

Issues Paper D

Sexual Offences: Report to Charge



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Introduction

- 1 This paper is for:
 - people who work in, or have experience of, sexual offence investigations
 - counsellors, intermediaries, and others who support or work with those who have experienced sexual harm
 - researchers and others interested in the subject.
- 2 We also encourage people who have experienced sexual harm, and those who have supported them, to answer any questions in this paper that interest them.
- 3 People who experience sexual harm often take their first step towards a criminal justice response by making a report to Victoria Police. In this paper, we discuss how police in Victoria respond to and investigate reports of sexual harm.
- 4 We ask how well police investigations of sexual offences are working and how to improve them. We would also like to know if people who experience sexual harm should have options to report in alternative ways.

Issues Paper D is one of eight papers.
View them at https://lawreform.vic.gov.au/sex_offences_2020/issues_papers.
We encourage you to tell us your views on all the issues you are interested in.

Specialist approach to investigating sexual offences

- 5 Victoria Police's approach to investigating sexual offences has been reformed in important ways over time.¹
- 6 Victoria Police now has teams of specialist investigators who respond to sexual harm and child abuse reports (Sexual Offence and Child Abuse Investigation Teams (SOCITs)). In some places, people harmed can access police and the key services and supports they need in 'one stop shops' called Multidisciplinary Centres (MDCs).² We discuss SOCITs and MDCs further below.
- 7 Victoria Police also has a taskforce that investigates historical child sexual abuse in institutions such as churches (the SANO taskforce).³

- 8 Evaluations have shown the benefits of this specialist approach by police:
- ‘victim-centric’ responses have led to better interactions between people harmed and police
 - police attitudes and practices have changed because of better training
 - there is better continuity of care.⁴

Table 1: Examples of how Victoria Police is required to put the person harmed at the centre of an investigation⁵

Feature	Description
Making support available	Police are required to connect people who have experienced sexual harm with support and services.
Giving people who have reported a crime enough information	Police are required to provide the person who reported the sexual harm with information throughout the investigation process. They should explain the process and the main decisions, such as the decision to discontinue an investigation. They should provide copies of material, such as transcripts from visual and audio recorded evidence (VARE).
Supporting decision making and control over the process	People who have reported sexual harm are given some ability to ‘move at their own pace’; for example, only giving formal statements when they are ready. If they decide to withdraw their complaint, the police are required to respect this.

Sexual Offence and Child Abuse Investigation Teams (SOCITs)

- 9 SOCITs aim to follow a ‘victim-led process’ when investigating sexual offences, giving priority to the safety and wellbeing of people who have experienced sexual harm.⁶ There are 28 SOCIT sites around Victoria.⁷
- 10 SOCIT investigators are qualified as detectives and complete specialist sexual offence training. This training is a single four-week course. It covers topics such as the nature and context of sexual offending and specialist interviewing techniques.⁸

Multidisciplinary Centres (MDCs)

- 11 The agencies in MDCs work together with the aim of having a ‘victim-centric, integrated and holistic response’ to sexual assault, child abuse and, in some locations, family violence.⁹
- 12 MDCs have SOCITs,¹⁰ counsellors from Centres Against Sexual Assault (CASAs), officers from the Victorian Institute of Forensic Medicine, child protection staff from the Victorian Department of Health and Human Services and community health nurses. Some MDCs have a Family Violence Investigation Unit and response services.¹¹
- 13 MDCs are located away from police stations. Police officers do not wear uniforms and the buildings have discreet signs.¹² People who use the centres have safe access to services and facilities, including private counselling and clinic rooms, forensic medical suites and evidence recording facilities.¹³
- 14 We also discuss MDCs in Issues Paper A.

Question

1 How well are Sexual Offence and Child Abuse Investigation Teams (SOCITs) and Multidisciplinary Centres (MDCs) working? How can they be improved?

You might think about:

- the diverse needs and experiences of people who have experienced sexual harm
- the range of available services in MDCs.

