

Submission to the Department of Justice and Regulation

VICTORIA POLICE RESTORATIVE ENGAGEMENT AND REDRESS SCHEME (SEXUAL HARASSMENT AND SEX DISCRIMINATION)

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INTRODUCTION

The Law Institute of Victoria (LIV) is Victoria's peak body for lawyers and represents more than 19,500 people working and studying in the legal sector in Victoria, interstate and overseas. The fundamental purpose of the LIV is to foster the rule of law and to promote improvements and developments in the law as it affects the public of Victoria. Accordingly, the LIV has a long history of contributing to, shaping and developing effective state and federal legislation, and has undertaken extensive advocacy and education of the public and of lawyers on various law reform and policy issues.

This submission has been prepared by members of the LIV's Criminal Law and Litigation Lawyers Section. Members of these Sections have had a long history of contributing to, shaping and developing effective advocacy on law reform and policy issues

General comments

The LIV welcomes this consultation and is grateful for the opportunity to comment on the merit and form of a restorative engagement and redress scheme for victims of sexual harassment and discrimination within Victoria Police.

We note that the Department of Justice and Regulation (the 'Department') has requested submissions regarding the potential merits of a redress and restorative engagement scheme and advice on the form that such a scheme would take, including which components – including financial reparation and non-financial support – would be of most value to victims.

Accordingly, the LIV's comments are made in light of existing approaches to restorative justice and redress, in particular the implementation of such schemes in comparable institutions such as the Australian Defence Force. In addition to our members' practice experience, this submission has been prepared with regard to the review conducted by Victorian Equal Opportunity and Human Rights Commission (VEOHRC) into sexual harassment and discrimination in Victoria Police.

The LIV acknowledges that a restorative engagement and redress scheme is likely to be of value to Victoria Police and victims, in terms of acknowledging victims' harm, and improving public perception of Victoria Police as an organisation.

RESPONSES TO QUESTIONS

Considering the existing options for resolution, how would a stand-alone redress scheme be of value to current and former police personnel who have suffered sexual discrimination and predatory behaviour in the workplace?

The emergence of alternative dispute resolution processes in recent years has indicated a need for less adversarial and more therapeutic approaches to justice than the court system is traditionally equipped to provide.¹ In particular, restorative justice – which, although varied in its specific implementation, typically involves a process of dialogue and acknowledgement of harm between victim and offender – has proven to reduce the feelings of marginalisation and isolation that victims often report following incidents of crime.² Additionally, there is evidence that restorative justice reduces trauma and eases victims' suffering in the aftermath of an offence, as victims' experiences are acknowledged and redressed in a context where their specific harm could otherwise be ignored or subsumed by the investigative and trial processes.³

Restorative justice has proven to be helpful for victims of sexual abuse, and there is some evidence of the positive role that such schemes can play in redressing harm in the workplace. This may be particularly so in hierarchical organisations such as the police force and/or the Defence force where obeying orders and being a “team player” can be a matter of life or death in an operational setting, but culturally these imperatives may result in abusive behaviour in the workplace which can be particularly difficult to address.

The Defence Abuse Response Taskforce (DART) program, developed in response to allegations of sexual abuse in the Australian Defence Force (ADF), has produced positive results by recognising adverse workplace behaviours in a non-adversarial setting and enabling conferences between victims and a senior ADF representative, where the victim has been able to describe their experiences with discrimination and harassment and its effect on them, and oftentimes receive an apology.⁴ Additionally, DART and other similar programs, such as Queensland, Western Australia and Tasmania's child sex abuse redress schemes and Ireland's Residential Institutions Redress Board, have also included a financial reparation component whereby eligible claimants receive a one-off payment as acknowledgement of their harm.⁵ DART is a particularly relevant point of reference when assessing the possibility of a restorative scheme in Victoria Police, as both the Defence Force and Victoria Police are highly stressful work environments with traditionally male-dominant cultures and an important role to play in the community. As such, any strengths and weaknesses of the DART scheme as it operated in the Defence Force should be considered when considering the implementation of a restorative engagement and redress scheme in Victoria Police.

Based on current research and evidence in a comparable workplace, the LIV submits that a stand-alone redress scheme is likely to prove worthwhile as a way to remedy harm for police personnel who have experienced sexual discrimination in the workplace. Such a scheme is likely to be valuable in addition, and

¹ Michael King, 'Restorative Justice, Therapeutic Jurisprudence and the Rise of Emotionally Intelligent Justice' (2008) 32 *Melbourne University Law Review* 1103.

