

## **Statement to the Royal Commission into Family Violence made by John Ross Champion SC, Director of Public Prosecutions, Victorian Public Prosecutions Service**

### **Introduction**

1. I am Director of Public Prosecutions for the State of Victoria and head of the Victorian Public Prosecution Service ("VPPS").
2. The VPPS is comprised of the Director of Public Prosecutions; the Chief Crown Prosecutor; Crown Prosecutors; the Solicitor for Public Prosecutions; and the Office of Public Prosecutions. The VPPS is mandated under the *Public Prosecutions Act* 1994 to prosecute serious indictable crime on behalf of the State of Victoria. The OPP legal practice is made up of some 200 lawyers and the Witness Assistance Service ["WAS"]

### **Relevant Director's Policies**

3. I have a suite of Director's Policies ["policies"] that provide guidance for legal staff and WAS in the conduct of prosecutions on my behalf. It is these policies which underpin and inform the legal practice and WAS in providing support to witnesses, complainants and persons adversely affected by crime. There are two significant policies that impact in the area of family violence. I refer to them below.

### **Director's Policy in Relation to Victims and Persons Adversely Affected by Crime**

4. My Policy in relation to victims and persons adversely affected by crime formally picks up the principles articulated in the *Victims Charter Act* 2008 and sets out how I expect the VPPS to respond to complainants, witnesses and people adversely affected by crime.
5. This is an important Policy as it exists to guide legal staff and the WAS through the complexities of consultation, whilst not acting as the legal representatives or advocates of victims or those adversely affected by crime.
6. The Policy states that the VPPS, in performing its functions must:
  - a) have regard to the need to ensure that the prosecutorial system gives appropriate consideration to the concerns of victims of crime;
  - b) treat all people adversely affected by crime with courtesy, respect and dignity; and
  - c) take into account, and be responsive to, the particular needs of people adversely affected by crime, in particular: race or indigenous background, sex or gender identity, cultural or linguistic diversity, sexual orientation, disability, religion and/or age.<sup>1</sup>

### **Communicating with victims**

7. This policy sets out guidelines for communicating with victims, in line with the legislative obligations. It sets out what needs to be taken into account before

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<sup>1</sup> Director's Policy in relation to victims and persons adversely affected by crime, No. 31, p.4

communicating with victims. This includes the particular needs of the victim, the victim's preferred method of contact and the urgency of the information being communicated.

8. The Policy states that all prosecution witnesses and victims should be informed about the availability of WAS and that they can contact WAS for information, support and assistance.

#### **Providing information and assistance**

9. The Policy states that referral to WAS should be made as early as possible if the matter involves:
  - a) a death
  - b) a child victim
  - c) a victim with a disability or cognitive impairment
  - d) a sexual offence
  - e) family violence
10. The Policy states that the OPP solicitor should offer a pre-committal and pre-trial conference to child witnesses; sexual offence complainants; and, victims or witnesses with a disability where they are required to give evidence. Conferences should also be offered to family members of deceased victims. In matters involving family violence, the OPP solicitor should consult with WAS to determine whether a conference is required.
11. The Policy sets out the Director's expectations in relation to the OPP's obligations under the *Victims' Charter*. These include:
  - a) providing information about the court process;
  - b) information about the outcome of any bail hearing, where the victim has requested such information;
  - c) consultation with victims prior to any decision to substantially modify charges, not proceed with some or all of the charges or accept a plea of guilty to a lesser charge and informing them of any decisions in relation to any of these matters;
  - d) providing information about hearing dates and outcomes;
  - e) obligations to victims at court;
  - f) providing information and assistance in relation to Victim Impact Statements;
  - g) protecting a victim/witness' privacy and personal information.
12. It is important to emphasise that appropriate support as envisaged by this Policy is the role of all staff employed by the OPP. The role of OPP instructing solicitors cannot be underestimated in providing support at court, facilitating an understanding of the criminal justice process and the role to be played by victims, witnesses and importantly other stakeholders. WAS has an integral function in assisting the OPP to meet its obligations under the *Victims' Charter*.
13. I am conscious that the legal staff must manage competing obligations to different stakeholders in the criminal justice system. The legal staff perform a difficult role in this regard, often negotiating a very delicate balance between victims and the legal system as a whole, especially in respect of consultation about various "difficult decisions" (eg plea negotiations, discontinuances) and in providing legal information and advice about complex evidentiary questions.

