

Monday, 13<sup>th</sup> May 2019

Mr Leigh Roach  
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Chair, Sexual Violence Prevention Roundtable  
Department of Child Safety, Youth and Women  
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Dear Mr Roach

Court Network (Qld) welcomes the opportunity to provide feedback to the Sexual Violence Prevention Roundtable. We would like to submit several comments specifically responding to:

- **Priority area 3:** Meeting the needs of all Queenslanders and
- **Priority area 4:** Strengthening and integrating the service system from the *Sexual Violence Prevention: Having the conversation Discussion Paper*. However, we recognise that many of our comments and recommendations are applicable to other Priority areas.

Our submission begins with an overview of Court Network and the Victim Support Unit and seeks to outline:

- some of the key issues that may be encountered by victims of sexual violence when interacting with the criminal justice system
- the role that independent court support can have in increasing victim's access to justice.

Where appropriate we have outlined potential options for reform. We hope that you will find our recommendations useful in your consideration.

## 1. About Court Network

Court Network is a frontline, independent, membership based, community organisation that supports people to access the court system. Court Network has operated in Queensland since 2006, in the Brisbane CBD courts, and expanded in 2010 to Cairns and Townsville. It was founded in 1980 by Carmel Benjamin AM, in a small suburban court in Melbourne after Carmel saw a real gap for people in contact with the justice system. It was at a time when there was not a lot of focus on the quality of experience or treatment of people going through the justice system. There was no non-legal support service infrastructure, no remote witness facilities, no separate waiting rooms, or opportunities through which people would be informed about the process they would be required to participate in.

We are passionate about our vision and mission which remains unique.

***Vision:*** *To provide our community with volunteers who stand beside, empower and instill confidence in all court users*

***Mission:*** *To provide support, information and referral to persons attending court and to advocate for the needs of all court users*

We are still the only service that operates within the courts, offering support, information and referral to court users. It is a mission that drives our identity as an organisation and provides the foundation of our practice. Our role is to empower and increase the confidence of court users to manage the requirements of the courts. The focus of our mission is on providing non-legal support, information, referral and advocacy services to court users.

Patrons:

The Honourable Linda Dessau AC  
Governor of Victoria

The Honourable Chief Justice  
Catherine Holmes  
Supreme Court of Queensland



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Court Network provides support,  
information and referral to people  
attending court and advocates for the  
needs of all court users.

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Our services are an important component of accessing justice. People may feel vulnerable or disadvantaged, they may be attending court for the first time, be unfamiliar with court rules and processes, lack knowledge of what is expected of them, feel frightened and unsafe. They may not feel confident with English as a language, or simply need someone to listen, provide support, and assist them to navigate the court system. Court Network's services meet this need with volunteers assisting court users to navigate and make sense of the complex and sometimes confusing court processes, we also support and assist them to access support services to improve their personal safety, wellbeing and access to justice.

### **Victim Support Unit (VSU)**

Since 2013, Court Network has been receiving funding from Victim Assist Queensland (VAQ) to provide a support service to adult victims of violent crime in Brisbane and Ipswich. The Unit expanded into Gympie and the Sunshine Coast for specific services in 2016. However, clients may be anywhere in Queensland.

The Unit aims to:

- provide a coordinated cross jurisdictional response, by a team of professionally trained and supported volunteers, to adult victims of violent crime, witnesses to violent crime, families (e.g. family of deceased of an act of violence) and support persons (i.e. service providers, individuals supporting victims in others areas where perhaps VSU does not exist) involved in the criminal justice system
- increase frontline support services to victims and witnesses through the provision of support information, referral and advocacy
- ensure victims are aware of their rights
- develop/maintain stakeholder relationships.

As there is no witness support service within Queensland, a significant component of VSU's work is independent witness support.

VSU can assist victims throughout their entire court experience – as a one-off contact or supported for an extended period of time. That is, anytime from when the crime is committed till after all related court hearings are finalised which can take years.

