deaf witness may be questioned or the means by which a mute witness may give evidence
- the court may also make any orders it considers just in relation to the questioning of witnesses generally.<sup>629</sup>

Section 31 (2) of the Evidence Act allows a witness who cannot speak adequately to give evidence by any ‘appropriate means’, but does not provide examples or guidance on what this means. In the absence of clear guidance, it appears that courts vary in how they accommodate communication disabilities.

In the case of a man with an alphabet board, an expert in Augmentative and Alternative Communication came in. He asked if the man could be allowed word completion, which would eliminate a lot of work in giving evidence. It saves days of evidence. In the committal, it was referred to as “prediction” (rather than “word completion”), and the Magistrate said, “No prediction in my court,” just because of the word. So at trial the expert explained it better, because of what we had learned, but that’s what you have to have done.<sup>630</sup>

<sup>622</sup> *Evidence Act 2008 (Vic)* ss 12–3(1). A person who is not competent to give evidence about one fact might be competent to give evidence about other facts.

<sup>623</sup> *Evidence Act 2008 (Vic)* s 13.

<sup>624</sup> *Explanatory Memorandum, Evidence Bill 2008 (Vic)* 5.

<sup>625</sup> *Evidence Act 2008 (Vic)* s 103.

<sup>626</sup> Office of PPV, above n 48, 10.

<sup>627</sup> Focus group 10, police (November 2013).

<sup>628</sup> Office of Public Prosecutions Victoria, above n 48, 10.

<sup>629</sup> *Evidence Act 2008 (Vic)* ss 26, 30–1.

<sup>630</sup> Key informant interview, Communication Rights Australia (31 July 2013).

## Auslan in the court

The whole justice system utilises really complex language ... communications are complex and not consistent across the board. For example, there is not universal sign for abuse, or sign for sexual abuse in Auslan. Even people who are fluent in Auslan may have their own signs for things. Legalese or justice processes just do not have signs, and do not make sense.<sup>631</sup>

Auslan interpreters explained that VARE interviews will include Auslan interpreters.<sup>632</sup> However, as noted in Chapter 4, problems remain where police conduct interviews by writing notes to the victim, use children or other family members to interpret, including requesting the husband/perpetrator to provide Auslan interpreting.<sup>633</sup> This poor practice by police has a knock-on effect on prospects for conviction.

There is a lot of preparation and education we have to do to make up for the knowledge gap of the deaf person, or the police, or the court. There was one story where the Magistrate forced the mother to interpret for her son. She was not a very good signer, and she knew she wouldn't be able to get the complexity of what the court was trying to say. The judicial system doesn't understand that interpreting is very difficult.<sup>634</sup>

Lack of hearing loop technology was also reported.<sup>635</sup> Challenges for people with low literacy were also noted, given the reliance on paper-based information provided by the courts. However, Auslan interpreters stressed the positive work of WAS in assisting the court to prepare where a witness has a hearing impairment or low literacy.<sup>636</sup> It should also be noted that the Victorian Government provides important Easy English information about preparing for court and court processes on its Victims of Crime website.<sup>637</sup>

631 Focus group 2, service workers (12 August 2013).

632 When an Auslan interpreter is used in a VARE, another interpreter may be subpoenaed by the court to verify the translation. Focus group 5, Auslan interpreters (10 October 2013).

633 Focus group 5, Auslan interpreters (10 October 2013). However, the focus group noted that Sexual Offences and Child Abuse Investigation Teams are much more likely to be consistent in requesting an Auslan interpreter.

634 Focus group 5, Auslan interpreters (10 October 2013).

635 For example, Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 17.

636 Focus group 5, Auslan interpreters (10 October 2013).

637 State of Victoria, Department of Justice, Victims Support Agency, *Easy English Resources* (2014) <<http://www.victimsofcrime.vic.gov.au/utility/for+professionals/easy+english+resources/>>.

## Conduct of the prosecution and defence

### Questioning of witnesses with disabilities

Under section 41 of the Evidence Act the court must disallow an improper question put to a 'vulnerable witness', unless the court is satisfied that, in all the relevant circumstances of the case, it is necessary for the question to be asked.<sup>638</sup> An improper question can include a question which is based on a stereotype about a person's mental, intellectual or physical disability.<sup>639</sup>

The presumption of innocence is a fundamental principle in the criminal justice system. In an adversarial system, it is to be expected that lawyers will defend their clients robustly to ensure they receive a fair trial.

The *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases* draws together existing legal and ethical obligations of legal practitioners.<sup>640</sup> Recognising that a significant number of sexual offences are committed against people with cognitive impairment, it stresses that "lawyers and criminal justice agencies can minimise the trauma experienced by victims of sexual assault by following the obligations outlined in this Charter and that this does not jeopardise the accused receiving a fair trial".<sup>641</sup>

It sets out a range of responsibilities for the prosecutor including keeping victims informed of the process and requires defence practitioners to treat victim survivors with "respect and dignity at all times", and refrain from improper questioning, including that which is humiliating, belittling, insulting, or which has no basis other than a stereotype.<sup>642</sup> However, some people reported unsatisfactory behaviour, which may go unchecked by the court.

638 'Vulnerable witnesses' include people with a cognitive impairment or an intellectual disability or any mental or physical disability. *Evidence Act 2008* (Vic) s 41(4).

639 *Evidence Act 2008* (Vic) s 41(3)(d).

640 Including the *Evidence Act 2008* (Vic), the *Criminal Procedure Act 2009* (Vic), the *Victims' Charter Act 2006* (Vic) and the Victorian Bar Practice Rules.

641 Department of Justice, *Charter of Advocacy*, above n 51, 3–4.

642 *Ibid* 7–10.

I was cross-examined for three hours. The defence lawyers asked questions about how much I had drunk. They had already started accusing me. The defence lawyer chucked the photos (of my breasts) in front of me to look at. It was hard work. The three hours were harrowing. They gave me the option of giving evidence to court remotely, but I faced the perpetrator in court. You want to face the person and do it in court.<sup>643</sup>

She had done a VARE but she still had to be cross-examined on the VARE evidence-in-chief. The judge didn't step in enough to make sure she understood the questions and to ensure that defence asked the questions in a simple way.<sup>644</sup>

## Special hearings

For sexual offences, victim survivors with a cognitive impairment can give evidence at a special hearing, where the person has all of their evidence, including the cross-examination, video recorded and played to the jury at the trial at a later date.<sup>645</sup> Thus, they only give evidence once and are protected from "unnecessary delays and further trauma".<sup>646</sup>

Police told us they would often push for a special hearing, but were not always successful.

We will always argue for a special hearing and put in enormous effort to protect the victims' evidence. But the defence always want to do the opposite.<sup>647</sup>

By contrast, the OPP said some people eligible for a special hearing do not to get one because police failed to identify their disability during the investigation.

The person had been raped, they had an intellectual disability and were on a disability support pension. I asked the solicitor, "Why is this not a special hearing?" He said it was because police hadn't done a VARE. The police had taken a written statement instead. She had been in twice to make a written statement, and they hadn't picked up her disability. Once someone has given a statement, then it's too late – they lose the entitlement they have to a special hearing. The way a victim is heard initially determines their whole journey.<sup>648</sup>

Or, the defence may question the victim's disability so as to exclude VARE evidence:

There are a lot of problems now – people will say they have a disability, you take video evidence, and because they've recorded this they don't have to attend certain parts of the court process. Then, years later, the court might determine there was no disability, you can't use the video then. In one case we had, the victim's disability was the thing the defence pushed, whether they really had a disability.<sup>649</sup>

Importantly, while a special hearing may be desired by some, the assumption that a person always wants this may be false.<sup>650</sup>

They thought he would prefer to give evidence by camera. They thought they were doing him a favour, but he felt discriminated against. He wanted his day in court.<sup>651</sup>

---

643 Case study: Kim (person with disabilities).

644 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

645 The court must direct a special hearing to be held before or during the trial. In deciding when to hold the special hearing, the court must consider the severity of the complainant's cognitive impairment among other things. If a special hearing is held, the judge must warn the jury it is routine practice for the evidence of a cognitively impaired person to be recorded at a special hearing before the trial; not to draw any inference adverse to the accused, or give the evidence any greater or lesser weight because of the special hearing. *Criminal Procedure Act 2009* (Vic) ss 369–70, 375.

646 Victoria, *Parliamentary Debates*, Legislative Assembly, 16 November 2005, 2184 (Rob Hulls, Attorney-General).

647 Focus group 9, police (November 2013).

---

648 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

649 Focus group 8, police (November 2013).

650 Previous research has also found that some people with disabilities (cerebral palsy, deafness) were required to participate in a special hearing because it was presumed they had a cognitive impairment when they did not. Success Works Pty Ltd, above n 571, 190.

651 Key informant interview, Communication Rights Australia (31 July 2013).

## Requests for confidential information

In sexual offences trials, confidential communications between a victim survivor and their medical practitioner or counsellor are generally excluded from evidence. However, the defence may seek leave to summons this information in some circumstances.<sup>652</sup> We heard that defence lawyers made full use of this provision in order to challenge the credibility of victim survivors with disabilities.<sup>653</sup>

Another thing that is frustrating is that the defence usually tries to subpoena someone's psychiatric records and history and then use it to discredit the victim. The judge often allows it.<sup>654</sup>

The evaluation of the Sexual Assault Reform Strategy found some Magistrates consider defence counsel may still seek confidential communications as a 'fishing exercise'. This is strongly denied by defence lawyers.<sup>655</sup>

## Why don't prosecutions succeed?

When it's a discontinuance (if police lay charges but it gets discontinued at trial stages) it's usually due to courts not accommodating the disability, the judge not picking up on issues with the cross examination, and the questions being asked not being appropriate, even though we conference with them.<sup>656</sup>

In 2011 the OPP reported that in the four years previous there had been fewer than six convictions for the specific offences of sexual offending against persons with cognitive impairment. "It seems that short of admissions made by the accused or an eyewitness to the offending, these types of prosecutions are rarely successful."<sup>657</sup>

---

652 If the defence wishes to compel this evidence they must first give notice in writing and seek the leave of the court to issue a summons. The court must not grant leave unless it is satisfied that the evidence will have substantial probative value and that other evidence of similar or greater probative value is not available. A public interest test must also be undertaken to ensure that protecting the victim survivor from harm is outweighed by admitting a confidential communication into evidence. *Evidence (Miscellaneous Provisions) Act 1958 (Vic) s 32(c)-(d)*.

653 For example, key informant interview, Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault (29 July 2013).

654 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

655 Success Works Pty Ltd, above n 571, 87.

656 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

657 Office of Public Prosecutions Victoria, above n 48, 10.

Police members we interviewed consistently identified challenges in presenting evidence to the court as the biggest barrier to gaining a conviction. Some felt the Evidence Act tied their hands and was not flexible enough to meet the requirements of people with disabilities, particularly those with communication disability. Others felt that defence lawyers would vigorously pursue the argument that the victim lacked credibility.

The challenges were summed up by Victoria Police Deputy Commissioner Tim Cartwright:

I remember one case where someone was indecently assaulted by a milk bar proprietor. The victim had short-term memory issues. We knew it had happened, but we couldn't establish a case. There are probably a lot of cases where you start an investigation but you can't take it anywhere. We are limited because we have to be able to meet the rules of evidence and we have to be able to prove a case beyond reasonable doubt. If a victim of crime can't give a reasonable account or recall specifics or has difficulty with communicating then it is very difficult to get a prosecution.<sup>658</sup>

Despite this, we heard from some police who were determined to 'get a result' for the victim, recognising that how well they did their job early on may be determinative.

Just because someone has a disability doesn't mean we wouldn't do everything we could to make sure their matter is heard.<sup>659</sup>

## Good practice

It is important to remember that the court is impartial. This is a central tenet of our legal system. This long standing legal principle is complemented by the right to a fair trial provisions in the Charter.

It's about the right to go through it, even if it's not going to be a win. It's not about the court outcome. We're part of making that right happen. It's about the process of being heard, or being believed ... People can be empowered through that, can get courage given they have had the courage to report and go through the court process. Every victim has different expectations of the criminal justice system.<sup>660</sup>

---

658 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

659 Focus group 11, police (November 2013).

660 Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

The Commission heard positive reports about the power of collaborative efforts to bring cases to prosecution:

They all had different needs, but the people who were working on the case were all working together really well. Lots of preparation was put in to setting it up for success. For example, they used the remote witness facilities here so the victims didn't have to go to court, and the team went out to where the people lived so that we knew what they needed and could put it into place. They could be understood in court and that may have been one of the factors that led to the defendant pleading guilty.

There was work done pre-court as well – the prosecutor did everything they could, and spent all the time necessary. She did a practice run where she set up the screen so they knew who she was and how it would work. It felt like this set a benchmark of how well it can be done – and that it can be done. It created an attitude that it is possible. This can become a best practice example for the field more generally.<sup>661</sup>

In another case described by service workers:

We were lucky [in a case we had], we had a great QC. The victim advocate and supporting solicitor all came out to the house, and explained what it would be like answering questions. They were fabulously flexible, and we just seemed to have encountered a great group of people. What was good about this response was that it was about the person, not the system.<sup>662</sup>

---

<sup>661</sup> Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

<sup>662</sup> Focus group 2, service workers (12 August 2013).



# Chapter 9: Victorian service systems

## Main findings

- The justice system does not operate in isolation. Police practice is affected by, and affects, practices in other systems.
- Research indicates that “people with a disability are much more likely to experience abuse in a service setting than people without a disability, with some studies also finding that the largest group of individuals who perpetrate sexual abuse against people with an intellectual disability are staff in services”.<sup>663</sup> However, the Department of Human Services (DHS) advises that this does not reflect the department’s data.<sup>664</sup>
- Although there are departmental policies in place, there is a lack of clarity within services about when and how to undertake internal investigations and action, including issues in relying on a criminal threshold for substantiating allegations. This leads to inconsistency in response.

## Legal obligations of service providers

The *Disability Act 2006* (Vic) regulates services provided either directly by DHS or funded community service organisations.<sup>665</sup> The Act contains principles which state that people with disabilities have the right to live free from abuse, neglect or exploitation.<sup>666</sup>

The legislation obliges disability services to comply with the *Department of Human Services Standards*.<sup>667</sup> This includes specific standards to ensure people’s rights to wellbeing and safety are promoted.<sup>668</sup> Services must achieve and maintain accreditation against these standards and be independently reviewed against the standards once every three years.<sup>669</sup>

All disability and mental health services, and Supported Residential Services are bound by the *Equal Opportunity Act 2010* (Vic). This applies to unfavourable treatment because of a person’s disability, and to systems, policies and practices that are not reasonable and may disadvantage people with disabilities. This can include policies that fail to appropriately respond to crimes because they happen to people with disabilities.

Service providers also have legal obligations under the Charter of Human Rights and Responsibilities to provide an abuse-free environment and to observe human rights when responding to allegations and conducting investigations. The Disability Services Commissioner (DSC), Office of the Public Advocate (OPA), the Mental Health Complaints Commissioner (MHCC), DHS and Department of Health (DH) must also comply with these laws when responding to complaints and investigating allegations.

663 Coulson Barr, above n 7, 8.

664 Information provided to the Commission by the Department of Human Services, 3 June 2014.

665 The Disability Act definition of disability is narrower than that in the Equal Opportunity Act. *Disability Act 2006* (Vic) s 3; *Equal Opportunity Act 2010* (Vic) s 4.

666 *Disability Act 2006* (Vic) sus-s 5(2)(b).

667 *Disability Act 2006* (Vic) s 97(6). See State of Victoria, Department of Human Services, *Department of Human Services Standards* (29 January 2014) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/policies,-guidelines-and-legislation/departments-of-human-services-standards>>.

668 “Standard 3.5: services are provided in a safe environment for all people, free from abuse, neglect, violence and/or preventable injury.” Ibid.

669 Ibid.

The *Crimes Act 1958* (Vic) specifically makes it an offence for staff at a residential facility (including mental health settings) to have sex with, or commit an indecent act with, a person who is there because of a cognitive impairment.<sup>670</sup>

Under the Disability Act, restrictive interventions, including mechanical restraint, chemical restraint and seclusion in disability services can only be used following approval by the Senior Practitioner – Disability.<sup>671</sup> This is also overseen and monitored by the Senior Practitioner – Disability.<sup>672</sup>

A restrictive intervention may only be used on a person receiving mental health services in a designated mental health service after all reasonable and less restrictive options have been tried or considered and have been found to be unsuitable. An authorised psychiatrist must give a written report to the chief psychiatrist on the use of any restrictive intervention in a designated mental health service.<sup>673</sup> At law, if restraint is used outside strict legal parameters it will amount to assault.<sup>674</sup>

### Key policies and monitoring frameworks for disability services

In addition to requirements under the Disability Act and the *Department of Human Services Standards*, monitoring and review processes are also contained in the *Departmental Policy and Funding Plan (2012-2015)*.<sup>675</sup> This also sets out a range of key policies and procedures that disability services must adhere to. These include the:

- *Critical Client Incident Management Instruction – Technical update 2014*<sup>676</sup>
- *Responding to Allegations of Physical or Sexual Assault Departmental Instruction 2005*<sup>677</sup>
- *Residential Services Practice Manual 2013*.<sup>678</sup>

In addition, the department has a protocol in place with Victoria Police to outline how DHS and the police consult each other on discipline matters that may also be criminal matters. The department's discipline policy, which covers Disability Services, provides guidance on the management of concurrent criminal investigations.<sup>679</sup> The relevant documents include the:

- *Reporting Employee Criminal Conduct Policy*
- *Protocol between Victoria Police and the Department of Human Services*
- *Managing Performance and Conduct in Disability Services, Part 4: Criminal Matters*.

670 *Crimes Act 1958* (Vic) ss 50–2. Cognitive impairment includes mental illness, intellectual disability, dementia or brain injury. The Department of Justice has recently undertaken consultation on its review of sexual offence laws in Victoria. See <<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/review+of+sexual+offences+consultation+paper>>.

671 *Disability Act 2006* (Vic) s 140. It may also be used in an emergency as detailed in section 147 of the Act.

672 *Disability Act 2006* (Vic) ss 23–7. Reporting requirements relating to the intention to use or the application of a restrictive intervention are also contained in the Departmental Policy and Funding Plan (2012-2015). For example, services must provide copies of behaviour support plans within 48 hours prior to the proposed use of a restrictive intervention. State of Victoria, Department of Human Services, *Departmental Policy and Funding Plan (2012-2015)* <[http://www.dhs.vic.gov.au/\\_\\_data/assets/word\\_doc/0004/725107/Chapter-7-Department-of-Human-Services-Policy-and-Funding-Plan-2012-15-Update-2013-14-Monitoring.doc](http://www.dhs.vic.gov.au/__data/assets/word_doc/0004/725107/Chapter-7-Department-of-Human-Services-Policy-and-Funding-Plan-2012-15-Update-2013-14-Monitoring.doc)>.

673 *Mental Health Act 2014* (Vic) ss 105, 108.

674 See the Commission's previous research on the use of restrictive practices in education. Victorian Equal Opportunity and Human Rights Commission, *Held Back: the experiences of students with disabilities in Victorian schools* (2012) 105–124.

675 Chapter 7 of the Departmental Policy and Funding Plan (2012–2015) relates to disability services. State of Victoria, Department of Human Services, *Departmental Policy and Funding Plan (2012-2015)*, above n 672. In addition the Department of Human Services and Department of Health Monitoring Framework applies risk management principles to assist with early identification of risk. See <<http://www.dhs.vic.gov.au/facs/bdb/fmu/service-agreement/4.departmental-policies-procedures-and-initiatives/4.10-monitoring-framework>>.

676 State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update 2014) <<http://www.dhs.vic.gov.au/funded-agency-channel/about-service-agreements/incident-reporting/human-services>>.

677 State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault Departmental Instruction* (2005) <<http://www.dhs.vic.gov.au/funded-agency-channel/about-service-agreements/incident-reporting/human-services>>.

678 State of Victoria, Department of Human Services, *Residential Services Practice Manual* (2013) <<http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/residential-services-practice-manual>>.

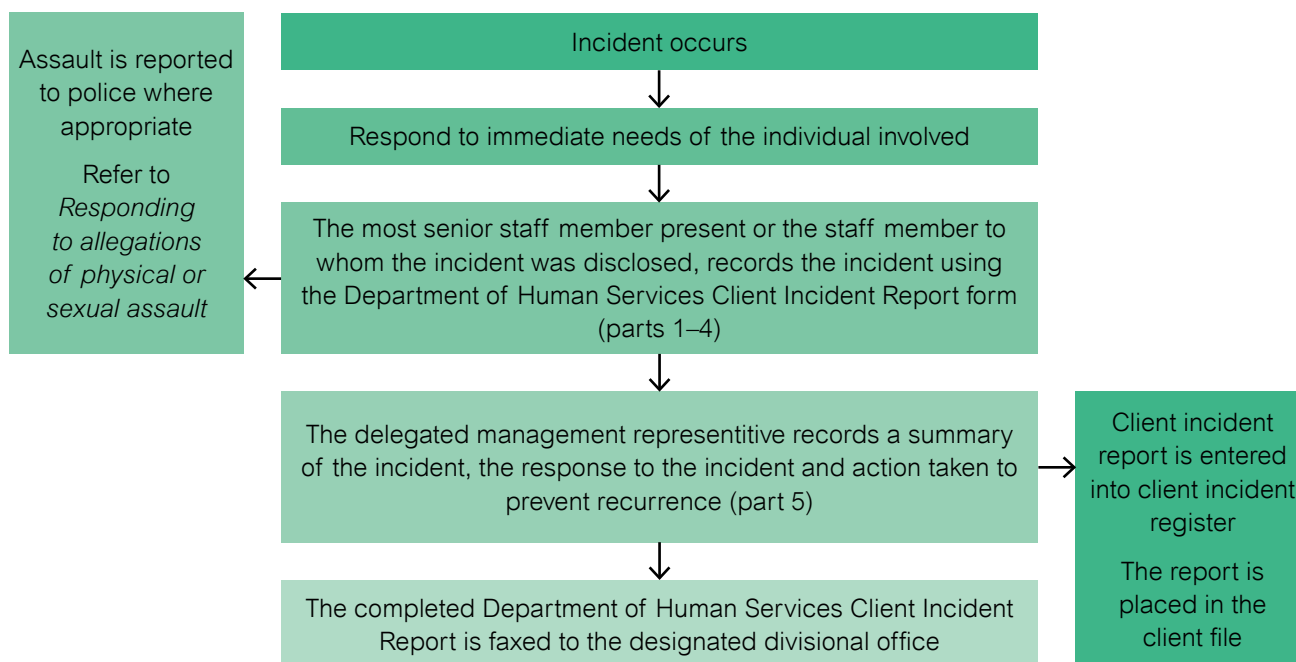
679 This section of the discipline policy and the protocol are currently subject to review. Information provided to the Commission by the Department of Human Services, 3 June 2014.

## Incident reporting systems

There are related but separate incident reporting requirements for DH and DHS. These are supplemented by specific instructions regarding the reporting of physical and sexual assault.

### Figure 4: Reporting a critical incident to DHS

Since the time of this study, the DHS *Critical Client Incident Management Instruction 2011* has had a technical update. These changes are reflected in the diagram below.<sup>680</sup>



### Categorising incidents

Incidents are categorised according to the impact on or potential risk to the client, severity, and the relationship between the alleged perpetrator and the victim. There are two categories of reportable incidents:

- **Category one** incidents are the most serious. They include client death or severe trauma.<sup>681</sup>

<sup>680</sup> State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update 2014), above n 676.

<sup>681</sup> Disability services have additional statutory obligations to report to the Coroner when a death appears to be unexpected, unnatural or violent or to have resulted directly or indirectly from accident or injury ('reportable deaths'). This obligation also applies to the death of a person who immediately before death was a patient within the meaning of *the Mental Health Act 2014* (Vic) and *Coroners Act 2008* (Vic) s 4.

Allegations of assault of a client by a staff member, volunteer carer or member of the carer's household must be reported as a category one incident regardless of injury. Any assault of or by a client that has led to serious injury and hospitalisation as an inpatient, must be reported as a category one incident. Poor quality of care must be reported as a category one incident when the health, wellbeing and development of the client is significantly impaired or at risk.<sup>682</sup>

<sup>682</sup> State of Victoria, Department of Human Services, *Critical client incident management summary guide and categorisation table: 2011* (2012) 17 <[http://www.dhs.vic.gov.au/\\_\\_data/assets/pdf\\_file/0008/684710/critical-client-incident-summary-guide-categorisation-table-12-2012.pdf](http://www.dhs.vic.gov.au/__data/assets/pdf_file/0008/684710/critical-client-incident-summary-guide-categorisation-table-12-2012.pdf)>.

- **Category two** incidents involve events that threaten the health, safety and/or wellbeing of clients or staff. Client-to-client assaults may be reported as category two incidents unless they meet the threshold for category one incidents (death or severe trauma, including serious injury and hospitalisation, the use of a weapon or potential risk to the client). Inappropriate behaviour or inadequate care by caregivers is otherwise treated as a category two incident.

DH also uses category three to describe those incidents deemed to have “minor impact on clients and staff with the significance of the incident not extending beyond the workplace or facility”.<sup>683</sup> Category three incidents are not required to be reported to DHS.<sup>684</sup>

Alleged criminal acts that occur during service delivery must be reported to the police as soon as practicable, regardless of whether they have been classified as a category one or category two incident. The DHS Critical Client Incident Management Instruction states clearly that the relevant service provider is responsible for fulfilling this expectation.<sup>685</sup>

Further, the *Responding to allegations of physical and sexual assault instruction (2005)* outlines the reporting requirements for allegations of assault.<sup>686</sup> In particular, this instruction requires that all allegations of assault in disability residential services, and facility-based day programs, where the client receives direct service and supports by a registered disability service provider, must be reported to the police whether or not the client has consented.

However, key informants reported that it was more likely that client-to-staff violence would be reported as a crime while categorisation of client-to-client violence was skewed towards not being reported to police.<sup>687</sup> While there are policies and guidelines

in place that require services to report to police and to record incidents, we heard that practice on the ground varied. In one disability service:

There is an in-house document called Register of Incidents of Concern, but only at house level ... even the incident of strangling and an ambulance being called didn't result in the incident being properly recorded. Certainly the police weren't involved.<sup>688</sup>

In this case, the departmental policy which requires an alleged assault to be reported to police should have been followed.<sup>689</sup>

**Figure 5: Number of Category one critical incidents by incident type group in Disability Services**

Category one incidents	2009 -10	2010 -11	2011 -12	2012 -13
Client death	208	272	156	65
Assault	287	396	439	413
Behaviour	46	52	91	113
Other incident types <sup>690</sup>	451	876	1,010	1,199

Source: Data extracted from DHS Incident Reporting System.<sup>691</sup>

In relation to the data in Figure 5, most incidents are considered allegations as they are yet to be proven. Incident reports only contain the information collated at the early period of a reported event. Subsequent information is not added to these reports. Incident reporting information undergoes routine data validation and as such is subject to minor changes over time. No category type or incident type specifically relates to crimes. Use of this information in relation to any research on crimes may be misleading for the above reasons.

