

**IN THE MATTER OF THE ROYAL COMMISSION
INTO FAMILY VIOLENCE**

ATTACHMENT CA-8 TO STATEMENT OF SUPERINTENDENT CHARLES ALLEN

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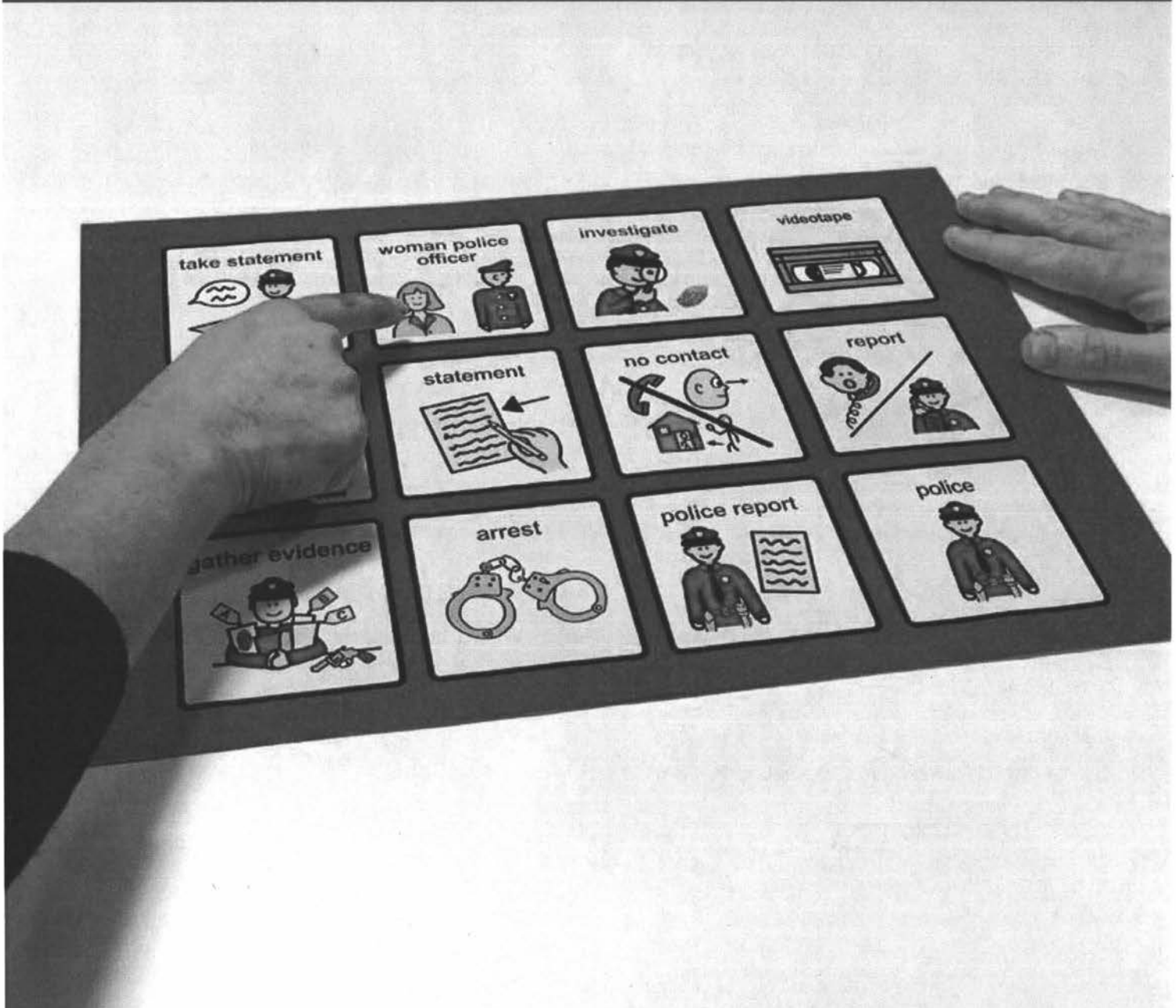
Attachment CA-8



Victorian Equal Opportunity
& Human Rights Commission

Beyond doubt

> The experiences of people with disabilities reporting crime – Summary report





Victorian Equal Opportunity & Human Rights Commission

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Beyond doubt: The experiences of people with disabilities reporting crime – Summary report

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Beyond doubt:

The experiences of people with disabilities
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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 to 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 Witcher, Julian Alban, Emma Coetsee and Robert Stewart for their 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

About this project

The Victorian Equal Opportunity and Human Rights Commission (the Commission) is an independent statutory body. We have functions under:

- the *Equal Opportunity Act 2010* (Vic)
- the *Racial and Religious Tolerance Act 2001* (Vic)
- the Charter of Human Rights and Responsibilities (the Charter).

This research was conducted under section 157 of the Equal Opportunity Act. It was initiated because of concerns raised by our Disability Reference Group that people with disabilities face significant and complex barriers when seeking justice as victims of crime.¹

Issues around equality 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 can prevent victims from accessing other stages of the criminal justice system
- crimes against victims with disabilities are less likely to be successfully prosecuted.

These issues raise a number of rights protected in the Equal Opportunity Act, the Charter and in other domestic and international law.²

- 1 This group provides advice to the Commission on systemic discrimination and human rights issues. It includes members who have direct experience of disability or are parents of children with disabilities. Other members include service providers and advocates.
- 2 Rights under the *Convention on the Rights of Persons with Disabilities* include 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 United Nations Committee on the Rights of Persons with Disabilities adopted *General Comment No. 1 on Article*

Specifically, Victoria Police, the courts and Victorian service systems all have legal obligations to uphold the rights of people with disabilities under the Equal Opportunity Act and the Charter (see page 10).

Our aim

This research sought to examine whether police services in Victoria are delivered on an equal basis for people with disabilities who are victims of crime, compared to those without disability.

Our study aimed to:

- explore what factors have an impact – both positive and negative – on the initial contact between a person with disability 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 system, including during reporting, interviewing, investigation and prosecution.

12: Equal recognition before the law. The General Comment offers guidance to states on meeting their obligations under article 12 of the Convention, including the obligation to provide supports to people with disabilities to exercise legal capacity. It also states that key factors in the justice system – including police and the judiciary – should be trained to recognise people with disabilities as equal before the law and give the same weight to their complaints and statements as they would to people without disabilities. Committee on the Rights of Persons with Disabilities, *General Comment on Article 12: Equal Recognition before the law*, 11th sess, UN Doc CRPD/C/11/4 (30 March -11 April 2014) <<http://www.ohchr.org/Documents/HRBodies/CRPD/GC/DGCArticle12.doc>>.

Our methodology

The 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.³

We used a qualitative approach that included:

- **twenty-seven in-depth case study interviews** with people who had experienced a crime, supported someone to report a crime or who worked in the justice system⁴
- **twenty-four key informant interviews** with those who have specialist knowledge of disability, crime victimisation and reporting⁵
- **thirteen focus groups**, involving 61 people, including with groups of police members, Independent Third Persons, people with disabilities, advocates, Auslan interpreters and people who provide care and support⁶
- **reviewing submissions** from a range of organisations and **examining aggregate de-identified data** from the Department of Human Services (DHS) and the Department of Justice Victims Support Agency (VSA)⁷
- **a confidential survey** that asked respondents about their experience of crime, reporting crime and the police response. We received 63 responses, including 52 from people with disabilities and 11 from people who provide care and support for people with disabilities.

In addition, 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

Participation was promoted through disability support networks, on the Commission's website and in the media. The Commission directly invited key informants to participate. These methods may have led to either over-reporting or under-reporting compared to a random sample.

However, based on the nature of the issue, this method was considered the most appropriate means of engaging participants.

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 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.

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.

Research participants raised many issues with us that did not fit the original scope of the project. Some of these, such as court processes and the experience of 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, 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.

In addition, people spoke of the 'system' as a whole when their contact may have been with subsets 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.⁸

3 Ethics approval for the research was granted by the Department of Justice Human Research Ethics Committee (Ethics approval number CF/13/3512).

4 Case studies of in-depth interviews are available from page 59.

5 A list of all key informant interviews is available at Appendix 1.

6 A list of all focus groups is available at Appendix 2.

7 A list of all submissions is available at Appendix 3.

8 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).

Terminology

A glossary of terms can be found on page 82.

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*.⁹ 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.¹⁰

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.¹¹

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.

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

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

Our research was supported by a project reference group, whose members included representatives from the Office of the Public Advocate, the Disability Services Commissioner, Victoria Police, the Victorian Advocacy League for Individuals with Disability, the Department of Justice Community Operations and Victims Support Agency, Women with Disabilities Victoria, Federation University Australia and the Commission's Disability Reference Group.

⁹ *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. 24.

¹⁰ *Equal Opportunity Act 2010* (Vic) s 4.

¹¹ "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.

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 Charter of Human Rights and Responsibilities and the *Equal Opportunity Act 2010*. 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.¹²

People with disabilities face significant and complex barriers when reporting crime to police. We heard that a lack of access to information means that some victims do not know *how* or *where* to report a crime. Some may not know that what happened to them is a crime.

Feelings of shame and embarrassment, as well as fear of retribution from the alleged perpetrator, can prevent people from reporting crime.¹³ Many participants also said that negative attitudes of police towards their disability made a significant difference to their experience of reporting.¹⁴

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

13 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>>.

14 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); Submission No 4 to Victorian Equal Opportunity and Human

Further, people with communication disabilities face considerable hurdles at all points in the criminal justice system.¹⁵

Families and carers of people with disabilities also told us about the challenges of reporting crime, especially the fear of negative consequences for the victim if they made a complaint.¹⁶

One of the strongest messages in this study is that people with disabilities fear that they will not be believed or will be seen as lacking credibility when they report a crime to police.

Of particular concern to the Commission are the participants who spoke of police refusing to take reports. This can amount to unlawful discrimination under Victorian and federal anti-discrimination laws.

Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 11.

15 For example, Key informant interview, Communication Rights Australia (31 July 2013).

16 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).

When police have a good understanding of disability, when they believe victims and they take their reports seriously, victims report higher levels of satisfaction with police practice and the justice system.¹⁷

The majority of police members aim to deliver the best possible service and the Victoria Police leadership is keenly 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.¹⁸

What makes the difference is the quality of that very first interaction between people with disabilities and police, and consistent follow-up by police members. This is largely informed by the 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.