Specific services provided include, but are not limited to:

- **Support:** practical, emotional, client focused; treating clients with respect, empathy and without judgement (e.g. support with attending pre-court conferences, maintaining contact as the court date approaches, provision of access to a safe place whilst at court)
- **Information** – lessens trauma and empowers clients; gives confidence (e.g. pre-court tours to orientate to the court environment and planning for the court date, finding their way around and informing clients of “who’s who” and the court process/protocols and etiquette, provision of information and assistance to apply for financial assistance and in writing a Victim Impact Statement)
- **Referral:** using the ‘window of opportunity’ to identify need and link clients to appropriate services or individuals at court and externally within their local community (e.g. informing and referring clients to services that could assist with other needs such as specialist counselling, support groups)
- **Advocacy (non-legal):** it is about bringing a client’s particular needs or vulnerabilities to the attention of the court or other relevant parties (e.g. speaks little/no English, anxiety).

Services are provided by phone, email, video conference, text, occasional face-to-face appointments. In fact, many people prefer the relatively low impact and anonymity of tech communications. However, the most significant moment of all is when the victim(s) attend court.

### **Networkers**

Services are provided by our professionally trained volunteers, known as Networkers. Networkers must satisfy background and probity checks (including Working with Children Check, National Criminal History Check, referee checks), participate in a five (5) day training program, up to nine (9) supervised practice shifts and undergo a review with the Program Manager prior to being eligible to becoming a Networker. The initial training programs covers topics such as Code of Conduct, OHS, unconscious bias and self-awareness, communication, reflective practice, referrals, barriers to justice, domestic and family violence, financial assistance and Victim Impact Statement training.

Networkers are supported through:

- team leadership and management
- on-the-job training and support
- continuing education
- reflective practice, feedback and review
- debriefing (including access to counselling).

There are approximately 26 Networkers who usually work one (1) shift per week, with two (2) paid staff supporting the Networkers.

## **2. Key Issues Identified**

Sexual violence crimes have a tremendous impact on victims and their families. The emotional and psychological injuries sustained are often as serious, if not more, than the physical injuries, potentially affecting every aspect of a victim's life long after the physical injuries have healed. Following are some key issues we have identified from research and from feedback and observation of client's interactions with the criminal justice system.

### ***Experiencing the complexity of the criminal justice system***

A victims' journey through the criminal justice system is often complex involving contact with numerous different court officials, police prosecutors and other support services. Interactions with these services can either reinforce or redefine a victim's perspective of authorities thereby also impacting on subsequent willingness to report and/or participate in the criminal justice system (i.e. a victim's first contact for instance with the police to report the crime is critically important in creating a positive opinion). Victims who have negative experiences often report that they would never report a similar victimisation to the police again. Interactions with these services can also impact on future desire to remain law-abiding.

### ***The trauma of court***

In general, victims have no previous experience of either being a victim of sexual assault or of dealing with the criminal justice system. Victims are often overwhelmed by the formality of the court causing them to feel anxious and distressed, with a huge risk of re-traumatization. Many victims state that their experience through the court is the second worst experience in their life, only exceeded by the day of the crime. Victims often do not, and cannot, anticipate what the experience will be like and are likely to underestimate the emotional impact of the court day. Therefore, they cannot accurately anticipate their own support needs. A well-prepared and supported witness is not only better able to cope with the court process but also contributes to better justice outcomes. If the witness provides coherent evidence in a timely manner, the court hearing will proceed better for all parties, including the State. In contrast, if the witness is too traumatised to present evidence, the case is negatively affected and at risk of collapsing. This outcome is deeply traumatising for the victim; the accused does not have the opportunity to have their name cleared by the court through the possibility of a 'not guilty' finding, and the community is potentially at risk because a guilty party has not been convicted.

### ***Need for information***

Research suggests that information and knowledge such as the progress of the police investigation, role of the ODPP, information in relation to court protocols and processes, possible outcomes, have a significant impact on the victims. The more information victims have, the better.

### ***Limited and unequal access to court support services***

Court support services are currently not equally available in all parts of the State. Regional and remote communities are particularly disadvantaged with very limited options, contributing to unequal 'post-code justice'. Currently Victim Assist Queensland (VAQ) employs three (3) Victim Coordination Officers across the

state, specifically in Ipswich, Rockhampton and Cairns and our VSU provides services in person in Brisbane, Ipswich and specific support in Sunshine Coast and Gympie. No victim should be left to suffer alone nor be disadvantaged, based on where the crime was committed or where the victim resides.