683 State of Victoria, Department of Health, *Incident reporting instruction, 2013* (2013) 8–10 <<http://docs.health.vic.gov.au/docs/doc/Department-of-Health-Incident-Reporting-Instruction-2013>>.

684 Ibid 12–13.

685 State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update 2014), above n 676, 12.

686 State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault*, above n 677.

687 For example, key informant interview, Professor James Ogloff (30 July 2013); key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13.

688 Key informant interview, Communication Rights Australia (31 July 2013).

689 State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault*, above n 677.

690 Includes matters such as drug/alcohol possession or use, injury, illness and self-harm.

691 Information provided to the Commission by the Department of Human Services, 3 June 2014. Note that 2010–11, 2011–12, and 2012–13 data aligns to DHS annual reporting. 2010–11 was the first year the department published incident reporting data. In 2010–11 updated policy definitions were implemented and staff training occurred.

DHS further noted that:

The reporting requirement for deaths of people with a disability in residential services was amended in December 2011. Prior to this time, all deaths of clients in residential services were reported as a category one incident. Many deaths of people with disability who are clients of the department or funded community service organisations are a consequence of the progression of a diagnosed condition or illness.

DHS and funded community service organisations are required to report all client deaths. For deaths that occur in departmentally managed supported

accommodation, the department notifies the Coroner and the Community Visitors Program managed by the Office of the Public Advocate.

Assaults include both alleged physical and sexual assaults. The department has very clear and stringent procedures requiring all allegations of assault to be reported to the department within 24 hours, and that assurance be given that clients are protected and supported. All allegations of assault are referred to the police and also the DSC for independent monitoring and review. Recent additional safeguards to ensure the safety of clients with a disability include stronger and improved processes for staff to report any concerns or incidents.<sup>695</sup>

### **Interagency guideline for addressing violence, neglect and abuse (IGUANA)**

A 2010 report by OPA of responses observed by advocates/guardians in the previous 10 years found that “service responses to violence perpetrated against people with cognitive impairment were often inappropriate and uncoordinated”.<sup>693</sup> For example:

- DHS Disability Services guidelines have limitations. For example “much client-to-client violence and abuse may not receive adequate response as such incidents are often not identified as ‘category one’ incidents”<sup>694</sup>
- a stronger focus on addressing clients’ experience of trauma following instances of abuse is needed.<sup>695</sup>

Following this, an inter-agency guideline known as IGUANA was developed by OPA. It seeks to address significant gaps in the way in which services respond to and investigate abuse.

It sets out the actions to be taken by service staff or volunteers when violence, abuse or neglect of an adult is reported, witnessed or suspected. It includes instructions to front-line and senior staff, as well as to Victoria Police and government departments, including that:

- even if a police investigation occurs, an investigation must be organised by the organisation with the relevant duty of care to the person. Agreement about the timing and scope of this investigation should be reached with police if a police investigation has occurred or is occurring
- the investigation should be undertaken as soon as possible and should not be carried out by anyone suspected of being involved in the incident. A preliminary assessment may be necessary to determine the scope and conduct of the investigation, including whether an external investigator should be engaged.<sup>696</sup>

692 Office of the Public Advocate, *Interagency guideline for addressing violence, neglect and abuse (IGUANA): Background and discussion paper* (2013) 5.

693 Ibid 9.

694 “The Office of the Disability Services Commissioner identified a further gap. The paper ‘Safeguarding People’s Right to be Free from Abuse: Key considerations for preventing and responding to alleged staff to client abuse in disability services’ (Coulson Barr, above n 7) cites research showing the importance of specialised responses to addressing clients’ experience of trauma following instances of abuse. The paper goes on to argue that DSC experiences with complaints regarding DHS disability services indicate the need ‘for both training and specific practice guidelines for responding to and supporting clients following alleged assaults and trauma’.” Office of the Public Advocate, *IGUANA: Background and discussion paper*, above n 692, 9. DHS informed the Commission that a focus on the client experience has been strengthened in the recent technical update of the DHS Critical Client Incident Management Instruction. Information provided to Commission by the Department of Human Services, 12 May 2014.

695 Information provided to the Commission by the Department of Human Services, 3 June 2014.

696 Office of the Public Advocate, *IGUANA*, above n 60.

## Investigations in disability services

In services directly delivered or funded by DHS, category one and category two incidents are reported by the most senior staff member to witness the incident, or the staff member to whom the incident was disclosed, using a standard form.<sup>697</sup>

The Client Incident Report form requires the most senior staff member to record information about the critical incident, including the actions taken immediately to support and respond to the client needs. A management representative from the service is then required to review the incident report, note details of actions taken including if an investigation has been initiated following the incident, if Victoria Police have been contacted, and note any actions to be taken to reduce the likelihood of recurrence of the incident.

Category one incidents must be reported within one day of the service being told of an incident; category two incidents must be reported within two days of being told of an incident. Once received, the designated DHS divisional area manager must review the report and:

- check that the client/s' immediate needs have been addressed
- check that appropriate immediate actions have been taken in response to the incident and any planned further actions are appropriate
- confirm that the most appropriate incident type and category has been selected
- record additional or required follow-up action (if any).<sup>698</sup>

DHS also confirms that the incident has been correctly categorised.<sup>699</sup> Where a category one incident has occurred, the Executive Director determines whether a departmental review is recommended.<sup>700</sup> All category one client incident reports that involve allegations of staff-to-client assault or injury involving “unexplained or concerning injuries” involving clients of disability services funded or directly delivered by DHS must be forwarded to the DSC.<sup>701</sup>

### Departmental reviews

The department conducts a departmental review for all incidents of alleged staff-to-client assaults. This is a post-incident management review and can review the adequacy of investigations, engagement with police and client outcomes.

The DSC does not review all departmental reviews but often requests a copy of the review when aspects about the response to the incident are unclear. These reviews “provide important information on client wellbeing and safety and the adequacy of support”.<sup>702</sup> In addition, DHS provides quarterly information to the DSC about these reviews and in turn, the DSC provides quarterly reports on thematic issues back to DHS to support improvements to the process.

Some of these things might include issues around delays in reporting, and the need to consider advocacy. There might also be commentary on trends on specific group services to determine what areas of practice need addressing, like what should be in a Quality of Support Review.<sup>703</sup>

<sup>697</sup> State of Victoria, Department of Human Services, *Critical client incident management summary guide and categorisation table*, above n 682.

<sup>698</sup> State of Victoria, Department of Human Services, *Departmental internal critical client incident management guide* (December 2012) 5. Information provided to the Commission by the Department of Human Services, 18 March 2014.

<sup>699</sup> If an incident has been incorrectly categorised the service must be notified and offered assistance with instruction compliance. Ibid 6. Information provided to the Commission by the Department of Human Services, 18 March 2014.

<sup>700</sup> Ibid 8. Information provided to the Commission by the Department of Human Services, 18 March 2014.

<sup>701</sup> Ibid. Information provided to the Commission by the Department of Human Services, 18 March 2014.

<sup>702</sup> Key informant interview, Disability Services Commissioner (23 October 2013).

<sup>703</sup> Key informant interview, Disability Services Commissioner (23 October 2013).

DHS is responsible for ensuring that the incident is subject to an appropriate level of local investigation and causal analysis and that, where relevant, the service prepares an improvement strategy.<sup>704</sup>

DHS directs that incident investigations should:

- identify reasons for the incident occurring
- identify opportunities for improvement in management systems or service delivery practice
- make local recommendations and implement improvement strategies in order to prevent or minimise recurrences. These strategies should be actionable and measurable and include an assessment of their effectiveness in delivering improvement
- satisfy mandatory reporting or review requirements (for example, a child death inquiry, notifying the Coroner or WorkCover).<sup>705</sup>

When an investigation is conducted in a funded service, DHS protocols must be followed. This includes procedures around standing down an accused staff member. External investigators are likely to be used in these circumstances.<sup>706</sup>

DHS has an Ethical Standards Unit which is an internal team established to investigate staff disciplinary matters, including allegations of serious misconduct against Disability Development Support Officers employed by the department. Under the current framework, Ethical Standards does not have jurisdiction to investigate disability workers who are not employed by DHS directly.<sup>707</sup>

## Investigations in health services

The DH Incident Reporting Instruction covers incidents in funded organisations, including Home and Community Care (HACC) services, alcohol or drug services, Psychiatric Disability Rehabilitation Services (PDRS), community health centres and Supported Residential Services (SRS).<sup>708</sup>

All category one incidents must be reported to the department. The DH review of the incident should:

- identify reasons that the incident occurred and opportunities for improvement in systems or processes
- make recommendations for improvement strategies in order to prevent or minimise recurrences. Improvement strategies should define prioritised actions, responsibilities, timescales and strategies for measuring the effectiveness of actions
- confirm that mandatory reporting requirements have been met (for example reporting to WorkCover, the Coroner, the Chief Psychiatrist).<sup>709</sup>

Proprietors of SRS are not required to complete the DH incident report form. Reporting under this instruction is the responsibility of the Department's SRS Authorised Officers only.<sup>710</sup>

Only alcohol and drug services and PDRS services are required to report category two incidents. Category three incidents are not required to be reported to the department.<sup>711</sup> Incidents are reported by the most senior member of staff available using a standard form.<sup>712</sup> Category one incidents must be reviewed by the Director, Health and Aged Care. "It is expected that all physical and sexual assaults occurring on-site, during service delivery or where there is direct involvement of the service or its staff, will be reported to the police".<sup>713</sup>

704 State of Victoria, Department of Human Services, *Departmental internal critical client incident management guide*, above n 698, 6. Information provided to the Commission by the Department of Human Services, 18 March 2014.

705 Ibid. Information provided to Commission by the Department of Human Services, 18 March 2014.

706 Key informant interview, Dr Jeffrey Chan (14 November 2013).

707 Information provided to Commission by the Department of Human Services, 12 May 2014.

708 SRS are required to notify the Secretary of the department of any prescribed reportable incident that occurs on the premises, or in relation to the SRS. Prescribed incidents include the unexpected death of a resident, a serious injury of a resident and an alleged serious assault (sexual or physical). State of Victoria, Department of Health, *Incident reporting instruction*, above n 683, 3–4.

709 Ibid 16.

710 Ibid 4. Authorised Officers are appointed under the *Supported Residential Services (Private Proprietors) Act 2010* and monitor and enforce compliance with the Act and the Regulations through inspections, complaint investigation, and providing advice and education to proprietors. Information provided to the Commission by the Department of Health, 4 June 2014.

711 State of Victoria, Department of Health, *Incident reporting instruction*, above n 683, 7, 10.

712 Supported Residential Service proprietors are not required to complete the department's incident report form. Reporting under this instruction is the responsibility of the department's SRS authorised officers only. Ibid 13.

713 Ibid 25. The Instruction refers staff to the *Responding to allegations of physical or sexual assault Departmental Instruction* for more information on supporting victims and reporting allegations. State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault*, above n 677.

Category two incidents are reviewed by senior staff in the regional program area of the department.<sup>714</sup> In addition, the Incident Reporting Instruction encourages services to undertake a systematic analysis of incidents to prevent similar events occurring. This may include local regional reviews, Chief Psychiatrist reviews, or regulation reviews of an SRS.<sup>715</sup>

The DH has a procedure for investigating allegations of sexual assault in an SRS. Regional authorised officers will ensure Victoria Police, Centres Against Sexual Assault (CASA) and the Community Visitor Regional Convenor are notified. They will also visit the premises, discuss options for affected residents and the alleged perpetrator, including moving the alleged perpetrators, and then follow up with a visit to monitor compliance.<sup>716</sup>

## Investigations in mental health services

The Chief Psychiatrist may conduct investigations into the provision of mental health services on his or her own initiative or, at the request of the Secretary, may conduct an investigation into the provision of mental health services where they are of the opinion that the health, safety or wellbeing of a person is or was endangered as a result of those services.<sup>717</sup> They may also give directions to a service, make a report and recommendations from an investigation, in addition to addressing systemic issues by issuing standards, guidelines and practice directions.<sup>718</sup>

If an inpatient of a mental health service alleges sexual assault, the service must follow the Chief Psychiatrist's Guideline, including that the patient "should be protected from any further contact or association with the staff member concerned, even while an allegation is pending investigation".<sup>719</sup>

714 State of Victoria, Department of Health, *Incident Reporting Instruction*, above n 683, 16, 19.

715 Ibid 26.

716 State of Victoria, Department of Health, *Responding to allegations of sexual assault in SRS: Clarifying roles for SRS proprietors, the Department of Health and Centres Against Sexual Assault* (October 2012) 3. In addition, the Commission was informed that the Department of Health have developed, and will distribute, a guide for SRS proprietors on identifying and responding to family violence <[http://docs.health.vic.gov.au/docs/doc/9D7764ADF8CF97F2CA257A91007FF11A/\\$FILE/CASA%20PROTOCOL%20FINAL%2024%20SEPT%2012.pdf](http://docs.health.vic.gov.au/docs/doc/9D7764ADF8CF97F2CA257A91007FF11A/$FILE/CASA%20PROTOCOL%20FINAL%2024%20SEPT%2012.pdf)>.

717 *Mental Health Act 2014* (Vic) s 122(1).

718 *Mental Health Act 2014* (Vic) ss 121–33.

719 State of Victoria, Department of Health, *Chief Psychiatrist's Guideline: Promoting sexual safety, responding to sexual activity, and managing allegations of sexual assault in adult acute inpatient units* (5 June 2012) 29 <<http://docs.health.vic.gov.au/docs/doc/Promoting-sexual-safety-responding-to-sexual-activity-and-managing-allegations-of-sexual-assault-in-adult-acute-inpatient-units--June-2012>>.

## Lack of confidence in service investigations

Investigations by the organisation are important for many reasons. Not least because "a police investigation may decide that there is insufficient evidence to proceed or be more narrowly focused on criminal justice outcomes".<sup>720</sup>

Investigations allow organisations to "learn from the circumstances of the instance of violence or abuse, to take action to acknowledge and apologise for (where appropriate) any trauma suffered by the person, and to take action to prevent similar occurrences in the future".<sup>721</sup>

There is no doubt that there is a significant amount of policies and monitoring frameworks established by DHS in this area. This is informed by a comprehensive approach to safeguarding that recognises that there needs to be an emphasis upon prevention as well as ensuring a consistent and robust response.<sup>722</sup>

We found evidence of good practice in service reporting and improvements to the way some services are developing capability in pursuing robust internal investigations.<sup>723</sup> However, participants also told of situations where service follow-up was not consistent with existing safeguards and departmental policy does not appear to have been followed:

A client was hit with a broom by a staff member. The incident was not reported even though two carers were present. The client was in hospital for several weeks. There was no internal inquiry. A forensic report was conducted and the client returned to the Community Residential Unit. Only when the client returned to the CRU, was the incident reported to police. The perpetrator was interviewed but made no comment. No charges were laid.<sup>724</sup>

720 Office of the Public Advocate, *IGUANA: Background and discussion paper*, above n 692, 16–7.

721 Ibid 17.

722 See for example, Ottmann et al, above n 212, 6–7.

723 Key informant interview, Dr Jeffrey Chan (14 November 2013); focus group 2, service workers (12 August 2013).

724 Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013). See also Mental Health Legal Centre, Submission No 2 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 29 July 2013, 3.



Thus, while there is evidence of an increased focus on getting it right, we identified a number of consistent barriers to ensuring robust service investigations. These include:

- staff are not always able to identify and respond to incidents of abuse and neglect. Recent research found that in a survey of disability workers, 30 per cent of direct care staff disagreed with the statement that they would be able to identify and respond to allegations or incidents of abuse or neglect<sup>725</sup>
- while many resources and guidelines exist, most are sector specific. This causes “unnecessary confusion for carers about how they should respond to abuse, particularly for carers in large organisations who worked across more than one sector”<sup>726</sup>
- staff not always following incident reporting guidelines, so a service investigation is not always triggered<sup>727</sup>
- inadequate record keeping
- variable communication and interviewing skills of investigators
- lack of funded advocacy services
- the investigation’s focus is usually determining if the allegation can be substantiated or not, therefore, the policy aim of minimising trauma may not always be met
- privacy concerns trump the gathering of evidence
- industrial relations concerns.<sup>728</sup>

We had another client who had a black eye. When asked who the perpetrator was, the client pointed to a particular staff member. There had been other allegations made against this staff member. The disability service indicated it would need to have 120 per cent certainty to fire the staff member. They further indicated that the staff member could go to his union, and would likely get his job back, if there was no evidence of assault. The negotiated outcome resulted in the staff member moving to a different residential house. The priority of the service was on industrial relations and occupational health and safety, rather than on the rights of the person.<sup>729</sup>

---

725 Ottmann et al, above n 212, 5–6.

726 Office of the Public Advocate, *IGUANA: Background and discussion paper*, above n 692, 8.

727 Information provided to Commission by the Department of Human Services, 12 May 2014.

728 For example, key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

729 Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

The DSC reported significant variations in services’ approaches to investigating incidents of alleged assaults and unexplained injuries, and issues concerning the adequacy of investigation methodology and practice.

There is confusion in services about when they can investigate, for example, do they have to wait until the police investigation is over before commencing their own or an independent investigation. There is also a danger that services rely on the criminal threshold being met to determine whether an allegation can be substantiated.

Further, it is also unclear to services the extent that they can use material or witness statements provided to the police for their own investigation. If services need to follow up an investigation they won’t have the same evidence collection skills as police, so it would be useful to consider options as to how information provided to police could also be provided to a service to inform their subsequent investigation.<sup>730</sup>

This issue does not appear to have been considered in the most recent review of the DHS Critical Client Management Instructions.<sup>731</sup>

Internal capacity to effectively investigate is another concern:

Within [our service] there is a huge range of qualifications and skills that we rely on to run internal investigations, sometimes they have good communication skills and sometimes they don’t. Our investigators are trained in different techniques, but it has relied on the police-style of substantiated and unsubstantiated evidence. This has meant that we have been left with people who are re-employed because a report against them is unsubstantiated. [Our service] is taking a stance on this and saying it’s not about substantiated or unsubstantiated, it’s acknowledging that there’s a trauma for this client ... In our service, we have moved from “beyond reasonable doubt” to going on our assessment about the balance of probabilities.<sup>732</sup>

---

730 Key informant interview, Disability Services Commissioner (23 October 2013).

731 See State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update), above n 676.

732 Focus group 2, service workers (12 August 2013).

Even when an external investigator is appointed, there may be gaps in knowledge.

These are private companies who come in and investigate a certain claim. I have observed this in government and non-government services. Technically you need a Certificate 3 or 4 qualification I think. They aren't specialists. Some investigators don't even have credentials displayed in their reports.<sup>733</sup>

Some participants had little confidence in service investigations – be they by the organisation where the abuse or violence is alleged, external investigators or the relevant government department. Some told us there was a culture of secrecy and deliberate cover ups in investigations.<sup>734</sup>

In my view this is done intentionally. The way to disempower people is to build it into the system and the structure. The system deliberately fluffs around and does not address the issues.<sup>735</sup>

Disturbingly, several key informants told us that, due to a perceived lack of consequences, perpetrators act with impunity, while others move from service to service.

[Name of service] management did not initially take the matter seriously and have covered up the fact that they knew the perpetrator was a danger to its clients and moved him from house to house.<sup>736</sup>

DHS is currently exploring options to address this problem.<sup>737</sup> These issues are discussed further in Chapter 13.

## Independent oversight

Lack of confidence in incident reporting and internal service investigations highlights the importance of independent oversight.

### Mental Health Complaints Commissioner

The *Mental Health Act 2014* established the MHCC, who from 1 July 2014, may receive complaints regarding mental health services.<sup>738</sup> Complaints may be made by consumers, other individuals (such as family members or carers) and others including Community Visitors, OPA and the DSC. In addition to dealing with the complaint through dispute resolution, or recommending the matter for conciliation, the MHCC may also conduct investigations and issue compliance notices under the Act. They may publish a report of the investigation. Where the service provider makes an undertaking to take remedial action regarding a complaint, the Commissioner may monitor the service to track progress.<sup>739</sup>

### Disability Services Commissioner

All disability service providers must have internal complaint processes, report on complaints and take steps to protect people who make complaints from victimisation.<sup>740</sup> The Disability Act also sets out the process for making complaints to the DSC, this includes where a person believes a disability service provider has not properly investigated or acted upon a complaint.<sup>741</sup> Following a referral from the Minister for Disability Services and Reform under section 16(c) of the Disability Act, the DSC has also been providing independent review and monitoring of category one incident reports relating to allegations of staff-to-client assault and unexplained injuries since June 2012.

Through these reviews, the DSC may request further information/clarification regarding the response to the incident and provide advice to the disability service and/or DHS on areas warranting action or follow up in the departmental review conducted by DHS. The DSC also provides Notices of Advice to the Secretary of DHS on key themes and issues identified from incident report reviews and areas warranting attention and practice improvement.

733 Key informant interview, Dr Jeffrey Chan (14 November 2013).

734 Key informant interview, United Voices for People with Disabilities, 29 August 2013. See Victorian Ombudsman, *Ombudsman Investigation Assault of a Disability Services Client by Department of Human Services Staff* (March 2011).

735 Key informant interview, United Voices for People with Disabilities, 29 August 2013.

736 Survey participant (person with disabilities).

737 Information provided to Commission by the Department of Human Services, 12 May 2014.

738 *Mental Health Act 2014* (Vic) ss 232–43.

739 *Mental Health Act 2014* (Vic) ss 232–68.

740 *Disability Act 2006* (Vic) ss 104–6.

741 *Disability Act 2006* (Vic) ss 14–9, 107–32. In 2012–13, service providers' approaches to complaint handling was one of the most common systemic issues identified in enquiries and complaints to the Disability Services Commissioner. Disability Services Commissioner, *Annual Report 2013* (2013) 19.

## Community Visitors

In his submission to this study, the Ombudsman, drawing upon his own motion *Ombudsman Investigation – Assault of a Disability Services Client by Department of Human Services Staff* identified “the important role of Community Visitors who independently visit and report on the quality and standard of disability care provided to residents who often cannot speak for themselves”.<sup>742</sup>

The Community Visitors Program is administered by OPA. Community Visitors are volunteers who conduct unannounced visits of Victorian supported accommodation facilities for people with disabilities. This includes disability services, SRS and mental health facilities. The program seeks to safeguard the rights and interests of people with disabilities and ensure high quality service provision. Functions of Community Visitors in disability services are set out in Part 4 of the Disability Act; functions of Community Visitors in mental health services are set out in Part 9 of the Mental Health Act.

In 2012–13, 366 Community Visitors made 5,445 visits. Of these 3,158 were to disability services, 962 to SRS and 1,325 to mental health facilities.<sup>743</sup>

Community Visitors talk with residents and staff to identify issues of concern and follow up complaints made by residents. Community Visitors prepare a report of their findings and present this to the service provider and OPA. Serious concerns are referred directly to OPA.

There is an escalation process in place entitled *Notification Protocol for serious and/or unresolved issues Between the Office of the Public Advocate and DHS for both DHS and DHS funded services*. “This protocol enables issues that are not able to be resolved at the local level to be formally raised with the DHS Divisional Executive Director and includes clear tasks and timelines to respond within 10 days.”<sup>744</sup>

However, we also heard that existing mechanisms may not be able to respond quickly enough, or in all circumstances. Some argued that people undertaking front-line ‘watchdog’ roles may also become influenced by the normalisation of violence.

We have watchdogs that oversee services and have the power to look at these services and report what they see. The staff person, the Community Visitor, or an Independent Third Person will all have different views, but their views are often institutionalised/normalise over time, which informs what they think is appropriate.<sup>745</sup>

Overall, we found that existing systems do not, and cannot, guarantee that all crimes are treated as crimes. If crimes are not reported, services end up policing themselves. There is a clear need to address gaps in safeguarding people’s rights and to strengthen and extend monitoring and oversight.<sup>746</sup>

742 Victorian Ombudsman, Submission No 1 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 8 July 2013, cover letter, 2.

743 Office of the Public Advocate, *Community Visitors Annual Report 2012–2013*, above n 125, 10.

744 Information provided to the Commission by the Department of Human Services, 3 June 2014.

745 Key informant interview, Dr Patsie Frawley (5 July 2013).

746 A discussion about key principles underpinning safeguarding are outlined in Coulson Barr, above n 7. See also Ottmann et al, above n 212. The need for training, capacity building and practice guidance is discussed in greater detail in Chapter 13.

# Part 4 – The way forward

This part describes the actions necessary to remove the inequities people with disabilities face across the justice system.

People with disabilities may require reasonable adjustments to be made, including access to adequate levels of appropriate support, flexibility, information, communication access (including interpreters and communication assistance) and physical access including attendant carers.

Victims of crime with disabilities must be able to access consistent support – when they need it and for as long as they need it across the process. This may include advocacy support to assist the system to better respond to the individuals' needs.

The Commission recognises that Victoria Police is only one part of the system and that achieving lasting change requires a consistent effort across our justice, health and human services systems.

Accordingly, this report makes recommendations regarding those areas where we have established a clear link with issues relating to the incidence and reporting of crimes against people with disabilities.

The areas in which we have made recommendations include:

- transformation and leadership in police
- equipping police
- improving access to courts
- safeguarding in services.

# Chapter 10: Transformation and leadership in police

## Main findings

- Leadership is needed to prioritise disability across the police force and change police culture.
- Coordination and guidance is necessary to establish and embed change across the police force, and to acknowledge and build good practice across the state.
- Police need to know where and how to access support to ensure that people with disability receive the best possible service and realise their rights to justice and safety.
- There is a need for data to understand where, how and why people with disabilities are accessing the justice system to allow policy makers to tailor responses, make improvements and build efficiencies.

## Police culture

To get changes across the organisation, you need three things really: leadership, cultural change mechanisms and good practice. We also need to be supported by legislation and allowances for flexibility in the way we pursue our work.<sup>747</sup>

The importance of leadership in Victoria Police is a major theme in this research. Strong leadership throughout the ranks is crucial to ensuring people with disabilities can access police services in common with other Victorians. As has been seen in the seismic improvements in Victorian responses to family violence and to sexual assault, prioritisation of an issue, and the rising status of that issue within the force, can be transformational.

<sup>747</sup> Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

## The need for ‘critical mass’

The majority of police members aim to deliver the best possible service and the Victoria Police leadership is committed to human rights and non-discriminatory practice. There are numerous examples of good work taking place, backed up by sound policies; however, on the ground, performance is mixed.<sup>748</sup>

What makes the difference is the quality of that very first interaction between people with disability and police, and consistent follow up by police members. This is largely informed by skill and attitude of individual police members. However, it is also determined by the overall culture of what is a very large and complex organisation.

In many ways, police members reflect attitudes in the broader community.<sup>749</sup> They also reflect the culture of their station or unit. Research shows that perceptions of disability are influenced by the attitude of the police officers in the station.<sup>750</sup>

In police focus groups, we heard that demonstrated leadership at a station and unit level was the primary driver for adopting inclusive practices. However, while senior officers at the station or unit level are important, one or two champions are not enough. A critical mass of support within the station, at the divisional and regional levels, and within the senior leadership is necessary to bring about sustained culture change.

<sup>748</sup> For example, key informant interview, Victoria Legal Aid (19 July 2013); key informant interview, Professor James Oglloff (30 July 2013); key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); key informant interview, Scope (11 November 2013); key informant interview, Dr Jeffrey Chan (14 November 2013).

