

CASA Forum welcomes the opportunity to comment on the proposed offences relating to child abuse, child sexual abuse and child death.

CASA Forum will respond to your discussion paper under your headings and numbering system. This submission will focus on sexual abuse.

## PART A: BACKGROUND

2. Sexual Abuse by its very nature is secretive, threatening and disempowering. A mother who fails to report that her child is being sexually abused by her partner is often a victim and is an example of this secrecy, disempowerment and abuse herself.

Sexual assault has a detrimental impact on the victims and their family members, particularly the non offending parent who feels guilty, blames herself and experiences loss and grief in relation to the sexual assault inflicted on her child/children.

3. The question arises as to how the Failure To Take Action would be measured?

For example a mother who takes her concerns re possible sexual abuse to Child Protection DHS and Victoria Police Sexual Offences and Child Abuse (SOCA) and Sexual Offense and Child Abuse Investigations Teams (SOCIT) may well be informed, after the allegations have been investigated, that there is not enough evidence to take the sexual assault allegations any further. Mother is forced to return to her home she shares with the alleged offender.

Has she taken sufficient action even though the children are still at risk of further sexual abuse or will this Mother be charged under the newly proposed Failure To Protect Laws? ?

If she is convicted she could risk being jailed for Failing to Protect her children, removed from her home thus leaving her children at home and of further risk of abuse by this offender.

## PURPOSE OF 'FAILURE TO PROTECT LAWS'

4. Whilst the Forum welcomes the notion that adults have a responsibility to take active steps to respond to child sexual abuse it would be helpful to be provided with the evidence that informs the discussion that this legislation has a positive impact on adult behaviour and further protects children from sexual abuse.

CASA Forum has concerns regarding the potential of the proposed legislation to impose further onus of responsibility on an adult who is herself a vulnerable person and, in fact, a victim of family violence. Where an adult, perhaps a mother of the child in question, has also been subjected to physical violence or other acts of

family violence by the person who is harming the child, she may well have a high level of fear of that other adult. This fear would have developed in response to past experience of violence and of being threatened and intimidated by that person. It may be that, for these reasons, this person has “failed to protect” a child in the household and could be charged with failure to protect where, in fact, this adult is as much a victim of the offender as the child.

This situation is concerning as there is a risk that the primary focus, in that situation, might be concentrated on the neglect or failure to report rather than on the actual crime of harmful behaviours i.e. physical or sexual abuse. This could happen where there is not enough evidence to identify who has caused the harm or to lay charges.

The definition of “protect” – what does this actually mean? This will need to be clearly defined before deciding whether one has ‘failed to protect’.

6. CASA FORUM supports Government initiatives that improve responses to vulnerable children . The FORUM also supports the principle that adults who are caring for children have a responsibility to protect the child from harm. However the complexities of sexual assault of children and young people do not appear to be taken in consideration in this discussion paper.

An adult who did not take ‘action’ (require a definition ) to protect her child/children does not automatically translate to this adult knowing about the abuse.

Sexual abusers very often groom their victims, They have power and authority over these children, they threaten the children and they are opportunistic and calculating.

Women often say that in hindsight they can look back and see indicators of this abuse but they never suspected this was happening to their children. Once they know about the abuse women take steps to remove their child from contact with the offender and to protect them from further abuse.

Co-existence of child abuse and family violence: There is a growing body of international research that confirms that family violence and child abuse frequently co-occur within the same families.

Edleston (2001) estimates that between 30 % and 60 % of children whose mothers are subjected to family violence are also being abused.

Multiple studies demonstrate that mothers of incest victims are likely to be victims of family violence.

Vulnerable children come from vulnerable families who are under stress, who are often faced with anxiety, depression, violence and deprivation.

In years gone by in Victoria our Child Protection system focused on “mothers”. Today this has changed. Family Violence is much better understood. We now know that men are responsible for the majority of the most serious abuse of children (Lowenthal 1996, Aron& Olsen 1997, Edleston 1996) and not women and that women are often the victims of family violence as well as their children.

We know that these women can make many many attempts to leave the abusive home. most do finally.

However, at times the safest action that women can take to protect their children from abuse is to stay at home.

For women living with Family Violence it is common to spend hours in a day strategising safety for herself and her children. While this may not be apparent to the outer world it is a struggle she is engaged in. Immobility can be an important strategy designed so as 'not upset him'. Intervention at a point where he appears likely to harm a child might result in the child being more severely assaulted. What clinical practice tells us is that she knows best: she knows his violence well and is best able to judge what strategies are useful and when. Only those with a genuine interest in her efforts will get to know their meaning.