Obligations under Victorian equal opportunity and human rights laws

Victoria Police

Under the Equal Opportunity Act, Victoria Police have obligations not to discriminate and to make reasonable adjustments when taking a report.¹⁹ Charter rights to equality before the law and freedom of expression, including the right to receive information, also apply when police take a report.²⁰

When police investigate crimes, they are generally not delivering a service under the Equal Opportunity Act. However, they are still required by Victorian law and Victoria Police policy to adjust their practices to meet the diverse needs of victims.²¹ Ongoing police communication with victims is a service and Victoria Police's obligations to make reasonable adjustments under the Equal Opportunity Act applies.

Service providers

All disability, mental health services and Supported Residential Services, are bound by the Equal Opportunity Act. This applies to unfavourable treatment because of a person's disability and to systems, policies and practices that are not reasonable and which 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 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 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 to give proper consideration to human rights when they are exercising their administrative functions.²²

In addition, the courts have functions under Part 2 of the Charter, which sets out all of the rights.²³ 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 provisions in the Charter.

17 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, 437–49. 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.

18 For example, Key informant interview, Victoria Legal Aid (19 July 2013); 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); Key informant interview, Scope (11 November 2013); Key informant interview, Dr Jeffrey Chan (14 November 2013).

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

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

21 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>; 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>.

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

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

Promoting good practice within Victoria Police

To assist people with disabilities to report crime, police need to be able to identify and understand different forms of disability, and then determine what reasonable adjustments are required to meet different access needs.

Police members, advocates, victims, families, and carers all told us this was a major challenge and a key area of need for future professional development.²⁴

Participants also told us that communication was a major barrier in their dealings with police. This was the case for people with mild or moderate communication disabilities through to people who are non-verbal.

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

For police, a lack of information and the ad hoc nature of various support services can hamper 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, on the likelihood of a successful prosecution.

Improving accessibility within Victorian courts

While our focus was mainly on police practice, the Commission's study confirmed that other key parts of Victoria's criminal justice system are not built for accessibility.

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 witnesses with sensory, physical, learning or communication disabilities.²⁵

24 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); 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) 185, 187.

25 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*

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 2008* (Vic) 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, assess these needs prior to the hearing and ensure the court is aware of them.²⁶

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.²⁷ To maximise their participation, more effort is needed to address negative attitudes among legal practitioners and court personnel and to ensure that appropriate standards of conduct are met at all times.

Improving safeguarding in services

People with disabilities may live in environments that leave them socially isolated. As a result, they can face very specific barriers to justice because the crime they experience happens behind closed doors.

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 in some services can experience violence and abuse 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.²⁸

Families and Carers, 9 September 2011, 10; Key informant interview, Communication Rights Australia (31 July 2013); Disability Advocacy and Information Service, 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).

26 The Office of Public Prosecutions Witness Assistance Service is a valuable model that assists people with disabilities to understand the court process. It also assists the court identify relevant supports to facilitate their participation in justice system.

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

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

Further, people with disabilities can also be subjected to unnecessary restrictive practices, if communication assessments and behaviour supports have not been put in place by staff or when they are not effectively implemented or monitored.²⁹

The Commission heard 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, we were told that police may be unlikely to investigate and may refer the matter back to the service for internal review.³⁰

It is crucial that service investigations are robust, comprehensive and conducted by skilled investigators and do not occur in place of police investigations. While there is policy and procedure developed by the Department of Human Services on these matters, some participants identified serious shortcomings in these systems and actual investigations.³¹ This highlights the importance of bolstering workforce capability across the service system and taking a comprehensive approach to safeguarding in both policy and practice, and in prevention and response.

People with disabilities must be empowered to report and make choices about what happens when they report. Rights-based knowledge and practice is essential to ensuring people experience justice and safety. The Commission recognises some important work being done in the self-advocacy sector and by services in educating

people about their rights. People with disabilities should be involved in the development and delivery of training to people working with them, to share expertise and build respect for the perspective and knowledge of people with lived experience. Peer-led education, advocacy and self-advocacy should be a priority of service delivery.

Making justice for all a reality

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 justice process.

Most of the Commission's recommendations (see page 14) are designed to support Victoria Police fulfil its commitment to better meet the needs of people with disabilities reporting crime.

A central recommendation is for Victoria Police 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.³²

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.

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 project and look forward to working together to implement this report's recommendations.

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

30 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, 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).

31 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).

32 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>>.

However, the Commission also recognises that Victoria Police is just one part of a complex system. 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 Victoria's broader justice and human service and health 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.

Our goal is to ensure that Victoria has an accessible, consistent and comprehensive system to respond to the experience of crime, which considers the preferences and needs of victims and empowers them 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 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.
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 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, 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 pro-actively 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.

People with disabilities' experiences of crime

National and international studies reveal that people with disabilities are more likely to be victims of crime than other groups in the general population.³³

This is in spite of – and sometimes the result of – systems that are designed to provide support and protection.

The experience of crime is particularly acute for women with disabilities and people with cognitive impairments.³⁴ A growing body of evidence also finds that crime towards people with disabilities starts early and becomes part of their everyday lives.³⁵

Further, international and national reports and research highlight the risk of violence against people with disabilities in residential or supported living environments.³⁶

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

It is difficult to determine an exact picture of crime against people with disabilities in Victoria, because data systems do not capture information on victimisation or on reporting crime in a comprehensive way. For example, police data does not capture and record the disability status of victims of crime, except in some family violence and hate crime incidents. Other data systems may not have mandatory fields that require the person to ask or identify disability status or reasonable adjustments that are required or may not collect the relevant data because the system is built for another purpose.

33 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).

34 Victorian Health Promotion Foundation (VicHealth), *Preventing Violence Against Women in Australia: Research Summary* (2011) 5; Camilleri, *[Dis]abled justice*, above n 24; Margaret Camilleri, 'Enabling Justice New Ways Forward – Pathways to Change' (Paper presented at National Victims of Crime Conference, Adelaide, 23–4 September 2008) 2.

35 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.

36 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.

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.³⁷
- 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 18.³⁸
- A study of people presenting in police stations in South Australia found that those with an intellectual disability were three times more likely to be victims of physical assault, sexual assault and robbery compared to people who do not have an intellectual disability.³⁹
- An Australia-wide survey of 367 family violence agencies found that nearly one in four women and girls with disabilities live with violence, although the actual rate is likely to be much higher as the survey did not include the experiences of women and girls with disabilities who did not access family violence services.⁴⁰
- Despite one in five Australians having a disability, Victim Support Agency data shows that people with disabilities comprise between just two and five per cent of recorded victims of crime in Victoria.⁴¹ 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.

What we still don't know

- We know more about the experience of people with cognitive impairment than physical disabilities – and we don't know if or how their experiences differ.
- In general, we know little about men with disabilities as most studies have focused on the experiences of women.
- We know little about exposure to crime in mainstream environments, where most people with disabilities go about their lives.
- Most of our knowledge comes from service providers, which means the experiences of people who do not use services are not recorded.
- We know very little about the experiences of Aboriginal people with disabilities reporting crime, as well as the experiences of people with disabilities from culturally and linguistically diverse backgrounds.

37 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>>.

38 VicHealth, above n 34, 5.

39 Carlene Wilson and Neil Brewer, 'The incidence of criminal victimisation of individuals with an intellectual disability' (1992) 27(2) *Australian Psychologist*, 114–17.

40 Stop the Violence Project, above n 33, 7–8.

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

Barriers to reporting crime

People with disabilities often face significant and complex barriers that prevent them from reporting crime. As a result, most crimes go unreported.

Additional barriers can also exist for people living in socially isolated environments, such as residential services, because crimes occur 'behind closed doors' and they may have limited ability or support to report.

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 diminish the sense of safety for victims of crime, it can also put people with disabilities at greater risk of experiencing crime in the future.⁴²

Of particular concern to the Commission are the participants who spoke of police refusing to take reports. This can amount to unlawful discrimination under Victorian and federal anti-discrimination laws.

Barriers to reporting for people with disabilities

Lack of access to information or communication support

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.⁴³

We heard that many victims do not know how or where to report a crime. In fact, some people may not make a report because they do not know that what happened was a crime.⁴⁴

42 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.

43 Case study: Antoinette (person with disabilities).

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

For example, victims may have never been educated about crime or how to report a crime. And, for some, violence may be 'normal'.

In some cases, a lack of communication support meant that people were not able to report a crime or police did not take their 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.⁴⁵

The emotional toll of reporting

Reporting crime to police can be difficult and people with disabilities may fear the process will be traumatic, tiring and draining.⁴⁶

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.⁴⁷

Feelings of shame, embarrassment and self-blame can prevent people from reporting crime.⁴⁸ Others told us that they did not report because they did not want their family to find out what had happened.⁴⁹ Some report the crime but the emotional strain of re-telling their stories may lead them to withdraw the complaint.

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

46 Focus group 5, Auslan interpreters (10 October 2013); Focus group 7, Independent Third Person Program volunteers (1 November 2013).

47 Survey participant (person with disabilities).

48 Survey participant (Easy English); Case study: Bella (person with disabilities); Case study: Leonne (person with disabilities).

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

Previous contact with police

Victims with a criminal history may be reluctant to report because they feel that police won't believe them or take them seriously.⁵⁰ A fear of police following up past fines or misdemeanours can also deter some from reporting crime.⁵¹

People told us that the attitudes of some police to mental health disabilities created a barrier to reporting crime:

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.⁵²

Others said they did not report because they had experienced negative treatment from police applying their powers under the (then) *Mental Health Act 1986* (Vic), or they feared being subject to an order in the future.⁵³ For example, a person was warned that if she made any further reports she would be "taken away and locked up".⁵⁴

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 felt by those whose credibility was questioned by police.⁵⁵

Fear of repercussions

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.⁵⁶

Our study confirmed previous research that found reliance on the perpetrator and a fear of losing supports are common reasons for not reporting crime.⁵⁷

⁵⁰ Focus group 3, people who provide care or support (2 September 2013).

⁵¹ For example, Focus group 3, people who provide care or support (2 September 2013).

⁵² Case study: Kayla (person with disabilities).

⁵³ Case study: Kayla (person with disabilities); Case study: Phillip (person with disabilities).

⁵⁴ Case study: Kathleen (person with disabilities).

⁵⁵ Case study: Kathleen (person with disabilities); Key informant interview, Dr Margaret Camilleri (7 August 2013).

⁵⁶ Focus group 7, Independent Third Person Program volunteers (1 November 2013).

⁵⁷ 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).

Participants said they were afraid of losing their home, their children or being placed in a more restrictive environment.⁵⁸ This fear is particularly strong if the person relies on the alleged offender for support, as either a paid or unpaid carer or family member.