<sup>749</sup> Camilleri, *[Dis]abled justice*, above n 5, 219–225; key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

<sup>750</sup> Camilleri, *[Dis]abled justice*, above n 5, 227–232.

As noted by Victoria Police Deputy Commissioner Tim Cartwright:

There are all sorts of prejudices that are unspoken or unrealised. But you see in the broader community that the language is starting to change around people with disability, community attitudes are shifting. A good example is the changes in the way we look at family violence. Once you have people understanding the context, it spins off into other areas. Fostering a culture where people feel empowered to call out bad behaviour or bad attitudes. This kind of change needs to be driven from the top down by leaders. We have done a lot of work around gender and race, this flows on to people with disabilities – it is about using the language of dignity and respect.<sup>751</sup>

Recent work by Victoria Police including the establishment of the Priority Communities Division and the development of a three-year action plan aimed at improving the way in which police engage with diverse communities are important steps in this cultural change.<sup>752</sup>

Actions include:

- establishing community advisory groups to assist Victoria Police to work with specific community priorities, including people with disabilities
- reforming Victoria Police education content, structure and delivery to support enhanced diversity training
- developing policy, practice and education on unconscious and implicit bias
- reviewing and enhancing the Victoria Police complaints process.

The Commission welcomes these commitments.

Victoria Police is currently finalising its Disability Action Plan. This provides the ideal vehicle for embedding change internally, and to actively involve consumers, advocates and disability peak bodies to devise and implement practice change. To that end, the Commission encourages Victoria Police to include the recommendations from this report in its Disability Action Plan.

## Getting the foundations right

There are a number of other policies that seek to respond to the access needs of people with disabilities. These include:

- Victoria Police Blueprint 2012–15
- Code of Practice for the Investigation of Family Violence
- Code of Practice for the Investigation of Sexual Assault
- protocols with key agencies including the Department of Human Services (DHS), and the Department of Health (DH) and Victoria Police *Protocol for Mental Health*<sup>753</sup>
- a Memorandum of Understanding between DHS and Victoria Police, which sets out the broad principles of their partnership. This agreement is supported by a joint relationship governance committee – the Collaborative Responses Steering Committee, which has a sub-committee structure including governance groups to oversee joint responses to high risk/highly vulnerable clients including adults with disabilities who engage with Victoria Police.

In addition, the Inter-departmental Liaison Committee (IDLC) is a forum where senior representatives from Victoria Police, DHS, DH, Ambulance Victoria and consumer and carer stakeholders meet quarterly to improve system responses involving police, ambulance, mental health and disability services to people with complex needs.<sup>754</sup>

<sup>753</sup> Both of these protocols are under review to ensure compliance with the *Mental Health Bill 2014*. “Topics in the protocol with DHS include supporting the needs of people with a disability in police custody or care (including victims, witnesses and suspects); and reporting incidents to police (for example, family violence, physical and sexual assault, missing persons).” Information provided to the Commission by Priority Communities Division, Victoria Police, 4 March 2014.

<sup>754</sup> In addition, there are 21 Emergency Services Liaison Committees (ESLCs) operating across the state, comprising senior staff from the local police, ambulance, hospital emergency department and mental health services, as well as consumer and carer representatives. ESLCs are responsible for translating the statewide protocol into a local protocols, which document agreed matters including service responses and standards and case planning. ESLCs are required to submit the minutes of their meetings to the IDLC on a quarterly basis to advise of matters requiring inclusion in the state protocol. Information provided to the Commission by the Department of Health, 3 June 2014.

<sup>751</sup> Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

<sup>752</sup> Victoria Police, *Equality is not the same*, above n 597.

The primary document for police practice is the Victoria Police Manual (VPM), which includes Policy Rules and Procedures and Guidelines. Disability is mentioned throughout the VPM, with information organised according to the activity the policy or procedure is addressing. Some, but not all, disabilities are referred to, and there is no way to efficiently or consistently identify the standards, practices and legal obligations expected of police members.

We found that policy improvements are not uniformly applied. Some of this is because of the volume and complexity of procedures that police must follow. In some cases, members don't know where to find the guidance that already exists. Further, they don't consider they have a source of specialist assistance to help them put policies into practice.<sup>755</sup>

### Developing a Code of Practice

The need for coordinated and consistent responses and clarity in process are necessary to improve confidence and outcomes for police and for people with disabilities who have experienced crime.

One option would be to consolidate information about disability in the VPM. This would help to bring all relevant information into one place; however, it may not have maximum impact for cultural change as the VPM is a large and complex document, with many components.

The Commission's preferred option is to develop a Code of Practice for responding to victims and witnesses with disabilities. There are currently two Codes of Practice for Victoria Police – *Code of Practice for the Investigation of Family Violence* and *Code of Practice for the Investigation of Sexual Assault*. The development and implementation of these codes has been a process of reform that has resulted in significant cultural change and a seismic shift in community expectations and confidence of victims to report crime.<sup>756</sup>

In addition, the codes, particularly the family violence code, has been critically important in clarifying response needs and processes, and the roles and expectations of police working with a victim cohort with specific needs.

Unlike the existing codes on specific offences, our recommended code would focus on a particular class of persons. However, what each code would have in common is that it responds to victims of crime that require a specialist response. Further, experience shows that the consultation and cooperative effort in the development of a code utilises existing expertise, builds important community relationships and works to build consistent support and referral pathways, all of which enhance police capability.

The learnings from the proposed code would also inform more rights-consistent practice when dealing with alleged offenders with disabilities. It would send a powerful message that the leadership of Victoria Police expects all members to prioritise disability.

### Recommendation

Victoria Police should:

- develop a Code of Practice for responding to victims and witnesses with disabilities and amend the Victoria Police Manual to put the code's standards into operation. The code should specify legal obligations for reasonable adjustments, guidance on how to make adjustments, as well as support options, including access to services and information, and referral pathways.

### Coordination and change

When presented with a person with disabilities reporting crime, police members, particularly those with less experience, do not know what to do or where to get assistance. Development of a Code of Practice will go some way to addressing this issue. However, there is also a need to build capability within the Victoria Police structure and to show leadership in transforming the way disability is prioritised within the structure.

The key needs outlined by police members include the need for more practical advice to be readily available to them. Some suggested establishing specialist staff in Victoria Police that could advise them on a range of disabilities.<sup>757</sup> Some key informants also suggested having designated officers at police stations, so the community knew there was a skilled person present if they needed to make a report.<sup>758</sup>

<sup>755</sup> For example, Focus group 13, police (November 2013).

<sup>756</sup> State of Victoria, Victims Support Agency, *Measuring Family Violence in Victoria*, above n 63, 27–8.

<sup>757</sup> Focus group 13, police (November 2013).

<sup>758</sup> Key informant interview, Dr Nicole Asquith (24 July 2013); key informant interview, Dr Jeffrey Chan (14 November 2013).

Some key informants suggested establishing a specialist disability unit, along the lines of a Sexual Offences and Child Abuse Investigation Team – as a go-to place for police.<sup>759</sup> However, to avoid marginalising disability issues, it is important that all police members take responsibility for delivering equitable services.<sup>760</sup>

We want someone to take responsibility. That hits the nail on the head.<sup>761</sup>

### **Mental Health Liaison Officers**

Victoria Police has had Mental Health Liaison Officers since 2007. Their functions include providing information and advice (such as referral pathways, current policies and procedures) to police members and external stakeholders and fostering communication and collaboration with local service providers.<sup>762</sup>

A priority of the new Priority Communities Division is to increase awareness about the role and about both mental health and disability.<sup>763</sup> This is welcomed by the Commission.

### **Coordination and leadership**

Given the general feeling of ‘not knowing what to do’ when working with different access needs, more effort is required to support police members across Victoria in a way that is consistent and which gives status and priority to the issue. It also needs to be recognised that police face competing priorities and operate in a highly complex environment.

Accordingly, we believe that Victoria Police should develop a network of Disability Advisors across the state modelled on, and complementary to, the Victoria Police Family Violence Advisor roles as outlined in the *Victoria Police Code of Practice for the Investigation of Family Violence*.

The purpose of this role would be threefold – to create dedicated leadership across the police force, to provide a point of coordination for reform, and to acknowledge and build good practice across the state.

Key responsibilities of this role could be to:

- provide a focal point for the interface between operational police and local agencies
- maintain relationships with the Priority Communities Division
- ensure operational police are aware of the issues, impact and needs of victims of crime with disabilities
- establish and maintain formal consultative community networks and represent Victoria Police at appropriate forums relevant to victims of crime with disabilities
- coordinate, develop and conduct training workshops to operational police in consultation with the Priority Communities Division
- research and identify local issues, trends and incidents of crime against people with disabilities in the community, and develop initiatives and strategies to improve responses and break down barriers to reporting
- report regularly to the Priority Communities Division (and any advisory structure) on issues, emerging trends, innovative projects (good practice) and community engagements
- provide a point of coordination to implement solutions and good practice identified at the statewide level.

It is anticipated that these roles would provide the necessary structure to:

- support all police members to operationalise the recommended Code of Practice
- provide consistency across the state
- allow Victoria Police to build capability in disability
- assist in monitoring performance and trends
- clarify and build networks with services, organisations and individuals that provide the support so that police can do their job
- engage senior leaders in Victoria Police, while the inbuilt accountability structure avoids ghettoising disability into specific units.

Success would depend on working in partnership with service agencies, peak bodies, advocates and consumer groups.

759 Key informant interview, Associate Professor Keith McVilly (18 July 2013).

760 Key informant interview, Dr Nicole Asquith (24 July 2013).

761 Focus group 10, police (November 2013).

762 Key informant feedback indicates that some portfolio holders have not had specialist training and so do not have the expertise to fulfil the role. Key informant interview, Disability Justice Advocacy (15 October 2013).

763 Information provided to the Commission by Priority Communities Division, Victoria Police, 4 March 2014.



### Recommendation

Modelled on the existing Victoria Police Family Violence Advisor roles, Victoria Police should develop a complementary network of Disability Advisors and work with people with disabilities and relevant organisations to build and share practice knowledge, and strengthen community partnerships across the state among all police members.

## Monitoring system performance

Evidence-based policy is essential to understanding the extent and nature of crimes against people with disabilities, developing appropriate responses and prevention strategies, and to monitoring the effectiveness of initiatives.<sup>764</sup>

There is currently only limited information on the prevalence of crime against people with disabilities in Victoria. Service systems, data collection, and monitoring and oversight systems do not currently collate data in a way that establishes a picture of the problem, or of the trends occurring in different settings across the state.

The *Victorian Family Violence Database* provides a model tool for government and stakeholders to analyse and monitor trends around victimisation and service system improvements. It also provides a focal point for considering agency improvements to existing data systems. The benefits of a model of this type is that it allows analysis of a range of data sources with inconsistent data capture to build a picture across the system and to understand how the changes in one system, and improvements to policy, affect other parts of the system.

In considering the development of this work, there must be cross-agency cooperation and input, and the need for efficient and timely reporting on trends for maximum benefit to policy makers and organisations in building effective responses.

### Recommendation

That the Department of Justice:

- in cooperation with other departments, statutory agencies and Victoria Police, undertake trend analysis of the prevalence of crime against people with disabilities in Victoria to inform improvements to responses, including early intervention and prevention, and to assist in improving and streamlining cross-sectoral supports.

<sup>764</sup> State of Victoria, Victims Support Agency, *Measuring Family Violence in Victoria*, above n 63, 25.

# Chapter 11: Equipping police

## Main findings

- Police leadership face competing demands about what needs to be included in training for recruits, and on an ongoing basis. Hard decisions need to be made about what should be prioritised.<sup>765</sup> However, there is strong consensus that building police capability through career-long learning and development around disability is an urgent priority.<sup>766</sup>
- Individual police generally base their interactions on their previous work with people with that type of disability, and are much more likely to base their knowledge on interactions on the job rather than through formal training.<sup>767</sup> Accordingly, learning and development opportunities need to go beyond the classroom.
- Some police do not know how to challenge others who contribute to a negative culture around disability. Supporting police members to prevent and intervene against discrimination through bystander action needs to be prioritised in professional development.
- Given that not all police can identify when a person has disabilities, it is likely that Independent Third Persons (ITPs) are not always called for interviews with victims of crime with disabilities.
- Important police information for victims of crime is not currently available in multiple formats, including Easy English, and police are poorly equipped to make the reasonable adjustments required to communicate with many people with disabilities.

## Learning and development

As general members, we fly by the seat of our pants really – go on instinct – based on how they are acting.<sup>768</sup>

Among all police we spoke to, the clearest message was that learning needs to occur at all stages of their careers, with continual reinforcement through learning by doing (see Figure 6: Victoria Police training and development programs that include disability on page 107).

## Improving knowledge and skills

While current efforts are valued, there was consensus that existing methodologies contained limitations.<sup>769</sup> These are discussed below.

## Supporting bystanders to challenge stereotypes

We heard disturbing reports of some police members using offensive terms to describe people with disability. Labels such as ‘nuff nuff’ and ‘spaz’ have no place in a modern police force. Further, while this language is at the extreme end, subtle stereotypes such as assuming a lack of intelligence are still harmful.

While discriminatory language is not sanctioned, junior members did not feel confident to challenge it. This means that Victoria Police leadership need to take a more active approach by supporting members to report it and challenge it. Only then will the culture change.

---

765 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

766 Focus group 6, Independent Third Person Program volunteers (11 October 2013); key informant interview, Dr Margaret Camilleri (7 August 2013).

767 Henshaw and Thomas, above n 33, 5.

---

768 Focus group 8, police (November 2013).

769 For example, key informant interview, Associate Professor Keith McVilly (18 July 2013).

## Recommendation

That Victoria Police:

- develop a bystander response for police members who witness discrimination. This should include training for senior sergeants, and local area commanders on a proactive approach to challenging discriminatory stereotypes and language.

### Community Encounters program

Police need more training. Not just a basic three-hour session ... There needs to be more depth in the training they receive.<sup>770</sup>

The strength of the Community Encounters program is that it exposes recruits to difference, helping to change attitudes, build confidence, and provide a base upon which to build further learning. It also reaffirms the importance of consumer participation.<sup>771</sup>

However, for those with strong discriminatory attitudes it may be counterproductive. "If it is going to work, it has to be authentic. It can't be artificially created situations of intimacy."<sup>772</sup>

Not all disabilities are represented in the Community Encounters program. For those that are, interactions are only for five to ten minutes. Venues may not always be fully accessible. "If the program itself does not have the capacity to make reasonable adjustments for people with disability, this sets a bad example for the recruits and Protective Services Officers."<sup>773</sup>

Typically, just relaying information about disability does not change people's minds – you need to build the personal relationship-building into the training. It needs to be part of the program for police who will come into contact with people with disabilities. People with disability need to be involved in delivering the training.<sup>774</sup>

### Scaling up interactive learning beyond recruits

Positive learning may soon be displaced.<sup>775</sup>

Recruits might leave these sessions with enthusiasm, but when they get back to their stations they are dealing with the old, entrenched practices and attitudes.<sup>776</sup>

Again, critical mass in promoting inclusive practice as a core policing skill is vital. Suggestions here included:

- interactive learning should extend to senior officers, who set the culture of the police station or unit<sup>777</sup>
- prosecutor and investigator training should also include an interactive element
- mental health training is available as an online module, as part of Operational Tactics and Safety Training. Police members spoke highly of this module, while recognising its emphasis upon incident management was a limitation.<sup>778</sup> Further, while e-learning is a pragmatic way to ensure all members know about these issues, it "should not be used as a substitute for interactive learning".<sup>779</sup>

<sup>770</sup> Key informant interview, Office of Public Prosecutions, Witness Assistance Service (22 November 2013).

<sup>771</sup> For example, key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

<sup>772</sup> Key informant interview, Dr Nicole Asquith (24 July 2013).

<sup>773</sup> Key informant interview, Disability Justice Advocacy (15 October 2013).

<sup>774</sup> Key informant interview, Associate Professor Keith McVilly (18 July 2013).

<sup>775</sup> Key informant interview, Dr Patsie Frawley (5 July 2013).

<sup>776</sup> Key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

<sup>777</sup> Key informant interview, Dr Nicole Asquith (24 July 2013); key informant interview, Women with Disabilities Victoria (1) (9 July 2013); key informant interview, Disability Justice Advocacy (15 October 2013).

<sup>778</sup> For example, Focus group 11, police (November 2013); Focus group 13, police (November 2013).

<sup>779</sup> The Office of Police Integrity, *Policing People who appear to be mentally ill* (2012) 33. Key informant interview, Victoria Legal Aid (19 July 2013).

## Current training and support for police members

Figure 6: Victoria Police training and development programs that include disability

Stage/Role	Program
Protective Service Officers	Pre-confirmation program <i>Thinking ahead stage 1</i> (two days) Post confirmation – <i>Thinking ahead stage 2</i> (no disability or mental health training in this phase)
Police recruits / Probationary Constable (two years) (Diploma of Public Safety (Police))	Community Encounters, part of 33 week <i>Operational Police Training in the Community</i>
All police members	Operational Tactics and Safety Training (OTST) One day
Sexual Offences and Child Abuse Investigation Teams (SOCIT)	Four weeks SOCIT training, plus four weeks Detective training
Detectives (includes SOCIT)	Field Investigation Course (three weeks) then Detective Training School (four weeks) once a member obtains a position as a Detective Advanced Diploma of Public Safety (Police Investigations)
Authorised persons	Brief Quality Assurance Course (BQAC) BQAC for SOCIT (40-minute presentation in the form of four slides on cognitive impairment and mental illness considerations)
Police prosecutors	Prosecutors course
Supervision and management	Sergeant's Qualifying Program Senior Sergeant's Qualifying Program Inspector's Qualifying Program Victoria Police Leaders Mentoring Program Senior Managers' Leadership Development Program

Source: Victoria Police<sup>780</sup>

780 Information provided to the Commission by Victoria Police, 8 May 2014.

Content	Time dedicated to disability	Compulsory
Includes half a day of Community Encounters program, and a separate day of theory and practice with external psychologists on mental health, conflict management, resilience	1.5 days in total	PSO recruits must complete
Contains modules on recognising and responding to the needs of people with disabilities/mental health – three x 60 minute theory sessions in week 11 and four sessions on practical application in week 12. Also undertake Community Encounters Program – half a day	1.5 days in total	All recruits
Training on Equity and Conflict Resolution (mental health disability)	Online module (approximately 20 minutes)	Online (mental health) module must be completed before attending the OTST  Whilst all members must complete standard OTST every six months, the content does not always include a mental health component
Includes working with people with disability, interviewing skills, communication adjustment, VARE (video and audio recorded evidence) interviewing	Two days in total includes one day with people with disabilities and one day on communication	Must complete within one year of joining SOCIT
Includes VARE	Three days	Must complete Field Investigation Exam
Includes <i>Evidence Act 2008</i> (Vic) provisions re witnesses with disability, but general focus on 'vulnerable' witnesses	BQAC is two days during which vulnerable witnesses education forms a small segment  BQAC for SOCIT members is three days	All members authorised to approve briefs must complete this course (generally sergeants and senior sergeants)
Includes information about how the Evidence Act applies to vulnerable persons, but not disability specific and nothing on witness management as this is more the police informant's responsibility; not that of prosecutions	Not applicable	Not applicable
These programs have sessions that address discrimination and/or community engagement but no specific disability education	Not applicable	Not applicable
Nil		
Nil		
Nil		

## Learning how to identify disability and make adjustments

“Early recognition of disability needs to be key to training, and then what to do once you’ve identified it.”<sup>781</sup> The message also needs to be reinforced that making reasonable adjustments is not just a good idea; it is also a legal obligation.

Police do not need to know about every specific type of disability, but they should be able to think through an appropriate way to respond generally, and be able to contact appropriate support services and advocates.<sup>782</sup>

Learning needs to recognise intersectionality, including the specific adjustments needed for women with disabilities and Aboriginal people with disabilities.<sup>783</sup>

The most significant challenge for police is establishing the means for effective communication, across a range of disabilities.<sup>784</sup> Specialist prosecutors, video and audio recorded evidence (VARE) and Sexual Offences and Child Abuse Team (SOCIT) training has a much stronger focus on disability, including communication skills. Given every police member will encounter a person with disability, this knowledge and skill needs to be further embedded across the organisation.<sup>785</sup>

Participants in this research made many practical suggestions about how police learning and development should be enhanced. These include:

- redesigning the Community Encounters program to ensure members receive training on a range of disabilities, including communications disabilities, disabilities such as autism spectrum disorder, oppositional defiance disorder and other less well-known disabilities and that the program is audited for physical accessibility

- introducing content on unconscious bias and challenging stereotypes about disability (including mental health) into Academy training, the Constable’s course, the Diploma of Public Safety (Policing), and all required courses for promotion to more senior ranks in Victoria Police. Content on the intersection of gender, race, age, and sexuality with disability should also be included in these courses
- using the Equity and Conflict Resolution in the Operational Tactics and Safety Training as a model, develop new content on people with mental health disabilities as victims of crime (rather than as accused) so that all members receive this training on a six monthly basis, as a supplement to experiential learning
- leveraging the value of SOCIT training by including interviewing techniques with people with disabilities in training courses for general duties members
- reinforcing in training to general duties members that the *Evidence Act 2008 (Vic)* and *Criminal Procedure Act 2009 (Vic)* to facilitate evidence from people with disabilities, and that assuming a person will lack credibility because of their disability before the court is discriminatory
- introducing additional content on communication accessibility and methods available to the court into the Brief Quality Assurance Course.
- including the experiences of victims with disabilities who have been through the process into police prosecutorial training
- providing opportunities for police members to undertake external professional learning focused on policing and disability, including scholarships for graduate diplomas and Masters degrees in these areas.

<sup>781</sup> Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

<sup>782</sup> Key informant interview, Women with Disabilities Victoria (1) (9 July 2013); Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

<sup>783</sup> Key informant interview, Aboriginal Family Violence Prevention and Legal Service Victoria, 9 December 2013.

<sup>784</sup> Key informant interview, Communication Rights Australia (31 July 2013); Speech Pathology Australia, Submission No 3 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 12 September 2013, 4–5. See also Henshaw and Thomas, above n 33, 9.

<sup>785</sup> Key informant interview, Scope (11 November 2013).

## Recommendation

- Under the Victoria Police Education Master Plan, Victoria Police should develop a comprehensive, career long, learning strategy for all police members to equip them to deliver equitable services to Victorians with disabilities. This should focus on capacity to identify and understand disability, and make adjustments. This should include police at all levels of the organisation throughout their careers, including at points of recruitment, advancement and across the range of roles, including as duty officers, Sexual Offences and Child Abuse Investigation Teams (SOCITs), prosecutors and in leadership.

## Leading on communications access

In Chapters 5 and 6, we described the principles for effective interactions with police. The need to be flexible, and the need to provide support and physical adjustments, has been a clear message throughout this report.

We are aware that specific barriers exist for people with communications disabilities, at all points in the system, and that a focus on making adjustments for this cohort should be a priority.

We need to shift the onus off victims and onto police to become familiar with, and understand, a diverse range of communication methods and to acknowledge that people communicate in different ways.<sup>786</sup>

One in 500 Victorians has communication disabilities.<sup>787</sup> These can range from a “subtle impact on someone’s ability to understand what others say, to a complex communication disability that affects all aspects of spoken communication and results in the need to use a communication aid or device”.<sup>788</sup>

There was consensus that police struggle to work with people who have communication disability. Many are simply ill equipped for the task, feel uncomfortable trying to communicate with a person who is non-verbal, has language disability or otherwise does not fit the social norm when it comes to communication. Very few police we spoke to knew how and where to find assistance. Others, including SOCIT members, or members who had established relationships with agencies like Communication Rights Australia or Scope Communications Access Centre, were better able to respond; however, overall the barriers for victims of crime with communication related disabilities were immense.

Victoria Police is not alone in this challenge, as many other government agencies and duty holders under the *Equal Opportunity Act 2010* (Vic) fail to make adequate adjustments for this group. However, Victoria Police could show leadership on the issue and support their members to deliver services equitably, by seeking Communications Access accreditation for parts of their organisation that interact with the public.

<sup>786</sup> Key informant interview, Dr Margaret Camilleri (7 August 2013).

<sup>787</sup> Scope, *Communication Access – Introducing the newest access symbol within Australia* (19 August 2011) <<http://www.scopevic.org.au/index.php/site/mediacentre/pressreleases/communicationaccesssymbol>>.

<sup>788</sup> Speech Pathology Australia, Submission No 3 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 12 September 2013, 3. Also see key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Scope (11 November 2013).

## Communications Access accreditation

The Communication Access symbol (below) is the newest access symbol in Australia. In 2009, the Communication Resource Centre led the development of a symbol to represent Communication Access.<sup>789</sup> When people see this symbol, they know that the place or service is communication accessible.



To display the symbol, services must meet specific criteria for communication access. To assess this, people with communication disabilities use a checklist to assess a business or service to determine if it meets the minimum standards to be awarded the Communication Access symbol.

All communication accessible services and businesses are listed in a directory on Scope’s website.<sup>790</sup> These include a number of local councils, the Victorian Electoral Commission reception and enrolment team, community health centres, several disability services, local business and retailers. V/Line is also seeking accreditation following a major consultation exercise and audit process. This indicates that gaining accreditation is possible even in a very large organisation with a dispersed workforce. V/Line have approached this in a staged manner, over two years, including an upcoming pilot in one region. As noted by V/Line:

The achievement of this symbol will be a significant move forward for V/Line. The process has identified gaps in our communications and has already improved information access for all of our customers.

<sup>789</sup> Over 1700 people participated to select the symbol. The process met the Australian Standard AS 2342-1992 for selecting a new symbol. Scope, *Communication Access for All: Introducing the Communication Access Symbol* (2013) 5. <<http://www.scopevic.org.au/index.php/cms/frontend/resource/id/1646/name/Communication%20Access%20for%20All%20pack.pdf>>.

<sup>790</sup> Scope, *Directory of Communication Accessible Places* <<http://www.scopevic.org.au/index.php/site/whatweoffer/communicationresourcecentre/communicationaccess/businesses>>.

The culture of the organisation has shifted throughout the process with a new emphasis on understanding the various needs of our customers. Those who will most benefit are customers with communication disabilities, physical disabilities, difficulties reading, vision impairments and hearing impairments.<sup>791</sup>

Gaining communications accreditation would involve working with Scope (as the accreditation body) to audit existing practices, completing a gap analysis and then making changes at police stations. This can be staged over time and include very simple things such as:

- ensuring members know how to book an Auslan interpreter or communication support worker
- translating key information into Easy English<sup>792</sup>
- having communication books and symbols at police stations so that members can easily find out if the person is there to report a crime
- producing Auslan videos on the Victoria Police website.

These are simple, affordable changes that could easily be made.

A key component of seeking accreditation would be training police to better understand communications disability – this should form part of a comprehensive strategy under the Victoria Police Education Master Plan.

While the Commission recognises that embarking upon accreditation would be a considerable undertaking for Victoria Police, we believe that a staged approach would allow Victoria Police to build capacity over time while staying focused on achieving full accessibility within a realistic period. Further, it would establish a benchmark for other government agencies and departments with a high contact rate with customers, who also need to improve their accessibility.