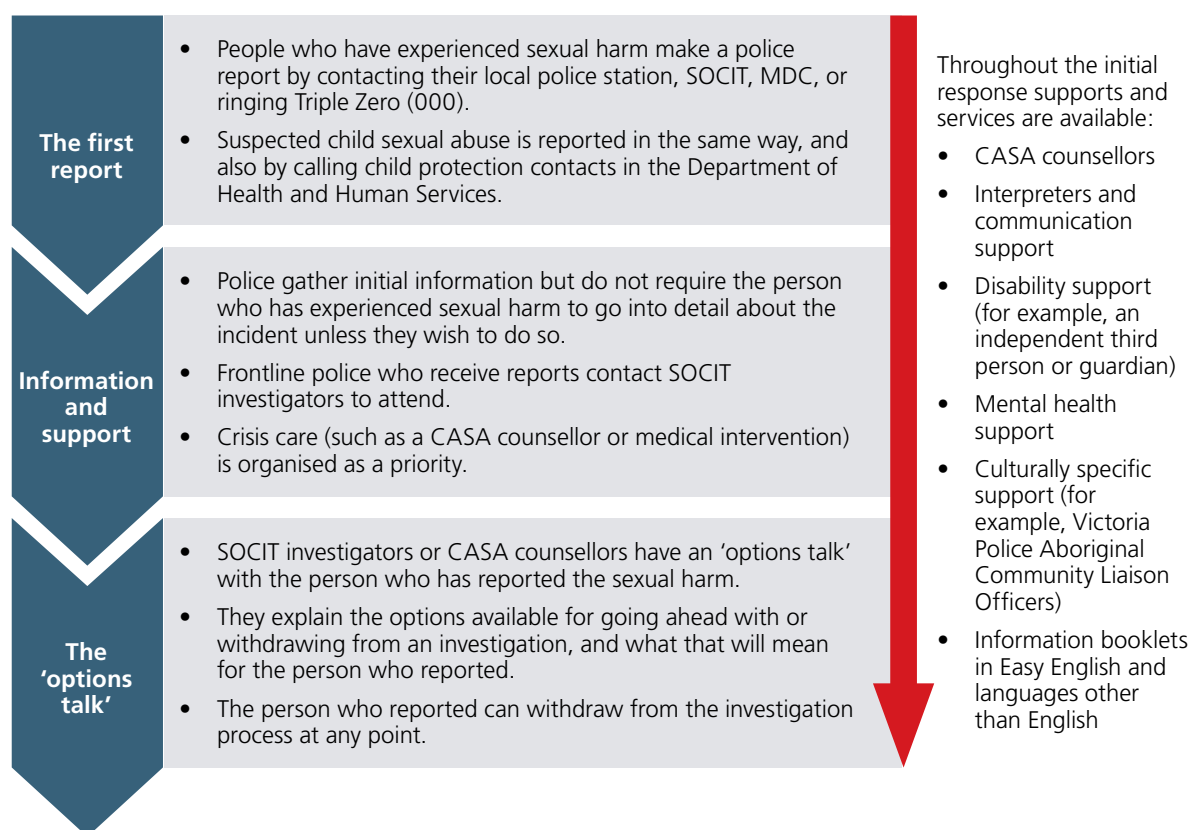
The investigation process

15 The investigation process is guided by the Victoria Police Manual¹⁴ and internal codes of practice and conduct.¹⁵ We set out below how Victoria Police is required to respond to and investigate reports of sexual harm.

The initial police response

16 Figure 1 summarises how police should respond when sexual harm is first reported. The focus is on the welfare of the person reporting the sexual harm and giving them control over what happens next.

Figure 1: Initial police response to reports of sexual harm¹⁶



Forensic medical examination

- 17 A forensic medical examination is a way of collecting evidence from the body of the person harmed. The person's consent is required to carry out an examination.¹⁷
- 18 Forensic medical examiners from the Victorian Institute of Forensic Medicine carry out these examinations. They may be carried out at the nearest hospital's crisis care unit¹⁸ or MDC. If the person harmed is in a nursing home or aged care facility, the examination takes place there.¹⁹
- 19 SOCIT investigators may also give the person harmed a forensic self-sampling kit called an 'early evidence kit'. This may be used if the person harmed wants to do things that may damage physical evidence, such as showering or urinating. It does not replace a forensic medical examination.²⁰

Taking a formal statement

- 20 Victoria Police are required to take formal statements in private settings and to ask questions in a clear and sensitive manner.
- 21 If the person harmed is a child or has a cognitive impairment, the statement is taken in the form of visual and audio recorded evidence (VARE). This is usually done by an appropriately trained Victoria Police officer.²¹
- 22 At some SOCIT sites, an intermediary can advise on the communication needs of the complainant before a VARE is taken.²² If the complainant is a child, the child's parent or guardian, or an independent person, needs to be present during the interview. If the complainant has a cognitive impairment, an Independent Third Party (ITP) must be present.²³
- 23 We discuss the use of VAREs in criminal trials in Issues Paper E.