² Daniel Van Ness and Karen Heetderks Strong, *Restoring Justice* (2nd ed, 2002) 38.

³ James Dignan, *Understanding Victims and Restorative Justice* (2005) 63 – 5.

⁴ Defence Abuse Response Taskforce, Parliament of Australia, *Final Report* (2016).

⁵ Debra Rosser, *Redress WA (2008 – 2011)* (12 February 2015) Find & Connect <https://www.findandconnect.gov.au/ref/wa/bioqs/WE00505b.htm>; Department of Health and Human Services, *Abuse in Care Program* (21 January 2013) Tasmanian Government http://www.dhhs.tas.gov.au/news/2013/abuse_in_care_program; Residential Institutions Redress Board, *Application Procedure* (28 December 2016) <http://www.rirb.ie/application.asp>.

as an alternative, to the existing avenues for complaint reporting and resolution, because of its focus on therapeutic jurisprudence and psychological healing, rather than punishment and financial compensation.

Currently, the legal options for members of the police force who have suffered abuse in the workplace are to lodge workers compensation claims and/or pursue discrimination claims - both of which potentially involve costly and stressful litigation. LIV members report that even if victims win these claims, the fall out can include loss of career, significant out of pocket expenses and irreparable financial damage if the claim is initially denied and the legal process protracted, as is often the case.

It often takes a considerable period of time for complaints to be investigated during which time psychological injury can be aggravated and/or become entrenched. For example, the Broderick report⁶ into discrimination and harassment in the Australian Federal Police showed that the average time frame for investigating minor complaints was 110 days, and for more serious complaints 234 days.

LIV members report that by their very nature, legal claims of this type can place pressure on an employer to “choose” between the victim and the alleged perpetrator, who is often a more senior officer. The fall out for the organisation can include costly investigation processes, and just as these claims can irreparably damage the victim’s career, the alleged perpetrator’s career may also be irreparably tainted. Reputational damage to the organisation can also be significant, as we have seen in some recent media.

Restorative processes allow an organisation to bypass these processes and focus on a safe, non-adversarial process for all involved.

What do victims of sexual harassment and discrimination at Victoria Police need in a restorative engagement and redress scheme?

Feelings of loneliness and isolation are a common theme in the accounts given by victims of harassment and discrimination, and anecdotal evidence suggests that institutional responses to these incidents often involved lack of empathy or even outright dismissal of concerns by senior officers to whom complaints were made. For instance, one former executive who was interviewed by the VEOHRC during their investigations into systemic harassment and discrimination in Victoria Police recalls being told “that’s just what you deal with being a woman in police” in response to allegations of sexual harassment.⁷

Given that VEOHRC’s investigations suggest that there is latent sexism in some parts of Victoria Police, a scheme which allows victims’ experiences to be heard and acknowledged would be beneficial for all those involved. The opportunity for restorative conferencing, which allows the victim to air their grievances and receive acknowledgement and recognition of their harm, is central to successfully addressing the needs of victims. Giving victims the flexibility to run meetings on their own terms by tailoring discussion to their own purposes and expectations is also important, as it allows victims to pursue their own personal justice, outside the constraints of standard disciplinary or judicial procedures. As an initial measure, a public acknowledgement by Victoria Police of the harm caused to victims would be beneficial for all involved.

For example, former Defence Chief David Morrison’s apology to members of the Australian Defence Forces had a significant impact on both members of the Defence Forces but also on the broader community.⁸

⁶ (<https://www.afp.gov.au/sites/default/files/PDF/Reports/Broderick-Report-2016.pdf> p92)

⁷ Victorian Equal Opportunity and Human Rights Commission, *Independent review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police*, Phase One Report (2015) 44.

⁸ The *YouTube* video of the apology has been viewed more than 1.7 million times. <https://youtu.be/QagpoeVgr8U>

LIV members report that their clients felt that their harm was not acknowledged. Clients also reported that they would have valued senior representatives of Victoria Police directly acknowledging and apologising on behalf of the organisation for any harm caused. This would allow the organisation to consider how Victoria Police can better respond to and prevent further incidents of harassment and discrimination, and to help address any underlying culture of sexism and discrimination in the organisation. Many participants in the DART scheme and respondents to the VEOHRC investigation told interviewers that their impetus for coming forward was to help reduce future incidents of harassment – the opportunity to speak to senior members of Victoria Police about reform should be a part of the restorative engagement process.

The LIV submits that involvement in a restorative processes should not preclude the victim from pursuing other avenues such as VOCAT or civil litigation if they wish to hold the perpetrator accountable. Reparation payments in some cases may be appropriate in recognition of the victim's suffering; such payments should be characterised not as financial compensation but as acknowledgement of the harm done, and should not be contingent on the victim signing a waiver of legal rights.