Lack of physical access

An immediate barrier to reporting for many people with disabilities is simply being unable to get to the police station. This may be the result of a lack of independent community access, living in a closed environment or mobility issues.⁵⁹ Some were able to get to the police station only with assistance from family or a support person.⁶⁰

Once they arrived at the police station, some people said they faced difficulties with access to the building. Victoria Police is currently working to improve the physical access of its stations, however, the expense of updating buildings can often be overcome by changes to police 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.⁶¹

Lack of communication access

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.⁶²

Communication is essential to reporting a crime. However, for those with communication disabilities, even expressing the need to contact police may not be possible.⁶³

⁵⁸ 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).

⁵⁹ Case study: Vicki (Independent Third Person); Case study: Mark (advocate).

⁶⁰ For example survey participant (person with disabilities) and survey participant (Easy English).

⁶¹ Focus group 2, service workers (12 August 2013).

⁶² Focus group 13, police (November 2013).

⁶³ Case study: Vicki (Independent Third Person); Case study: David (person with disabilities).

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.

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.⁶⁴ It also does not explain that other accommodations can be made to a standard interview format.⁶⁵

We found a wide variation in knowledge and equipment that police might use to support effective communication. Sexual Offence and Child Abuse Investigation Teams (SOCIT) members described using picture boards, tablets and other communication aids, drawing on training and having reasonable access to supports. However, general duties police did not have the same knowledge or resources.⁶⁶ This creates a problem when they are the first point of contact.

A number of participants also told us that Auslan interpreters were not always provided when needed:

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.⁶⁷

Interpreters told us that police do not engage Auslan interpreters because of the cost,⁶⁸ effort and a lack of knowledge about the process.⁶⁹ This was reflected in participants' comments:

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.⁷⁰

Interpreters also told us that police might not think qualified interpreters are essential due to a lack of understanding about how deaf people communicate.⁷¹ Or they may "think it will be quicker to do it without an interpreter".⁷²

Police see writing to deaf people as sufficient. But when a person goes to the 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].⁷³

In addition, people described cases where police used insufficiently qualified interpreters or inappropriately relied on family members to interpret:

I have seen cases where the person's husband is used as the interpreter, even when he was the perpetrator.⁷⁴

Police participants reported few difficulties with accessing Auslan interpreters.⁷⁵ However, a focus group 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".⁷⁶

64 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines – Interviewing specific categories of person'* (31 January 2014) 7.

65 The Victoria Police Manual includes Policy Rules and Procedures and Guidelines. Policy Rules are mandatory, minimum standards police members must apply.

66 For example, Focus group 13, police (November 2013).

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

68 Regarding cost, see also Case study: Deborah and John (person who provides care or support); Focus group 5, Auslan interpreters (10 October 2013).

69 "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).

70 Survey participant (person with disabilities).

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

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

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

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

75 For example, focus group 11, police (November 2013); focus group 10, police (November 2013).

76 Focus group 8, police (November 2013).

Barriers to reporting for people who provide care and support

Many people with disabilities may rely on family, carers or staff in services to help them report a crime. However, if these 'gatekeepers' do not recognise that a crime has occurred, if they do not want to see what happened as a crime or if they do not know how to report, then crimes go unreported.

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.⁷⁷

Violence is accepted in some settings

We were told that, in some settings, actions are accepted that would not be tolerated in another environment.⁷⁸ In these circumstances, violence may become normalised, with the seriousness of client-on-client violence seen to be mitigated by the perpetrator's disability. Some people reported that "it is only when a staff member gets assaulted that there is action taken against the client".⁷⁹

Violence committed by staff against clients can also become normalised if it is justified on the grounds of behaviour management or even deemed to be in the person's 'best interest'.⁸⁰

Crime is viewed as an 'incident'

Crimes may be treated as 'incidents' and may first be dealt with internally by the service provider.⁸¹ This is indicative of the way that crime is classified (or not) for some people in some settings:⁸²

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.⁸³

The Victorian Ombudsman noted 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".⁸⁴

Fear of consequences

In some cases, family members may choose not to report in order to avoid potentially re-traumatising the victim, particularly if the prospect of a successful prosecution is slim.⁸⁵

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.⁸⁶

Families may also fear being branded troublemakers and the potential repercussions for themselves or their family member if they make a report.⁸⁷

Key informants also described service workers fearing repercussions from management if they supported a client to report a crime.⁸⁸

A defensive attitude of management has also been identified as a barrier to effective safeguarding in recent research.⁸⁹ 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".⁹⁰

77 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) 5–6.

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

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

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

81 Camilleri, *[Dis]abled justice*, above n 24. Referred to in Key informant interview, Dr Margaret Camilleri (7 August 2013).

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

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

84 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.

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

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

87 Case study: David's mother (person who provides care or support); Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

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

89 Ottmann et al, above n 77, 18–9.

90 Ibid.

Police refusing to take reports

Several participants told us of police refusing to take reports.⁹¹ The Victoria Police Manual states that all reported incidents must be recorded as an offence unless there is credible evidence to suggest that a crime has not occurred.⁹² Refusing a report based on disability is discrimination under the *Equal Opportunity Act 2010* (Vic).⁹³ This includes refusal based on a stereotype about a person's credibility, the setting of the crime or because a person had communication difficulties.

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.⁹⁴

In other cases, factors other than the person's disability led 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 a person's report being doubted because of her sexual history.⁹⁵

Participants told us of cases where police refused to accept or investigate a report of abuse or violence in a service setting, instead referring the matter back to the service.⁹⁶ Key informants also

91 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).

92 Victoria Police, *Victoria Police Manual 'Policy Rules: Crime reporting and investigations'* (31 January 2014) 2.

93 *Equal Opportunity Act 2010* (Vic) 44.

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

95 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).

96 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, 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

discussed police telling the person with disability to adjust their behaviour.⁹⁷

Discriminatory attitudes and culture

[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.⁹⁸

While examples of discrimination like this are extreme, the Commission heard that negative attitudes among police towards people with disabilities are commonplace. We were told that police can treat those reporting crime as childlike, time wasters or as someone deserving of suspicion.⁹⁹

These attitudes can be exacerbated if the person is Aboriginal, from a culturally and linguistically diverse background or otherwise different.¹⁰⁰ Poor attitudes towards carers were also reported.¹⁰¹

In some instances, police held the view that people with disabilities could 'avoid' crime, particularly street-based crime, by self-excluding from the community to avoid being in the wrong place at the wrong time.¹⁰² This amounts to victim blaming, even where the intention may have been good.

issue in schools. Key informant interview, Disability Discrimination Legal Service (12 July 2013).

97 "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).

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

99 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 experience both. Key informant interview, Victoria Legal Aid (19 July 2013).

100 Key informant interview, Aboriginal Family Violence Prevention and Legal Service Victoria, 9 December 2013; Key informant interview, Senior Rights Victoria (19 November 2013).

101 Key informant interview, United Voices for People with Disabilities, 29 August 2013.

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

Interviews with police members also revealed that, in some cases, derogatory language about people with disabilities, negative or paternalistic stereotypes and a 'what's the point?' culture had become the norm:

We use the word ['nuff nuff'] in the van. We don't use the word in public, only in private among other members.¹⁰³

Prejudice and discriminatory attitudes can undermine the training and good intentions of new police members. Junior members also told us that they felt unable to challenge this culture, especially when expressed by a superior officer.¹⁰⁴

It is important to note that derogatory terms are not sanctioned by Victoria Police, which has stated its commitment to tackling this type of prejudice.

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

104 Focus group 13, police (November 2013).

What happens when people with disabilities report crime?

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.¹⁰⁵

When police have a good understanding of disability, when they believe victims and when they take their reports seriously, people reporting crime express higher levels of satisfaction with police and with the justice system.

Unfortunately, those who do report a crime are not guaranteed a positive experience. While some people reported good practice by police, most described negative encounters.

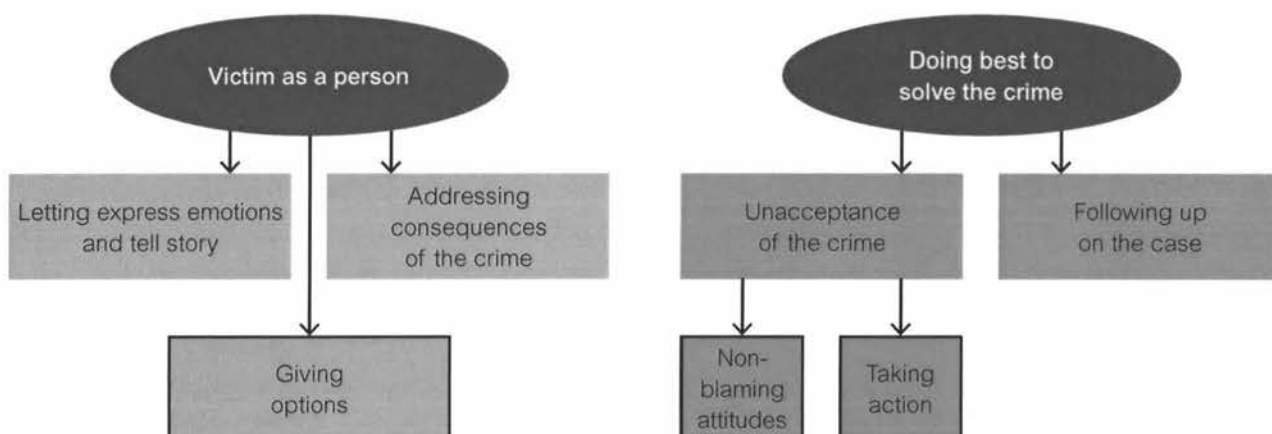
Further, this first interaction may determine the rest of the person's journey through the criminal justice system. If that first contact is poor, or if the person's

disability is not identified, it can potentially compromise the prospects for an effective investigation.

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 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.¹⁰⁶

Because of the importance of procedural justice, we have used the conceptual framework at Figure 1, developed by Elliott, Thomas and Ogloff to analyse the experiences reported to us.

Figure 1: 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* 437, 446. Note: Unacceptance of the crime means acknowledging the crime is not acceptable.

¹⁰⁵ Key informant interview, Professor James Ogloff (30 July 2013).

¹⁰⁶ 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 17, 437–40.

Effective report taking

- Of 27 case study interviews, we spoke 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 crimes 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.
- 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.
- 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.

We heard clear messages from victims, carers and police about what would make the reporting process better and more consistent for people with disabilities. There was consensus that 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.

However, our study found that the experience of reporting crime is too dependent on the attitudes, knowledge and skills of the individual police member who happens to take the initial report.

Recognising and understanding disability

To assist people with disabilities to report crime, police need to be able to identify and understand different forms of disability, as well as recognise that people may experience them differently.