791 V/Line, *Accessibility Action Plan 2012-15* (2012) 14, 22 <[https://www.vline.com.au/pdf/publications/Accessibility\\_Action\\_Plan.pdf](https://www.vline.com.au/pdf/publications/Accessibility_Action_Plan.pdf)>.

792 Easy English documents are a useful tool in supporting people with a wide range of disabilities, as well as those with poor literacy and people for whom English is not their first language. For example, the Victims Support Agency has produced an Easy English booklet on violent crime. See <<http://www.victimsofcrime.vic.gov.au/utility/for+professionals/easy+english+resources/information+a+bout+violent+crime+easy+english>>. NSW Police provides victims' rights fact sheets in Easy English. See <[http://www.police.nsw.gov.au/community\\_issues/victims\\_of\\_crime/easy\\_english](http://www.police.nsw.gov.au/community_issues/victims_of_crime/easy_english)>.

## Recommendation

That Victoria Police:

- gain and maintain Communications Access accreditation according to the advice of Scope. Using a staged approach, Victoria Police should achieve accreditation across the state by 31 December 2017. In the first instance, Easy English versions of Victoria Police standard forms and written information for victims should be made available. These should also be made available in Auslan video on the Victoria Police website. This work should commence immediately.

## Streamlining access to communications assistance

Availability of communications support was a challenge reported by police, prosecutors, advocates and services. Access to speech pathologists, communications support, advocacy and case management (each of which are distinct services) is limited by resources, ad hoc relationships between individual police and services and poor knowledge of adjustments needed for people with complex communication needs.

Police have the same issues as other services in terms of access to interpreters and getting adequate communication support. Police have to rely on local sources – so, the equipment or the people victims would usually rely on for support. We don't have additional resources to do this work – this is the same across most services, we have no designated resources for access needs.<sup>793</sup>

Unlike language interpreters, there is no centralised booking service for communication support workers. This is a significant gap, as it makes it difficult for police to locate supports, as well as muddying the role of advocates, who end up trying to do both jobs. It also masks unmet demand, meaning appropriate budget allocations are not made to support communications access across the system.

As an advocate we are not communication support workers, so although we have a familiarity with the role, we avoid it. If an advocate is absorbed by helping a client to communicate, the advocate is not in the best position to advocate for them. So we try to keep it separate. If there was a central booking system for communication support workers, it would help us focus on advocacy and allow the communication support workers to fulfil their role as well.<sup>794</sup>

793 Key informant interview, Victoria Police Deputy Commissioner Tim Cartwright (15 October 2013).

794 Key informant interview, Communication Rights Australia (31 July 2013).



Access to communications support is an issue across the justice system. Given the potential volume of work that may come through Victoria Police, the Commission recommends that the Department of Justice and Victoria Police coordinate to develop a centralised booking system for communication support to assist all justice agencies. This could involve utilising existing capacity, or contracting an external agency to undertake booking and supply coordination. This justice-based model can then be adapted to address the gaps in communication support that exist in other systems, including health and human services.

### Recommendation

That the Department of Justice and Victoria Police:

- establish a centralised booking system for Augmentative and Alternative Communication for use by Victoria Police, Office of Public Prosecutions, Victorian Legal Aid, Victorian Courts and tribunals, and the Victims Support Agency and other justice agencies. This model should be developed in a way that ensures it is adaptable to other systems.

## Improving access to Victoria Police services

### Independent Third Persons

Independent Third Persons (ITP) have the potential to support both victims with disabilities and police, however:

- unlike other jurisdictions, the ITP function is not mandated in legislation<sup>795</sup>
- in recent years, dedicated training for police recruits on use of ITPs has been scaled back or withdrawn<sup>796</sup>
- ITPs are not provided for people with disabilities other than cognitive impairments and mental health disability<sup>797</sup>
- ITPs cannot follow up with victims or make necessary referrals, unless they are part of the Making Rights Reality Project.<sup>798</sup>

<sup>795</sup> For example, in the United Kingdom, intermediaries are required under legislation. *Youth Justice and Criminal Evidence Act 1999* (UK).

<sup>796</sup> “To cut the Victoria Police Academy classroom component down, Victoria Police set up 90 designated training units in the regions. These were designed to provide additional training not covered by the academy. Logistically we just couldn’t go to all 90 of these.” Key informant interview, Office of the Public Advocate (26 November 2013). See also Key informant interview, Victoria Legal Aid (19 July 2013).

<sup>797</sup> Key informant interview, Communication Rights Australia (31 July 2013).

<sup>798</sup> The benefits of a referral role for ITPs has been identified by the Office of the Public Advocate. Office of the Public Advocate, *Breaking the cycle*, above n 107.

- For the ITP system to work, police need easy to use tools to assist them. The Office of the Public Advocate (OPA) provides a ‘ready reckoner’ to assist police in:
  - outlining police procedures that relate to people with a cognitive impairment
  - recognising indicators of cognitive impairment
  - effectively communicating with people who have a cognitive impairment
  - contacting agencies that may be of further assistance.<sup>799</sup>

It is not clear how well the ready reckoner is distributed. Updating the ready reckoner and mandating e-learning to remind members to use it would be a cost effective and time-efficient way to make sure Victoria Police Manual policy to call an ITP is put into practice.

OPA has strongly advocated for the need to legislate for the role of ITPs in the criminal justice process.<sup>800</sup> The Commission supports the need for consistency of practice in the use of ITPs in the justice process. Providing a legislative mandate for ITPs would help to achieve that, and would be consistent with other jurisdictions, including the United Kingdom.

### Recommendation

That Victoria Police and the Office of the Public Advocate:

- update the ITP ready reckoner to facilitate and improve the identification of people who have disabilities and uptake of ITPs for victims of crime. All police members should be required to complete a compulsory online learning and testing on use of ITPs by June 2015, and then on an ongoing basis at least every three years.

<sup>799</sup> Office of the Public Advocate, *Responding to a person who may have a cognitive impairment*. Information provided to the Commission by the Office of the Public Advocate, 22 April 2014.

<sup>800</sup> Office of the Public Advocate, Submission No 29 to Parliament of Victoria Law Reform Committee, *Parliamentary Inquiry into Access and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers*, 13 September 2011, 11.

# Chapter 12: Improving access to the courts

## Main findings

- The criminal justice system is not built for accessibility. While some progress has been made, basic adjustments are not always made to adapt court practices and facilities to meet access needs.
- The court process can create additional challenges for victims of crimes with disabilities. Positive reforms to court procedures and rules of evidence should be clarified and strengthened to improve access to justice for this group.
- Given the oral nature of our court system, people with communication disabilities face significant barriers. Courts remain cautious about using Augmentative and Alternative Communication.

## Access to courts

For the relatively few victims of crimes with disabilities that have their case heard in court, additional hurdles remain. In its Disability Action Plan 2012–16, the Department of Justice recognised that:

Access extends well beyond just entry to buildings, the built environment and the obvious visible things we move around, work and play in. It encompasses the processes we use to deliver a justice service. It refers to the provision of information to our staff and to the public. It includes access to information, goods, services and programs offered by the justice system. It also refers to the events we hold and the customers and clients that we serve.<sup>801</sup>

From 1 July 2014 Court Services Victoria commenced operations as a statutory agency. The transition to an independent statutory agency provides a good opportunity to review court processes, systems and environment to implement improvements to accessibility, in a consistent and comprehensive way.

The Commission understands the Department of Justice has conducted an access review of the courts, which identified where improvements need to be made. We urge Court Services Victoria to drive those changes to ensure compliance with their Charter of Human Rights and Responsibilities (the Charter) and *Equal Opportunity Act 2010* (Vic) obligations, including the positive duty to eliminate discrimination as far as possible.<sup>802</sup>

### Recommendation

That Court Services Victoria:

- prioritise disability accessibility and drive implementation consistently across jurisdictions. Priorities include hearing loops and space for mobility aides in court rooms across jurisdictions.

## Improving the law

The likelihood of being required to provide testimony in court, including cross-examination, may influence whether or not someone reports a crime. It may also influence police attitudes regarding prospects for a successful prosecution. As a result, it is important to consider how current laws and practices impact on people with disabilities.

<sup>801</sup> State of Victoria, Department of Justice, *Disability Action Plan 2012–16* (2012) 17 < <http://www.justice.vic.gov.au/utility/about+the+department+of+justice/disability+action+plan+2012-16>>.

<sup>802</sup> *Equal Opportunity Act 2010* (Vic) s 15.

In recent years, laws governing criminal procedure have been amended to improve how our justice system responds to sexual assault. Children and people with cognitive impairment are often complainants in sexual offence matters due to their increased risk of being targeted, so the provisions were directed to a specific, relatively large subgroup of complainants in these matters.

For example, special hearings are now available to children and victim survivors with cognitive impairment in sexual assault cases.<sup>803</sup> In addition, under section 366 of the *Criminal Procedure Act 2009* (Vic), evidence-in-chief may be provided by a VARE (Video and Audio Recorded Evidence) for people with cognitive impairment in sexual assault and assault matters.<sup>804</sup>

These are very welcome improvements. However, this and previous research indicates that more work needs to be done.

## Minimising trauma and maximising participation

### Option one – extend special hearings to other serious offences

Currently, special hearings are only available in sexual assault matters. Sexual offences were a focus of the reforms, not just because of the specific trauma a victim survivor may experience giving evidence, but also because of how difficult it can be to secure a conviction in a sexual offence case and the number of re-trials ordered due to successful appeals.

In 2013 the Victorian Parliament Law Reform Committee for the Inquiry into Access to and Interaction with the Justice System by People with an Intellectual Disability and their Families and Carers recommended that the Victorian Government explore whether alternative arrangements and special provisions for giving evidence should be expanded beyond sexual offences.<sup>805</sup>

Ideally, special hearings would also apply to indictable offences involving an assault, injury or threat of injury. This would make them consistent with the VARE provisions, while recognising that people with disabilities experience a range of serious crimes against the person, not just sexual offences.

803 *Criminal Procedure Act 2009* (Vic) s 369.

804 *Criminal Procedure Act 2009* (Vic) s 366. In the Act, cognitive impairment includes “mental illness, intellectual disability, dementia or brain injury”. *Criminal Procedure Act 2009* (Vic) s 3.

805 Parliament of Victoria, Law Reform Committee, above n 78, 293.

### Option two – extend special hearings but remove the time limit for non-sexual offences

The Commission is mindful that extending special hearings would engage Charter rights in criminal proceedings. However, special hearings have been operating for several years, and do not appear to have unreasonably restricted the rights of the accused.<sup>806</sup>

There is an important point of complexity that requires further consideration. Currently, special hearings must be held within three months after the day upon which the accused is committed to trial.<sup>807</sup> This reflects the particular needs of the cohort of people for whom the provision applies (people with cognitive impairments and children) and the nature of the crime (sexual offences).

The need for the trial to be held promptly, and for the complainant to only give evidence once, is directly linked to securing the best evidence from the complainant while their memory is fresh, and securing a recording of the evidence for a re-trial if necessary. The recording also prevents re-traumatisation in any re-trial.

However, having this time limit creates flow-on effects to how cases are scheduled across the court system, and also requires extra time from judges and counsel as they need to be present for both the recording and viewing of the tape.

One option would be to keep the existing time limit for sexual offences but remove it for the additional offences the Commission is advocating should be included in special hearings.

### More work is needed to scope options

Assaults may be very serious and people with cognitive impairment may be vulnerable to these crimes. However, to expand the special hearings provisions to assaults and other injuries would require legislative amendments which, in the current environment of an overstretched court system, may not be achievable in the short term.

It must also be acknowledged that, even allowing for a variation in the time limit, special hearings are resource intensive and can divert court resources away from other cases. This can put significant pressure on the timely hearing of other cases.

806 Including rights in criminal proceedings protected by section 25 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). Section 7(2) of the Charter allows limitations on human rights when they are reasonable and can be demonstrably justified in a free and democratic society.

807 *Criminal Procedure Act 2009* (Vic) s 371. Sub-section 2 enables the court to extend the time limit if, because of exceptional circumstances, it is in the interests of justice to do so. Sub-section 4 allows for more than one extension of the time limit.

Nevertheless, the Commission considers that such a reform is worthy of active consideration by government. We would encourage the Department of Justice to undertake exploratory work to develop workable options for reform. In order to consider the full implications of reform in this area, consultation with stakeholders, including the judiciary and Criminal Bar would be required.

## Reducing trauma for people with communications disabilities giving evidence in sexual offence cases

As described above, the original special hearing reforms were made in recognition that “a significant number of sexual offences are committed against women, children and other vulnerable persons including persons with a cognitive impairment”.<sup>808</sup> People with complex communication needs are also vulnerable to these crimes.

Currently, if a person with communications disability also has a cognitive impairment, they will have access to a special hearing. However not all communication disability is associated with cognitive impairment.<sup>809</sup>

For special hearings, an important rationale for recording the evidence of children and people with a cognitive impairment as opposed to others is that their memories fade more quickly than the average adult. If a person is not a child or does not have a cognitive impairment, the need for evidence to be given quickly is lessened.

Nevertheless, save for memory recall, a person who is non-verbal or who otherwise has a communication disability still faces significant challenges giving evidence in a sexual offence trial, and the risks of re-trauma are equally serious.<sup>810</sup> In recognition of this, the Commission encourages the Victorian Government to give consideration to extending special hearings to people with communication disabilities.

This is a complex issue and would require a thorough review of the policy implications of such a reform as well as extensive consultation, including determining an appropriate definition of communication disability. Potentially, this could form part of options scoping by the Department of Justice described above.

Changing legislation may take some time, however, we consider the equality dividend from such a reform to be substantial, making such an amendment worthy of active consideration by government, at least in the medium term.

### Recommendation

Examine options for amending the *Criminal Procedure Act 2009* (Vic) to:

- provide for special hearings for indictable offences involving an assault, injury or threat of injury
- extend special hearings to people with communication disabilities
- consult with relevant stakeholders including judicial members and the legal profession on options for reform.

## Clarifying rules of evidence to ensure equity for people with communications disabilities

The rules of evidence regulate what witnesses can say and what physical evidence may be introduced, in line with two broad principles:

- to provide the court with the best evidence
- to establish rules of fairness.<sup>811</sup>

As noted by the Australian Law Reform Commission, “In general, rules of evidence attempt to ensure that the trial process is fair for the parties. However, these same rules often prevent witnesses from fully explaining their evidence”.<sup>812</sup>

808 *Criminal Procedure Act 2009* (Vic) s 338.

809 While communication disability may result from intellectual disability, for 40 per cent of people with severe communication disabilities, the underlying disability is not known. Speech Pathology Australia, Submission No 3 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 12 September 2013, 3.

810 Consequently, the need for the trial to come on quickly, and for the complainant to only give evidence once, is directly linked to securing the best evidence from the complainant while their memory is fresh, and securing a recording of the evidence for a re-trial if need be.

811 State Library of New South Wales, *Information about the law in NSW – Evidence* (29 March 2012) <[http://www.legalanswers.sl.nsw.gov.au/guides/defend\\_yourself/evidence.html](http://www.legalanswers.sl.nsw.gov.au/guides/defend_yourself/evidence.html)>.

812 Australian Law Reform Commission, *Seen and heard: priority for children in the legal process*, Report No 84 (1997) 14.57 <<http://www.alrc.gov.au/publications/14-childrens-evidence/rules-evidence>>.

The biggest thing is that it should be OK to collect evidence in a way that reflects the disability – if a disability functions this way we should collect evidence in a way that suits the disability. Our legal system is structured in the opposite direction. Often we are so worried about presenting incorrect evidence that the victim gets lost in the process.<sup>813</sup>

### Definition of vulnerable witness

Currently, the *Evidence Act 2008 (Vic)* makes provision for vulnerable witnesses so that they are protected from improper questions. Vulnerable witnesses are defined to include people with a cognitive impairment or an intellectual disability or any mental or physical disability. Prosecutors have a role to play in ensuring that the court is made aware of disability, and the way that disability may affect someone's evidence. However, while the Act requires the court to have regard to any relevant condition or characteristic, communication disability is not specified.<sup>814</sup> This means that the court may not always apply the vulnerable witness provisions consistently for people with communications disability, even though given the oral nature of our court system, these people face significant barriers.

This can lead to inequity. One option would be to clarify that people with communication disability are included by specifying this in the Act or by including this as an example of a vulnerable witness. This would not change the current law but would help to improve the status of communication disability in courts.<sup>815</sup>

However, amending the Evidence Act would take time because, being a uniform Act across Australia, amending the wording of the Victorian legislation would require consultation with other Australian jurisdictions.

Therefore, the Commission's preferred option is that the *Uniform Evidence Manual* clarifies this point. Produced by the Judicial College of Victoria, this bench book provides a 'first port of call guide' to the application of the Act.<sup>816</sup> It is therefore a very important educative tool.

Amending the manual to clarify this point would also help to encourage the courts to become more accustomed to accommodating people with complex communications needs. That way, adaptations made to assist victims with disability can be equitably achieved across different types of disabilities.

### Clarifying 'appropriate means' of communication

Section 31 of the Evidence Act allows a witness who cannot speak adequately to give evidence by any 'appropriate means'. However, it does not provide examples or guidance of what these are. As a result, courts remain cautious about using Augmentative and Alternative Communication.

One option would be to specify in the Act that 'appropriate means' includes Augmentative and Alternative Communication. The benefit of this approach would be that it would provide formal acceptance of this communication method. The risk is that if it is too tightly defined, as methods change, positive developments in non-spoken forms of communication may be excluded.

Augmentative and Alternative Communication can already be used in Victorian Courts within the parameters of the Evidence Act. The question is the level of guidance available to the court to apply this provision. To assist this, the Commission's preferred option is for the *Uniform Evidence Manual* to clarify that Augmentative and Alternative Communication can be utilised by the courts under section 31 of the Act.

### Developing educative tools on equality considerations by the court

Amending existing benchbooks to clarify key legislative provisions will assist in promoting equity. However, as reported in Chapter 8, further attitudinal and practice changes are needed if people with disabilities are to truly enjoy equality before the law.

Other jurisdictions including the United Kingdom, Canada and New South Wales have approached this by developing detailed guidance on equality as part of a more comprehensive suite of educative tools for the courts. For example, the Judicial Commission of NSW has published an *Equality before the law bench book*.<sup>817</sup>

813 Focus group 9, police (November 2013).

814 *Evidence Act 2008 (Vic)* s 41(4).

815 This could be done by including communication disability as an example in the Act.

816 Judicial College of Victoria, *Uniform Evidence Manual* (12 March 2014) <<http://www.judicialcollege.vic.edu.au/publications/uniform-evidence-resources>>.

817 Judicial Commission of New South Wales, *Equality before the Law Bench Book* (first published 2006, revised ed, 2013) <<http://www.judcom.nsw.gov.au/publications/benchbks/equality>>.

The advantages of this approach are:

- the guidance can cover all attribute groups and all forms of disability
- it can be updated to incorporate improvements in knowledge and technology
- developing the guidance provides an opportunity to engage with stakeholders, including people with disabilities.

Further, drawing on existing resources of this kind means developing similar products for the specifics of the Victorian jurisdiction, including the operation of the Charter, becomes an easier and more efficient task while avoiding duplication.

However, the Judicial College of Victoria operates with finite resources and must balance competing demands. The Commission also notes the practical considerations required, including the need for ongoing maintenance of resources, and the need for cross-agency collaboration on areas of expertise.

To this end, the Commission and the Judicial College have an opportunity to:

- work collaboratively to leverage the interest of judicial champions on the issues of diversity, equality and accessibility,
- work in a consultative way with parts of the community directly affected by issues of accessibility and discrimination
- develop specialised and authoritative educative resources for judges.

The Commission would welcome the opportunity to partner with the Judicial College to develop these.

## Recommendations

That the Judicial College of Victoria:

- amend the *Uniform Evidence Manual* to clarify that people with communications disabilities are included in the definition of a vulnerable witness contained in section 41(4) of the *Evidence Act 2008* (Vic) and that Augmentative and Alternative Communication be used by the courts under section 31(2) the Act.
- collaborate with the Commission to develop educative resources that specifically address making adjustments for people with disabilities. Over time, this should form part of a broader suite of resources to assist the courts to meet the diverse needs of people across all attribute groups.

# Chapter 13: A comprehensive approach to safeguarding

## Main findings

- Failures in other systems make policing harder. In particular, lack of communication support and poor quality behaviour support plans may create environments where violence occurs, remains unreported, and becomes normalised.
- In some cases, people with disabilities can also be subjected to unnecessary use of restrictive practices, if communication and behaviour supports have not been put in place by staff.<sup>818</sup> This is unlawful under the Charter of Human Rights and Responsibilities (the Charter).<sup>819</sup>
- Building workforce capability in human services is necessary to achieve the aim of safeguarding rights, and for crimes to be treated as crimes.
- In environments where people may be socially isolated and in the absence of consequences, perpetrators may believe they can act with impunity or they may move from service to service when no criminal conviction has been recorded against them.<sup>820</sup>

There is a clear need to ensure that the human rights of people with disabilities take priority when delivering services across mental health, health Supported Residential Services (SRS) and disability settings. A comprehensive approach to safeguarding requires a focus on preventing discrimination and crime before they occur, empowering people to know, pursue and achieve rights, and to take proactive steps to ensure quality

818 Key informant interview, Senior Practitioner – Disability (22 November 2013); key informant interview, Dr Jeffrey Chan (14 November 2013).

819 *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 10.

820 For example, key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Dr Margaret Camilleri (7 August 2013); Camilleri, *[Dis]abled justice*, above n 5, 165; Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); key informant interview, United Voices for People with Disabilities, 29 August 2013; key informant interview, Dr Jeffrey Chan (14 November 2013).

safeguarding and monitoring are in place, and sit within a human rights framework.

While this is a priority for government and services alike, and there are many policies and procedures in place that achieve this – the challenge remains in ensuring this happens at an individual service level in a highly devolved and complex service system.

## Risk management versus human rights

Some crimes against the person experienced by people with disabilities may be accepted by placing occupational health and safety issues, industrial relations concerns or risk management above the human rights of the person with disability.

As Williams, Chesterman and Laufer point out:

[A] large amount of evidence shows that people with a range of disabilities are admitted to care facilities and face restrictions upon their liberty once there, without any lawful basis. While these practices are largely undertaken for the person's own benefit, the line between benevolence and abuse is thin in the context of vulnerable individuals who often cannot communicate their daily needs or how they wish to live. We know, too, that deprivations on liberty are often not motivated by benevolence but the desire of diverse care providers, including "for profit" services, to maintain a minimal staff and ease the burden of care, or simply to control a person's behaviour.<sup>821</sup>

821 Michael Williams, John Chesterman and Richard Laufer, 'Consent versus scrutiny: Restricting liberties in post-Bournewood Victoria' (2014) 21 *Journal of Law and Medicine* 641, 660.

## Quality of behaviour support

Lack of communication assessments and supports, and poor quality Behaviour Support Plans (BSPs) may create environments where violence occurs, remains unreported, and becomes normalised. As noted by Dr Jeffrey Chan:

A behaviour of concern can be in response to an oppressive environment. It is not a behaviour of concern, it is responding to a maladaptive environment ... You need to get the Behaviour Support Plan right. It has far-reaching effects for people's human rights.<sup>822</sup>

In other circumstances, it may be that services and service workers are not properly equipped to meet a person's needs, which may lead the person to lash out in protest. The staff's response to this behaviour might be criminal in some circumstances, for example if a restrictive intervention is used when the behaviour could have been prevented through effective behaviour support. This was described to as "double victimisation".<sup>823</sup>

Associate Professor Keith McVilly told us

All community residential services funded by the Department of Human Services are required to lodge client BSPs with the Senior Practitioner. The majority of audited plans are barely getting to the minimum level of quality to reasonably expect them to be effective, and provide staff with sufficient information to provide safe and supportive services – so there is a big problem with the quality of BSPs.<sup>824</sup>

The need to improve the quality of BSPs has been a significant focus of recent work by the Senior Practitioner – Disability. The Senior Practitioner – Disability explained that one in three BSPs lodged with his office are evaluated using the Quality Evaluation tool.<sup>825</sup> He reported that through this process, the quality overall is improving, and there is a clear link between high quality BSPs and reductions in restrictive practice.<sup>826</sup>

The Senior Practitioner – Disability also conducts random audits to check whether any unauthorised restrictive interventions are being made. They informed the Commission that all of the audited services had shown non-compliance at some point.<sup>827</sup>

I know families who haven't had a behaviour support plan for six years. There's no penalty if one isn't developed.<sup>828</sup>

Concerns about these issues have led to parents and carers organising themselves to speak out:

We really joined forces because we were dissatisfied with the system. Unfortunately, a lot of our experiences are of our adult children living in care and having experiences of sexual abuse, physical abuse and neglect. We also see services not complying with processes like developing support plans.<sup>829</sup>

Chesterman et al suggest that the informal or unlawful use of restrictive interventions in disability services has been somewhat improved by the "principles regarding the minimal use of restrictions, the monitoring of those practices, and the normative stance of the Senior Practitioner that the adoption of different standards of care can eventually see such practices eliminated".<sup>830</sup> However, they also identify that there is further work to do, and that gaps remain in oversight and monitoring in other areas where people with disabilities reside, including SRSs and in aged care.<sup>831</sup>

<sup>822</sup> Key informant interview, Dr Jeffrey Chan (14 November 2013).

<sup>823</sup> Key informant interview, Associate Professor Keith McVilly (18 July 2013).

<sup>824</sup> The audits are done using the behaviour support plan quality evaluation tool. This tool is a checklist of 12 quality items recognised as being effective. Key informant interview, Associate Professor Keith McVilly (18 July 2013).

<sup>825</sup> Part of the Office of Professional Practice and the Senior Practitioner – Disability, Department of Human Services.

<sup>826</sup> If there is a concern, a more detailed assessment and review follows. Key informant interview, Senior Practitioner – Disability (22 November 2013).

<sup>827</sup> Key informant interview, Senior Practitioner – Disability (22 November 2013).

<sup>828</sup> Key informant interview, United Voices for People with Disabilities, 29 August 2013.

<sup>829</sup> Key informant interview, United Voices for People with Disabilities, 29 August 2013.

<sup>830</sup> Williams, Chesterman and Laufer, above n 821, 660.

<sup>831</sup> On 28 April the Minister for Mental Health announced additional funding to complement changes to the Mental Health Act in Victoria. The funding includes a pilot of a model of care to reduce the use of restrictive interventions in mental health facilities, which will be trialled and evaluated at seven Victorian metropolitan and regional health; sensory modulation equipment at all Victorian mental health services; and funding for mental health services for the development and implementation of local action plans to reduce the use of restrictive practices. See Premier of Victoria, Denis Naphine, '\$2 million funding package to drive down seclusion and restraint at mental health services' (Media Release, 28 April 2014) <<http://www.premier.vic.gov.au/media-centre/media-releases/9723-2-million-funding-package-to-drive-down-seclusion-and-restraint-at-mental-health-services.html?highlight=YToxOntpOjA7czoxMDoid29vbGRyaWRnZSI7fQ>>.