In addition to financial payments and in line with the restorative aims of such a scheme, non-financial forms of redress should be made available to victims and tailored to their needs; for example, counselling and support groups or, in some cases, additional drug and alcohol or medical treatment may be appropriate.

How can a scheme be made accessible and inexpensive for victims?

For such a redress scheme to operate effectively and reach as many people as possible, it must be simple and inexpensive for potential claimants to access information about the scheme and make an application. To this end, the LIV suggests that a similar system used by DART be adopted. Information about the scheme, along with an invitation to apply, could be provided on an easily accessible website, along with a form where claimants detail the allegations and provide any supporting documentation. To raise public awareness of the scheme, information should be made available in print, broadcast and online forums. As far as possible the claims process should be able to be completed online, to minimise costs and facilitate access by a wide range of people, such as those who live rurally or have special needs.

LIV members suggest that assessment of reparation payments can also be done remotely. Where restorative engagement is sought, some travel may be necessary, although this can be kept to a one-off event and arrangements can be made to find a counsellor close to home if counselling is deemed necessary. Beyond administrative and travel costs, it is not foreseeable that any additional expenses will arise for claimants.

How do we ensure the scheme's processes are fair and provide consistent outcomes?

The LIV suggests that the evidentiary standard used for each claim should be identical, and reparation claims should be directed to a designated payments assessor who is also acting independently of Victoria Police. In line with the DART process, the LIV submits that all reparation claims should be assessed by a single assessor, to ensure consistency in decision-making. Recourse to appeal a decision, including the opportunity to submit any further documentation, should be made available in the event that the claim is deemed to fall short of the evidentiary standard.

Where restorative conferences are used, the facilitator should be trained in dealing with emotionally charged situations and have the ability to moderate discussion in a fair and measured way, including ensuring the victim's opportunity to tell their story and voice their concerns.

Should persons who receive payment also be eligible to receive payments through other mechanisms (for example, the courts or VOCAT)?

The LIV submits that persons who receive payments under the redress scheme should also be eligible to receive payments through other mechanisms. The financial redress offered by such a scheme should not be seen as analogous to the type of compensation awarded by the legal system, but as an acknowledgement that the harm was wrong and ought not to have occurred. The evidentiary threshold for acquiring compensatory damages through the courts is higher than would be used in a redress scheme, meaning that the value of legal damages is correspondingly higher. If victims who receive financial redress through this scheme wish to hold individual perpetrators to account through legal avenues then they should not be barred from pursuing that option. Additionally, financial payments through this scheme should not be perceived as ‘hush money’, so legal waivers and confidentiality agreements are not appropriate. The LIV submits however, that redress payments received through the scheme may be taken into account by courts or other bodies in making damage assessments.

What benefit would a restorative engagement and redress scheme provide to:

Victims?

The LIV considers that the opportunity for restorative engagement is likely to provide a valuable mechanism for victims to receive acknowledgement and validation of their experiences by Victoria Police, along with recognition that wrongs occurred. Studies on victim outcomes from restorative engagement processes in Australia and the United Kingdom suggest that victims experience reduced anger and fear of future victimisation, and a reduction in symptoms of post-traumatic stress disorder following the conferences.⁹

Victoria Police?

Restorative engagement that involves a meeting between the victim and a representative from Victoria Police is likely to engender positive changes in the culture of Victoria Police. Police representatives in attendance at restorative conferences – while not being directly responsible for the harm – comprise the next generation of leaders in the force. By attending these meetings and hearing victims’ stories, they can recognise institutional problems and help to address systemic sexism through facilitation of a more inclusive work environment.

The Victorian community?

The LIV submits that an investment in a restorative scheme which leads to just outcomes for victims is likely to increase public trust in Victoria Police, for two key reasons:

- Firstly, public confidence in the police force is likely to be increased if Victoria Police is seen to be taking active steps to improve gender equality within its own ranks. Victoria Police is unlikely to be viewed as able to adequately respond to issues that primarily affect women – such as family violence and sexual assault – if standards for its own members are seen as falling below community expectations. Proactive implementation of a scheme that seeks to tackle institutional sexism will help to improve Victoria Police’s image as a force that values women and social equality.
- Secondly, attitudes towards women within Victoria Police inform how police make decisions when they engage with the community; male police members who do not respect their female peers in the workplace are unlikely to be able to deal respectfully with the women who need their protection in the

⁹ Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (2007).

broader community. A redress scheme that includes an action plan to address institutional sexism will ultimately translate into improved outcomes for the Victorian community.