Police members, advocates, victims, families and carers all told us this was a major challenge.¹⁰⁷

Police do not always correctly identify that a person has a disability or understand its manifestations. Some participants also described the distress caused by police not believing that they had a disability. This resulted in some people being discouraged from the reporting process or needing to educate police throughout the process, adding another burden during a stressful time:¹⁰⁸

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.¹⁰⁹

Not surprisingly, experienced police members felt more confident, while newer members described examples of seeing a person with a disability for the first time.¹¹⁰ As a result, police responses can be inconsistent:

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.¹¹¹

Focus groups told us that most people will self-disclose their disability or police will rely on observation.¹¹² However, 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 a person had an intellectual disability.¹¹³

Research with Victoria Police also found that, in some instances, participants were "either confusing mental illness and intellectual disability, or generalising and referring to intellectual

107 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, *[Disabled justice]*, above n 24, 185, 187.

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

109 Case study: Michael (person with disabilities).

110 Focus group 13, police (November 2013).

111 Focus group 13, police (November 2013).

112 Focus group 9, police (November 2013).

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

disability as a mental illness".¹¹⁴ In addition, some police members did not necessarily identify mental illness as a disability, even though it is probably the most common disability they encounter.¹¹⁵

At the reporting stage, participants told us that police failing to identify how a person's disability affects that individual can lead to negative assumptions and result in negative treatment.¹¹⁶ This can lead some people with disabilities, and those who support them, to be discouraged from reporting a crime.

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.

SOCITs 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.

There are 27 SOCIT units in Victoria, which vary in size depending on their location and work requirements.¹¹⁷

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, and Centres Against

Sexual Assault counsellors/advocates.¹¹⁸ 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.

SOCITs are generally acknowledged as providing an improved service for victims of sexual assault and child abuse. SOCITs are able to provide more flexibility in terms of the time taken and utilise less formal arrangements, such as special rooms and wearing plain clothes. SOCITs are expected to work closely with other organisations.

Knowing what adjustments to make

Identifying and understanding disability is the key to ensuring that reasonable adjustments can be made to support people with disabilities to access police services and report crime. A failure to make reasonable adjustments is a form of discrimination under the *Equal Opportunity Act 2010* (Vic).¹¹⁹

SOCIT members tended to have more confidence in understanding different types of disability and greater knowledge of how to make adjustments. In contrast, most duty police we spoke to felt isolated and ill equipped to do this.¹²⁰

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.¹²¹

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?"¹²²

114 Marie Henshaw and Stuart Thomas, 'Police encounters with people with intellectual disability: prevalence, characteristics and challenges' (2011) *Journal of Intellectual Disability Research* 1, 9.

115 Focus group 11, police (November 2013).

116 Case study: Mark (advocate).

117 Victoria Police, *About Sexual Offences and Child Abuse Investigation Teams* (12 July 2012) <http://www.police.vic.gov.au/content.asp?document_id=36237>.

118 Multidisciplinary centres (MDCs) are located in Frankston, Geelong and Mildura. Three further MDCs will be established in Bendigo, Latrobe Valley and Metropolitan Melbourne. Ibid.

119 *Equal Opportunity Act 2010* (Vic) s 45.

120 Focus group 13, police (November 2013).

121 Focus group 10, police (November 2013).

122 Focus group 10, police (November 2013).

Areas of particular challenge identified by police included knowing how to assist people with:

- complex communication needs, especially if the person is non-verbal
- an intellectual disability or other cognitive impairments
- mental health disabilities
- autism spectrum disorder, attention deficit hyperactivity disorder (ADHD) and behavioural disabilities
- multiple and complex disabilities.¹²³

Failing to identify a disability at first contact can also reduce opportunities to support people properly during later stages; for example, if people are not referred for a video and audio recorded evidence (VARE) interview.

What is a VARE?

A VARE is a video 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.¹²⁴ The VARE is used as evidence-in-chief, meaning that the victim does not have to give direct testimony in court.¹²⁵

Treating the victim as a person – the importance of credibility

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.¹²⁶

123 For example, Focus group 8, police (November 2013); Focus group 10, police (November 2013).

124 Victoria Police, *Code of practice for the investigation of family violence*, above n 21, 26.

125 *Criminal Procedure Act 2009 (Vic)* ss 366–8.

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

Being treated with respect is the key to procedural justice.¹²⁷ 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.¹²⁸

However, many people with disabilities said they felt patronised by police. These feelings were compounded when police spoke to a support person rather than the victim:

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.¹²⁹

Many participants said disrespectful treatment made a significant difference to their experience of reporting.¹³⁰

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.¹³¹

Respecting a person requires police to listen actively, show patience and believe the victim in the first instance:

Progression through the criminal justice system rests heavily on being believed and being believable at every stage.¹³²

One of the strongest messages from our study is that people with disabilities fear that they will be not be believed or seen as credible when they report a crime to police.

Police generally base their responses on their previous work with people with that type of disability.¹³³ While this may help police to make adjustments, there is also a risk that police will make generalisations about types of disability.

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

128 Survey participant (person with disabilities).

129 Survey participant (person with disabilities).

130 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; Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, (16 October 2013), 11.

131 Case study: Alexis (person with disabilities).

132 Goodfellow and Camilleri, above n 36, 53–4.

133 Henshaw and Thomas, above n 114, 5.

Police make decisions about a person's credibility early on; in some cases on first contact with the victim. For example, police may assume that the person is lying or untrustworthy if he or she cannot explain things in a clear narrative.¹³⁴ They may also question the person's capacity to even know that a crime has occurred.¹³⁵

Capacity should be assumed unless there is clear evidence to the contrary.¹³⁶

Decisions about the credibility of victims and witnesses may lead police to believe that there is insufficient evidence for the case to succeed in court. As a result, they may not allocate the resources necessary for an investigation.¹³⁷ These judgements and assumptions not only mean that people with disabilities are less likely than others to see justice served, it also entrenches the view of an 'ideal victim' among police, courts and the community.¹³⁸

When people felt believed, their level of satisfaction in making a report 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.¹³⁹

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

135 "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).

136 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.

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

138 "The concept of ideal versus non-ideal victims that has been reported in much of the literature was evident in police decision-making." Carolyn Taylor et al, *Policing Just Outcomes: Improving the Police Response to Adults Reporting Sexual Assault Final Report* (2012) 12.

139 Case study: Bella (person with disabilities).

Ensuring the person is safe and feels as safe as possible

Police members we interviewed were very mindful of the importance of safety. 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.¹⁴⁰

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.¹⁴¹

Victims can also feel safer when reporting by being able to bring along "[A] safe person, such as a family member or friend ... [Police] need to explain the process to me so that I understand and feel comfortable".¹⁴²

Supporting the person

My experience with the police was fantastic; they were practical and sympathetic the whole way through.¹⁴³

Support can include helping to meet a victim's immediate needs, showing genuine empathy and making appropriate referrals to other services:

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).¹⁴⁴

Two young police officers came over to my house. They told me they were going to take me to the [Centre Against Sexual Assault], 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.¹⁴⁵

140 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.

141 Case study: Kayla (person with disabilities).

142 Survey participant (person with disabilities).

143 Survey participant (person with disabilities).

144 Survey participant (person with disabilities).

145 Case study: Kim (person with disabilities).

The *Victims' Charter Act 2006* (Vic) states that police should provide victims with information about and, if appropriate, referrals to relevant support agencies.¹⁴⁶

However, general duties police expressed frustration at the lack of easy access to relevant services, telling us that "a referral pathway for people with disabilities doesn't exist".¹⁴⁷ Some tried to find local agencies, or relied on colleagues with networks, but often no appropriate services were available.¹⁴⁸

The presence of a support person can increase the chance of a report being made because of the practical and emotional support they provide. It may also improve the police response because police may feel more comfortable with a person without a disability or because the support person provides an independent check on police process.

Regardless of the reasons, police have a legal obligation to take all reports fairly and on an equal basis. It should not be dependent on a support person being present.¹⁴⁹

146 *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* (2014), above n 21, 44.

147 Focus group 10, police (November 2013).

148 Focus group 11, police (November 2013).

149 Camilleri, *[Dis]abled justice*, above n 24, 163.

What happens after the report?

Effective interviewing

A comprehensive interview is crucial to a successful prosecution. However, people with disabilities can face significant challenges trying to tell police what has happened, such as communication barriers, attention or memory difficulties, low self-confidence and the effects of discrimination.¹⁵⁰

This does not mean that victims with disabilities are not able to provide the necessary information for a good interview. It simply means that interviewers may need to modify their practice.¹⁵¹

Drawing on previous research, police policies and the stories people told us, the following principles form the basis of effective interviews:

- **Establish rapport before the interview** to learn about the victim's needs, abilities, communication style and strengths.
- **Ensure security for the victim** by considering who will conduct the interview and when and where it will be held.
- **Let people tell their story** not just answer those questions directly relevant to the case.
- **Allow enough time**, which may mean conducting the interview over multiple sessions.
- **Use appropriate communication**, including plain language and styles of questioning appropriate to the person's disability.
- **Make sure the victim is in control**, for example, by ensuring they understand what will happen in the interview.
- **Ensure support is provided on the person's terms**, which will differ for each person and may include, for example, emotional support, an advocate, and/or an interpreter or other form of assistance.

150 Martine Powell, Michelle Mattison and Keith McVilly, 'How to interview witnesses with communication impairment' (2013) 67(2) *Australian Police Journal* 72, 72.

151 Ibid.

Communication difficulties can be minimised in an interview by using simple, transparent, concrete language and avoiding figures of speech.¹⁵²

Police also need to 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.¹⁵³ In contrast, people with autism spectrum disorder may respond better to more specific questions.¹⁵⁴

Interpreters and communication support workers

We heard that police do not always work with interpreters and communication support workers during interviews. This can undermine the interview process.

However, participants described 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 highly valued by everyone involved in the process.

152 Ibid 75.

153 Ibid.

154 The National Autistic Society, *Autism: A guide for criminal justice professionals* (2011) 21–2 <<http://www.autism.org.uk/cjs>>.

Independent Third Person

Independent Third Persons (ITPs) perform a vital role in our justice system.¹⁵⁵ 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 Victoria Police Manual stipulates that an ITP must be present for interviews with victims with cognitive impairment or mental health disability.¹⁵⁶ ITPs are not permitted for interviews with victims with other disabilities.

An ITP can be a relative, friend or a trained volunteer from the Office for the Public Advocate (OPA).

An ITP provides support and helps assist 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.¹⁵⁷

ITPs do not attend forensic examinations for rape victims; a Centres Against Sexual Assault (CASA) worker should be called instead.