Ongoing investigation and outcome

- 24 The investigation may involve interviewing the accused, talking to witnesses and analysing evidence collected from the scene. An investigation may result in the police filing charges against the accused, or the investigation may be discontinued.

Filing charges

- 25 If SOCIT investigators have identified the accused, they decide whether to charge the person. There needs to be enough evidence to support each charge and a reasonable prospect of conviction.²⁴
- 26 In some cases, police may ask the Director of Public Prosecutions (DPP) for advice, where the case is complex or could raise policy issues.²⁵
- 27 The DPP can change these charges during its prosecution. We discuss the role of the DPP and accountability for charging and prosecuting decisions in Issues Paper E.
- 28 Police can also prosecute many indictable sexual offences summarily in the Magistrates' Court, without the DPP being involved.²⁶ The maximum sentences that the Magistrates' Court can order in these cases are lower than those available in higher courts.²⁷

Discontinuing an investigation

- 29 SOCIT investigators may decide to discontinue an investigation because:
- they cannot identify the person responsible for the sexual harm
 - they do not have enough evidence to charge the accused
 - they do not have enough evidence for a criminal prosecution.
- 30 When this happens, the person harmed should be informed at once. Police are required to explain why they decided to discontinue the investigation. These decisions are overseen by a manager.²⁸

Questions

- 2 What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?
- You might think about:*
- the initial police response and communication with the person harmed
 - how formal statements are taken.
- 3 What other issues need to be addressed to improve the experience of the police investigation process for children who have been sexually harmed? How can they be addressed?
- You might think about:*
- the initial police response and communication with the child who has been harmed (or their parent or guardian)
 - how formal statements are taken.
- 4 What other issues need to be addressed during the investigation process to support successful criminal prosecutions in sexual offence cases? How can they be addressed?
- You might think about:*
- the quality of statements taken by police officers
 - the collection of physical evidence, including forensic evidence
 - decisions about and accountability for filing charges or discontinuing investigations
 - the extent to which the views of the person harmed are taken into account when making decisions.

Should there be other ways to report?

- 31 People who experience sexual harm may find it difficult to tell police what happened. They may want to tell someone else, or find more information about what to do next, without going to the police. They may not want to go to a police station.
- 32 Other ways of reporting, using technology, have been developed by universities, sexual assault services and law enforcement agencies.²⁹ Table 2 lists some of these options in Australia and the United States.
- 33 These options could encourage more people to report sexual harm.³⁰ For example, people facing additional barriers to reporting—such as people who work in the sex industry, people from regional and rural locations and young people—might prefer to use them. These ways of reporting could also provide more information about available options. They could allow the person harmed to ask someone such as a counsellor or SOCIT investigator to contact them or see them at a safe location. They could also give police better intelligence for their investigations.

Table 2: Examples of technology-based alternative reporting options

Name	Description	Main features
Callisto ³¹	<p>An online tool for anonymously reporting sexual assault on college campuses and in some workplaces.</p> <p>Elker is another example of a technology-based anonymous reporting tool.³²</p> <p>Some Australian universities and colleges also have anonymous reporting avenues for sexual harm.³³</p>	<ul style="list-style-type: none"> anonymous reporting user-friendly interface presenting the options available, including talking to a friend, speaking to a therapist, or not telling anyone option available for legal advice collects data to identify repeat offenders.
Sexual Assault Report Anonymously (SARA) ³⁴	<p>An online help-seeking tool for sexual assault and harassment created and administered by the South Eastern Centre Against Sexual Assault. It provided an alternative to making a formal report to police.</p> <p>SARA is no longer available.</p>	<ul style="list-style-type: none"> anonymous reporting people who experienced sexual harm could report details of an incident and request contact from a counsellor data used for police intelligence gathering.
Alternative Reporting Options (ARO) ³⁵	<p>The Queensland Police Service allows people who have experienced sexual harm to access Alternative Reporting Options instead of making a formal report to police.</p> <p>The New South Wales Police Force has a similar alternative reporting option known as Sexual Assault Reporting Option (SARO).³⁶</p>	<ul style="list-style-type: none"> anonymous reporting people harmed fill in a Sexual Crime Survey Form online used for police intelligence gathering and investigations.