How do we ensure the scheme is an effective use of resources?

The LIV acknowledges that this redress scheme would be operating in the context of a limited government budget, and therefore recognises the need to balance the interests of individual complainants with the broader needs of the Victorian community to ensure that resources are being allocated effectively.

Several stand-alone issue-specific redress schemes have operated successfully in other Australian jurisdictions. For instance, the Commonwealth Government's DART scheme and child abuse redress schemes in Queensland, Western Australia and Tasmania have produced good results in terms of addressing victims' needs while helping to repair the public image of the institutions where the abuse occurred and prevent further abuse from occurring in the future.

Given the success of similar programs in comparable jurisdictions, the LIV submits that this scheme is a worthwhile use of resources that would ultimately prove beneficial to both individual victims and the Victorian public.

How should a scheme's success be evaluated?

The LIV recognises that positive outcomes for victims should be given primacy as the initial goal of a restorative engagement and redress scheme. Individual feedback from claimants following the conclusion of the process is the best way to measure the success of the scheme.

Many people who made claims as part of the DART process indicated that the impetus behind their complaint was to help prevent future abuse in the ADF.¹⁰ If a similar redress scheme were to be implemented by Victoria Police, its ultimate goal should be to institute meaningful change in its workplaces through recognition of victim experiences and confrontation of the sexist culture that leads to such complaints being made. Although this is a difficult goal to measure empirically and it will inevitably take some time before institutional change is registered, the redress of past wrongs is an important first step.

Should a scheme be administered independently of Victoria Police?

The LIV submits that a restorative redress scheme should be administered independently of Victoria Police. To ensure unbiased assessment of claims and the fair facilitation of restorative conferencing, an independent taskforce such as the one used in the DART scheme should be employed to administer the scheme.

How do we strike the right balance between ensuring the independence of the scheme while also ensuring Victoria Police accepts responsibility for past behaviour?

In order to strike the balance between independence and accountability, an independent taskforce should be recruited to administer and monitor the scheme, whilst maintaining close ties with Victoria Police. LIV recommends that the taskforce be responsible for making recommendations to Victoria Police, based on engagement and feedback with claimants, to help improve workplace culture and practices going forward. As part of their role, ongoing working forums between the independent taskforce and the police force to discuss implementation of changes to processes and culture may be appropriate.

¹⁰ Defence Abuse Response Taskforce, Parliament of Australia, *Final Report* (2016).

Additionally, the LIV considers public acknowledgement of victims' harm to be an essential step in ensuring that Victoria Police accepts responsibility for past behaviour. As part of this process, information about the scheme, including the recommendations made by the independent taskforce and steps being taken by Victoria Police to address these recommendations, should be made publicly available.

What would a successful restorative engagement and redress scheme look like?

The LIV submits that a successful scheme would comprise the following elements:

1. A reparation scheme that offers both:
 - a. Financial redress; and
 - b. A non-financial component.
2. A restorative engagement initiative involving a conference between the claimant and a representative from Victoria Police where the victim can tell their story and have their harm acknowledged; and
3. Public acknowledgement of the harm from Victoria Police, and implementation of an action plan to address the drivers of sex discrimination and sexual harassment in their culture.

The LIV suggests that the restorative engagement element should be kept separate from the reparation scheme to allow victims to choose the extent of their engagement with the scheme and flexibility to decide which avenue would be most helpful to them.

What kinds of support and services would help victims?

The LIV recognises that sexual harassment and discrimination can have debilitating psychological and physical consequences and cause long-term mental health problems for victims. In light of this, the LIV submits that the provision of appropriate support groups and counselling is equally as important to achieving positive outcomes for victims as the financial redress component of the scheme.

The LIV further submits that the scheme should offer a limited number of counselling sessions through a program analogous to DART's Defence Abuse Counselling Program. Such a program should be able to be tailored to cater for the particular needs of the individual – for example, drug and alcohol support, career counselling, or support groups for victims may also be offered.

What elements of a restorative engagement and redress scheme would make the most difference to:

Victims?

Research into restorative justice and redress schemes suggests that restorative conferencing is likely to make the biggest positive difference to victims, in terms of their ongoing mental health and ability to come to terms with the harm they suffered.¹¹ Conferencing presents a unique opportunity for victims to engage with Victoria Police and receive official acknowledgement of the harm they suffered and discuss problems in workplace culture and its effects on them.