It is apparent that these laws will be applied at a time when she is most hurt by his violence: having lost a child through death or seeing her child sexually assaulted or seriously injured by him.

A law of this type demonstrates ignorance of family violence dynamics: that at every minute she is his victim. When he is harming her children he is harming her.

#### CURRENT VICTORIAN OFFENCES:

9. Under the CRIMES ACT 1958 a perpetrator can be charged with child sexual offences.

However there is still a very low rate of charges and convictions against perpetrators despite the work done by the VLRC 2004 re sexual assault and children, the Reforms that have been put in place and the increased awareness of these crime in the community.

Currently CASAs report that approximately 3% of cases (children and young people) get to Criminal court.

12.The CHILDREN, YOUTH AND FAMILIES Act 2005 does list an offence of 'failing to protect a child from harm'. This Act fails to list sexual assault as a harm that can be acted upon

It is recommended that this recent 2005 legislation is considered when looking at proposing new 'Failure to Protect' laws.

It would appear that Victoria already has legislation that has considered failure to protect laws for vulnerable children. If it is not being used as it was intended then maybe that needs to be considered.

## ‘FAILURE TO PROTECT’ LAWS IN OTHER JURISDICTIONS

13. It would be most helpful to this discussion if definitions of offences, penalties and failure to protect legislations were made available from the jurisdictions which have such legislation to assist us in discussing these issues.

## PART B: KEY ISSUES

### POTENTIAL APPLICATION OF LAWS

#### WHICH ADULTS SHOULD THE PROPOSED OFFENCES APPLY TO?

16. Children require key significant adults in their lives to form positive attachments so that they can grow and develop as loved and well cared for children who grow up and reach their full potential as adults.

If we are to consider the role of adults in children’s lives those adults who are the key significant adults must be the adults who safely and lovingly nurture children in their care. However a publicity campaign that informed our community that children are everyone’s responsibility and if you have concerns about a child you should report to Child Protection would enhance our community’s response to children’s safety and protection.

### DUTY OF CARE

18. Parents and guardians are the main group of adults who have a duty of care to children.
22. Adults who have a duty of care towards the child must also include staff who work in Out Of Home Care facilities, foster parents and other alternate carers.

If this law is introduced the impact on carers and foster parents would need to be considered.

Recruiting sufficient foster care parents and other care staff is extremely difficult. Victoria does not have adequate carers for vulnerable children who need alternate care. This proposal may further discourage those interested in doing this most difficult job.

### OTHER RELATIONSHIPS TO THE CHILD:

23. Key significant adults are the most important group of adults who should be considered if this legislation is to go ahead.

#### MEMBERS OF A HOUSEHOLD

25. as above

#### WHAT LEVEL OF ABUSE SHOULD THE OFFENCE APPLY TO?

26. Including other adults who have regular contact expands the social responsibility for ensuring safety for children. On face value this seems to be a positive/good idea in that it might be one step in building capacity/strength in the community.

27. Frequent contact is more appropriate as other people who have irregular contact may not be in a position to notice key indicators or changes.

31. Sexual abuse of children is very difficult to prove and in most instances it is not proven.

36. Sexual Offences under the CRIMES ACT 1958 include sexual penetration of a child under 16, indecent act with a child under 16 and incest.

If this legislation is to be introduced the requirement to report the abuse, who to report it to and what level of proof is required all require careful consideration

37. A sexual relationship between a 15 and 20 year old would appear to stand outside the stated purpose of this proposed law. .

38. Indecent acts over the internet and the phone.

This is an evolving area of abuse that requires its own legislation re prosecution. This is not the purpose of this legislative proposal.

#### AT WHAT AGE SHOULD CHILDREN BE PROTECTED BY THESE OFFENCES?

43. Victoria has laws to assist the appropriate age of protection. This includes 16 and 17 under the care and supervision of adults.

#### WHAT PROOF OF ABUSE SHOULD BE NECESSARY?

46. As stated earlier there are very few child sexual abuse cases that get to the criminal court. Only approximately 3% of CASA (from the 16 Centres across Victoria) cases.

48. Developing legislation that means the non-abusive parent could be at risk of self-incrimination if they provided evidence that the perpetrator had sexually abused the child is doomed to fail.

52. If it is proposed that a court had to be satisfied that the abuse had occurred very very few child sexual abuse cases would even be considered under this legislation.

#### WHAT LEVEL OF AWARENESS OF ABUSE SHOULD THE OFFENCES APPLY TO?

53. The question arises as to how we measure 'awareness' even if we agree on a definition!

54. If it depends on knowing that abuse was probable again we are ignoring complexity of Family Violence and the dynamics of Vulnerable families.