## Lack of communication assessment may lead to use of restrictive practices

Currently, out of around 5,000 people living in disability accommodation services, 1,850 are reported on the Department of Human Services (DHS) system (RIDS) as being subject to restrictive interventions. Restrictive interventions include physical, mechanical, chemical restraint and seclusion. The Senior Practitioner – Disability advised that a significant number of people registered on RIDS have communication difficulties.<sup>832</sup>

I've had a 53 year old man who has never had a communication assessment. The Victorian Government funded 100 or so people who had physical restraints in place. It made a huge difference – those people no longer have a physical restraint as part of their plan, because they now have ways to communicate.<sup>833</sup>

Failure to make reasonable adjustments for people with disabilities in service delivery, including steps to facilitate communication, is a breach of the *Equal Opportunity Act 2010* (Vic).<sup>834</sup> The unnecessary use of restrictive interventions is a breach of the Charter. While reasonable limitations on Charter rights are allowed, these are unlikely to meet the test in section 7(2) of the Charter when the intervention is not necessary or the least rights restrictive option available once communication supports are in place.

DHS informed the Commission that:

99.2 per cent of DHS residents have complex communication strategies (for all residents who require them). In addition 94.4 per cent of residents subject to restraint and/or seclusion have current behaviour support plans in place. The department acknowledges there is further work to be undertaken to improve the quality of implementation of communication strategies and overall quality of behaviour support plans.<sup>835</sup>

However, some key informants told us that gaps remain.

You come across situations where there are five people in a house, none of whom can communicate, which is not okay. But it's assumed to be okay because they all can't express themselves.<sup>836</sup>

If we invested more in communication assessments and closer monitoring and implementation of communication plans and supports in services, this may help to prevent incidents of violence and reduce the use of unnecessary restrictive interventions. As well as ensuring the rights of people with disabilities are upheld, it would also assist police to interact with victims with communication needs when a crime is reported.

### Recommendation

- Consistent with the Charter of Human Rights and Responsibilities, and recognising that a lack of communication supports may lead to the unnecessary use of restrictive interventions, the Department of Human Services and Department of Health should ensure all service users who require a communication assessment and plan have one, and that this is implemented and monitored. To achieve this, the Victorian Government should ensure that this is resourced and priority should be given in the first instance to people subject to restrictive interventions.

<sup>832</sup> Key informant interview, Senior Practitioner (22 November 2013).

<sup>833</sup> Key informant interview, Senior Practitioner (22 November 2013).

<sup>834</sup> *Equal Opportunity Act 2010* (Vic) s 20.

<sup>835</sup> Information provided to the Commission by the Department of Human Services, 3 June 2014.

<sup>836</sup> Key informant interview, Dr Patsie Frawley (5 July 2013).

## Building capacity in safeguarding

The development of effective safeguards is a complex undertaking involving all levels of an organisation.<sup>837</sup>

A recent study found that among disability service staff surveyed, the following underpins effective safeguarding practice:

- building an open, ethical, and accountable organisational culture in which human rights are taken seriously and in which concerns can be discussed and in which confidentiality is maintained
- building the capacity of clients, carers, staff and managers to identify and respond to situations of abuse and neglect and to be aware of responsibilities
- putting in place the necessary supports and structures to facilitate responses to abuse and neglect
- facilitating clients' social connectedness and implementing internal and external checks and balances
- making available the necessary resources to implement good safeguarding practices
- maintaining high recruitment standards.<sup>838</sup>

The concepts above “reveal the complexity and the holistic approach that is required when creating an organisational context comprising effective safeguarding practices”.<sup>839</sup>

### Adequate recruitment and supervision in services

A key step in preventing crime in services is to ensure that staff are properly recruited, and that they are equipped and supported to undertake work in a way that is consistent with human rights.

Key informants told us of the pressure services face in employing and retaining appropriately trained and competent staff:

[T]here are undertrained, under-resourced support staff, and they're part of system where there are other problems, including a high rate of casuals, and high staff turnover.<sup>840</sup>

Key informants also told us about inconsistent practice and quality in the process of recruiting workers:

Across the disability sector, we don't recruit well.<sup>841</sup>

There was acknowledgement that good recruitment does happen and that it is best achieved in recruitment processes where services:

[E]mphasise the integrity of the person ... it is about knowledge and values, not competency – a mechanic requires competency.<sup>842</sup>

In April 2014 National Disability Services released practice advice on safer recruitment and screening that emphasises, among a number of things, the importance of consumer involvement in recruitment, value-based recruitment and the limitations of police checks.<sup>843</sup>

While adequate recruitment, including comprehensive induction and probation are important, it became clear through the research that pressures in the system can result in inadequate ongoing supervision of staff, and this has the potential to result in poor practice.

Proper supervision is an important monitoring tool for services. The importance of debriefing, supervision and reflective practice was also raised as a priority for preventing practices that can escalate without the benefits of proper supports and intervention.

### Taking action

Improved practice requires making sure the workforce is skilled and supported, that a culture of integrity and human rights is fostered and that staff and services have the capacity and confidence to act when, and if, something goes wrong. “Management needs to foster a culture and procedural environment where people are expected, and feel safe to ‘share what’s on their mind’”.<sup>844</sup>

837 Ottmann et al, above n 212, 6.

838 Ibid 22.

839 Ibid 22–3.

840 Key informant interview, Dr Patsie Frawley (5 July 2013).

841 Key informant interview, Dr Jeffrey Chan (4 November 2013).

842 Key informant interview, Dr Jeffrey Chan (4 November 2013).

843 National Disability Services, *Zero Tolerance practice advice 1: Safer Recruitment and Screening*, (2014) 1–3.

844 Ottmann et al, above n 212, 19.

The introduction of the *Interagency guideline for addressing violence, neglect and abuse* (IGUANA guideline) is an important step in recognising abuse and reporting crime.<sup>845</sup> However, it is only one part of the picture. Key informants consistently reported that services need dedicated training on reporting crime and police processes, and support to do so. There can be confusion from services about whether an incident has to meet the criminal threshold of assault in determining whether a matter should be reported to police, even where incident reporting instructions require this.<sup>846</sup>

Staff also need to know how quickly they need to report, and need to understand what will happen when they do report. Again, while some training is happening, more is needed.

Building workforce capability must focus on treating crimes as crimes, and ensuring that services act when reports of abuse or violence are reported or witnessed regardless of whether police pursue an investigation, and act to prioritise the safety of the victim.

The Disability Services Commissioner (DSC) cites research showing the importance of specialised responses to addressing clients' experience of trauma following instances of abuse. They note the need "for both training and specific practice guidelines for responding to and supporting clients following alleged assaults and trauma".<sup>847</sup>

The DSC has foreshadowed producing a resource for services to provide guidance on the key factors needing to be considered as part of an investigation into an incident involving alleged staff-to-client assaults or unexplained injuries, as "there is currently a big variation in what service investigations look like and how comprehensive they are".<sup>848</sup>

In no way does this suggest that internal investigation should be undertaken instead of reporting to police. Rather, internal investigations, underpinned by clear guidance on what is required by an investigation, should be undertaken when a client report is made, regardless of police decision-making on the incident.

845 Office of the Public Advocate, *IGUANA: Background and discussion paper*, above n 692, 9. See key informant interview, Communication Rights Australia (31 July 2013).

846 For example, Disability Advocacy and Information Service Inc., Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13. However, the Disability Services Commissioner told us that in the majority of cases of staff-to-client assault the allegation is reported to police. Key informant interview, Disability Services Commissioner (23 October 2013).

847 Coulson Barr, above n 7, 23.

848 Key informant interview, Disability Services Commissioner (23 October 2013).

Developing a Victoria Police Code of Practice for responding to victims and witnesses with disabilities will also assist in clarifying police processes, referral pathways and relationships between services and Victoria Police. This should be supplemented by, and aligned with, protocols between Victoria Police and DHS and Department of Health (DH) and in associated service-level guidelines. This belt and brace approach to policy and practice will reinforce and support workforce development investment.

## Peer-led education and advocacy

Perhaps even more important is ensuring people with disabilities have the things they need to engage safely and with dignity in our justice system. Consistent with the Charter and the *Convention on the Rights of Persons with Disabilities*, the autonomy and capacity of those with disability must be recognised and supported. This includes investing in self-advocacy and peer led education.

### Disability advocacy

Under the National Disability Agreement funding for disability advocacy in Victoria is a joint responsibility of the state and federal governments.

DHS informed the Commission that through the Victorian Disability Advocacy Program, DHS provides funding to 22 community organisations and two statewide resource units to provide advocacy support to people with a disability, their families and carers.

DHS provides annual recurrent funding to the Self Advocacy Resource Unit (SARU) which has overseen an increase in the number of Victorian self advocacy groups from 13 in 2009 to 27 in 2014.

The SARU supports self advocacy groups for people with an intellectual disability, acquired brain injury and complex communication needs. These include Reinforce, Brain Injury Matters, New Horizons and Diversity in Disability, which receive recurrent annual funding from DHS.

Through the National Disability Advocacy Program, the Australian Government funds 17 community organisations to provide advocacy. This includes funding for legal advocacy which is not funded through the Victorian program.

One successful example that recognises and fosters recognition of the expertise of people with disabilities is the gender and disability professional development package, delivered by Women with Disabilities Victoria, and funded as part of the Victoria's Action Plan to Address Violence against Women and Children. The training, delivered to disability service workers, is co-facilitated by women with disability and includes a train-the-trainer component for ongoing delivery by women with disabilities.<sup>849</sup>

We were informed of a number of other peer-led training and advocacy programs that aim to equip people with disabilities to identify and report crime and to drive policy and practice change. These included:

- *Living Safer Sexual lives: Respectful Relationships*: a program developed by Dr Patsie Frawley, La Trobe University. It is a peer-led respectful relationships program run by trained peer educators who are supported by locally based co-facilitators from community organisations. A cross-sector network of community organisations, including peer educators, manage the programs locally.<sup>850</sup>
- *My Rights training (VALID)*: covers rights and responsibilities of people with disabilities, as users of disability support services.
- *Yooralla Life Skills Program*: aims to educate people who use alternative forms of communication, about how to make complaints, identify abuse and how to report these crimes.
- *Victoria Legal Aid community legal education for self-advocacy groups*: includes information on identifying legal problems, what to do, how to recognise a crime, how to seek help, and when to speak up.<sup>851</sup>

In addition, there are consumer advisory groups, such as those at the Thomas Embling Hospital, which includes a Consumer Leadership and Engagement Program, a Consumer Advisory group, a Patient Consulting Group and a network of Consumer Consultants.<sup>852</sup>

849 See Women with Disabilities Victoria, *Latest News, Media & Events* (2013) <[http://www.wdv.org.au/news\\_events.htm](http://www.wdv.org.au/news_events.htm)>.

850 Key informant interview, Dr Patsie Frawley (5 July 2013).

851 Key informants noted that being proactive about delivering legal rights sessions with clients in closed environment would be beneficial. Key informant interview, Victoria Legal Aid (19 July 2013); key informant interview, Professor James Ogloff (30 July 2013).

852 Key informant interview, Professor James Ogloff (30 July 2013).

## Recommendation

- In order to improve consistency of response when a crime against a person with disability occurs in a service setting, and to reflect the standards in the Victims of Crime Operating Procedures and the recommended Code of Practice, local arrangements such as Standard Operating Procedures should be enhanced to provide for stronger, minimum standards around response times, communication on progress and status of matters. These should be reflected in associated protocols with the Department of Human Services and Department of Health and in practice directions to service staff.
- Building on existing efforts, and as part of a comprehensive approach to safeguarding, the Department of Human Services and Department of Health should:
  - issue comprehensive practice guidelines on when and how to report to police, how to effectively and proactively engage with police, navigating the criminal justice system, services and referral pathways, empowering victims to make choices about the process, appeal and review options, and minimum standards for conducting service investigations
  - deliver training for departmental and funded services staff on preventing, recognising, responding to and reporting violence, abuse and family violence, including focused efforts to support management to strengthen supervision and recruitment processes
  - promote prevention, rights awareness and improved response by continuing to support peer-led education, advocacy and self-advocacy by people with disabilities.

## Preventing further crime

Although services are required to report crimes to police, we heard of occasions when this had not occurred, or if it did occur, prosecutions did not proceed. In the absence of consequences, perpetrators may believe they can act with impunity. Or they may move from service to service as no criminal conviction is recorded against them.<sup>853</sup>

853 For example, key informant interview, Communication Rights Australia (31 July 2013); key informant interview, Dr Margaret Camilleri (7 August 2013); Camilleri, *[Dis]abled justice*, above n 5, 165; key informant interview, Villamanta Disability Rights Legal Service (20 August 2013); key informant interview, United Voices for People with Disabilities, 29 August 2013; key informant interview, Dr Jeffrey Chan (14 November 2013).

We had a house supervisor, an alleged abuser, who reportedly said to their victim while he was abusing him, "Don't worry, I do this to another resident and he likes it." None of the residents of the house could speak, the other residents had no communication, so if this is true it was a sign that broader abuse was going on. Most of the time, house staff don't support communication methods. It means group homes are ripe for predators. Offenders feel the individuals can't report or that if it's found out it's dealt with in-house and not referred to police.<sup>854</sup>

Strengthening workforce capability through guidance and support, through improvement to recruitment and ongoing supervision in service and through monitoring, will reduce the risk of perpetrators being employed in services in the first place. However, the significant risk of perpetrators moving from service to service requires focused effort.

### Registration of workers and volunteers

If we are serious about protecting the rights of people with disabilities, we need to make sure staff can't just move around services.<sup>855</sup>

One option to reduce the risk of perpetrators moving between services is to introduce a registration scheme for people who deliver services or have contact with people with disabilities in service settings.

Currently in Victoria, those working (including board members, volunteers and students) who have actual or potential unsupervised contact with service users in disability, mental health and SRSs are required to complete a police record check (sometimes called a national criminal history check) prior to commencing duties.<sup>856</sup> Checks must also be made if a person is transferring to duties where they will have contact.<sup>857</sup>

These police checks provide records of criminal convictions, findings of guilt and pending court proceedings. These are supplemented by the usual reference checks that employers make when considering employing someone.

---

854 Key informant interview, Communication Rights Australia (31 July 2013).

855 Key informant interview, Dr Jeffrey Chan (14 November 2013).

856 This includes registered disability services under the *Disability Act 2006* (Vic) and *Home and Community Care Services*. See also *Supported Residential Services (Private Proprietor's Act) 2010* (Vic) s 66.

857 Other employees not involved in direct or patient contact may be required to undergo a police record check where the manager certifies that the job requires consideration of any police record check before approving employment.

A separate scheme operates for those working with children, including children with disabilities.<sup>858</sup> The working with children check, administered by the Department of Justice, does not necessarily require a criminal charge to exclude the person from employment as it includes consideration of disciplinary proceedings by professional bodies, as well as criminal charges and investigative information. Employees or volunteers issued with a Negative Notice under this scheme must not undertake child-related work.<sup>859</sup>

Further, a determination by the Suitability Panel that, on the balance of probabilities, sexual or physical abuse of a child has occurred and the person presents an unacceptable risk to children can result in a person's working with children check being cancelled (without a criminal charge).<sup>860</sup>

As well as government departments, all organisations funded by the DHS or DH to provide services to specified clients and patient categories are required to comply with these policies.<sup>861</sup>

### Should disability and mental health workers be registered in Victoria?

While criminal and referee check requirements are important tools that services use now to screen applicants they may not reveal instances of alleged abuse which have not resulted in criminal charges.

As noted by the DSC, currently the Australian system for staff in disability services provides:

[N]o independent mechanism to determine whether abuse has occurred and the suitability of staff to continue to work with disability clients, such as exists for out-of-home carers of children. This is a clear gap in the existing regulatory framework for the prevention of abuse in disability services.<sup>862</sup>

There are a number of options for establishing a registration scheme in Victoria to minimise the risk of perpetrators moving from service to service. In establishing any scheme it will be important to avoid diverting resources away from provision of services. Further, registration should form part of a broader safeguarding effort to minimise the risk of abuse and to respond appropriately when abuse does occur.

---

858 *Working with Children Act 2005* (Vic).

859 As defined by the *Working With Children Act 2005* (Vic).

860 *Children, Youth and Families Act 2005* (Vic) ss 101, 106.

861 State of Victoria, Department of Human Services, *Overview of Department of Human Services employment-related safety check requirements for funded organisations* (March 2014) <[http://www.dhs.vic.gov.au/\\_\\_data/assets/word\\_doc/0009/864945/Employment-related-safety-check-requirements-for-funded-organisations\\_032014.doc](http://www.dhs.vic.gov.au/__data/assets/word_doc/0009/864945/Employment-related-safety-check-requirements-for-funded-organisations_032014.doc)>.

862 Coulson Barr, above n 7, 22.

### Option one – All staff and volunteers who work with adults with disabilities require registration

Legislation in the United Kingdom provides for mandatory care standards of staff and maintaining “a list of individuals who are considered unsuitable to work with vulnerable adults”.<sup>863</sup> Registration is also compulsory in some other Australian jurisdictions. However, some schemes are more developed than others. For example, the Tasmanian scheme only commenced in 2013 and the Australian Capital Territory (ACT) scheme is currently being phased in.

Commonly, these schemes require a check of a person’s criminal history and other relevant factors – with either a positive, negative or conditional registration being determined. Typically, registration needs to be renewed every three years and any changes in circumstances, such as being charged with an offence, must be notified to the registration body.

The Tasmanian scheme allows background checking on criminal history, non-conviction information, relevant offences and other information, and considers risk, whether by reason of neglect, abuse or other conduct.<sup>864</sup>

In Queensland, the *Disability Services Act 2006* (Qld) requires all staff and volunteers of services funded by the Department of Communities, Child Safety and Disability Services to undergo criminal history screening every three years, including “related information” such as information from the police relating to a conviction, charge or investigative information.<sup>865</sup>

In the ACT, the *Working with Vulnerable People (Background Checking) Act 2011* (ACT) mandates a risk assessment drawing on criminal history, non-conviction information and “any other information” about the person,<sup>866</sup> including anything that “on reasonable grounds is or may be relevant in deciding whether, in engaging in the activity the applicant poses a risk of harm to a vulnerable person”.<sup>867</sup> This includes a professional disciplinary proceeding against the person.<sup>868</sup>

In jurisdictions where such schemes operate, if a negative or conditional registration is contemplated the person has the right to an internal review of that decision, as well as a right of external appeal through the courts (or relevant administrative review tribunal). Following the decision, the person is then issued with a registration card with a unique identifier which proves they have permission to work or volunteer in services.

The advantages of a full registration scheme are:

- it is comprehensive. Such schemes typically cover all types of services with whom people with disability have contact, all stages of employment (pre-screening and during employment), and all types of engagement, including volunteers
- it requires a comprehensive risk analysis to determine a person’s suitability, and does not have to solely rely on a criminal charge to be recorded. While this needs to be carefully balanced to ensure fairness, it also encourages rigour in service investigations and disciplinary processes as the outcomes of these can be considered by the registration body when determining risk

<sup>863</sup> *Care Standards Act 2000* (UK) s 81 cited in Coulson Barr, above n 7, 21.

<sup>864</sup> Relevant offences include sexual offences, offences against the person, an offence involving violence, dishonesty or fraud, property offences, offences against an animal and driving offences. Non-conviction information includes where a person has been charged with an offence but the proceedings are not finalised, the charge has lapsed, been withdrawn, discharged or struck out, the person has been acquitted, and infringement notice has been served or the conviction has been annulled. *Registration to Work with Vulnerable People Act 2013* (Tas) ss 3, 25.

<sup>865</sup> This includes students, contractors, executive officers and members of a board, management committee or other governing body. Close relatives and persons under 16 years do not require registration. *Disability Services Act 2006* (Qld) s 114(4). If the police provide investigative information, the applicant must be given notice of this, in the approved form. *Disability Services Act 2006* (Qld) s 114(8). The Disability Services Act overrides the *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld), which would usually prevent disclosure of all but serious charges or convictions after a certain period of time. *Disability Services Act 2006* (Qld) s 77.

<sup>866</sup> *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 18(2).

<sup>867</sup> *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 28 (2)(e).

<sup>868</sup> Other examples in the Act include but are not limited to child protection and family violence orders. *Working with Vulnerable People (Background Checking) Act 2011* (ACT) s 28 (3)(e).

- there are criminal penalties for people who seek to work or volunteer without registration (or contrary to any conditions attached to registration).<sup>869</sup> It is also an offence for a service to engage a person who is not registered.<sup>870</sup> These sanctions are a powerful tool for compliance.

The disadvantages of full registration include:

- the costs of establishing and maintaining the scheme. These costs need to be weighed against the value of other mechanisms, including more rigorous referee checks, improved management and supervision of staff, and closer monitoring of risk
- the potential for casting a very wide net to capture relatively few people who do the wrong thing.

The Commission's preference is that the determination of risk be assessed by a body independent of the service delivery organisation. This would exclude the DHS and DH from being the registration body. This will help to build confidence in the registration system as there can be no perception that the provider of services is regulating itself. However, it may make the scheme more complicated to establish if another agency needs to be engaged to take on this role.

Establishing a full registration scheme would require consultation with the service sector, relevant unions, people with disabilities, their families and carers. It would also require legislation and a budget allocation to support the scheme. This means it would take some time to establish. However there are steps that could be taken now to move towards a full scheme while focusing on areas of highest risk.

### **Option two – a register of persons who are unsuitable to work with adults with disabilities across human and health services (deregistration).**

This is the Commission's preferred option in the short term.

The Victorian Government could establish a register of persons prohibited from working (or volunteering) with people with disabilities.

This should cover a range of services, including mental health, SRS, residential disability settings, respite, in home, day centre and Home and Community Care (HACC) services. It would also need to include consideration of other relevant information beyond a criminal record to assess risk – including disciplinary proceedings in services.

The advantages of this approach are:

- it avoids net widening by targeting those who pose the most significant risk (that is, persons who have been found to have abused, neglected or assaulted a person with disabilities)
- all people with disabilities receiving services are protected, regardless of type of disability or mode of delivery
- it is less expensive than a full scheme – avoiding the risk of diverting resources from other safeguarding efforts or service delivery
- it can be used to test models of risk assessment and other elements of a more comprehensive scheme in a contained manner
- it can be evaluated to see if it has resolved the problem of people moving between services, and if not, can be used as a first step in a staged approach towards a more comprehensive scheme.

The disadvantages are:

- without legislation, it may be difficult to establish effective sanctions for non-compliance
- it is not as comprehensive as a full scheme as it only deregisters a person after the fact. It still largely relies on criminal record and referee checks which to date have been inadequate.

<sup>869</sup> *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 13–4, 50. In Queensland, it is an offence to work/volunteer contrary to registration, to fail to disclose a charge or offence, or for a disqualified person to apply for registration. Disqualifying offences are set out in Schedule 5 and 6 of the Act and include sexual offences. A person may appeal against a disqualification order. *Disability Services Act 2006* (Qld) s 122.

<sup>870</sup> *Working with Vulnerable People (Background Checking) Act 2011* (ACT) ss 13–4; *Disability Services Act 2006* (Qld) s 91; *Registration to Work with Vulnerable People Act 2013* (Tas) ss 16–7, 23–4, 41.

### **Option three – a register of persons who are unsuitable to work with adults with disabilities in residential services**

This model would be the same as option two but would be more tightly targeted to only protect persons living in disability residential services.

The rationale for limiting the scheme in this way is that it focuses solely on residential environments which arguably are the sites of highest risk. However, in doing so it ignores the risk of abuse occurring in other places where people may also be socially isolated including mental health wards and SRSs. This in turn risks some forms of disability being prioritised over others.

While this option has the advantage of being more targeted and so less costly, the Commission considers that all people with disabilities should enjoy equal protection from abuse and neglect, regardless of type of disability and the mode of service delivery.

Accordingly, the Commission's preferred option is option two as a first step towards a more comprehensive registration scheme.

### **Human rights considerations of establishing a scheme**

Regardless of which model was adopted, introducing any form of registration would be a significant step requiring careful balancing between the rights of people wishing to work or volunteer in human services, and the rights of service users.

For option one, legislation would be required. Section 28 of the Charter requires legislation being introduced into the Parliament to be accompanied by a Statement of Compatibility which considers whether the Bill is compatible with Charter rights and if not, the nature and extent of the incompatibility. For option two, regulations would require a Human Rights Certificate to be made.<sup>871</sup>

Under the Charter, human rights may be limited but only as much as can be “demonstrably justified in a free and democratic society”.<sup>872</sup> In determining if a right may be limited, factors to consider include the nature of the right being limited and the purpose of the limitation.

These issues were canvassed when the ACT law establishing registration was introduced, which found that their scheme could promote the rights of people with a disability by strengthening:

- recognition and equality before the law
- right to life
- protection from torture and cruel, inhuman or degrading treatment
- protection of children
- humane treatment when deprived of liberty.

However the following rights of potential or existing employees would be limited:

- recognition and equality before the law
- privacy and reputation
- taking part in public life<sup>873</sup>
- right to a fair trial – in relation to strict liability offences.

The ACT Explanatory Statement balanced these competing rights using the criteria in section 28 of its Human Rights Act (equivalent to 7(2) in the Charter) and found that the requirement for an applicant to provide the Commissioner with its criminal history, non-conviction information and additional information was the least restrictive way of minimising risks for vulnerable people who access regulated activities or services. It is not contrary to the presumption of innocence in the Act because this is only a procedural right that is available in court proceedings.

The Commission agrees with this analysis. On balance the rights of people with disabilities to live free from abuse outweigh the limitations on rights of potential employees and volunteers. Put simply, if there is no history of allegations or charges against a service worker, then registration will not affect their employment prospects.

Further, so long as reasonable safeguards and protective measures are included in the scheme – it will be a proportionate and not unduly restrictive response.

<sup>871</sup> *Subordinate Legislation Act 1994* (Vic) s 12A.

<sup>872</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 7(2).

<sup>873</sup> To the extent that it relates to public sector employment.



## Legal safeguards

The ACT law includes a number of safeguards that should be replicated in any Victorian scheme. These include:

- conducting background checks within a comprehensive risk assessment model – only using relevant information the checks reveal
- powers to request and consider non-conviction information must be clear and precise and accompanied by statutory safeguards that are oriented against the powers being used unreasonably.
- only ‘relevant offences’ should result in any action being taken – for example, a sexual offence – the risk assessment should only consider information which relates to the inherent requirements of working with vulnerable people
- people must be able to seek a review of the decision to issue a negative or conditional registration, where the applicant believes it was made because of incomplete or incorrect information.

## Recommendation

- The Victorian Government should prohibit persons who have been found to have abused, assaulted or neglected a client of a disability, mental health and other service for people with disabilities from working or volunteering in such services by placing them on a register of unsuitable persons. This scheme should include an independent mechanism to determine the suitability of persons to continue to work with adults with disabilities. Subject to evaluation, it should be the first step in the development of a more comprehensive registration scheme for those delivering services to adults with disabilities.

# Case studies

The following case studies contain the experiences of individuals reported to the Commission during this report's data collection period.

## Case study: Leonne

I have a vision impairment and I can have trouble understanding sometimes when people talk too quickly or all at once, or use jargon.

I was at home and I saw car pulling up. I wasn't expecting anyone. It was the taxi driver I was using at that stage. He said he had come to help me with something and he came into the house. Then he sexually assaulted me. He lied to me, he said he was coming to help me. He targeted me because he knew I was alone.