We are aware of a recent example of a very vulnerable victim of alleged sexual assault who was seeking court support when she was appearing as a witness at Beenleigh Court. Ten separate agencies were approached to provide support, and none was able to offer any service.

### ***Physical court facilities***

Some regional and remote courts, particularly older buildings, lack facilities to ensure the physical safety of victims (e.g. separate waiting areas, safe spaces for victims of violence, video-conferencing facilities).

### ***Negative impact of cross-examination***

Cross-examination is frequently cited as retraumatising. In adversarial legal systems, it is the job of the defence to bring the prosecution's case into doubt. In sexual violence cases, the victim's testimony may be the only evidence. This will therefore be the focus of attack for the defence. This is typically done by undermining the victim's credibility and reliability, and their story's plausibility and consistency. Detailed questioning can recreate the powerlessness of the original violence particularly where a victim is required to recount the trauma in detail in court. All of which can have serious consequences for victims' mental health and wellbeing.

### ***Impact of extended process and adjournments/delays***

Lengthy court processes are often difficult for victims to endure, with cases often taking months or even years prior to getting to court let alone reaching a verdict (if it even gets to that stage). Victims have to re-live the incident to strangers but also wait long periods to come in to give evidence to then be told to come the next day. 'The longer the delay, the more likely the victim is to drop off and barristers and defence teams know that. It is in their interests to delay things as much as possible'.

### ***Lack of dedicated support for victims***

Victims are unrepresented within the criminal justice system. Prosecutors argue a case on behalf of the State, with the defendant's lawyer representing their client's interests for a fair trial. There is no secure, established process to protect the rights of the victim and ensure they are well prepared to participate in the trial. All too often, they fall between the gaps.

### ***Long delays in financial assistance application assessment***

On 23<sup>rd</sup> April 2019, VAQ advised that processing times for financial assistance are now 18-24 months, thereby further delaying a victims' recovery and healing. Court Network welcomes the extension of this service to be inclusive of survivors of domestic and family violence, but the subsequent impact on application processing times is deeply concerning.

***In summary*** the needs of victims vary but when victims feel heard and respected, have their needs considered, feel safe at court and have some prior knowledge of the court process, they are more likely to feel an overall sense of justice, have confidence in court processes and a sense of procedural fairness. This strongly affects how they speak about their experience to others, their recovery, their willingness to cooperate and, in general, their lawful participation within society.

## **3. Recommendations**

### **Recommendation 1: Holistic, integrated service support system for victims**

Whilst there have been considerable and positive developments to minimise the harm to victims within the criminal justice system, there is much more that can, and should, be done to reduce revictimization and to

assist with healing. We recognise the importance of, and support, the development of a service approach and system that:

- treats victims of sexual violence with respect, sensitivity, compassion and understanding
- provides holistic wrap-around services with genuine integration and collaboration in meeting both legal and non-legal needs of victims, which can be adapted to local needs and contexts
- is victim-centred by creating a safe system for victims and gives precedence to the wellbeing of victims
- is flexible and adaptable to each victim's needs and addresses public safety concerns to promote healing for the victim.

The following recommendations for future action are guided by the principles in Recommendation 1.

### **Recommendation 2: Independent Court Support for Victims**

Victims should have access to high quality, independent and consistent court/victim support services, including advocacy support, and should, routinely, be strongly encouraged to access this support (opt-out not opt-in). This support should be available in all locations, regardless of where the crime was committed or where the victim lives. It should be established in recognition that independent support is essential to ensure the best possible outcome for all parties and for justice outcomes. This is supported by:

- Recommendation 12 of the Queensland Government's Response to the Domestic and Family Violence Death Review and Advisory Board 2016-17 Annual Report: Court support for victims in criminal proceedings, "that a program for specialised and consistent court support for victims of D&FV in criminal proceedings be developed and funded by the Queensland Government" which was accepted in principle. Government stated that it will further consider service delivery models that will enable consistent court support for victims, involved in criminal proceedings across the State as well as explore opportunities to leverage off existing court support mechanisms in recognition of the importance of practical and emotional support.
- Court support workers, as identified in both the Law Council of Australia's The Justice Project Final Report (2018) and Special Taskforce on Domestic and Family Violence in Queensland's Not Now, Not Ever – Putting an End to Domestic and Family Violence in Queensland Report (2015), "play an important role in enhancing safety for victims of family violence. Court support services can complement the work of lawyers . . . by providing timely, non-legal support to victims . . . By the time victims engage with the legal system they may lack confidence, and require practical and emotional support . . . it can make a real difference to the quality of instructions we obtain from the client and the amount of advice that is retained and acted upon by the client. . . . they can be directed straight to the services they need in a timely manner". Furthermore, research around victims participating in family violence related proceedings illustrates that they value having a support person accompany them in the courtroom and court precinct and that court support services led victims to feel less vulnerable in the courtroom, safer, better able to understand court processes, and to feel that their experience of violence was recognised.

### **Recommendation 3: Victims should be informed about court/victim support services and proactively enabled to access the services.**

This includes:

- examining the barriers to access such services particularly for marginalised groups (e.g. Aboriginal and Torres Strait Islander people) and affording the necessary accommodations to address them.
- establishing processes to ensure proactive and early referral by arresting officers and prosecutors (i.e. police and ODPP), including mandated referrals for vulnerable witnesses.
- ensuring court personnel and judiciary are informed and aware of court/victim support services available and understand their role.

#### **Recommendation 4: Safe and respectful spaces in courts**

Victims should have access to court facilities and an environment that supports and encourages safety and does not re-create situations of humiliation, disempowerment and isolation (e.g. access to separate waiting areas or safe places for victims). They need a safe space to have their say, to speak and be heard and to be told about decisions affecting them as soon as they happen.

#### **Recommendation 5: Criminal justice processes that are sensitive to the needs of victims**

We recommend exploration of criminal justice processes that are sensitive to the needs of victims while respecting the rights of defendants. This includes:

- ensuring legal powers that currently exist to protect victims are properly applied and used in practice.
- capping hours permissible that cross-examination may go on for (e.g. to 2 hours, unless there are exceptional circumstances).
- educating court personnel, judiciary and juries of the potential psychological and emotional effects of sexual violence on victims, including effects that relate to strategies commonly employed by defence during cross examination.
- managing the expectations of victims around the resolution of a case, especially when options arise that are better suited for the overall pursuit of justice, but which may not fully align with the victim's wishes.
- considering whether victims should be entitled to separate legal representation through their trial.

#### **Recommendation 6: Protected and adequate funding for victims counselling and support services**

We recommend ringfencing funding for victims counselling and support services so that resources for these services are not subject to political whim. This includes:

- reviewing current allocation of funds for both government and non-government services to determine need, demand and capacity and ensure such services are protected.
- clarifying scope and function of existing victim and court support services, both within Government Departments and not-for-profit organisations.

#### **Recommendation 7: Establishment of an independent and transparent victims' commissioner**

There is a need for a victims' commissioner or other enforceable oversight body with responsibility for advocating for the rights of victims, monitoring breaches of the provisions of the Charter of Victims' Rights, investigating breaches and complaints, and monitoring patterns of breaches, complaints and issues.

#### **Recommendation 8: Expeditious administration of victims' financial assistance**

The current significant delays undermine the value of this important support scheme

#### **Recommendation 9: Explore alternative approaches to justice**

There are important examples which may improve outcomes for victims of sexual assault and DFV while respecting the integrity of the justice system. e.g. review learnings from the specialist domestic and family violence courts and further afield such as the Quebec government which has convened a panel of experts for a 1 year to provide recommendations around improving support for sexual assault and DV victims.

There is a need for robust implementation and monitoring of all initiatives.

Court Network (Qld) respectfully asks that you take these comments and recommendations into account when drafting the Sexual Violence Prevention Framework. We would welcome the opportunity to expand further on the matters raised in this submission. If we can assist the Roundtable in any way or provide additional information please contact Jodie Mullen (Victim Support Services Program Manager) on 07 3738 7792 or email [vsspm@courtnetwork.com.au](mailto:vsspm@courtnetwork.com.au).

Yours sincerely



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