These families are under stress. They are not functioning at an optimum level. They are often struggling just to survive. How do we measure the non offending parents awareness in light of all these stressors. Is it even reasonable to expect a woman under extreme stress and violence which can include her own physical and sexual assault to have this awareness? What is the definition of a reasonable person in these circumstances?

Intimate partner violence is the leading contributor to preventable death, disability and illness in Victorian women aged 15-44. It is responsible for more of the disease burden than high blood pressure, smoking or obesity.(Vic Health 2004)

#### A FAILURE TO TAKE REASONABLE STEPS OR TO DO WHAT A REASONABLE PERSON SHOULD DO?

59. In what circumstances would a reasonable person be aware of a risk of death, serious injury or sexual abuse to a child? What particular challenges could arise when attempting to provide that an adult was aware, or that a reasonable person would have been aware that a child was being sexually abused? As we know, even where a parent suspects sexual abuse because of behavioural indicators, unless there is a disclosure (given all the barriers including age) or physical evidence (rate), it is very difficult for an adult to be aware.

60. What is 'reasonable'?

Intervening to prevent the abuse assumes that the adult is aware it is occurring. This can also be dangerous for the non offending adult if she is the victim of such abuse and sexual assaults herself.

Removing the child from the abusive environment assumes that she had somewhere to take the child/children and that she has the financial resources to do so. Often this is not the case.

She may also be in fear of her life if she upsets him and leaves.

Reporting sexual abuse to the authorities often leads to no further action.

Rarely is there physical evidence. It is often the child's words against the adults. The child often retracts their allegations. On many occasions Child Protection DHS, SOCA Police and Family Court rulings cannot assist a Mother and her child as there is insufficient evidence.

1 in 6 report to Police of rape and less than 1 in 7 reports of incest or sexual penetration of a child results in prosecution (Sexual Offences: Law and Procedure Final Report Victorian Law Reform Commission)

SHOULD THE STANDARD OF WHAT STEPS ARE 'REASONABLE' VARY DEPENDING ON THE ADULT'S RELATIONSHIP WITH THE CHILD?

64. Key significant adults in the child's world should be considered.

IN WHAT CIRCUMSTANCES MIGHT IT NOT BE REASONABLE FOR AN ADULT TO TAKE STEPS IN RESPONSE TO THE ABUSE?

72. An adult's behaviour needs to be understood in the context of what is occurring in their own circumstances.

It is strongly recommended that these laws have no application for women living with a partner using violence.

If Family Violence is present then these circumstances will directly impact on the non-offending adult's ability to protect.

All violence of this nature is serious and descriptions such as 'extreme domestic violence' (Parliament of South Australia) are not to be applied.

By its very nature Sexual Assault is secretive, threatening, shaming and hidden. All these factors and many more will impact on the non-offending adult's ability and knowledge to protect a child from sexual abuse.

PENALTIES:

Is there research that would inform this discussion that demonstrates that penalties for 'Failure To Protect' children from sexual abuse is a deterrent or reduces the incidence of abuse?

INTERACTION WITH BROADER REFORMS:

78. Protecting Victoria's Vulnerable Children Inquiry should be allowed to publish its findings to assist informing this discussion.

There needs to be a focus on the failure of the system to protect so it is timely that the "Protecting Victoria's Vulnerable Children Inquiry" is also in train. As we know unless the Child Protection system is able to substantiate, or police able to proceed

etc, Family Court are able to be on board, etc then mothers, attempting to protect their children from sexual abuse etc, are often left powerless to do so.

79. Media campaigns to highlight child sexual, physical abuse and child death should be considered. Victoria needs to become a community that recognises child abuse in its many forms and we as a community require services to assist these most vulnerable citizens.

This is not possible with current services that are stretched to capacity all the time.

There is a need for supports for the adults who do take the responsibility to report or advise that a child is being harmed. There needs to be an awareness that they may need ongoing support and protection. We need to take into account whether that person is then at greater risk? How can this be supported?

Given the nature of family violence, there is a very real risk that the person who reports might be punished or harmed further, or even that the child might be harmed further. Some of the common characteristics of family violence and sexual abuse by a family member of another, often more vulnerable family members, includes that the abuse often is associated with:

- Threats
- Secrecy
- Suggestions that the person being harmed is somehow to blame, or complicit in the abusive behaviour ("this is our secret")
- Other people being abused by the same offender
- Repeat offences
- Intimidation