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 at all is also not known.¹⁵⁸

However, given that police can struggle to identify when a person has a disability, it is likely that ITP volunteers are not called as frequently as they should be. 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.¹⁵⁹ 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.¹⁶⁰ OPA also told us that the program and volunteers would benefit from the ability to provide referrals to support services and advocates for victims of crime with disability.¹⁶¹

Advocates

Advocates also play an important role in the interview process. They may be preferred to ITPs because they can provide case management support that ITPs cannot. Advocates may also provide independent advice to the victim and to police. However, they should not be used as a replacement for communication assistance.¹⁶²

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.¹⁶³

As noted by Victoria Police Deputy Commissioner Tim Cartwright, “[a]dvocates are really

155 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.

156 Victoria Police, *Victoria Police Manual 'Guidelines – Interviewing specific categories of person'* (31 January 2014) 4.

157 Office of the Public Advocate, *Independent Third Persons* (15 October 2012) <<http://www.publicadvocate.vic.gov.au/services/108/>>.

158 Key informant interview, Office of the Public Advocate (26 November 2013).

159 Key informant interview, Office of the Public Advocate (26 November 2013).

160 Key informant interview, Office of the Public Advocate (26 November 2013).

161 Key informant interview, Office of the Public Advocate (26 November 2013). 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.

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

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

important".¹⁶⁴ However, despite this recognition of the importance of advocates at the highest levels, one participant told us that they were not permitted to have an advocate present.¹⁶⁵ Advocates also told us of difficulties they faced in trying to support the person throughout the interview process.¹⁶⁶

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 adequate support is lacking.

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. Less well developed were relationships between disability services and these sectors, and with police.¹⁶⁷

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.¹⁶⁸ There was consensus that getting all these sectors to understand each other better – including the values driving the work, language, terminology and sector practices – was a priority.¹⁶⁹

Effective investigations

Recent research indicates that the willingness of police to do their best to resolve the case, and being treated with respect, is at least as important to victims as a successful prosecution.¹⁷⁰

The quality and timeliness of investigation is largely dependent on the knowledge, skill and attitudes of the police informant assigned to the case:¹⁷¹

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 ..."¹⁷²

Several key informants reported that some police expect advocates to do the legwork on investigations.¹⁷³

In some cases, following representations to more senior police members, matters were more thoroughly investigated. In other cases formal complaints were made to Victoria Police:¹⁷⁴

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.¹⁷⁵

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

165 Case study: Leonne (person with disabilities).

166 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.

167 Key informant interview, Women with Disabilities Victoria (1) (9 July 2013); Key informant interview, Women with Disabilities Victoria (2) (3 September 2013).

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

169 Key informant interview, Women with Disabilities Victoria (2) (3 September 2013). Key informant interview, Women with Disabilities Victoria (1) (9 July 2013).

170 Elliot, Thomas and Ogloff, 'Procedural justice in contacts with the police: the perspective of victims of crime', above n 17, 437.

171 For example, Case study: David (person with disabilities). Contrast with Case study 24 who had a consistently poor response across multiple crimes, reported to different police stations. Case study: Blue Star (person with disabilities).

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

173 For example, Key informant interview, Communication Rights Australia (31 July 2013).

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

175 Key informant interview, Communication Rights Australia (31 July 2013). See also Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

Keeping people informed

They left and said they would pursue it and ring back, but they never rang back.¹⁷⁶

Previous research into the experiences of victim survivors of sexual offences shows that the two main areas of concern 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.¹⁷⁷ Participants in our study shared these concerns.

Under the *Victims' Charter Act 2006* (Vic) 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.¹⁷⁸

Accordingly, it is Victoria Police policy that the police informant is responsible for keeping the victim informed. However, this does not always happen. As noted by the Office of Public Prosecutions, "some police informants don't call us back, or the victim. Some are fantastic though – and it makes a huge difference".¹⁷⁹

Some people told us they received regular information early in the investigation but then the information flow ceased.¹⁸⁰ Others said they found out about key aspects of the investigation from third parties. Victims and family members also felt they had to chase information for police and that more effort earlier in the investigation was needed.¹⁸¹

I was told that I would be informed once someone was assigned to the case. However, no one called me ... I had to keep chasing up to find out what was happening.¹⁸²

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:

176 Case study: Leonne (person with disabilities).

177 Success Works Pty Ltd, 'Sexual Assault Reform Strategy' (Final Evaluation Report, State of Victoria, Department of Justice, January 2011) 59.

178 *Victims' Charter Act 2006* (Vic) s 8.

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

180 Case study: Linda (person with disabilities).

181 Case study: Julie and Beau (person who provides care or support); Case study: Michael (person with disabilities).

182 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).

The police officer assigned to my case was fantastic because he was open to contact and kept me informed ... 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 ...¹⁸³

Why don't investigations progress to prosecution?

Even though police members may believe the victim, make the necessary adjustments to the interview process and conduct a thorough investigation, the matter may still fail to proceed to court.¹⁸⁴

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.¹⁸⁵

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.¹⁸⁶ 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.¹⁸⁷

183 Case study: Kim (person with disabilities).

184 For example, Case study: Gary (police).

185 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 (e.g. 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'* (31 January 2014) 8. See also Director of Public Prosecutions Victoria, 'The Prosecutorial Discretion' (Director's Policy No 2, 27 July 2013) 1.

186 Victoria Police, *Victoria Police Manual 'Policy rules: Briefs of evidence'* (31 January 2014) 3–4.

187 Victoria Police, *Victoria Police Manual 'Procedures and Guidelines: Brief preparation and management'* (31 January 2014) 8.

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.¹⁸⁸ 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 and, as a result, the likelihood of a conviction:

My boss didn't want to authorise the brief because of the nature of the VARE, but I got medical advice that said that [the victim's] behaviour comes back to the [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.¹⁸⁹

A range of other factors may prevent an investigation from proceeding, including where there is no witness, concern that the criminal justice process could re-traumatise the victim, or fear about the cost of an unsuccessful prosecution.

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...¹⁹⁰

188 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 12 months of the issue of that CCI. Victoria Police, *Victoria Police Manual* 'Chief Commissioner's Instruction 08/13 Transition to new summary brief process' (31 January 2014).

189 Case study: Laura (police).

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

In other cases the decision comes down to who the police consider is more credible – the victim or the alleged offender.¹⁹¹

Concern for the victim may lead to inaction

Several police members 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 ... 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 [it's] 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...¹⁹²

While this is a risk, the challenge in police decisions based on duty of care considerations is that it reduces victims' agency. This is of particular significance for people with disabilities, for whom autonomy is a hard-won right.¹⁹³

No one ever asked what we wanted.¹⁹⁴

Fear of costs

Yes, it may come back down – "who authorised that brief that cost us 20k?"¹⁹⁵

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".¹⁹⁶ However, others felt that you had to "give justice a go".¹⁹⁷

191 Camilleri, *[Dis]abled justice*, above n 24, 245.

192 Focus group 10, police (November 2013).

193 *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).

194 Case study: Julie and Beau (person who provides care or support).

195 Focus group 8, police (November 2013).

196 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).

197 Focus group 10, police (November 2013).

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. The investigator must not encourage a victim to request no further police action or to sign a statement of no further police action.¹⁹⁸

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 ... 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.¹⁹⁹

Will police review decisions?

There are rules in the Victoria Police Manual for informing people about the decision to discontinue an investigation, not lay charges or not authorise a brief. Police told us:

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.²⁰⁰

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. However, not all participants had a positive experience:

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 ... 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.²⁰¹

198 Victoria Police, *Victoria Police Manual 'Policy Rules Crime reporting and investigation'* (31 January 2014) 12.

199 Case study: David's mother (person who provides care or support). See also Focus group 8, police (November 2013).

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

201 Case study: Julie and Beau (person who provides care or support).

People also 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.²⁰² However, some police do not send a letter to people with intellectual disability due to perceived complexities in the information.²⁰³

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 in these services.²⁰⁴

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.²⁰⁵ 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 members disciplined.²⁰⁶ Others, including victims of crime, did not know they could complain, how to complain or had had no success with complaints mechanisms available.²⁰⁷

202 Victoria Police, *Code of practice for the investigation of sexual assault*, above n 21, 24; Victoria Police, *Code of Practice for the investigation of family violence*, above n 21, 27.

203 Focus group 9, police (November 2013).

204 Key informant interview, Disability Services Commissioner (23 October 2013).

205 Case study: David (person with disabilities).

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

207 Case study: Michael (person with disabilities); Case study: Alexis (person with disabilities).

Participation in our 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.²⁰⁸

While our focus is mainly on police practice, the study confirmed that other key parts of Victoria's criminal justice system are not built for accessibility.

While some progress has been achieved, basic adjustments are not always made to adapt court practices and facilities to meet the access needs of witnesses with sensory, physical, learning or communication disabilities.²⁰⁹

As a result, a successful prosecution when the victim has a disability remains uncommon. However, prosecutions can and do succeed when agencies adjust their practices to meet the access needs of people with disabilities, assess these needs prior to the hearing and ensure the court is aware of them.

Preparing for court

Participants told us that support to participate in court proceedings is critical, and makes a big difference to whether people withdraw from the criminal justice process. Ensuring that people with disabilities have the practical support they

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

209 For example, Case study: Kim (person with disabilities); Focus group 10, police (November 2013). Office of Public Prosecutions Victoria, above n 25, 10; Key informant interview, Communication Rights Australia (31 July 2013); Disability Advocacy and Information Service, 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).

need to get to and from court is vital. Victims and prosecutors identified this as a significant hurdle for people wanting to have their day in court.²¹⁰

Preparing victims for court appears to depend on the availability of specialist supports and the attitudes and experience of the key players in the prosecution.

Effective preparation aims to ensure the person is physically and emotionally ready for the challenges that she or he will face. This can include pre-hearing visits to the court so the person can "see around the space, understand what it would be like on the day, understand about how it would work".²¹¹

Experiences at court

We heard a number of examples where courts failed to make basic changes to facilitate access and participation for people with disabilities:

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.²¹²

Ensuring that people with disabilities can give their best evidence in court is essential. However, 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

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

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

212 Key informant interview, Communication Rights Australia (31 July 2013). A similar example was also raised in key informant interview, Scope (11 November 2013).

Communication. In addition, provisions that allow flexibility in the court system for vulnerable witnesses do not clearly specify that these apply to people with communication disabilities despite the fact they can face significant challenges giving evidence.

Auslan interpreters highlighted the challenges for deaf people giving evidence:

The whole justice system utilises really complex language ... communications are complex and not consistent across the board. For example, there is no universal sign for abuse or for sexual abuse in Auslan.²¹³

We heard there was a lack of hearing loop technology.²¹⁴ 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 the Witness Assistance Service in assisting the court to prepare where a witness has a hearing impairment or low literacy.²¹⁵

The Office of Public Prosecutions (OPP) Witness Assistance Service (WAS) is a valuable model that assists people with disabilities to understand the court process. It also assists the County Court and the Supreme Court to identify relevant supports to facilitate their participation in justice system.