It's been hard. Now, when I am on my own at night and I hear noises, I can get very scared. I can't sleep. The worst part is that what I have heard from police is that it was my fault because I let him in, and because I didn't have someone with me.

I was ashamed. I didn't know whether my carer would believe me, whether my carer had to tell my support worker, and whether he would believe me. It was a week later before I told anyone. My carer said, "What's wrong?" and I just opened up. I called my advocate and he told me to ring the police.

With the police there were problems. First, they always come in twos, which is hard for me. I can't see very well and when two people are speaking at once, I can't understand. The policeman was butting in all the time, so it was hard to continue the conversation and answer questions. He was also using terms that were very unusual terms, medical terms. When I don't understand, I don't answer, so I basically ignored him and spoke to the woman because she was keeping it basic.

I think when the two police first came to my house it would have been better with two females. It would have been better if the man had taken more time and waited for me to express myself. It would have helped if he had asked me questions I could understand!

The policeman asked my carer to go into the kitchen with him. He thought I didn't know what was going on, that I was making the story up. He wanted to find out if I had a brain, if I knew what was going on. He was asking whether I was taking my medication. Even today, I feel that it's low, it's unfair. Also, if I thought there was a problem with someone and I was interviewing them, I would not split them from the person who supports them.

They left and said they would pursue it and ring back, but they never rang back. Another policewoman rang me later and told me my report was not strong enough to go ahead. I was very hurt that she said this, and because it had been a long time since I reported, I got upset about the assault all over again too. When I hung up, I rang my advocate straight away and he said, "That's garbage. Leave it with me", and he organised a counsellor and an interpreter to come and take my statement, then it went to police. They did the police's work for them.

There was then a two or three-month gap and then I received a phone call from police to come in for an interview. I asked if my advocate could come as well, but they said I had to be on my own in the interview room. I had to have the policewoman and another woman who I'd never seen. I don't know what her role was, but I think it was to protect the police person from my bad language.

The interview was a very long process. What frustrated me, even now, is that I've never seen written reports of my statement to check, I've never seen written copy, never seen or heard the interview tape. They seemed to always come back to same issue with different words to try to make me change my mind from what I said the first time. It confused me.

A big issue that people with disability have to always put up with, is that 90 per cent of time we see a lot of words and say, “Whatever. Hang on, what does that mean?” We need time to go through things. People are always rush, rush, rush. Slow down. It’s hard for people to understand that. They’ll say, “She’s lost the plot”.

And after all that, I got nowhere. If it happened again, I would go to my support worker, but I would say I don’t want the police involved.

My problem has always been that people put me down because of my disabilities, but what I do understand stays in my brain. I should be consulted, but because of my disabilities, I’m put aside.

### Case study: Melanie

I have epilepsy and also a cognitive impairment, but I don’t like that term.

I thought pretty hard about whether to go to the police to report sexual assault. To report a crime you have to step out of yourself, and step into someone else’s body. I was three people. When he was doing bad things to me, I had to put myself in a box. The transition to go from one to another is hard. There have been other times I was assaulted when I didn’t say anything – because I didn’t know how to get away, and I’d heard that things are pretty twisted to suit the perpetrator. This time, it is something that he has to pay for. He has got to take some responsibility for his actions.

I reported about 24 hours after it happened. The perpetrator and his wife were staying at my house, and I had to wait until I had a solid reason to go out so he wouldn’t suspect anything. I went to the police station with my sister and my cousin. I don’t understand how police find out whether people have a disability. I told them I had epilepsy. One of the officers asked, “You had a fall or something?” He didn’t mean to ask it rudely, but that is how he found out I had an Acquired Brain Injury (ABI).

The first time I went in, the policewoman was quite nice. It was really about getting comfortable. The next day I went back to the station to do a full interview, and I met the informant, a male police officer. I could take only one person into the interview room. I thought if I didn’t choose my sister, she would be heartbroken. Having her there made me feel more at ease but embarrassed as hell. I had my dad in the room for another interview. I had to stop that one because I couldn’t do it with him in the room. It was too stressful and uncomfortable.

I did have an Independent Third Person (ITP) in one interview, but honestly she was useless. She sat there with her head down, she didn’t answer any of my questions – she may as well not have been there. It would have been handy if she wasn’t there – I would have been able to ask the police more questions.

It would help if someone could talk to me during the interview, and tell me what I could and couldn’t say. I thought it was a bit unsettling that no one could talk to me during the interview. I understand people could be feeding you information but having the police there would balance it out.

After I had the second interview, they arrested him. I asked the police whether there was anything I could do to make sure he never comes near me or my family, and they got an intervention order.

I think I went in for three separate interviews, because I would remember something else, or think something else was important. I had the same interviewer for all three interviews. They were surprisingly good. I shouldn’t be surprised, because they should all be like that. The police gave me time in the interview. Once I got really upset. A policewoman took me into another room to chat; it was good to take a break.

The questions they asked during the interviews were OK, but I was frustrated because the police officer said he had to let me tell him so that it wouldn’t be seen as him leading. If you see me having trouble trying to remember things, try and get it out of me. It is more important that you get all the information out. I couldn’t think fast enough to answer, and I wasn’t allowed to bring in my notes. They told me, “You can’t be seen reading it word for word”. The police have something to read off, what is the complication with me having a prompt? I felt disadvantaged with the memory problems. I was so stressed my speech was slurred. When I saw the video (VARE) later, I couldn’t even understand myself.

It helped having the same informant through the whole process. You get to know each other and the officer can put you at ease and knows if you’re holding back. You’re still embarrassed but you are more likely to give information. During the court process it also means the officer knows how to ask you questions according to how they know you, rather than reading something in a book and thinking that is the best way to ask a question.

The fact I could go back was the most comforting thing. It is good you can tell them about the experience over a few goes. Even after three times I didn’t know if I had all my bases covered. The officer would ask me, “Did you tell me everything?” That is the big hurdle. Later, he said, “You have been here three times, and twice you said yes I told you everything and then came back – how do you expect the jury to believe you?”

It wasn't until I was sitting there and police asked, "Do you want to press charges?" that it hit. I didn't know there was any other option. I think police need to explain what this means to people. People with disabilities, especially if they have an intellectual disability, might need time to talk to the people who support them and to understand the consequences before they make the decision.

The perpetrator was charged with sexual assault. I wanted my case to go to court but was still surprised when it did because I thought that not many cases get that far. But since then I've been told that they do but then they get dismissed. I did witness assistance by videolink. I get these stress blistering things on my feet so I could hardly walk.

I didn't know how the justice system works at all. It is very confusing, and very demeaning. It feels like the perpetrator gets all the leniency. He kept asking for adjournments, which prolonged the whole process. It is incorrect to allow that sort of leeway – because if you say one thing and don't follow through then they're going to push it and not keep to the boundaries. The criminal is not subject to the same things I am – he can say nothing but you have to say everything.

During the process, you don't feel like you have control. You feel like your body, yourself, belongs to the law because they need that information. So you don't feel like you have yourself anymore. I felt like I was emotionally not there.

I wanted to understand more about my case. I was told what the outcome was, but I wanted to understand legally how that was allowed to happen. I am involved with the case, so I should know the details. Victoria Police had said, "We're involving you with as much of the process as possible," but I'm not sure that's the case at all, because real involvement would require me to understand all parties' views and operational limitations – what they can and can't do, and why. I think police are saying "We'll tell you information, we'll keep you informed," but they don't have all the information, or they have legal limitations, so they can't tell you much.

I've heard police say they are frustrated, because they aren't given the freedom to talk about the case. The police informant kept in touch with me between court dates; occasionally he'd call me to see how I was going or he'd ask my Centres Against Sexual Assault (CASA) worker to call me – probably to be less distressing. I contacted him once, when I was waiting. He said, "I would love to tell you, but I can't". He told me to ask specifics, but when I did, he said he didn't understand it himself so it wouldn't be fair for him to tell me. I believe the police officer doesn't understand the whole thing, and he's worried about getting it wrong.

I think the lawyer could tell me. The lawyers often don't go into detail. They say it is too complex to explain and for me to understand. It's very frustrating, because it's my case but I can't know the specifics of what is happening.

I know police and lawyers have certain rules but there needs to be a medium in between where you can understand why the decisions are being made. I never understand why you couldn't meet both legal teams after the process – both prosecution and defence – so you can ask why what happened did happen. And you can understand what happened. That might be the medium that needs to be reached.

After all the court process finishes, the police ask, "Did you feel respected?" There should be a follow-up where the police, preferably the same officer, will ask if you need help. Straight away, you might say "I'm OK," but about eight weeks later the effect comes through. I didn't realise how much stress I felt because I did feel like a few hundred tonnes of bricks had been lifted off my shoulders but I still felt a lot of stress. You get help during but you don't have the support after.

Because of all this I really missed out on a couple of years of my son's life. Nobody has recognised that the most significant impact of this process is on the child-parent relationship. People don't think about that. You get all these barriers up and then you have to let them all down for this one person, and you think "I don't know if I can".

## Case study: David

I have cerebral palsy, but it should be understood that I am intelligent even though I cannot speak and have some weird behaviours. I communicate with a communication device, which someone facilitates me to use.

I have seen lots of assaults in community residential units (CRUs). It was especially common to see carers hurt clients. It was particularly scary for speechless clients who cannot get help and they cannot leave. It was awesomely unjust.

It would have helped if the Community Visitors from the Office of the Public Advocate had been able to find out what really went on. They didn't get the information they needed. They didn't use communication assistance, so they couldn't communicate with the residents, and only got the information that staff wanted to give them. It was lucky I had someone visiting who could assist me to communicate with the Community Visitors. I told them about assaults by another resident. The police were not told what the resident did to me. We relied on our families to get assistance; there was no independent help available. All parents worked together to get him moved.

After the other resident was moved, I felt safer but not safe, because there was another client who was a problem but they wouldn't move him. I told the Community Visitor about him, and they helped me move.

After this, the house supervisor at a CRU sexually assaulted me. I disclosed to my mother. She made me write what he did to me without any facilitation, so it was totally independent. Then mum rang DHS [Department of Human Services].

*David's mother:* DHS didn't believe it, they said it couldn't be possible but that they would look it into it. Someone must have intervened, because by the time they called me back they said the house supervisor had been stood down so that my son could go back to the house. We didn't want him to have to go back to the house but they said they couldn't get us a bed in our home town.

*David:* Before I went back to the CRU, I went to see a Centres Against Sexual Assault (CASA) worker, who asked me if I wanted her to report to the police. A policewoman came to where I was staying at my parents' house. She was wonderful, because she knew I could be intelligent despite my cerebral palsy.

The policewoman communicated with Communication Rights Australia about a protocol for taking a statement. The policewoman let me type my statement at home, but I had to write independently. It was a nightmare. I got so terrified my vision left me and I couldn't see the stupid letters to write and I made endless errors. I felt so scared of him. He had told me he would kill mum if I told anyone.

Writing the statement went on forever. When it was finished I took the statement in and the policewoman and another senior officer recorded me answering yes and no questions about my statement. I don't remember this well. I was too scared to think and I don't remember what I felt.

I remember doing the statement again in Melbourne with a male police officer, and they let me have a facilitator who had to be someone who didn't know what had happened. My speech pathologist facilitated me. I was glad to be facilitated but it was difficult, because I was embarrassed for her to hear what he had done to me. I would have preferred for mum to have facilitated, but because she was the first person I disclosed to, she couldn't. The police were particularly patient and listened to the story and investigated.

The man who had sexually assaulted me kept ringing the CRU and lying to staff, saying that I couldn't write and that my mum had made the story up. Staff believed him, and they hated me. That was a big problem for me. I didn't go through with the intervention order because damn everybody said he wouldn't come near me, but he kept ringing the house. I wish I could have stopped that. Nobody believed I had been assaulted. I was utterly alone. I don't know what happened after I gave the statement. I got especially terrified.

After I gave this statement, I was assaulted by a staff member at a CRU and I reported it to police. When I gave my statement I told the police the name of the person who had assaulted me, which was an Indian name because he was Indian. Then the police asked me what he looked like. I got so angry, I said he had blonde hair and blue eyes. The question was stupid, so I answered it stupidly. They then stopped that investigation.

*David's mother:* There was a lot happening at this time. My son had recently moved house and was suffering from post traumatic stress disorder. The police officer investigating the sexual assault got in touch with me to tell me that the brief was ready for committal. He brought up the problems that would happen with the case. One of them was about the Indian case, and another about a report that my son made 15 years ago, which I didn't know about.

The pressure was to not proceed. Although the investigating police officer had said my son was competent, officers senior to the investigating officer then set two more hurdles – they said my son had to have an IQ test in addition to a communications test to do a communication validation. I had thought he would get quite a lot of support through the process, but that's not what happened. His father and I decided that it was too much pressure for him. He was in a really bad way then.

*David:* Because of the joke I made about the Indian carer, they said the man who sexually assaulted me would win against me in the other case. I think I stopped him, because mum said that I convinced the police officer it was true and I am glad about that. But I couldn't do it again.

I moved to a house in my home town, and I was assaulted again in my new home by a carer. I really fell apart then. I haven't reported this to police – after everything that has happened, why would I report again?

## Case study: Julie and Beau

My son is primary school-aged and has autism, which is described as mild to moderate. The first time I was aware that something was going on was when I received a phone call from DHS Child Protection telling me that my son was displaying sexualised behaviour at school and they suspected my son might be being abused. It was this call which triggered my concern. The behaviour Child Protection described was not like my son's behaviour at home.

I talked to my son about it, and he disclosed that he had been abused by my ex-partner. He told me about things that had occurred.

The school had called Child Protection after a period of six months and after repeated reports within the school that they suspected my ex-partner was a safety risk. They hadn't told me at all. They said they had suspicions but no proof! Why didn't they tell me so I could do something about it? At first, they also told me they hadn't made the report to Child Protection.

As soon as I found out from my son what had happened to him, I went to the police. I told the officer at the front desk what had happened. They said to wait in the public foyer, when I became visibly upset they arranged for a private room and contacted the Sexual Offences and Child Abuse Investigation Team (SOCIT).

In this first interview, a police officer spoke briefly with my son and decided to call a disability advocate, which took a long time. The interview process took a long time – about five hours. Both myself and the advocate believed they would have got more information in this interview if my son had been provided with more breaks and more support.

A few days later, we went to the SOCIT to make a statement. Before the interview, it seemed like the investigating officers really only knew what I had had the chance to explain to them about autism.

In his statement, my son told the police the abuse happened all the time. He can communicate clearly. He doesn't have a communication disability. He has problems with open-ended questions, which was hard for the SOCIT investigators. I did bring this to the attention of the officers before he was interviewed, and let them know they needed to break the questions down or use gestures to help make it clear what they were asking. I was told that they had to phrase questions in certain ways. I do think the investigating officers tried their best at that stage.

The SOCIT officer who took my son's statement said my son had supplied more than enough information in the interview. I was also told that I would be informed once someone was assigned to the case. However, no one called me. Eventually I found out from my son's school that someone had been assigned.

It seemed like everything ground to a halt very quickly after the initial interview. It took a really long time before anything was done, even an interview with my ex-partner. There were a whole array of excuses from police, including heavy workload and limited time to work on the brief and even personal reasons. I had to keep chasing up to find out what was happening.

At one stage, the SOCIT officer had told me, "The hardest thing for me is your son has autism". From that point I knew that the police were looking at my son differently. They told me that they knew about autism because they had conducted online research into it. I tried to give them material about my son's condition including assessments, but they weren't interested.

At around this time, I received a letter from DHS informing me that the police investigation was being closed. I rang the police immediately and they told me the case was still open and they were still working on the brief. I was told DHS should never have commented on this, though it was clear to me the police had been speaking with DHS. DHS had never offered me and my son support, they never asked me any questions at all. They got this very wrong, and I did eventually get an apology about the letter, which had caused me enormous distress.

Eventually, after about 12 months with little movement on the case, I was told that the case wasn't authorised to go to court. The SOCIT officer rang me to tell me, and was explaining why, but halfway through the phone call, they got distracted and said they would call back. They didn't – I had to chase them.

I told them I wanted to come in and discuss why the case was not going to court. This meeting lasted all of 15 minutes. It felt like the police weren't interested in hearing what I had to say. They told me, "It's just not going to happen".

I was told that this was due to lack of evidence, as well as unclear dates and times of the incidents. They weren't sure that my son had understood the questions he was asked in the SOCIT interview. They had also said there were inconsistencies between our statements. The whole process felt like a waste of time. I know they couldn't establish exact dates and times but what child could have provided that information? If you don't have DNA evidence or a witness, don't bother.

A support worker who came along with me to that meeting told me that even if there was enough evidence, if the police didn't think my son was capable of going to court or taking the witness stand, they wouldn't take the matter to court. They said it was a decision made by the police about their duty of care to the victim not to take the case further. But no one ever asked what we wanted.

I felt that my son was facing discrimination from day one and the case had been placed in the too-hard basket. I believe the nature of my son's disability meant police didn't pursue the case with the same vigour they would have with the case of someone without autism.

I tried fighting for my son as much as I could. I wonder whether a child with a different disability would have been treated the same way. My son has suffered sexual abuse. He is afraid to sleep at night. He's just trying to get back to normal.

### Case study: Blue Star

I am a strong, independent person, because that is how I was raised and because I am an elder in my community. I am part of the stolen generation, so I have seen injustice. I am also blind and quadriplegic since a hit and run accident. I shouldn't be treated with disrespect because of that.

The sad truth is that not once, not twice, but three times I have had such bad experiences with police. It is abhorrent to me, because police are supposed to serve and protect, especially the vulnerable. Instead, I have felt that they just don't care, and I have felt very alone. What my experiences have said to me is: no matter what happens to me, I should never ring police, because it doesn't matter what I say, they're just going to treat me with complete disrespect.

The first time I reported a crime to police was when my bag was stolen, with incredibly precious things including my Paua shell initiation bangles from my mother's tribe. The initiation bangles are very important to me, because I don't feel like a whole person without them. They are not just jewellery; they are something that were given to me by my community, by my whole family. The policewoman I reported to was very patronising to me. I asked if there was an Indigenous officer I could speak to, or who could explain to her what initiation bangles are and how important they are. She didn't believe I was Aboriginal, or Maori, or Koori. She also didn't believe I was blind, or quadriplegic, or that my dog is a guide dog.

The next time I went to police was because I needed protection from the woman I was living with at the time. She was violent, and assaulted me on frequent occasions. Again, I went to the police and they didn't believe me. They didn't care that I had a stab mark from a knife, and bruises on my face and arms. I have a doctor's report to prove that. I'm from the Northern Territory, where your word is your word and what you say you mean, and what you mean you say. I'd never not been believed before. It made me feel like I was very small.

Following the last assault by her, I just wanted to get out of that house. I went back to the police to ask for help to safely get my things and get away from her. Again, the police officer didn't believe me and said, "I doubt that happened". The police made me wait all day, which just made the anxiety even greater. When we finally arrived at the house some of my things were missing – she had stolen my wheelchair battery recharger, and two jade initiation bangles. The police couldn't give a rat's fig. The police also heard her threaten to kill me and my dog, but they didn't do anything about that either.

After I moved out, both she and her daughter started making obscene phone calls to me. It was constant telephone harassment for over two and a half months. I went to the police about the calls, but even with evidence it was abundantly clear the police weren't going to believe me. I got treated like I was an imbecile. Just because I have a disability doesn't mean I am stupid.

My third experience is very recent. In the past five months I have been pulled out of my wheelchair three times in the courtyard of the housing estate I now live in. The first time I did nothing. The second time I called the security guard. The next day there was an incident in another flat and the police attended, so I told them what had happened to me. They asked if I could describe the person who did it, and I said, "No, I'm blind". The police officer said, "Well, don't bother calling us then". He didn't seem to understand that I could give him information from the sounds that I had heard, or that there might be other witnesses.

The third time I was pulled out of my chair it was really vicious. The actions of my guide dog told me that one of the attackers had pulled a knife. They actually threatened to kill me and my dog. I rang the local police twice after this, and both times I was told, "Don't bother calling if you're blind". I gave my number, and both times no one got back to me. There was no investigation, they didn't interview anyone. No one came to see me, and no one gave me a crime number – they didn't in any of these cases.

The impact of all these crimes has been very serious. What people need to understand is that these latest assaults have not just happened to me, they've also happened to my dog. The dog is me. Without him, I wouldn't be able to do anything. He's not a pet, he is a working dog. I have often said, "He's my heart and soul". He has had a lot of trauma, and he will need retraining. If I get pulled out again, or something happens to me, it might send my dog over the edge. I don't think I would be able to get him back. I want to know – will the police, or the Office of Housing, pay to retrain him? There is no way I could train another dog, and develop a strong enough bond with another dog, quickly enough to replace him. He is more important to me than my wheelchair, because I'd rather have my eyes than my legs.

I've still got a really bad hip from being pulled out of my chair, my tendons are torn and I have black bruising where my bones have been bruised. I also have a bad wrist and a trigger finger that needs expensive treatment that I can't afford. My back has lost its alignment, so I need to go to the osteopath – but I can't afford that either. The first time I was pulled out of my wheelchair, they wrecked my custom-made electric chair. The mechanic told me it would cost \$5,000 to fix.

I want my initiation bangles back more than anything. I feel like my heart has been ripped out, and my soul with it. The police didn't understand the significance of the bangles to me, that to me, it's my life, it's my culture, it's my identity, it's who I am.

Police need to know that when a person asks to speak to an Indigenous officer, you need to make sure that happens.

Police don't understand what it's like to be a woman, or to be quadriplegic, or to be alone, and not have anyone to turn to. As a single woman that lives alone with multiple disabilities, living in a big super-strange city, I don't feel safe.

My advice to police would be: Listen to what the person is saying. Do not patronise them, ask them what they would like and need. Call them. Go and see them. More importantly – believe the person, especially a person with disability. When a person with disabilities asks for help, they need help. Regardless of whether you're standing tall, or are sitting in a wheelchair. Regardless of whether you have a vision impairment or not, or whether you're an Indigenous person, Asian, Australian, from overseas – you're a person, and a human. When I ask someone to help me, especially someone in a police uniform, I don't expect ridicule and no help. I would like to be able to expect dignity and respect.

What really frightens me the most about this whole saga is that if something really bad happened to me in the future I wouldn't call the police.

### Case study: Gary

I've been a police officer for 20 years. I have a son with disability, so I understand a lot more about disability than the average police officer.

With disability, police look at the differences, rather than the similarities. I was asked by a colleague about what to do when he had a case where both the victim and the offender had disabilities – he was focusing on the disability and the problems rather than thinking of solutions. This is the mindset you've got to get over from a police member's point of view. It is challenging for police, but all it needs is a bit more patience. Don't get me wrong, nearly all police are very professional. It's more about a lack of support and education, rather than attitude. I know it sounds corny, but most people join the police force because they want to do good, and have a caring nature.

It is difficult to know the prevalence of crimes against people with disabilities. Unless they have a carer, or a regular visitor from the Office of the Public Advocate, how will we know? If a carer assaults a client in a secure residential service, how will the victim tell someone? How will they be believed? Let's say the client can communicate somehow, they might say, "Jim hit me", but the client may get the name wrong, or his name might be something else but everyone calls him Jim for whatever reason. Even if there is evidence like a bruised arm, you'd have to interview 'Jim', and of course he'll say, "No, I didn't hit him". That would be it; I wouldn't authorise that brief, because I don't think it will ever stand up in court.

This is especially a problem with young kids. For example, you could ask a kid without special needs how he got some bruises, and he might say, "Dad hits me". But for a kid with disabilities, would you even ask? Especially if they can't communicate, using Picture Exchange Communication System (PECS) or otherwise. Police are then faced with the challenge of how to present this evidence in court. If someone is Chinese, I can get an interpreter, but my experience has been that PECS won't stand up in court.

It is the same for victims with intellectual disability, because it is hard to get a statement from them that you can use. My experience has been that if they can't give evidence, you need to think outside the box. It might mean pretending that the victim is dead and then following that process, such as relying on medical evidence or thinking about other people to speak to.



The thing that really concerns me is that police don't get enough training or assistance when it comes to disability. For instance, if you have a woman who has been subjected to family violence, you would usually put them in a motel, but if she is in a wheelchair and needs a hoist in the bathroom, the copper stands there and doesn't know what to do. Police don't have a disability knowledge bank. We have an Aboriginal Liaison Unit, and a Gay and Lesbian Unit, but we don't have a Disability Liaison Unit.

There should be a central unit to support the whole state, a one-stop shop for networking and support. I think if you had a knowledge hub, and someone to ask for help solving problems, it would be a big improvement. Let's seize the day and try and change what we can to provide a better service for the community.

### Case study: Deborah and John

My partner, Deborah is deaf. Deborah has a 14-year history as a victim of her violent ex-husband, who is also deaf. This man has a long history of violence, intimidation and bullying towards Deborah and many other people, including myself.

He has had around six or seven intervention orders taken out against him by many different people. He flouts these all the time. He also has several convictions for assault (including against me and Deborah), various convictions for breach of intervention orders and convictions for theft and wilful damage.

The trouble is, it's the tip of the iceberg. Deborah's frustration is that she has made many complaints to our local police station which have never been followed through. Deborah feels very let down by the police and doesn't have confidence that they can keep her safe.

On one occasion, a policeman confided to us that he believes one of the reasons police don't follow through is because it costs the police around \$800 every time a deaf interpreter has to be engaged.

This police station often does not seem to have ready and speedy access to deaf interpreters to assist their investigations.

Another problem is that police are not generally educated about the fact that they must use a deaf interpreter of at least 'Level 3 Auslan' qualification for evidence and statements to be admissible in court. Several times the police have jeopardised legal proceedings by not adhering to this detail. On a number of occasions, they have involved Deborah's children to assist them in taking statements from the ex-husband – this is obviously inappropriate.

We don't believe that it's fair that issues of cost and convenience should be a barrier to deaf people receiving a proper response by police to reported matters.

### Case Study: Kim

In the middle of the night, a man I knew broke into my house and sexually assaulted me in my bed. He knew I was there, he knew the house was empty, he knew I had a disability – I felt like a sitting duck.

After it happened, my coping mechanism was to start to ring around helplines to find out what I should do and to get support. One of these helplines contacted the police for me.

Two young police officers came over to my house. They told me they were going to take me to the Centre Against Sexual Assault (CASA), and asked if there was someone I would like there with me for support. I called a friend, and he met me there. The police carried me in a blanket to the car. When they finally brought me home, they made the bed for me.

The following day another police officer came over to take my statement at my house. The perpetrator showed up when I was halfway through making my statement – that was how much he did not think he had done anything wrong. I was terrified when he turned up – the police could see this, answered the door and told him to go to the station to make a statement the next day.

In terms of the police response, it was done very well. They were very polite and courteous. The police officer assigned to my case was fantastic because he was open to contact and kept me informed.

There was never a question the matter wouldn't get to court. I felt police were more helpful to me because I was vulnerable because of my disability. The police were more protective with me than they probably would have been with someone who did not have disability – it was, essentially, reverse discrimination, but this was probably a good thing in my case.

I think the police were a bit intimidated when dealing with me because of my disability in a way – I don't think they would have given the same treatment to a woman who didn't have disability. I felt like the police went 'softly, softly'.