- 34 A person who uses alternative reporting options may also report the matter to the police and pursue a criminal justice response. Information given through alternative reporting options might be available as evidence in prosecutions.³⁷

Questions

- 5 Do you support access to alternative ways of reporting sexual harm? Why or why not?
- 6 If you support alternative ways of reporting sexual harm, what features should they have?

You might think about:

- the barriers people face in reporting sexual harm
- the diverse needs and experiences of people who have experienced sexual harm
- the implications for investigations and prosecutions
- possible features such as reporting anonymously, access to information about options, asking for support, and accessibility features.

Endnotes

- 1 Many changes arose from recommendations in our 2004 review of Sexual Offences. See Victorian Law Reform Commission, *Sexual Offences* (Report No 5, July 2004) <<https://www.lawreform.vic.gov.au/projects/sexual-offences/sexual-offences-final-report>>.
- 2 MDCs were piloted in 2007 at two sites, and there are seven MDC sites; the last established in 2018: Victoria Police, *Multidisciplinary Centres (MDCs)* (Information Sheet, 16 October 2017) 1 <https://msau-mdvs.org.au/wp-content/uploads/2019/04/MDC_Information_Sheet.pdf>.
- 3 'Sexual Offences and Child Abuse', *Victoria Police* (Web Page, 21 April 2020) <<http://www.police.vic.gov.au/sexual-offences>>.
- 4 See generally Martine B Powell, 'Victims' Perceptions of a New Model of Sexual Assault Investigation Adopted by Victoria Police' (2013) 14(3) *Police Practice and Research* 228; Martine B Powell and Rebecca Wright, 'Professionals' Perceptions of a New Model of Sexual Assault Investigation Adopted by Victoria Police' (2012) 23(3) *Current Issues in Criminal Justice* 333; Success Works, Department of Justice (Vic), *Sexual Assault Reform Strategy* (Final Evaluation Report, 2011) <<https://trove.nla.gov.au/version/169811763>>.
- 5 See generally Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 6 'Sexual Offences and Child Abuse Investigation Teams', *Victoria Police* (Web Page, 31 July 2020) <<https://www.police.vic.gov.au/sexual-offences-and-child-abuse-investigation-teams#contact>>.
- 7 Ibid.
- 8 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) 24–5 <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>; Patrick Tidmarsh, Gemma Hamilton and Stefanie J Sharman, 'Changing Police Officers' Attitudes in Sexual Offense Cases: A 12-Month Follow-up Study' (2020) 47(9) *Criminal Justice and Behavior* 1176, 1178–1180.
- 9 Victoria Police, *Multidisciplinary Centres (MDCs)* (Information Sheet, 16 October 2017) 1 <https://msau-mdvs.org.au/wp-content/uploads/2019/04/MDC_Information_Sheet.pdf>.
- 10 In some locations.
- 11 'Sexual Offences and Child Abuse Investigation Teams', *Victoria Police* (Web Page, 31 July 2020) <<https://www.police.vic.gov.au/sexual-offences-and-child-abuse-investigation-teams#contact>>. The relationship between family violence and sexual assault in this context is outlined further in Issues Paper A.
- 12 Ibid.
- 13 Ibid.
- 14 The Victoria Police Manual is made under the *Victoria Police Act 2013* (Vic) s 60.
- 15 *Victoria Police Act 2013* (Vic); Victoria Police is also bound to act in accordance with relevant legislation such as the *Criminal Procedure Act 2009* (Vic) and *Victims' Charter Act 2006* (Vic).
- 16 See generally Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 17 Ibid 22 [7.3.1].
- 18 Crisis care units are usually found in emergency departments of local hospitals.
- 19 Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) 17 [6.1.5] <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 20 The early evidence kit consists of a urine jar to detect any alcohol or drugs; gauze/wipes for the person harmed to self-wipe areas that have been touched and a mouth swab for the person harmed to collect fluids from their mouth: Ibid 23 [7.3.4].