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.

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

214 For example, Disability Advocacy and Information Service, Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 17.

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

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.²¹⁶

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.²¹⁷

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.

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.²¹⁸

Special hearings

People with disabilities who have experienced sexual assault can experience specific challenges when they give evidence in court. For example, communication difficulties can greatly exacerbate the stress and ordeal of retelling a traumatic experience, especially under aggressive questioning.

Changes made under sexual assault reforms should transform how victim survivors participate in the prosecution; for example, by providing opportunities to people with cognitive impairments to give evidence in special hearings.²¹⁹

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

217 Office of Public Prosecutions Victoria, above n 25, 10.

218 Focus group 11, police (13 November 2013).

219 A special hearing is used in sexual offence cases, where the victim was under 18 or

In practice, however, not all those who are eligible for special hearings receive one if police do not identify the person's disability during the investigation.²²⁰

In some cases, the defence may question the victim's disability in order to exclude video and audio recorded evidence (VARE) from being submitted.

Importantly, while a special hearing may be desired by some, the assumption that a person always wants this may be false:²²¹

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.²²²

Definition of vulnerable witness

Currently the Evidence Act 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 a disability, and the way that disability may affect their evidence. However, while the Act requires the court to have regard to any relevant condition or characteristic, communication disability is not specified.²²³ 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.

Conduct of the prosecution and defence

The presumption of innocence is a fundamental principle in the criminal justice system. In an adversarial system, it should be expected that lawyers will defend their clients robustly to ensure they receive a fair trial.

However, aggressive, complex or inappropriate questioning can be especially intimidating and traumatic for people with disabilities giving evidence.

The *Charter of Advocacy for Prosecuting or Defending Sexual Offence Cases* is a welcome initiative that draws together existing legal and ethical obligations of legal practitioners.²²⁴ Recognising that a significant number of sexual offences are committed against people with cognitive impairment, it stresses that:

[L]awyers 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.²²⁵

It also 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".²²⁶

However, some people reported unsatisfactory behaviour, which may go unchecked by the court:

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.²²⁷

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 forms of an audio-visual recording, which is then used in court. *Criminal Procedure Act 2009* (Vic) ss 369–70, 375.

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

221 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 177, 190.

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

223 *Evidence Act 2008* (Vic) s 41(4).

224 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. It 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.

225 *Ibid.*

226 *Ibid* 7–10.

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

During this study, the Commission found that 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.

Examples of good practice

For many people with disabilities, having a successful outcome in court is as much about the right to participate as it is about the eventual outcome:

It's about the right to go through it ... It's about the process of being heard ... People can be empowered through that.²²⁸

The Commission heard positive reports about the power of collaborative efforts to bring cases to prosecution and ensure the genuine participation of people with disabilities:

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.²²⁹

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

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

Crime in the Victorian service system

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 CRU [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.²³⁰

The justice system does not operate in isolation. Police practice is affected by, and affects, practices in other service systems across Victoria.

People with disabilities living in environments that are socially isolating – such as residential facilities, mental health wards, rooming houses and Supported Residential Services (SRSs) – face very specific barriers to justice because crimes they may experience happen behind closed doors.

The risk of violence against people with disabilities in residential or supported living environments has been well established in international and national reports and research.²³¹ The research also 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”.²³²

230 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.

231 Goodfellow and Camilleri, above n 36, 46–7.

232 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’

However, the Department of Human Services (DHS) advises that this does not reflect the department’s data.²³³

Further, people with disabilities can be subjected to the unnecessary use of restrictive practices, if communication assessments and behaviour supports have not been put in place by staff.²³⁴ People living in residential settings can also experience violence and other crimes at the hands of another resident.

If crimes are not reported, services end up policing themselves. It is vital, therefore, that steps are put in place to reduce the risk of crimes and abuse occurring, and ensure all crimes that do occur are properly reported and investigated.

(Occasional Paper No.1, Disability Services Commissioner, 2012) 8. See also review of research by Goodfellow and Camilleri, above n 36; Rachel Bowman, Joseph Scotti and Tracy L. Morris ‘Sexual abuse prevention: a training program for developmental disabilities service providers’ (2010) *Journal of Child Sexual Abuse: Research, treatment, & Program Innovations for Victims, Survivors, & Offenders* 19, 119–27; Amanda Mahoney and Alan Poling ‘Sexual abuse prevention for people with severe developmental disabilities’ (2011) *Journal of Developmental and Physical Disabilities* 23, 369–376; Cambridge et al ‘Patterns of risk in adult protection referrals for sexual abuse and people with intellectual disability’ (2010), *Journal of Applied Research in Intellectual Disabilities* 24, 118–32; Victorian Law Reform Commission, *Sexual Offences: Final Report* (2004).

233 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.

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

Key policies and monitoring frameworks for disability services

The *Disability Act 2006* (Vic) regulates services provided either directly by DHS or funded community service organisations.²³⁵ The Act contains principles which state that people with disabilities have the right to live free from abuse, neglect or exploitation.²³⁶

The legislation obliges disability services to comply with the *Department of Human Services Standards*.²³⁷ This includes specific standards to ensure people's rights to wellbeing and safety are promoted.²³⁸ Services must achieve and maintain accreditation against these standards and be independently reviewed against the standards once every three years.²³⁹

Under the Disability Act, use of restrictive interventions, including mechanical restraint, chemical restraint and seclusion in disability services can only be used following approval by the Senior Practitioner – Disability.²⁴⁰ This is also overseen and monitored by the Senior Practitioner – Disability.²⁴¹

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.²⁴²

Service providers also have legal obligations under the Charter of Human Rights and Responsibilities (the Charter) 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.

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.²⁴³

In addition to requirements under the Disability Act and the DHS Standards, monitoring and review processes for disability services are also contained in the *Departmental Policy and Funding Plan (2012-2015)*.²⁴⁴ 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*²⁴⁵

235 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.

236 *Disability Act 2006* (Vic) sub-s 5(2)(b).

237 *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>>.

238 "Standard 3.5: services are provided in a safe environment for all people, free from abuse, neglect, violence and/or preventable injury." *Ibid* 4.

239 *Ibid*.

240 *Disability Act 2006* (Vic) s 140. It may also be used in an emergency as detailed in section 147 of the Act.

241 *Disability Act 2006* (Vic) ss 23–17. 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>.

242 *Mental Health Act 2014* (Vic) ss 105, 108.

243 Cognitive impairment includes mental illness, intellectual disabilities, dementia or brain injury. *Crimes Act 1958* (Vic) ss 50–2. 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>>.

244 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 241. 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>>.

245 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>>.

- *Responding to allegations of physical or sexual assault Departmental Instruction (2005)*²⁴⁶
- *Residential Services Practice Manual 2013*.²⁴⁷

In addition, DHS has a protocol in place with Victoria Police to outline how they 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.²⁴⁸ 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.*

The principles of effective safeguarding

The development of effective safeguards is a complex undertaking involving all levels of an organisation.²⁴⁹

A recent study identified six key themes that underpin 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.

246 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>>.

247 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>>.

248 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.

249 Ottmann et al, above n 77, 6.

- Making available the necessary resources to implement good safeguarding practices.
- Maintaining high recruitment standards."²⁵⁰

We found evidence of good practice in service reporting and improvements to the way services are developing capability in pursuing robust internal investigations.²⁵¹ However, participants also told us of situations where service follow-up was not consistent with existing safeguards and departmental policy does not appear to have been followed.²⁵²

People told us that 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.

While effective safeguarding is a clear 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

The research found that 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:

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.²⁵³

250 Ibid 22.

251 Key informant interview, Dr Jeffrey Chan (14 November 2013); Focus group 2, service workers (12 August 2013).

252 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.

253 Michael Williams, John Chesterman and Richard Laufer, 'Consent versus scrutiny: Restricting liberties in post-Bournemouth Victoria' (2014) 21 *Journal of Law and Medicine* 641, 660.

A lack of communication assessments and supports, and poor quality behaviour support plans may create environments where violence occurs, remains unreported and becomes normalised.

Behaviour support plans

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.²⁵⁴

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.²⁵⁵

I know families who haven't had a behaviour support plan for six years. There's no penalty if one isn't developed.²⁵⁶

The need to embed and improve the quality of Behaviour Support Plans has been a significant focus of recent work by the Senior Practitioner – Disability.

Communication assessments

Currently, out of around 5,000 people living in disability accommodation services, 1,850 are reported on the 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.²⁵⁷

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).²⁵⁸ 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.²⁵⁹

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 OK. But it's assumed to be OK because they all can't express themselves.²⁶⁰

254 Key informant interview, Dr Jeffrey Chan (14 November 2013).

255 If restraint is used outside strict legal parameters it will amount to assault.

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

257 Key informant interview, Senior Practitioner (22 November 2013).

258 *Equal Opportunity Act 2010* (Vic) s 45.

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

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

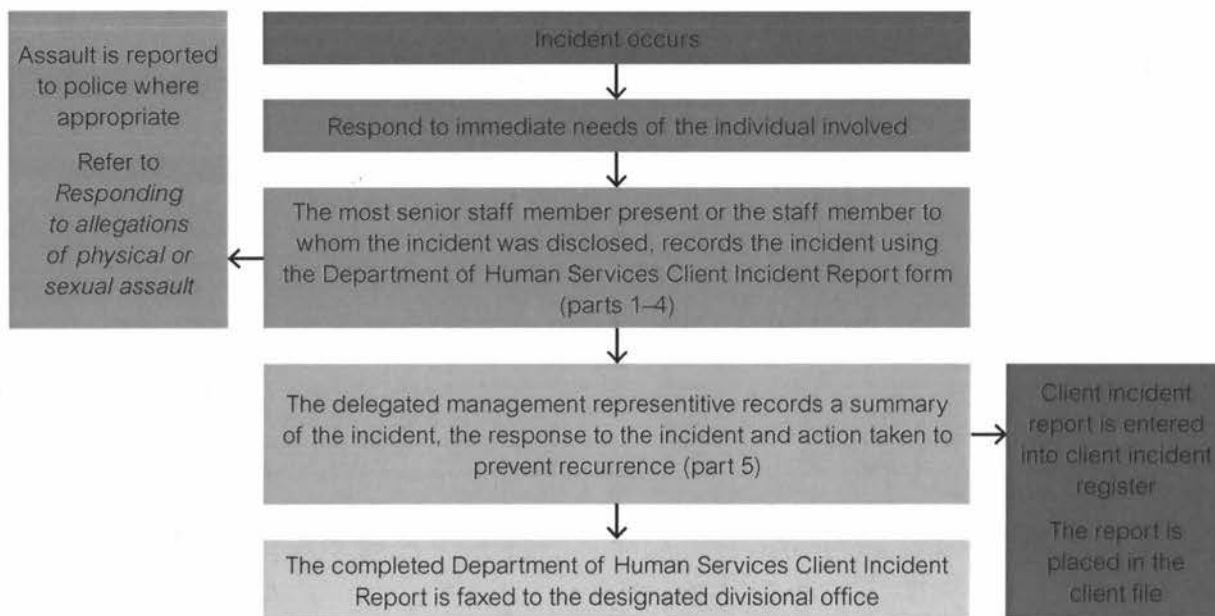
Reporting incidents

There are related but separate incident reporting requirements for services operated by the DH and DHS. These are supplemented by specific instructions regarding the reporting of physical and sexual assault.