If I needed information, I could phone my contact at the police at any time and he would call me back. I always felt like he was on my side, which you don't really hear with the police.

I did feel safer after speaking to police, but really, it was only after the perpetrator was behind bars that I felt safe. The police took out an intervention order for me, but it just felt like a piece of paper; it didn't make me feel much safer. If the perpetrator got drunk or took drugs the order would have been useless and there was a strong chance he would have just turned up anyway.

There should be more information provided without having to scope it out and chase it up yourself, though I really don't think it matters how many booklets they give you, it doesn't tell you how dysfunctional the justice system is. The whole process took a lot of my time.

I do think that police need more consistency and more education in their approach to sexual assault – both for women with and without disabilities. I felt like I had more credibility than a regular woman walking down the street and because I have a disability, I was treated better. The new generation of police officers need to be taught that it doesn't matter how you act, or what you're like, it doesn't mean a thing.

### Case study: Joanne

I am an Advocate Guardian at the Office for the Public Advocate. I have five clients with intellectual disabilities, and probably four of them have been victims of crime. I don't go to police interviews with clients, but instead take a position of oversight.

Crime is much more likely to be reported if there is a guardian, because services will be more likely to respond. There will be times when something happens and staff don't know what to do, or services will make their own decisions, rather than knowing to report to police. In one case, it was just recorded as a minor incident, but when the family told me and I ramped it up, the service realised they would have to do something. There'll be cases where a client has repeatedly said that they've been sexually assaulted. I say to services: "You don't get to decide if this happened or not, you have to report and let police make their decisions about how to proceed – that's their role".

Services don't report because it's a whole lot of hassle. It may also be because it is difficult to manage difficult people in group homes. I had a client who was threatened by another resident, a big man. The staff are all scared of him, so imagine how the residents feel. Just because people have disabilities doesn't mean that they should have to live in fear of someone.

Once it is reported, the other part of my role is to hound the police to make sure something does happen. I have one client who has repeatedly called the police for help, but they don't attend, probably because she is known to the police. I sought an intervention order on her behalf to protect her.

Having to hound police used to be much more prevalent, but things have improved over the last ten years. Police would use the excuse of people with disabilities being unreliable witnesses, and say, "We can't pursue things more". I had a client who was interviewed by police, but because she couldn't remember dates and times, they didn't pursue it. I also suspect they didn't proceed because the perpetrator had a disability, and probably would have been found unfit to plead, or wouldn't have gotten much of a sentence. There is also a big difference in the way police will respond to people who are verbal compared to people who are non-verbal; police will be more likely to follow up with people with very good verbal skills, and who are brighter.

### Case study: Bella

I think my past has influenced who I am today in terms of my beliefs about the world and other human beings. I was a ward of the state in Victoria until I was seven; I was moved between various institutions and the woman who had adopted my mother. My mum was part of the stolen generation, born in the 1930s. She was adopted by a woman who wanted to 'get the Aboriginality out of her'. (That is only my perception based on policies of the country at the time) Mum had a horrific life with that woman, and I got that same torturous treatment, too.

I believe I was psychologically, physically and sexually abused within those seven years. I don't have any recollection of it, but my behaviour was very attention seeking and I would have done anything for it. She used to handcuff me to my chair to watch TV, and put soap down my throat at the table my sister and I sat at away from the other residents in the house. It was the only time I have had blood noses, from her hitting my head against the wall because I wasn't eating my dinner. That woman was wicked.

In all that time, I don't remember anyone visiting to check if we were OK. I can't believe we were left to stay with her. She had so much power. I was always scared, always confused. I didn't have a sense of myself and I never had any personal agency. I was never allowed to make decisions for myself.

When I've come to a point in my life where my past is almost haunting me and I need someone to talk to and have explained what I'm going through and what that woman did to me, they explained that things she did were classed as criminal acts. I'm only learning now that there aren't time limits on reporting. But she is dead now, so I haven't thought about it. And I don't have any evidence; it would be my word against a dead person's.

When I was seven, my mum remarried so she got custody of my older sister and myself, but by this stage, the psychological and emotional damage was done. When I was 11 or 12, I lost my eyesight. I believe this was related to a traumatic event that occurred.

I had a pretty bad time during this period. One day, I ended up at this guy's house – he invited me over, and then when I was going, he told me that I couldn't leave until I had sex with him. I'd lost my eyesight by then, and I thought – what choice do I have? I didn't have any choice. Afterwards, he pushed me straight out onto the street. I saw him again with a group of his friends at an ice-skating rink and they assaulted me, holding me on the ground. I don't remember anything after that, nothing, not how I got home, what I did, where I went – nothing.

I never reported any of this. To me it was just life. I tried to commit suicide twice before I was 15.

After so many eye operations, after the hospitals decided they had done all they could for me, I was sent to an institution for my 'further education'. The storeman had a bet with his co-worker about who would get me into bed first. The one, who won, was part of a group of guys who all had bikes, they didn't wear colours. I'd get shared around with them. I felt like I didn't have any real friends. On reflection of these times I realised that the week was for working and the weekend consisted of getting drunk and being shared around. I was in that relationship, or pattern of living, with him for two or three years.

That's when it got really bad – we were shooting up drugs. I fell pregnant, I carried the baby full term, I had that baby and had to give her up and after that, I was broken. I took a lot of drugs, to try and numb my feeling of loss, but instead I was broken inside – sometimes you need to be broken, to hit rock bottom before you come back up. My mum and my boyfriend sent me away to get clean and to sort out my life. I felt like I was being thrown away. I was always told I was uncontrollable.

After I was sent away, about six years later, my mum passed away. My sister researched and found our mum's birth certificate and from that we discovered we were Aboriginal. Hearing this made sense to me. It felt like some things fell into place for me, because I'd never felt like I fitted anywhere, because I have different values and different ways of thinking about many things, a different world perspective.

I have had a series of abusive relationships up until now. One of these was my case manager, then we started dating, he casually admitted he took advantage of me because he could see I was vulnerable. How do you stop perpetrators? It's not just physical abuse, but the whole psychological manipulation that goes with it – all the threats and promises and put-downs.

Around 2006–7, I was close to being homeless. I found shelter at an Aboriginal hostel, it was shutting down and we had to find somewhere else to live. I found a place and a job. I needed some assistance and went to another organisation for help moving. The man who was helping me asked me out, and I thought I needed a friend, so I said yes. He raped me. This one I reported, because friends encouraged me to, and people knew about him.

The police came (one woman and one man) and sat on the floor with me, I didn't have any furniture in the flat I'd just moved into. I told the policewoman a bit of my story – I said I didn't report anything before because I didn't think they would believe me.

The policewoman was great. They asked me a lot of questions, but unfortunately I had washed the clothes I had been in when it happened and they couldn't press charges.

I am so pleased I reported this incident. I couldn't believe how it made me feel. I felt like this heavy weight had been lifted off my shoulders. I couldn't believe they believed me; they didn't blame me. The police actually went and spoke to him. After I reported, I could walk past him with my head held high. I wanted to let him know I'm not someone to be messed with.

Sometimes I wonder who I would be now if I hadn't lived the life on this path, what would this other path have in store for me. But I can't think like that because then I wouldn't be who I am. We need to empower our children by allowing them to make decisions for their life and be there for them if they fall. If you have strong empowered children, you have strong adults. I live by that philosophy with my own children.

I'm not sure if they know this.

## Case Study: Antoinette

A few years ago, I was living at a rehabilitation facility. The experience should have been positive, but I was harassed and treated disrespectfully by the staff members. Two staff treated me poorly. They were, in most ways, quite uncivil. Most of the staff were good, at least they were civil. I felt imprisoned and exploited. I complained to the people involved and they didn't take it seriously. They told me it wasn't a valid complaint.

I don't think other people saw it happen. I also don't know whether other people saw it as being wrong. People think that people with an acquired brain injury (ABI) have 'memory problems' so they are easy targets.

I stayed at the rehabilitation centre for six months. The intention of the facility was to work towards independence but the reality was very different. I don't know whether I could have left earlier. We weren't given any information on our rights. They should have had pamphlets in the facility. Fortunately, I got out of there.

I complained to the Disability Services Commissioner (DSC). They replied that they would not take up my complaint. The DSC said that the type of behaviour I alleged had happened, the harassment and treating me disrespectfully, was not part of the facility's policy, and therefore it did not happen. People look for reasons not to believe people with ABI.

I wasn't told about any other way I could make a complaint. I could not think of anywhere else to take the matter. To be honest, I did not think of going to the police.

I don't have issues with police. The problem is that anything you say can be excluded because you have an ABI. ABI is a disability and should be regarded as one. But people shouldn't just focus on the disability, they should focus on the human.

Just because you have an ABI, it doesn't mean you are stupid. It means you had a knock on the brain. It doesn't mean you are stupid forever. The experience of ABI is so diverse. People should know as much as possible about the brain and how it works. This of course, takes plenty of time and willingness on the part of the learner. But how much simpler things would be if people knew at least a little about the brain and how it is affected with the multitude of varieties of brain injury.

People with ABI are not believed when they make a complaint. People use memory loss as an excuse. Not all people with an ABI experience memory loss. My memory is good now. I am aware of it and take steps to make sure I remember things. I am only human and I've become aware of human capabilities or in-capabilities. People with ABI are still people. I constantly have to prove that I am human.

Now, when something reminds me of how I was mistreated, I can't stop thinking how unfair it was. The situation was unjust, unfair and un-everything! I just wanted the truth. The truth was all I wanted.

Self-advocacy and human rights are really important. Everyone has basic rights. Most people say they know about human rights but when you question them, they don't know. Disability services staff, police, indeed everyone should have some basic human rights knowledge so they know what they are doing is wrong.

## Case study: Kathleen

I have experienced a series of incidents involving stalking, assault, damage to my property, a home invasion and theft over many years. I have had a problem with police attitudes right from the beginning. I believe the biased judgments police made about me initially still affect the way I am treated now.

I have a high tone hearing impairment. I live in a small country town and have experienced difficulties with some community members. I have been active in establishing a number of business enterprises that have been unique and very successful. I am also an artist so I am aware that I am considered eccentric.

In 2003, when I made the first report to police after observing a man entering my home, I was astounded at the officer's response to me. The intruders returned on two occasions that night and I kept asking for the police to attend. I called them twice. The third time I asked someone in the street to phone for me, as I could not hear effectively on a public phone. That was a mistake as when I explained to the police that I asked someone to call for me I was told to "stop wasting valuable police time" and "get back to bed".

The police knew I was too afraid to be in the house. I would sit in my car in the street at night. The police contacted the Department of Human Services and told me someone would come and stay with me. Instead two people came and started asking unusual personal questions. I realised they were making a psychiatric assessment. It was humiliating.

I was told by one of them that I was not thinking straight and that I needed medication. I discovered through Freedom of Information that if I made any further reports to police they would use the Mental Health Act to get a compulsory treatment order so that the drug Risperdone could be administered without my consent. It is a very powerful drug.

The threat of being drugged against my will was as terrifying as the stalking I had experienced. To make matters worse some of the offenders knew my reports were being ignored by police and I was regarded as having a mental illness. Hence, the activity increased. They wanted me to doubt my own sanity. This is called 'gaslighting'.

I know of another woman in the area who experienced similar criminal offences. She was not subjected to the same humiliation and threats of compulsory treatment.

For months I made written reports to the police station. Eventually a special file was made and a police sergeant was in charge of my file. I don't think he did his job properly. I felt very intimidated. I felt like I had to apologise for being me.

One time he thumped his fist on his desk and yelled, "we're sick of it". Another officer called me a 'mad woman' to an acquaintance of mine, I was told the officer said, "we already have one mad woman here, we don't want another one".

Further reports to the police were not followed up, including when a shot was fired at me when I was in my backyard. The police claimed there was no hard evidence but some time later I found out that a weapon had been confiscated from a person in the same place where the shot came from.

Eventually, one offender was witnessed attempting to dope my dog. The police officer in charge of my file explained he would finally be charged. This person publicly admitted what he had been doing to me. Nevertheless, charges did not eventuate. I made a complaint about this. The explanation given was that the police officer responsible was going through a difficult time in his life. I did get a verbal apology.

Another time I was informed that my file could not be located at the station. Some eight months later I checked again and was told it had been located in a different place. Once again, my reports had not been taken seriously.

All this took a great toll on my financial wellbeing and health. I had closed my business enterprises and moved to a smaller home during the criminal activity but the stalking continued. I felt abused and intimidated not only by the perpetrators but also the police.

More recently, I have had some serious issues with a neighbour, including a physical assault. I have photographic evidence of the injury. I was treated in an aggressive manner by the police officer. He claimed that I "was only looking for compensation", that I had assaulted the neighbour and that it would not look good for me in court as I had refused previous mediation. He also asked me what medication I am on. I felt bullied and I regret making the report.

I feel unsafe. It has become necessary for me to sit in my car in the street once again for safety reasons.

I believe the police formed attitudes to me years ago and they will not consider my reports to be genuine or substantiated. I have undertaken some counselling by a qualified psychologist. There was some relief in being reassured that I was not paranoid but still I had poor relationships with the police.

It has been suggested that my file may be labelled 'NUPHY' which stands for Needs Urgent Psychiatric Help Yesterday.

## Case study: Mark

I work as an advocate for people with disabilities. I often work with victims as well as perpetrators with acquired brain injury (ABI), and in the past I have worked with a lot of people who are non-verbal.

ABI is kind of a 'hidden' disability so the police don't know – they think people with ABI might be drunk or being a smartarse, particularly if they have balance issues. Police might think they are lying or not telling the truth because what they are saying is disjointed. I don't know if police are really trained in disability – some police have a good understanding but others don't seem to care. I think when they become aware, they do change – they become a lot more patient and accepting.

People with disabilities face several barriers when it comes to reporting crime. People lack a lot of confidence and self-esteem from the starting point. Lots have had dealings before where there wasn't a good outcome or they weren't listened to. Some people have a certain aversion to the police force or people in authority – they are not aware of what they can do or who they can see sometimes. Some are just scared of approaching police.

Mobility is another issue – being able to get to the police station.

A lot of the time, people with disabilities are non-verbal, so it's harder. Police will often leave it up to advocates to manage the communication, because they know it's the best way to deal with it. On occasions, police have said, "OK, you know this person better than us, you can inform us". This can be good and bad. Sometimes they just ignore the person and speak to me instead. I will say to the police, "You need to speak to them, not me". Other times the police assume I'm a meddler and just making their job harder for them.

In situations where there is sexual assault, a lot of the time the perpetrator is a staff member or family member and so the victim feels threatened that if they say something, they will be in trouble. If a client tells our organisation that something has happened to them in a service, we would ask, "Do you want me to write a letter to the service?" I've had people say, "I'm too scared to lodge a complaint because they will come down hard on me".

It's the person's decision to report or not. We will encourage them and tell them the options. If things have been really bad we would say, "You need to report this to the police, we can help you. It would be good if you wrote a letter to the service as well". We will ask them if they'd rather have a meeting with the house manager. Again, it's their decision, their choice.

Residential services usually deny it. Often we will get a meeting, and this is probably the outcome the client is looking for. We get people to the table, get our client feeling safe. Outcomes have been that workers have been sacked.

Again, clients don't feel safe and they feel like it's them against the world, so we might not even be told in the first place. We don't hear everything – there is a lot that's unreported.

### Case study: Linda

I had an experience with the police where the police were great, but I feel like I was let down by the outcome. I was reporting sexual abuse by my brother, which happened throughout my childhood. My husband didn't even know about it until 10 years ago, and we've been married 34 years.

Three things made me want to report: setting an example for my children, preventing him from being able to do it again, and that my friend had a good experience when he reported abuse. Someone has to speak out. Lots of people think that because you've got a disability, you'll take it lying down. I'm not going to let them do that; I will add my voice as a blind woman.

Once I decided to report, I just went straight into the police the next day and said, "I don't know if it's a crime, I just want to tell someone about being molested, and I don't know if there's anything I can do about it but I want to talk to someone". Within a minute, someone from the sexual crimes unit was there, and we went into a room, and just started talking over a cuppa. She said, "Tell me how you want to tell me". So I spoke about the first memory of it. That interview ended in tears and exhaustion. She said, "You don't have to feel guilty". I didn't think I had been but I must have been.

I had three interviews with the policewoman. Along the way you have to explain what happened, what the house was like, where the rooms were. The policewoman asked me things like, "If you're blind, how do you know it was him? If it was night-time and he snuck in, how do you know it wasn't your stepfather or someone else?" I don't believe that they doubted me; I do feel that they were just getting it into the right context for a blind person's perspective. The questions were fair, on the whole.

She asked who else knew. There were only a handful. I was allowed to get into contact with them first to ask them if they would be involved. My other brother and my sister finally agreed to support me, because it happened to them too. The policewoman also attempted to get in contact with my mother. I had told my mum that it had happened when I was 17, and she got him psychiatric help. But, when I went back to her later she wouldn't have a bar of it.

I couldn't remember specific dates but I could remember times of year, and I could remember where we were living at the time. I would have thought that what happened during the high school years were the biggest problem but I couldn't give them any dates, and they decided that the crimes had really happened in the region we were living when I was younger. That meant the case had to be handed along to the police in that region.

Once it was handed over I just couldn't get any information from them. I got sick of trying to contact police – the police contact was never there, never returned his calls. I felt in control of the process until it was handed over to the other region and the Office of the Public Prosecutions.

They kept saying they'd let me know what was going on, what the charges were, but we didn't get to know what the charges were. We didn't even get notified of the court date, it was only by chance we learned the committal hearing was scheduled. I was really annoyed about that.

Once we found out we'd missed the first hearing, we were damned determined to get to the next ones.

When it finally got to the stage where we did get to know what the charges were, he'd denied a certain amount of each, and they were taken off – I didn't even get a right of reply. Why didn't the police come back to me and say, "Is there anything else you can give us?" I just thought I should have had the right to stand up in court and say, "You know you did this".

But when we got into court, the Magistrate says, "such-and-such charge" and he said "yes" or "no", and the Magistrate says, "OK, you get a five-year good behaviour bond and you'll go on the sex offender register". I was pretty disappointed with that.

I complained about the outcome and the process to the Attorney-General, and also about how once the case left my local station I had no contact. I'd like to know that he's definitely on the sex offender register, and that one day his children will find out about it. People used to say, "No, he wouldn't do that" but now I am able to say, "Yes he did do it, I have proof".

If I had my time over, I would definitely report again. I feel relief that I did – it took 30 years off me, I got it off my chest, and I got it out of my head. It took a long time, but I did.

## Case study: Alexis

My doctor advised me that I needed to undergo surgery again. I am very sensitive about invasive procedures because I have experienced sexual abuse and sexual assault in the past. I had had this particular procedure in the past, and my doctor informed the surgeon of my medical and personal history.

When I met with the surgeon, he gave no indication he had read the details of my case. I get the impression that some health professionals do not know how to address issues like this. In this case, he was either too squeamish about the issues, did not think I knew my doctor had passed on the information, or wanted to protect my privacy by not bringing it up. His message was essentially: "you've had it before, don't worry about it".

The day I went in for the procedure, I was handed the consent form about thirty seconds before I went into the theatre. I signed the forms, trusting that the procedure would be as the surgeon had said, "just like the last time".

When I woke up after the surgery, I felt uncomfortable and experienced unusual physical side effects. Based on other procedures I have had before, these side effects were not normal. I asked a nurse about it and was told the doctor had performed an additional and intrusive procedure without my consent. I was in shock, as well as in pain. I felt quite emotional and didn't talk to anyone else about my experience.

During a follow-up appointment, the doctor did not mention anything about the additional procedure. I asked him, and he replied, "I don't know what you are talking about". But I had had this procedure before and knew what the after-effects were. I knew something was different this time.

I had to decide what to do. There should be a process to inform people of their rights right at the start. If people do not realise their rights, or really lack thereof, it is difficult to find and understand information, it is not the sort of thing that everyday people can navigate easily; finding legislation, regulations and understanding the justice system.

I had the feeling what had happened to me was a criminal act, but it was not until further down the line, when other avenues of complaint were hopeless, that I decided to do anything about that aspect of it. I hadn't wanted to go to the police at first because I knew that my history of abuse would come out in a court case, and I didn't want my mum to know.

When I did call the police later on and explain the situation, the response was something like, "Look, we can only investigate *real* assaults". Even after explaining that under law, medical assault is still assault, the police said it is not something they would investigate. The police officer said, "I am telling you, no one will be interested". It felt like I had rung up and complained that my fish and chips were cold.

I think that their main reason for refusing was that they do not feel they have the capacity to walk into another professional setting and pretend they understand the ins-and-outs of medical practice. The police officer suggested I go through the 'correct' complaints system.

I got the feeling that the police did not see what happened to me as a 'real' assault, just a technicality. Their way of perceiving crime is as more overt violence. There is an element of victim blaming too – it was almost like they were thinking, "She agreed to be treated by the doctor, what did she expect?" It was like consent to one procedure meant the doctor had the rights over my body and my full consent to any other procedure.

All I wanted was an explanation for the surgeon's actions and acknowledgment of the wrongdoing. I also wanted the mistake to be admitted so he wouldn't do it to other vulnerable people.

## Case study: Michael

I had a really bad experience with police one Friday night. I was going to get into a cab but the taxi driver wouldn't let me in. There were three policemen standing nearby and I called them over – I wanted them to tell the taxi driver to let me in, because the cab driver was discriminating against me. But the police coming over made it worse. I have mild cerebral palsy and sometimes use a lightwriter to communicate. One of the police talked down to me, being rude. He was talking to me like I was four, and asking where my money was. He called me disabled. They should have treated me with some dignity.

I wanted to report the police's behaviour but I didn't know where to go. There is nowhere obvious to make a complaint about police, so I never did.

I had a better experience with police when a person I knew robbed me. I didn't know where to go for help, but then one of the people I work with realised what had happened and took me to the bank, who told me to report it to police. We just went into the nearest police station and reported it at the counter. At the beginning of the interview the police officer was really patronising but by the end of it he knew how to communicate with me and could understand me. This was because I worked with him through the interview. The interview went for three and a half hours. It was really long but it wasn't complicated. Police should get training in how to communicate with people with disabilities.

The experience was a little bit negative because we had to go back twice to get more evidence for the police. Each time I went back I spoke to different people, and I had to retell the story and go over some of the same things. I also had to keep following up with the police about the case. I'm not sure what happens next.

It would be good if the police had a disability liaison officer I could contact, so I would know who to go to, to find out what is going on. I think it would also be good to have someone to be able to come to the interview with me. Someone with training who knew what they were doing and how to communicate with me.

## Case study: Kayla

I have called the police a few times because I have been scared and stressed. Once, two policewomen came when I was having trouble in the neighbourhood, and they were OK. It made me feel better that they were women, and I had other people with me, which helped too.

Another time in 2010, two policemen came after I rang them for help. They put me in the back of the paddy wagon (in the part for criminals) and took me to the hospital. When we got to the hospital, they took me to the emergency department and I was left in the public space for the whole day and then I was cuffed to the bed, and no one explained anything to me. At one point police told me that if I didn't get back on the bed they would get me shock treatment and they were laughing. I found out they should have called the Crisis Assessment Team (CAT), they had legal responsibilities.

When the hospital transferred me to a psychiatric hospital, they didn't call anyone – my family and friends didn't know where I was for four days. I was scared and confused. They put me in seclusion overnight, like an animal, which was terrifying, I screamed so much, I got laryngitis. Two male nurses just grabbed me – it was so frightening and they injected me with something. I remember looking around and all these men were holding me down – lots of them, mostly big men – I had bruises all over my arms and legs. It is something that still affects me.

Later, a nurse said they were doing it because I was retaliating. But of course I was, I was so frightened. They don't realise the effect it had – it traumatised me. I still get nightmares about that time.

There was no privacy in the high dependency ward, security cameras everywhere, and they used male staff for things they should have used female staff for. Stress affected everyone, to the point that everyone even had constipation. Some of the staff had this attitude that we were all a risk to society, and because we were sick, we deserved to be punished.

Really, I had no rights. I was looking at a pamphlet at home, and it says, "you have the right to be treated with dignity and respect". There was none of that, and women especially need to be looked after.

I'd seen complaint forms at the hospital in the lower dependency ward and they were talking about patients' rights, but I never made a complaint about how I was treated. It felt hypocritical that they had them there when they treated me so badly. I didn't really know how to make a complaint, and I was scared of going back and also of some of the staff, I guess.

I don't call the police anymore, because I don't think they'll do anything to help me. And even CAT, I worry that if I told anyone that I would end up in that hospital again, or that something bad might happen. They discriminate against you if you have a mental illness.



The police are part of the problem really. They ask you if you are on any medication, and then they treat you differently when you say yes, you become a risk in their eyes. I don't really trust them. They shouldn't be involved in the mental health system. They're not trained. For example, when someone is suicidal, the police are more worried about the person going out and killing someone than that person's safety. I'd like the police to be more informed and better trained to be more sensitive, and I'd like to think that the hospitals were told that you can't treat people like that. I think seclusion should be banned from psychiatric hospitals, I don't want to see other people suffer like I did. I am still upset by it, all this time later.

I think, when I was first taken to hospital, if everyone had been a bit nicer, listened to me or told me anything, taken me a cup of tea, it all would have worked out a bit differently.

### Case study: Beth

I was having problems with carers that were abusive – they were bullying, intimidating and condescending, were inappropriately touching me, and were deliberately damaging my property. I also had a few minor injuries occur such as minor burns on my feet, which we couldn't explain.

I was also having trouble with the agency the carers were booked through. I was told by the co-ordinator that if I didn't want a carer that I didn't trust, then I wouldn't get a carer at all. I then arranged to meet with a senior manager at the agency to voice my concern about a number of the carers employed with them, however nothing changed.

The situation didn't improve, so I went to the police station, they listened and wrote things down, but there was no further correspondence or communication – there were three occasions where I reported incidents such as these and three occasions where there was no follow-up. I don't think the police thought it was serious enough. I am not sure if they just saw me as someone in a wheelchair or someone who was unstable or emotional. I presume it was all the normal stereotypes around disability. I also think they thought it was an agency problem, not a police problem.

The assaults happened a few times. When my support agency found out that I had gone to police, I became the 'difficult client'. They must have contacted the funding authority, because they then appointed a neuro-counsellor to assess the situation and I had to have a block of assessments.

The counsellor I saw acknowledged the problem I was having and seemed to understand why I was concerned enough that I had to reported things to the police. After a number of sessions, they suggested I move into respite for a time to get away from things. I agreed this would be a good strategy given the situation as it stood.

I received no feedback or follow-up from police. I ended up permanently moving house and location because I did not feel safe in my previous residence. I felt anxious that I had reported, and I don't know if the police ever contacted the individuals, because I was never told.

### Case study: Phillip

I am from Africa, a former colony. I have moved around most of my life. I have been to every continent. I moved to Australia to change my life. I have never had any trouble with the police – until I came to Australia.