### **Director's Policy on Family Violence**

14. The Family Violence Policy was launched in 2011 and highlights specific matters that the VPPS must have regard to in prosecuting offending that occurs within a family violence context. The Policy promotes and applies the extended definition of family violence as found in the *Family Violence Protection Act 2008*.
15. The OPP prosecutes matters involving family violence in the Magistrates', County and Supreme Courts and in the courts of appeal. This policy is a statement of the VPPS commitment to treating victims and witnesses of family violence with dignity and respect.
16. The Policy provides instructions for OPP solicitors and Counsel about best practice for preparing and prosecuting where the offences occur in a context of family violence. It outlines a number of priorities and principles to ensure consistency and fairness in the preparation and management of family violence prosecutions.
17. The Policy addresses issues that may arise in a prosecution set against a background of family violence, including:
  - a) a complainants legal right to object to give evidence;
  - b) dealing with witnesses who wish to withdraw statements of complaint; and
  - c) alternative arrangements for giving evidence.
18. The Policy is augmented by a chapter in the OPP electronic Practice Guide on family violence to provide further assistance for lawyers in preparation of family violence prosecutions. The Chapter also provided links to the electronic resources provided by the Judicial College of Victoria in this area.
19. My Policies on Persons Adversely Affected by Crime and Family Violence are published on the OPP website and available for the community to read and understand.

### **Statistical Identification of Family Violence Prosecutions**

20. Prosecutions with a family violence nexus are recorded in the OPP electronic case management system. This system also manages referrals to WAS from the legal practice.
21. Analysis of the case management system has revealed that over the last 3 reporting years, approximately 1200 matters prosecuted by the VPPS in the higher courts have been nominated as "Family Violence matters" by the solicitor with conduct of the file.
22. The figure each year has been between 400 and 500.
23. The actual offences in issue are a mixture of homicides, assaults and sexual offences, as well as substantive breaches of intervention orders.
24. During the same reporting period, the VPPS prosecuted approximately 250 murder cases, of which approximately 10% (23 matters) were nominated as being family violence-related.
25. These figures dovetail with an identified high demand for WAS services across the board, including in family violence matters or matters where there is a nexus with other sexual or offending involving fatal violence.



## OPP Publications

26. The OPP has prepared 5 publications specifically designed to assist witnesses, complainants and persons adversely affected by crime to understand the criminal justice system and their unique place in it. WAS has had a significant involvement in the preparation of these publications. All publications can be found on the OPP website where all members of the Victorian community can read online or download. They can be provided in hard copy as well. These publications are important adjuncts to the work done by WAS and the legal staff.

27. The 5 publications are:

- a) Now You Are A Witness - given to every person served with a subpoena to give evidence;
- b) Witness Assistance Service Brochure – contains an introduction to role and purpose of WAS and has been translated into Arabic, Mandarin, Hindi, Vietnamese, Turkish and Somali;
- c) Pathways to Justice – a key publication containing information about the criminal justice system and court process generally given to complainants at an early stage in the process;
- d) Taking the Next Step: A Guide to the Victorian Court System for Bereaved Families – this publication builds on the Pathways booklet and is specifically targeted at families who have lost a family member;
- e) The Prosecution Process Flowchart;
- f) Information for Witnesses Regarding Oaths and Affirmations.

## Witness Assistance Service

28. The Witness Assistance Service (WAS) was established in 1995 and provides a state-wide specialist service to adult prosecution victims, and witnesses and families of deceased victims of crime involved in OPP prosecutions.

29. WAS exists as a non-evidentiary service to assist witnesses and complainants navigate the criminal justice system.

30. In recent times the OPP and WAS have operated in an environment of legislative and policy change. This has occurred in a context of increasing recognition of the place victims of crime have within the legal system, and significant changes to the criminal law in the areas of sentencing and sexual offences.

## The Service Provided by WAS

31. The objective of WAS is to provide support and practical assistance to victims and witnesses throughout the prosecution process in the indictable jurisdiction - from the pre-committal to post appeal stage. WAS is a uniquely placed service within the criminal justice system. It is part of the prosecution process. WAS works closely with barristers, solicitors, informants and witnesses to assist witnesses give evidence to the best of their abilities.