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. The level of incident categorisation matters as it determines what type of response occurs and who is responsible for any investigation that follows.

Figure 2: 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.²⁶¹



²⁶¹ State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update), above n 245, 11.

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.²⁶²

Further, the *Responding to allegations of physical and sexual assault instruction (2005)* outlines the reporting requirements for allegations of assault.²⁶³ In particular, this instruction requires that all allegations of assault in disability residential services, 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.²⁶⁴ This means that the quality of any internal investigation becomes even more important. While there are policies and guidelines in place that require reporting to police and to record incidents, we heard that practice on the ground varied.²⁶⁵

Interagency guideline for addressing violence, neglect and abuse (IGUANA)

The Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA), produced by 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.²⁶⁶ 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.²⁶⁷

Reporting a critical incident in health services

The DH Incident Reporting Instruction covers incidents in funded organisations, including Home and Community Care services, alcohol or drug services, Psychiatric Disability Rehabilitation Services (PDRS), community health centres and SRSs.²⁶⁸

All Category One incidents must be reported to DH. 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

262 Ibid 12.

263 State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault 2005*, above n 246.

264 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, Submission No 4 to Victorian Equal Opportunity and Human Rights Commission, *Experiences of people with disabilities reporting crime project*, 16 October 2013, 13.

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

266 Office of the Public Advocate, *Interagency guideline for addressing violence, neglect and abuse (IGUANA)* (2013) <<http://www.publicadvocate.vic.gov.au/publications/539/>>.

267 See also Office of the Public Advocate, *Violence against people with cognitive impairments*, above n 42, for a discussion of case studies of abuse and neglect in services which provided important context for the development of the guideline.

268 Supported Residential Services (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, 2013* (2013) 3-4 <<http://docs.health.vic.gov.au/docs/doc/Department-of-Health-Incident-Reporting-Instruction-2013>>.

confirm that mandatory reporting requirements have been met (for example reporting to Victorian WorkCover Authority, the Coroner, the Chief Psychiatrist)".²⁶⁹

Proprietors of SRSs 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.²⁷⁰

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 DH.²⁷¹

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."²⁷² Category Two incidents are reviewed by senior staff in the regional program area of DH.²⁷³

The DH also 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.²⁷⁴

269 Ibid 16.

270 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.

271 Ibid 12–13.

272 Ibid. The Instruction refers staff to the *Responding to allegations of physical or sexual assault Departmental Instruction (2005)* 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 246.

273 State of Victoria, Department of Health, *Incident reporting instruction 2005*, above n 268, 16, 19.

274 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. Information provided to the Commission by the Department of Health, 3 June 2014.

Reporting a critical incident 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, and 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.²⁷⁵ They may also give directions to a service, make a report and recommendations from an investigation, and give directions to a service, in addition to addressing systemic issues by issuing standards, guidelines and practice directions.²⁷⁶

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".²⁷⁷

Conducting effective internal investigations

It is crucial that internal investigations are robust, comprehensive and conducted by skilled investigators. We found evidence of good practice in service reporting and investigations and a genuine focus on getting it right.²⁷⁸

However, we also heard of consistent barriers to ensuring robust and effective service investigations, including:

- staff are not always able to identify and respond to incidents of abuse and neglect.²⁷⁹

275 *Mental Health Act 2014* (Vic) s 122(1).

276 *Mental Health Act 2014* (Vic) ss 121–33.

277 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>>.

278 Key informant interview, Dr Jeffrey Chan (14 November 2013); Focus group 2, service workers (12 August 2013).

279 For example, Ottmann et al, above n 77, 5–6.

- while many resources and guidelines exist, most are sector-specific. This causes staff “unnecessary confusion for carers about how they should respond to abuse, particularly for carers in large organisations who worked across more than one sector”²⁸⁰
- staff are not always following incident reporting guidelines, so a service investigation is not always triggered²⁸¹
- inadequate record keeping
- variable communication and interviewing skills of investigators
- lack of funded advocacy services
- because the investigation's focus is usually determining if the allegation can be substantiated or not, the policy aim of minimising trauma may not always be met
- privacy concerns trumping the gathering of evidence
- industrial relations concerns.²⁸²

Some participants expressed little confidence in service investigations.²⁸³

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”.²⁸⁴

Oversight and monitoring

A lack of confidence in incident reporting and internal service investigations highlights the importance of independent oversight. For people with disabilities in Victoria's service systems, oversight mechanisms include the MHCC, DSC and the Community Visitors Program, which reports to OPA. These are in addition to service standards, funding conditions and departmental policies and procedures that all services must adhere to.²⁸⁵

However, we heard that existing mechanisms may not be able to respond quickly enough or in all circumstances. The significant risk of perpetrators moving from service to service requires focused effort, and there is a clear need to strengthen and extend monitoring and oversight mechanisms.²⁸⁶

Opportunities to improve safeguarding are discussed in the next section.

These efforts aim to prevent staff practices and behaviour that can escalate without the benefits of proper supports and intervention.

280 Office of the Public Advocate, *Interagency guideline for addressing violence, neglect and abuse (IGUANA): Background and discussion paper* (2013) 8.

281 Information provided to Commission by the Department of Human Services, 12 May 2014.

282 For example, Key informant interview, Communication Rights Australia (31 July 2013); Key informant interview, Villamanta Disability Rights Legal Service (20 August 2013).

283 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).

284 Key informant interview, Disability Services Commissioner (23 October 2013).

285 For example, State of Victoria, Department of Human Services, *Critical Client Incident Management Instruction* (Technical update), above n 245; State of Victoria, Department of Human Services, *Responding to allegations of physical or sexual assault 2005*, above n 246. Key DHS frameworks and policies are listed at page 43.

286 A discussion about key principles underpinning safeguarding are outlined in Coulson Barr, above n 232 and in Ottmann et al, above n 77. The need for training, capacity building and practice guidance is discussed in greater detail at page 54.

The way forward

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

People with disabilities reporting crime must be able to access consistent support – when they need it and for as long as they need it – at all stages of their journey through the criminal justice system.

Police are an important point of early contact when people experience crime. As such, most of the Commission's recommendations are aimed at supporting Victoria Police to better respond to the needs of people with disabilities, and will align with efforts in the forthcoming Victoria Police 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.

Of course, the Commission recognises that achieving lasting change requires a consistent effort across Victoria's broader justice, health and human services systems, and sees alignment with the whole of government work being undertaken through the Victorian State Disability Plan.

Accordingly, this report makes a series of integrated recommendations (see page 14) where we have established a clear link with issues relating to the incidence and reporting of crimes against people with disabilities.

Transformation and leadership in police

The importance of leadership in Victoria Police was a major theme in this research. Strong leadership throughout the ranks is crucial to ensure that people with disabilities can access police services on the same basis as other Victorians.

As seen in the dramatic improvements in responses to family violence and to sexual assault

in Victoria, giving priority to a victim cohort with specialist needs within the police force can be transformational.

Strong and decisive leadership, and coordination, is needed to prioritise disability across Victoria Police, to establish and embed cultural change across the organisation and to identify and build on examples of good practice.

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.²⁸⁷ The Commission welcomes these commitments.

Police members need to know where and how to access relevant information, advice and support to ensure that people with disabilities receive the best possible service and realise their rights to justice and safety.

Developing a Code of Practice for victims and witnesses with disabilities will provide an important framework to identify this as a priority issue within Victoria Police. A Code of Practice will ensure consistency in responses, including relevant supports, clarity referral processes and coordinated policy and practice level change across the state.

A Code of Practice should be underpinned by strong governance and the ability to undertake statewide coordination. This could be achieved by establishing a network of regional Disability Advisors across the state. The Victoria Police Priority Communities Division should coordinate these Disability Advisors, who would then become the interface between the division and operational

²⁸⁷ 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* (2013) <http://www.police.vic.gov.au/content.asp?Document_ID=39350>.

police members. Regional Disability Advisors could provide much-needed guidance and support in undertaking local level rollout of statewide initiatives.

Recommendations

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.
- 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.

Equipping police

Police members told us unequivocally that they need more support to know how to identify, respond to and support people with disabilities reporting crime. There was strong consensus that building police capability through career-long learning and development around disability is an urgent priority.²⁸⁸

Police told us that they are more likely to base their responses to people reporting crime on previous interactions they have had with people with that type of disability. Accordingly, learning and development opportunities need to go beyond the classroom. The most significant challenge for police is establishing the means for effective communication, across a range of disabilities.²⁸⁹ Specialist prosecutors, video and audio recorded evidence and Sexual Offence and Child Abuse Investigation Teams (SOCIT) training has a much stronger focus on disability,

288 Focus group 6, Independent Third Person Program volunteers (11 October 2013); Key informant interview, Dr Margaret Camilleri (7 August 2013).

289 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 114, 9.

including communication skills. Given it is likely that every police member will encounter a person with disability, this knowledge and skill needs to be further embedded across the organisation.²⁹⁰

Creating a critical mass across Victoria Police is also necessary to promote inclusive practice and overcome entrenched practices and attitudes towards people with disabilities. This includes equipping police members with strategies to challenge others who perpetuate a culture of prejudice towards disability. Supporting police members to prevent and intervene against discrimination through bystander action needs to be prioritised in professional development.

Recommendations

- 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, prosecutors and in leadership.
- 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.

Ensuring equity for people with communication disabilities

One in 500 Victorians has communication disabilities.²⁹¹ However, important police information for victims of crime is not currently available in multiple formats, including Easy English. Police also say they feel poorly equipped to make the reasonable adjustments required to communicate with many people with disabilities.

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

291 Scope, *Communication Access – Introducing the newest access symbol within Australia* (19 August 2011) <<http://www.scopevic.org.au/index.php/site/mediacentre/pressreleases/communicationaccesssymbol>>.