I have a mental health disability, and I have a 40 year history of substance abuse. I had an accident at work that means I also have physical disability. I went to Workcover, but I could hardly speak English, and I felt like the Workcover people were lying to me. I indicated with my hands that the Workcover people had 'screws loose'. They took my hand gesture to mean, "I am going to kill you". I use a lot of hand gestures to express myself, and I also talk loudly, particularly when I am trying hard to explain myself. The Workcover people called the police, and they charged me with abuse and threats to kill. My lawyer told me if I didn't plead guilty, there would be more trouble. They said, "You are the black guy with a mental illness". I didn't know the impact pleading guilty would have on my life later.

The event from the Workcover case completely traumatised me. I have had a lot more contact with police since then, and every time, it is traumatising.

I have been assaulted and humiliated by police. One example of this: I was being taken by police to the hospital (under section 10 of the *Mental Health Act 1986*). The police did the routine roundabout act – they know you can't hold on with your hands handcuffed behind your back, so when they turn a corner you go flying around the back of the van. My back pain was terrible and I was shouting. When I got out of the van, they held me by my feet and hit my head on the ground. If people know you have a mental illness, they think they can do what they want because no one will believe you when you complain.

Another time, I saw a young man in handcuffs being pushed around by police. I went up and said, “You can’t do that. If you don’t stop, I will film it”. The police put me in the back of a divvy van, where it was very hot, and left me sitting there for what felt like an eternity. The handcuffs were so tight I thought my wrists must be bleeding, and again they intentionally didn’t use a seat belt so I had terrible back pain. When I finally got inside the police station, I was so upset, my eyes and nose were streaming. I tried to wipe my face on the glass at the police station, so I could see. When I turned around again, the Senior Sergeant sprayed me with capsicum spray. I was charged with assault, hindering investigation and threats to kill police. I wanted to talk about how the police treated me, but again my Legal Aid lawyer said I should plead guilty.

Police immediately assume a person with a mental illness or a criminal record has done something wrong. I have been harassed by police, who often pull me over in my car for no reason. One of these times, the police took my licence. I followed the police car until I lost them, then I went straight to the police station. I wanted to report the way they treated me.

This was the first time I went to complain. They said to me, “You’re the one who did something wrong, you will get charged with abusing them”. I knew they wouldn’t listen to me – people with mental illness do not get taken seriously when they complain.

I don’t want anything to do with the police, but I am not angry anymore. Even if the police stop me, I act calm and just deal with it. Not all the police are bad, but some are cowboys. How can I complain to the police when this is how they have treated me? I will never forget how I was treated. The memories will always be there.

### Case study: Mia

My daughter is 20 years old. People can’t immediately tell she has autism. The community need to understand that there are both visible and invisible disabilities and both are equally disabling.

Once I had a disability parking permit so I could more easily manage when she attempted to run away or got upset. It was not easy to obtain the disability parking permit and there was considerable paperwork just to ‘prove’ my daughter’s disability.

The symbol on these parking permits should make it clear that they can be used by people with ‘invisible’ disabilities as well as physical disabilities. I have had many experiences where people see us using a disability parking space and become angry with us. Once, a very aggressive man yelled at us, saying, “I don’t care what your problem is, you’re illegally parked”. It was very frightening as he was so aggressive, but I was more concerned about my daughter and how she would react. This was a really bad time, and it happens a lot.

My daughter has a severe language disorder as well as autism spectrum disorder and it takes time, understanding and patience to find out what has upset her. She attended mainstream schools as part of an integration program, but unfortunately the schools’ lack of knowledge about her disability exposed her vulnerability and made her a subject of bullying.

The worst incident was when a group of boys bullied her. One boy touched her and told her she was “sexy”. She first hid in the bathroom, and then ran to the office, crying and screaming. The staff in the office tried to calm her down and stop her crying, but they didn’t try to find out what had happened to her.

When I collected her in the afternoon, a student told me that my daughter was crying badly today. I asked my daughter what had happened but because of her disability she couldn’t explain. I asked the Vice-Principal, who is in charge of all the integration students. She hadn’t done anything to find out – she wasn’t interested at all.

It turned out a teacher had observed the incident, but failed to tell me. A student told me about it. A student also told me a boy had been harassing my daughter for about six months. Someone without autism would find this intimidating and frightening. My daughter was terrified.

It took three hours to piece together what had happened. My daughter did not understand why the boy had made her feel so uncomfortable, frightened and distressed. She also did not know how to express her feelings or who to tell.

I was worried about how my daughter was reacting to the incident emotionally, so my GP referred me to the Royal Children’s Hospital. The doctor said she had only been touched and “hadn’t been raped”, so it wasn’t “a big deal”.

I had to kick up a stink to get the point across that I was worried about how she was reacting psychologically, and then they referred me to a social worker – I think they had decided there was something wrong with me. When I spoke with the social worker the first time I was told that it “wasn’t that serious”. I didn’t know how or where to get her help and I wasn’t being taken seriously. I was worried about sending her back to the school. I just wanted her to be safe.

The social worker notified the Department of Education Bullying Unit. After the Department of Education became involved, the school made special adjustments for her. They allocated a ‘safe space’ for her to go to if she wanted to get out of the open.

I also got in touch with an advocacy organisation for people from non-English speaking backgrounds and they set up a meeting for me with the new Vice-Principal and some teachers. The school appeared to have no knowledge at all that a ‘simple touch and word’ could send an autistic person into a downward spiral.

Although my daughter experienced something stressful and frightening, there was ultimately a good outcome. She is happier and safer, and through my daughter, the school and the teachers have learned about autism.

As a parent of a child with a disability, sometimes you have to act more angry or upset to get someone to actually help you, hear you, see you and take you seriously. You feel like you have to jump through hoops to prove a disability to obtain a permit for parking, or to convince people (even those in education, medical and social fields) that this invisible disability cannot be treated with normal remedies.

This proof of disability appears to hold no carriage with police whatsoever. It is very detailed, comprehensive paperwork, and you get new assessments all the time, so much paperwork, but police don’t recognise it.

## Case study: Trudy

I have a son who is 10 years old. My son has high functioning autism that some people find it hard to identify. He looks the same as any other child. He basically speaks well, but he sometimes has a stammer when he talks. It is sometimes difficult for him to tell others what happened. When we listen to his story, we are always careful to ask the ‘what, how, when, where, who and why’ questions, because his story is sometimes hard to follow.

He hasn’t experienced crime, but I realise he is vulnerable and he may have but I wouldn’t know. For example, he goes to a swimming school once a week. When he was nine, he decided that he didn’t want to come into the change rooms with me and wanted to use the men’s rooms. Of course I was worried, but he was growing up. We could make him change his clothes in the family changing room, but we would like to take his pride into account. He has the same pride as other boys.

Once though, he took a really long time. I was waiting for ages. I asked him what had taken so long. His language is at the level of someone much younger, and he did tell me eventually that there was a “weird man”. It is hard to understand what he says, and if I can’t always find out from him what happened, he would have all sorts of problems reporting to police. And I can’t just go and accuse someone, even though I would like to.

We try and teach him about stranger danger. We would like to think he understands the danger, but the problem is whether he can always recognise a dangerous situation. We just have to hope he understands and that if we are not there, someone will take the time to find out if he is OK or needs help. If something has happened to him, we hope the police will do all they can to find out what it was.

If something did happen to him, I feel like it would have to be pretty serious to go to the police. They are very intimidating, and sometimes the kids are scared of them. The police need to understand where children with disabilities are coming from. They might have a role in teaching children with disabilities like my son about what a crime is and that it is OK to get help. I’d like to get assistance like this through his school. We wish the school would teach children about the risks in public places. This is necessary for all children, but especially for kids who are more vulnerable.

Schools need to be able to do more. A couple of students, who he considers his friends, were using bad language and were being racist towards him and me, because we aren’t Anglo. My son was upset, he knows that that is not right, but he thought maybe it was OK because it was his ‘friends’ and he didn’t know how to talk about what was wrong.

At my son’s school he is quite lucky, because his teacher knows quite a bit about autism and is pretty savvy about disability issues, but because she is the only one we have to be very dependent on her. When my son was being bullied at school, she was able to find out what happened, so we were lucky that time, but that’s unusual.

Parents usually have to do so much education. And if schools and teachers don't get it, how will the police possibly understand?

I can only do what I can and hope that others will help him too, even though it is hard.

### Case study: Vicki

I have volunteered as an Independent Third Person (ITP) for five years. Working as an ITP is enjoyable, even addictive.

I have seen approximately 60 victims of crime in five years but they have mainly been white Australians. There must be many more victims who are not coming forward. The wider community, in particular people from Culturally and Linguistically Diverse (CALD) backgrounds, need to know they can come forward and seek assistance. If no one tells you it is OK to complain, then you won't complain.

I go in to police interviews to explain the process for people with disabilities, not to be their friend. When I arrive at the station, the police introduce me to the person and leave us alone together. The person needs to understand that an ITP does not work for the police, and that it is OK to talk about their experience because they are in a safe place and that I will not discuss their interview with others. I explain that it is a formal process and the police will ask questions. I tell the person that I will be there but I will not be asking any questions, and that they should give the police as much information as possible because you cannot give a wrong answer if you tell the truth. I explain the difference between a truth and lie.

One of the most important things about being an ITP is not judging a person on what a file says or what other people say about them. I don't think IQ is relevant when determining capacity. If the person has a disability, we talk together to find a way of communicating that works for them. I usually ask the person if they are happy to look at the police. If they are not, I ask them to explain that they will not make eye contact. As an ITP, you have to keep your words simple. I have two children with disabilities and this has been helpful in my role.

In my experience, the police have been supportive of my role. During the interview, I sit beside the person but not too close. This helps to set the boundary. I tell them if they need to come back for another interview, I can try to be there. I make sure the person is comfortable, has access to water and breaks.

If I am working with a victim, the police have allowed me to help put the person's worded account into 'police speak'. In written statements, you can make sure that all details get into the statement. A lot of victims decide to withdraw their statement. Police are usually happy to explain the process. In some interviews I ask the victim, "If this happened to your friend, what would you tell them to do?" It is about trying to get across the importance of making the statement. The victim needs to know they are of value, and what happened to them does matter. In my experience, officers in Sexual Offences and Child Abuse Investigation Teams are great at making people feel safe.

Most police want to help the person. The police may be unsure whether the case will go forward, but they will keep the matter alive. They want to do something about the person's problem. They don't disregard anyone's statement.

As a whole, police are engaging with people with disabilities more and bringing in ITPs at appropriate times. I think if you asked the police, they would say they need more training. They know they don't have a full understanding of disability. They understand they need more tools to assist a broader range of people. Police also need to have experience being around people with disabilities and communicating with people with diverse disabilities. This is much better than textbook learning and it teaches police that people have differences rather than disabilities.

### Case study: Angela

I work as an advocate guardian at the Office of the Public Advocate. Advocate guardians are assigned to work with people with disabilities who lack the legal capacity to make lifestyle decisions, or are in vulnerable situations. There are people out there that prey on people with disabilities and want to control others, and people with disabilities are vulnerable to this.

It is important that people with disabilities feel safe to report. Acknowledging and understanding fear is really important and something that has to be addressed to make people feel safe. It is a fear of loss, and if you go down this path of reporting crime there is going to be a loss. There must be supports and there must be follow-up so that a person remains safe and has a continual network around them.

Some police are more invested than others, but I haven't had any bad experiences. However, there is room for improvement. Everyone has the same rights, yet Independent Third Persons have been called in more for offenders than for victims, which isn't fair.

At the reporting and interviewing stage, police need to realise it doesn't have to happen in one session, it can happen over a period of time, over a number of sessions. The environment is also important – police need to be creative to make people feel safe and comfortable. This may mean interviewing the victim somewhere other than at the police station, taking into consideration who is present, the length of time, how an interview is conducted. It is about the law, but the process needs to be more flexible. Police will get more accuracy if the person feels secure and trusting.

Police may have access to facilitated communication but they should also consider other forms of communication to validate the information. People with disability have different ways of understanding and expressing their wishes and views. I often wonder how much truth is in the stories I hear from my clients so I investigate, ask more questions and engage others. I may hear two completely different stories from the client, from their families, from carers, but it comes back to the needs of the client and if they are safe.

Follow-up is equally important. I was involved in a case where a senior police officer continued to have contact with my client to make sure she was safe. He did that off his own bat, but it doesn't happen all that often.

Police are focused on the need to prove who the offender is and what they did, but that shouldn't take away from the victim being supported to tell their story. Victims need to tell their story so they are heard and can get support. It is part of the healing process.

# Appendix 1: Key informant interviews

No	Name/Organisation	Date
1	Dr Patsie Frawley, LaTrobe University	5 July 2013
2	Women with Disabilities Victoria (1)	9 July 2013
3	Disability Discrimination Legal Service	12 July 2013
4	Associate Professor Keith McVilly, Deakin University	18 July 2013
5	Victoria Legal Aid	19 July 2013
6	Dr Nicole Asquith, Deakin University	24 July 2013
7	Federation of Community Legal Centres Victoria and South Eastern Centre Against Sexual Assault	29 July 2013
8	Professor James Ogloff, Monash University	30 July 2013
9	Communication Rights Australia	31 July 2013
10	Dr Margaret Camilleri, Federation University Australia	7 August 2013
11	Villamanta Disability Rights Legal Service	20 August 2013
12	United Voices for People with Disabilities	29 August 2013
13	Women with Disabilities Victoria (2)	3 September 2013
14	First Peoples Disability Network	17 September 2013
15	Victoria Police Deputy Commissioner Tim Cartwright	15 October 2013
16	Disability Justice Advocacy	15 October 2013
17	Disability Services Commissioner	23 October 2013
18	Scope	11 November 2013
19	Dr Jeffrey Chan	14 November 2013
20	Seniors Rights Victoria	19 November 2013
21	Office of Public Prosecutions	22 November 2013
22	Senior Practitioner – Disability	22 November 2013
23	Office of the Public Advocate	26 November 2013
24	Aboriginal Family Violence Prevention and Legal Service Victoria	9 December 2013

# Appendix 2: Focus group interviews

No	Type	Date
1	Advocates	10 July 2013
2	Service workers	12 August 2013
3	People who provide care and support	2 September 2013
4	Independent Third Person Program volunteers	10 October 2013
5	Auslan interpreters	10 October 2013
6	Independent Third Person Program volunteers	11 October 2013
7	Independent Third Person Program volunteers	1 November 2013
8	Police	November 2013
9	Police	November 2013
10	Police	November 2013
11	Police	November 2013
12	People with disabilities	13 November 2013
13	Police	November 2013

# Appendix 3: Submissions

No	Name /organisation	Date
1	Victorian Ombudsman	8 July 2013
2	Mental Health Legal Service	27 July 2013
3	Speech Pathology Australia	12 September 2013
4	Disability Advocacy and Information Service Inc.	17 December 2013
5	Ryan Thorneycroft	23 October 2013

Information was also provided to the Commission by Blind Citizens Australia (6 November 2013).



# Glossary

## **ABI**

Acquired brain injury refers to any damage to the brain that occurs after birth, with the exception of Foetal Alcohol Spectrum Disorder (FASD). That damage can be caused by an accident or trauma, by a stroke, a brain infection, by alcohol or other drugs or by diseases of the brain.<sup>874</sup>

## **Augmentative and Alternative Communication**

Any type of communication other than speech. Unaided Augmentative and Alternative Communication does not use any props or devices, and includes body language, facial expression and the more formal use of manual sign. Aided Augmentative and Alternative Communication does use props or devices, such as voice output communication aids and communication boards.

## **Brief of evidence**

A compilation of all documents relevant to the prosecution of a case.

## **CALD**

Culturally and Linguistically Diverse refers to the range of different cultures and language groups represented in the population who identify as having particular cultural or linguistic affiliations by virtue of their place of birth, ancestry or ethnic origin, religion, preferred language or language spoken at home.

## **CASA**

The Victorian (Australia) Centres Against Sexual Assault (CASAs) provide support and intervention to women, children and men who are victim/survivors of sexual assault. They also work towards the elimination of sexual violence through education, facilitating research, policy, and advocating for law reform.<sup>875</sup>

874 <[www.bia.net.au](http://www.bia.net.au)>

875 <[www.casa.org.au](http://www.casa.org.au)>

## **CIU**

Criminal Investigation Unit, Victoria Police.

## **Committal Hearing**

A Magistrates' Court hearing where it is decided if there is enough evidence for a case to go to trial.

## **Committal Mention**

A Magistrates' Court hearing where it is decided if a case should be heard in the Magistrates' Court or if it should go to trial in a higher court.

## **CRAF – Family Violence Common Risk Assessment and Risk Management Framework**

Also known as the Common Risk Assessment Framework (CRAF), the framework has been designed to help practitioners working in a wide range of fields to understand and identify risk factors associated with family violence.

## **Cross-examination**

Asking a witness questions about evidence he or she has given. The defendant's lawyer cross-examines prosecution witnesses and the prosecutor cross-examines defence witnesses.

## **CRU**

A community residential unit (CRU) is a residential service that has been declared as a CRU by the Minister for Community Services. In most cases it will house four to six residents and support will be provided by rostered staff. Also known as 'group homes'.

## DSC – Disability Services Commissioner

The Disability Services Commissioner is an independent statutory body that provides a complaints resolution process for people with disabilities and disability services in Victoria. The Disability Services Commissioner also provides education and training, and conducts research to improve complaints processes within disability services.

## Environments that are socially isolating

Accommodation, including the home and service settings, where people have limited or no independent contact with the wider community or environment.

## Evidence-in-chief

The evidence given by a witness that is used to support the prosecution's case. This evidence can be tested under cross-examination by the defendant's lawyer.

## Family Violence Safety Notice

A notice issued by the police to protect an adult from a family member who is using family violence. The notice automatically becomes an application for an intervention order to the Magistrates' Court of Victoria.

## FVIO – Family Violence Intervention Order

An order made by a Magistrate to protect a family member from violence.

## FVLO – Family Violence Liaison Officer

A police supervisor who provides a consistent and coordinated approach to family violence at their station/cluster including adherence by police members to the *Code of Practice for the investigation of family violence*. There is an FVLO at every 24-hour police station in Victoria.

## Group homes

See CRU.

## Independent Third Person

Independent Third Persons (ITPs) are volunteers who assist people with a cognitive disability or mental health disability during interviews, or when giving formal statements to Victoria Police. The person with a cognitive disability or mental health disability may be an alleged offender, victim or witness. The Office of the Public Advocate trains ITPs in how to: facilitate communication, assist the person to understand their rights and support the person through the process.<sup>876</sup>

876 <[www.publicadvocate.vic.gov.au](http://www.publicadvocate.vic.gov.au)>

## Indictable offences

More serious offences that cannot be heard in the absence of the person accused of the crime. These offences are usually heard in the Magistrates' Court for a committal hearing. The offence may then be sent for trial before a judge in a higher court such as the County Court or Supreme Court.

## Intersectionality

In this report, intersectionality refers to experiences that are shaped by a number of co-existing attributes. For example, an Aboriginal person with disabilities may experience discrimination because of their disability and race, and may experience the discrimination in a way that is informed by cultural experience.

## IVO – Intervention Order

See FVIO or PSIO.

## LEAP – Law Enforcement Assistance Program

The Victoria Police system of electronically recording police records such as criminal histories and incidents attended.

## Local Area Commander

A police member of Inspector rank who has responsibility for a policing service area (equivalent to a local government area).

## Magistrates' Court

The court that hears the less serious (summary) cases and does not use a jury.

## Office of the Public Advocate (OPA)

The Office of the Public Advocate is an independent statutory body that has functions under the *Guardianship and Administration Act 1986* (Vic) to protect and promote the rights of people with disabilities in Victoria. Other functions include undertaking research, providing community education, and administering the Community Visitors program and Independent Third Persons Program.

## Office of Public Prosecutions (OPP)

Prosecutes serious criminal cases on behalf of the Director of Public Prosecutions. The OPP and Victoria Police are separate organisations.

## Police informant

The police member who investigates the crime and lays the criminal charges against the accused person. The informant also prepares the brief of evidence.

## Police prosecutor

A specialist police officer who presents cases in the Magistrates' Court. He or she decides which prosecution witnesses will be required to give evidence, and questions witnesses, including cross-examinations of people who are giving evidence on behalf of the defendant.

## Police supervisor

Police supervisors check the appropriateness of the police response when attending incidents, provide guidance and supervision and sanction frontline decision-making.

## Procedural justice

The fairness of the process of decision-making by authorities, as opposed to the fairness of the decisions made or the outcome of the case.

## PSIO – Personal Safety Intervention Order

An order made by a magistrate to protect a person from stalking (non-family).

## Re-examination

The prosecution can ask a witness further questions once they have been cross-examined. Nothing new can be raised in re-examination. The prosecution can simply clarify issues that were raised in cross-examination.

## Secondary victimisation

An indirect result of crime, which occurs through the responses of individuals and institutions to the victim. This may include victim blaming, and other inappropriate behaviour or language that causes trauma.

## Senior Practitioner – Disability

The Senior Practitioner – Disability sits within the Office of Professional Practice in the Department of Human Services. The *Disability Act 2006 (Vic)* created the position of the Senior Practitioner, who is responsible for ensuring that the rights of people who are subject to restrictive interventions and compulsory treatment are protected, and that appropriate standards are complied with in relation to restrictive interventions and compulsory treatment. The Senior Practitioner has extensive powers to set standards and guidelines, and to monitor and direct disability service providers in relation to the use of restrictive interventions and compulsory treatment.<sup>877</sup>

## SOCA – Sexual Offences and Child Abuse Units, Victoria Police

Staffed by trained police to assist with responding to and investigating sexual assault and child abuse. SOCAs have now been replaced by SOCITs (see below).

## Socially isolated environment

See 'environments that are socially isolating'.

## SOCIT – Sexual Offences and Child Abuse Investigation Teams, Victoria Police

Teams of specialist detectives who are trained to investigate crimes of sexual assault and child abuse.

## Special hearing

A special hearing is used in sexual offence cases, where the victim was under 18 or cognitively impaired when proceedings began. A special hearing can be held before or during a trial. When a special hearing is held before a trial, the victim must give their evidence in the form of a audio-visual recording, which is then used in court. To decide when a special hearing is needed before the trial, the court will consider: the maturity of a child, the severity of a cognitive impairment, the victim's preference, any potential adverse effects on the victim of conducting a special hearing during the trial, the need to complete the victim's evidence quickly, the likelihood that the witness will give inadmissible evidence that may result in the discharge of the jury; and any other relevant matters.

---

877 <[www.dhs.vic.gov.au/for-individuals/yourrights/offices-protecting-rights/office-of-the-senior-practitioner](http://www.dhs.vic.gov.au/for-individuals/yourrights/offices-protecting-rights/office-of-the-senior-practitioner)>

## SRS – Supported Residential Services

The most common referral source to SRS was the resident's family, followed by mental health services. A range of other services (including disability, alcohol, and other drug services, and services working with Corrections Victoria) may also place people in SRS.

## Summary offences

Offences heard by a Magistrate sitting alone. Includes some forms of assault.

## Support Link

Support Link provides a national referral and diversion gateway for police and other emergency services. It provides a single referral and diversion gateway for operational police and monitors and supports the referral process for clients, agencies and police officers.<sup>878</sup>

## VARE – Video and audio recorded evidence

An audio visual recorded statement taken by police in accordance with section 366 of the *Criminal Procedure Act 2009* (Vic). Used for victims or witnesses of a sexual offence or an indictable offence that involves an assault or injury or threat of injury. The person making the statement must be under 18 years of age or have a cognitive impairment.

## Victoria Police Manual

Victoria Police policies and procedures are published in the Victoria Police Manual. This sets the behavioural, operational and administrative standards for the organisation and is divided into Policy Rules, which provide mandatory accountabilities, and supporting Procedures and Guidelines.

## VSA – Victims Support Agency

The Victims Support Agency (VSA) within the Department of Justice represents victims of crime and provides statewide services (both counselling and practical assistance) to help victims of violent crime recover from the effects of crime. There are two primary programs: the Victims of Crime Helpline and Victims Assistance and Counselling Program – a network of agencies throughout metropolitan and regional areas providing support and assistance to victims of crime.

---

878 <[www.supportlink.com.au](http://www.supportlink.com.au)>

# Useful contacts

## In an emergency always dial '000'

### **1800 RESPECT: National sexual assault, domestic family violence counselling service**

Freecall: 1800 737 732

[www.1800respect.org.au](http://www.1800respect.org.au)

Qualified and experienced counsellors provide telephone and online counselling, information and assistance to access other services to all people in Australia affected by sexual assault and domestic and family violence, including family and friends. It is available 24 hours a day, seven days a week.

### **Centres against Sexual Assault (CASA)**

Sexual Assault Crisis Line (Freecall): 1800 806 292

[ahcasa@thewomens.org.au](mailto:ahcasa@thewomens.org.au)

[www.casa.org.au](http://www.casa.org.au)

Non-profit, government funded organisations that provide support and intervention to women, children and men who are victim/survivors of sexual assault. You can be referred to your local CASA or contact them directly.

### **Domestic Violence Resource Centre Victoria**

(03) 9486 9866

[www.dvrcv.org.au](http://www.dvrcv.org.au)

A statewide service that provides telephone support, information and referral services to assist people who have experienced family violence. Also provides training, publications, research and other resources to those experiencing (or who have experienced) family violence, and practitioners and service organisations who work with family violence survivors.

### **InTouch Multicultural Centre against Family Violence**

Freecall: 1800 755 988 or (03) 9413 6500

[admin@intouch.asn.au](mailto:admin@intouch.asn.au)

[www.intouch.asn.au](http://www.intouch.asn.au)

Provides culturally sensitive risk assessment, information, support, advocacy and referral

to women and children from culturally and linguistically diverse backgrounds in situations of family violence.

### **Living Well (male survivors)**

(07) 3028 4648

[www.livingwell.org.au](http://www.livingwell.org.au)

Although based in Queensland, Living Well offers a range of services and resources specifically designed to assist men who have experienced childhood sexual abuse or sexual assault, their partners, friends and family and service providers.

### **Sexual Assault Crisis Line Victoria**

Freecall: 1800 806 292

[ahcasa@thewomens.org.au](mailto:ahcasa@thewomens.org.au)

[www.sacl.com.au](http://www.sacl.com.au)

A sexual assault crisis line for people who have experienced sexual assault.

### **Victims of Crime**

Freecall: 1800 819 817

Text: 0427 767 891

[www.victimsofcrime.vic.gov.au](http://www.victimsofcrime.vic.gov.au)

The official Victorian Government helpline and website for people affected by crime against the person. Provides free guidance through the legal process and information, referral and support to help victims recover from the effects of crime.

### **Women's Domestic Violence Crisis Service**

Freecall: 1800 015 188 or (03) 9322 3555

[wdvcs@wdvcs.org.au](mailto:wdvcs@wdvcs.org.au)

[www.wdvcs.org.au](http://www.wdvcs.org.au)

A statewide not-for-profit service for women and children experiencing abuse from a partner or ex-partner, another family member or someone close to them. Provides emergency accommodation, a free 24-hour crisis line, outreach services, advocacy, referral and information and support services.





Victorian Equal Opportunity  
& Human Rights Commission

## Contact us

Enquiry Line	1300 292 153 or (03) 9032 3583
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	<a href="mailto:information@veohrc.vic.gov.au">information@veohrc.vic.gov.au</a>
Website	<a href="http://humanrightscommission.vic.gov.au">humanrightscommission.vic.gov.au</a>