32. WAS is closely aligned with the role of the OPP in prosecuting criminal offences on behalf of the Victorian community and adheres to the organisational parameters of prosecutorial independence, fairness, respect for obligations to the court, to the accused and to the law.

33. There are currently 10 staff in the WAS namely, a Manager, social workers and administrative support. All the professional staff in WAS have tertiary qualifications in social work, or a related discipline, and bring these skills and knowledge to bear in performing their function within the OPP.

34. As part of the WAS service delivery model, the following prioritisation is employed:

- a) matters involving death;
- b) sexual assault and/or family violence and
- c) matters involving vulnerable victims/witnesses

35. The prioritisation imperative demonstrates the considerable overlap between offences of serious and/or fatal violence and sexual offending with family violence.

36. The service offered by WAS includes:

- a) providing an information service to witnesses and people adversely affected by crime, focusing primarily on the legal process and the roles of the various stakeholders;
- b) assisting witnesses to understand the role of the OPP and what they can expect as witnesses or people adversely affected by crime from the OPP;
- c) assisting legal staff in non-evidentiary conferencing with complainants, witnesses and other persons adversely affected by crime at all stages of the criminal justice process;
- d) assisting legal staff in expectation management and support in appropriate consultation with complainants or persons adversely affected by crime;
- e) liaison with external support agencies and services and referral where necessary (eg Victims Assistance & Counselling Program, CASA, Court Network; VOCAT, family violence specific agencies, Koori specific agencies);
- f) court orientation in the Magistrates', County and Supreme Court;
- g) provide a secure and safe environment for viewing of VARE tapes;
- h) assist with training both internally and to external agencies.

37. In addition to conferences, work with witnesses, complainants and other people adversely affected by crime can take the form of telephone or email contact and supporting witnesses at court.

38. WAS aims to facilitate a greater understanding of the criminal justice process and ensuring witnesses are treated with dignity and respect.

#### **The Intersect between Sexual Offending and Family Violence in provision of Services to Victims of Crime – Service Initiatives as a Result of the Sexual Assault Reform Strategy**

39. The experience of the VPPS shows the close links between sexual offending and family violence. The two are often closely intertwined. Legislative reforms and whole of government funding initiatives in the area of sexual offending have impacted on family violence prosecutions.

40. In response to recommendations of the VLRC, the Victorian Government allocated \$34.2 million in the 2006/07 State Budget to improve the criminal justice system's response to sexual assault.

41. The Sexual Assault Reform Strategy had a significant impact on the work of the OPP and WAS. In particular:

- a) establishing a specialist sexual offences unit within the OPP;
- b) establishing a regional prosecutions office in Geelong;
- c) implementing an automatic referral process to WAS for sexual assault matters;
- d) setting up two remote witness facilities in the OPP;
- e) DOJ established a specialist Child Witness Service;
- f) Collaborative work with the OPP's Geelong office;
- g) automatic referral of sexual assault matters, including those with a family violence context;
- h) the establishment of two remote witness facilities in the OPP building for witnesses to give evidence.

## Conclusion

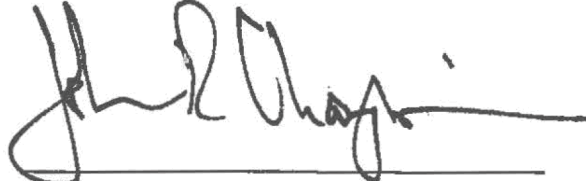
42. The overall approach taken by the legal practice and WAS generally is one of practical assistance to ensure all victims, complainants and witnesses understand the legal system and their role in it, and to support people through what can be an alien, legal environment. As the OPP prosecutes serious violent and sexual offending that occurs within a setting of family violence, the organisation is strongly committed to assisting victims and those adversely affected in the ways described above.

Signed by:

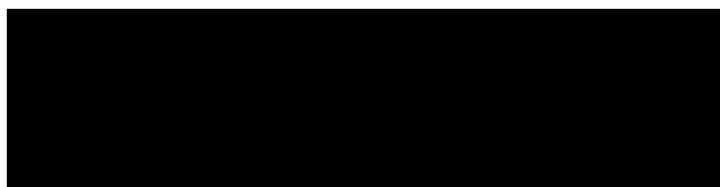
**JOHN CHAMPION SC**

at Melbourne

this 11<sup>th</sup> day of August 2015

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Before me:



Associate to the Director of Public Prosecutions