There is an urgent need for Victoria Police to lead on accessible communication practices so people with communication disabilities are not excluded from their services. Gaining communications accreditation would involve working with Scope 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 English²⁹²
- 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 be easily be made.

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.

That Victoria Police and the Department of Justice:

- 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.

292 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, 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+about+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>.

Making better use of Independent Third Persons (ITPs)

The Commission supports the need for consistency of practice in the use of ITPs in the justice process. The Office of the Public Advocate (OPA) has strongly advocated for the need to legislate for the role of ITPs in the criminal justice process.²⁹³ Providing a legislative mandate for ITPs would help to achieve that, and would be consistent with other jurisdictions, including the United Kingdom.

For the ITP system to work, police need easy to use tools to assist them. OPA provides a 'ready reckoner' to assist police.²⁹⁴ However, it is not clear how well the ready reckoner is distributed among police members.

Recommendation

That Victoria Police and the Office of the Public Advocate:

- update the Independent Third Person 'ready reckoner' to facilitate improved 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 the use of Independent Third Persons by June 2015, and then on an ongoing basis at least every three years.

Monitoring systems performance

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 explains the scope of the problem or the trends occurring in different settings across the state.

There is a pressing need to build the evidence base about people with disabilities and their experience of crime. Cooperation between cross-sectoral agencies would allow data analysis to monitor trends around victimisation of people with disabilities and the effects of service system improvements. This data is essential to identify

293 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.

294 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.

trends, to develop effective prevention and early intervention initiatives, and to ensure that police and other resources are effectively targeted.

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.

Improving access to the courts

While some progress has been made, basic adjustments are not always made to adapt court practices and facilities to meet the needs of people with disabilities.

Court Services Victoria commenced operations as an independent statutory agency on 1 July 2014. Its transition to an independent body provides a good opportunity to review court processes with a view to identifying and implementing improvements to accessibility in a consistent and integrated way.

Such a review should consider the access needs of people with sensory, physical, learning and communication disabilities.

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.

Court processes can place people with disabilities at a significant disadvantage to other witnesses. It can also influence whether or not a person reports a crime and takes the matter through the criminal justice system.

The Commission has identified a range of positive reforms that could be made to court procedures, and clarifications to rules of evidence, in order to improve access to justice for this group.

This includes extending special hearings to other serious offences beyond sexual offences and extending their operation to people with

communication disabilities; specifying people with communication disabilities as vulnerable witnesses; and clarifying the scope of appropriate means of communication to include Augmentative and Alternative Communication.

The aim of these changes is to minimise trauma and maximise participation for witnesses who can be especially vulnerable. Some changes may require legislative reform, while others could be achieved by amending the Uniform Evidence Manual, which is the bench book produced by the Judicial College of Victoria, and used by courts across Victoria.

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.²⁹⁵ We consider that this legislative change would require further consultation and scoping, but is worthy of active consideration by government.

Recommendations

That the Department of Justice:

- 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.

That the Judicial College of Victoria:

- 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

²⁹⁵ 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.

- collaborate with the Victorian Equal Opportunity and Human Rights Commission to develop educative resources that specifically address the making of 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.

A comprehensive approach to safeguarding

There is a clear need to ensure that the human rights of people with disabilities take priority when delivering services. 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 safeguarding and monitoring are in place, and sit within a human rights framework.

Building capacity in safeguarding

Building workforce capability in Victoria's human services is critical if incident reporting and monitoring systems are to achieve their aim of safeguarding the rights of people with disabilities. Staff must be properly recruited, and then equipped and supported to undertake work in a way that is consistent with a human rights-based approach.

It became clear through the research that pressures in the system can result in inadequate recruitment and supervision of staff, and this has the potential to result in poor practice.

Strengthening workforce capability will reduce the risk of perpetrators being employed in services in the first place, through:

- guidance on expectations for identifying and responding to abuse
- improvements to recruitment practices to focus on integrity and comprehensive reference checking²⁹⁶

²⁹⁶ In April 2014, National Disability Services released practice advice on safer recruitment and screening that emphasises, amongst a number of things, the importance of consumer involvement in recruitment, value based recruitment and the limitations of police checks. National Disability Services, *Zero Tolerance practice advice 1: Safer Recruitment and Screening* (2014) 1–3.

- a focus on ongoing debriefing, supervision and reflective practice opportunities between management and staff in services as core business
- improved monitoring through practice change and supervision.

Ongoing 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.

Central to this is making sure the workforce is skilled and supported, that a culture of integrity and human rights is fostered and that staff and services – as well as people with disabilities – in these settings have the guidance, capacity and confidence to act when, and if, something goes wrong.

Taking action

In the first instance, clients of services may need assistance to report a crime. However, people providing care and support, including service staff, may not recognise a crime has occurred or may not know how to report one. Some may fear repercussions for themselves or the victim if a report is made.

There can also be confusion 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 are clear on this point.²⁹⁷ We also heard about reluctance on the part of some agencies to follow up on police decision-making where little or no action was taken.

Building workforce capability must focus on treating crimes as crimes and ensuring that services and police act when reports of crime, abuse or violence are made.

Internal investigations should be undertaken in response to a report made by a client, regardless of police action on the incident. They should be robust and conducted according to clear guidance on the key elements of effective investigation procedures.

²⁹⁷ For example, Disability Advocacy and Information Service, 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).

There is a need to provide guidance and consistency between services and the police about what is required from police and services when a report is made, including minimum standards around response times, communication on progress and status of matters.

Peer-led education and advocacy

Training for service staff should recognise and promote the expertise of people with disabilities. A successful example of this approach is the gender and disability professional development package, being 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.²⁹⁸

Perhaps even more important is ensuring people with disabilities have the information and supports 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.

We were informed of a number of peer-led training and advocacy programs that aim to equip people with disabilities to identify and report crime and to drive changes in policy and practice:

- *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. The programs are managed locally by a cross-sector network of community organisations including peer educators.²⁹⁹
- *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, on how to make complaints, identify abuse and how to report these crimes.

298 See Women with Disabilities Victoria, *Latest News, Media & Events* (2013) <http://www.wdv.org.au/news_events.htm>.

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

- *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.³⁰⁰
- 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.³⁰¹

Greater investment in such programs is needed.

Disability advocacy

Under the National Disability Agreement funding for disability advocacy in Victoria is a joint responsibility of the state and federal governments.

Through the Victorian Disability Advocacy Program, the Department of Human Services (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.

The 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 n Disability which receive recurrent annual funding from DHS.

Through the National Disability Advocacy Program, the Commonwealth Government funds 17 community organisations to provide advocacy. This includes funding for legal advocacy which is not funded through the Victorian program.³⁰²

300 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).

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

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

Recommendations

- 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:
 - a) issue comprehensive practice guidelines on when and how to report to police, how to effectively and pro-actively 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.

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. They may also move from service to service if no criminal conviction is recorded against them.³⁰³

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. Further, while working with children, checks provide protection for children with disabilities, there is no equivalent mechanism for adult service users where a person can effectively be deregistered and prohibited from working with this group.

In order to prevent crime against people with disabilities in service settings, the Commission is recommending the introduction of a registration system for employees in disability, mental health and other services working with adults with disabilities.

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”.³⁰⁴ Registration is also compulsory in some other Australian jurisdictions, where a risk assessment is undertaken to determine whether a person is deemed suitable to work with people with disabilities.³⁰⁵

There are a number of options for establishing such a scheme and an important consideration is 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.

303 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 24, 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).

304 *Care Standards Act 2000* (UK) s 81 cited in Coulson Barr, above n 232, 21.

305 For example *Working with Vulnerable People (Background Checking) Act 2011* (ACT); *Registration to Work with Vulnerable People Act 2013* (Tas).

Option one – all staff and volunteers who work with adults with disabilities require registration

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 (preferred option)

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, Supported Residential Services, residential disability settings, respite, in home, day centre and Home and Community Care 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 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 the Department of Health 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 scheme will engage rights protected by the Charter. Under the Charter, human rights may be limited but only as much as can be "demonstrably justified in a free and democratic society".³⁰⁶ 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.

³⁰⁶ *Charter of Human Rights and Responsibilities Act 2006 (Vic) s 7(2).*

These issues were canvassed when the Australian Capital Territory 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 life³⁰⁷
- 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 2004* (ACT) (equivalent to 7(2) in the Charter) and found that the requirement for an applicant to provide the Commissioner with their 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.³⁰⁸

³⁰⁷ To the extent that it relates to public sector employment.

³⁰⁸ The ACT law includes a number of safeguards that should be replicated in any Victorian scheme, including a comprehensive risk assessment model that limits checks to requesting and considering information that is relevant and reasonable, including consideration of the relevance of criminal offences to the inherent requirements of working with vulnerable people. There should also be a right of review where the person believes a decision 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 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.

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.

Human rights as a priority

Service environments are complex and many in the workforce may not have adequate support, skills and training to manage these complexities.³⁰⁹ Services that rely on casual or less experienced staff can face particular challenges to ensure practices for their clients that are consistent with human rights.³¹⁰

In some cases, unnecessary use of restrictive practices occurs because communication assessments and behaviour supports have not been put into place. This is unlawful under the Charter.³¹¹

A greater investment in communication assessments and support for disability services may help 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 in their work with victims with communication needs when a crime is reported.

³⁰⁹ Recent data indicates that 93 per cent of ongoing staff in Department of Human Services managed residential disability services is qualified with a Certificate IV with some staff holding higher qualifications. Information provided to the Commission by the Department of Human Services, 3 June 2014.

³¹⁰ For example, Key informant interview, Dr Patsie Frawley (5 July 2013).

³¹¹ *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 10.

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 (video and audio recorded evidence) 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 blond 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 Department of Human Services 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 puaa 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 incapacities. 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 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) team, 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 coordinator 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

Number	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

Number	Type	Date
1	Advocates	10 July 2013
2	People who provide care and support	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	Victoria Police	November 2013
9	Victoria Police	November 2013
10	Victoria Police	November 2013
11	Victoria Police	November 2013
12	People with disabilities	13 November 2013
13	Victoria Police	November 2013

Appendix 3: Submissions

Number	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.³¹²

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.³¹³

312 <www.bia.net.au>

313 <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.³¹⁴

314 <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.³¹⁵

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.

315 <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.³¹⁶

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 in to 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.

316 <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

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
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

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
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

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
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

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
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
Telephone	1300 891 848
Fax	1300 891 858
Hearing impaired (TTY)	1300 289 621
Interpreters	1300 152 494
Email	information@veohrc.vic.gov.au
Website	humanrightscommission.vic.gov.au