- 21 *Criminal Procedure Regulations 2009* (Vic) r 5; if the statement is to be taken by way of a VARE statement and the police investigator is not conducting the interview, the investigator should be present and/or perform the role of Interview Monitor: Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) 26 [7.4.5] <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 22 Victoria Police is included in the Intermediary Pilot Program, which is managed by the Department of Justice and Community Safety. An intermediary's role is to assess the communication needs of a vulnerable witness and provide practical strategies and recommendations on how to best communicate with the witness so they can understand the questions and provide their best evidence: County Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearings* (Guide No 1/2018, 28 June 2018) 12 [23] <https://www.judicialcollege.vic.edu.au/sites/default/files/2019-07/Multi%20jurisdictional%20Court%20Guide%20for%20the%20IPP_0.pdf>. The role of intermediaries is discussed in more detail in Issues Paper B.
- 23 An ITP helps to facilitate communication and provide support to the person harmed. An ITP may be a relative or friend, or an ITP trained and authorised by the Office of the Public Advocate: Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) 24 [7.4.2] <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 24 Patrick Tidmarsh, 'Training Sexual Crime Investigators to Get the "Whole Story"' (PhD Thesis, Deakin University, 2016) 10 [1.5.2] <<http://dro.deakin.edu.au/eserv/DU:30102808/tidmarsh-training-2017.pdf>>.
- 25 Department of Public Prosecutions (Vic), *Policy of the Director of Public Prosecutions for Victoria* (Policy, 17 September 2020) 22 [64] <<https://www.opp.vic.gov.au/Resources/Policy-of-the-Director-of-Public-Prosecutions-for-/Policy-of-the-Director-of-Public-Prosecutions-for/>>.
- 26 *Criminal Procedure Act 2009* (Vic) ss 28–9.
- 27 These limits are two years imprisonment for a single offence; five years imprisonment for multiple offences and/or fines of up to 500 penalty units for individuals: *Sentencing Act 1991* (Vic) ss 112A, 113, 113B.
- 28 Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (Policy, 2016) 26 [7.4.6], 27 [7.5.4] <<https://content.police.vic.gov.au/sites/default/files/2019-01/Code-of-Practice-for-the-Investigation-of-Sexual-Crime-%282016%29.pdf>>.
- 29 Georgina Heydon and Anastasia Powell, 'Written-Response Interview Protocols: An Innovative Approach to Confidential Reporting and Victim Interviewing in Sexual Assault Investigations' (2018) 28(6) *Policing and Society* 631, 634–6.
- 30 Ibid 642–3.
- 31 'Technology to Combat Sexual Assault', *Callisto* (Web Page, 2020) <<https://mycallisto.org/>>.
- 32 'Access Realtime, Honest Comments from People in Your Organisation', *Elker for Reporting* (Web Page, 2020) <<https://elker.com/services/reporting/>>.
- 33 See, eg, 'How to Report Sexual Misconduct', *Australian National University* (Web Page) <<https://www.anu.edu.au/students/health-safety-wellbeing/violence-sexual-assault-support/how-to-report-sexual-misconduct>>.
- 34 SARA was available as a website and as an app. SARA could be accessed at www.sara.org.au: CASA Forum, *Annual Report 2017–18* (Report, 2018) 26–7 <<https://www.casa.org.au/assets/Documents/CASA-Forum-Annual-Report-2017-2018.pdf>>; Debbie Cuthbertson, 'Technology Helps Identify Serial Sexual Harassers', *The Age* (online, 17 February 2018) <<https://www.theage.com.au/national/victoria/technology-helps-identify-serial-sexual-harassers-20180214-p4z0ak.html>>.
- 35 'Alternative Reporting Options', *Queensland Police Service* (Web Page, 20 March 2020) <<https://www.police.qld.gov.au/units/victims-of-crime/adult-sexual-assault/alternative-reporting-options>>.
- 36 'Sexual Assault Reporting Option (Online Questionnaire)', *New South Wales Police Force* (Web Page) <https://www.police.nsw.gov.au/crime/sex_crimes/adult_sexual_assault/sexual_assault_categories/saro>.
- 37 See also Georgina Heydon and Anastasia Powell, 'Written-Response Interview Protocols: An Innovative Approach to Confidential Reporting and Victim Interviewing in Sexual Assault Investigations' (2018) 28(6) *Policing and Society* 631, 641.