While financial redress is a valuable way to acknowledge harm by making a practicable contribution to victims' lives, the therapeutic benefits of restorative conferencing are likely to have a longer-term impact on victims' quality of life.

Making Victoria Police a safer and more inclusive workplace?

¹¹ Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (2007).

Restorative engagement is likely to make the biggest difference to Victoria Police in terms of making their workplaces safer and more inclusive. By hearing and acknowledging the experiences of those who have suffered sexual harassment and discrimination, Victoria Police will be better equipped to understand the nature and prevalence of this kind of predatory behaviour, and in turn improve its internal complaints processes and address the underlying causes of institutional sexism.

Improving community confidence in Victoria Police?

Public acknowledgement of victims' harm is the first step to improving community confidence in Victoria Police, by demonstrating their willingness to recognise their own failings and confront structural and attitudinal barriers to gender equality.

Following the conclusion of the scheme, the LIV recommends that Victoria Police show commitment to improving the integrity of their workplace by publicising the steps they intend to take to implement the recommendations of the independent taskforce, whatever they may be.

Should participants in a scheme be able to choose whether or not their allegations are referred for investigation of criminal or police discipline conduct?

The LIV submits that participants in a redress scheme should be able to choose whether or not their allegations are referred for investigation of criminal or police discipline conduct. Victims' needs must be the focus of any successful restorative scheme, and there may be a variety of reasons that a claimant does not wish criminal or disciplinary avenues to be pursued. For instance, participants in the DART scheme reported concerns about the trauma and disruption that would be involved in a court case or disciplinary hearing, and a reluctance to 'drag up the past'.¹² The principal purpose of this scheme is to assist victims, not punish offenders – for this reason, referrals for criminal investigations should only be made with the victim's consent.

What kinds of behaviour should be eligible for:

Restorative conferencing?

The LIV proposes that behaviour falling within the definitions of sexual harassment and sex discrimination, as defined by the *Equal Opportunity Act* should be eligible for restorative conferencing.

The *Equal Opportunity Act* defines sex discrimination as 'treating, or proposing to treat a person unfavourably because of their sex or characteristics associated with their sex',¹³ and sexual harassment as 'unwelcome sexual behaviour in physical, verbal or written form, which could reasonably be expected to make a person feel offended, humiliated or intimidated'.¹⁴

Non-financial outcomes (such as counselling)?

The LIV submits that victims of sex discrimination and sexual harassment should be eligible for non-financial outcomes such as counselling and support groups.

Financial payments?

¹² Defence Abuse Response Taskforce, Parliament of Australia, *Final Report* (2016) 16.

¹³ *Equal Opportunity Act 2010* (Vic) s 7(1).

¹⁴ *Ibid* s 92.

The LIV submits that victims of discrimination and harassment should be eligible for financial payments. Payment amounts should be determined by reference to the seriousness and length of time over which the behaviour occurred, with a corresponding increase in payment if the discrimination or harassment was compounded by inappropriate handling of a complaint. This is in line with the approach taken by DART, where further payments were made if, for instance, if the complaint was dismissed without investigation or the force failed to take action to stop the harassment or abuse from continuing.

Who should be eligible to participate in a restorative engagement and redress scheme?

LIV submits that VEOHRC's suggested approach to determining eligibility for the scheme should be adopted; that is, current or former police personnel who experienced sexual harassment or discrimination from another police employee.¹⁵

Police personnel includes police officers, police recruits, police reservists, protective service officers, police custody officers and Victoria Police employees, including contracted employees.

LIV recommends the adoption of VEOHRC's proposal that the scheme only apply to past incidents of harassment and discrimination; new claims can be dealt with through other channels.

Those who witnessed the behaviour or were indirectly involved, such as victims' family members who heard second-hand about discrimination or harassment, should not be included.

Should there be a retrospective cut-off date for how far back the scheme should extend?

The LIV submits that there should not be a retrospective cut-off date for how far back the scheme should extend. In line with the victim-centric nature of such a scheme, no claimant should be barred from making an application due to a retrospective cut-off date. This scheme is not a legal process and the individual perpetrator would not be involved; as such, limitation periods are not necessary. Any victim who feels that they would benefit from restorative engagement or reparation payments should be invited to make an application.

What is the appropriate evidentiary test for assessing eligibility for the restorative engagement and redress scheme?

LIV members suggest that the evidentiary test for entry into the restorative engagement component of the scheme should be 'plausibility'. To meet the standard of plausibility, the claim would be required to have the appearance of reasonableness, based on available information. This test is better suited to a redress scheme than a more stringent civil or criminal threshold of proof, for several key reasons:

- Firstly, a lower standard of proof than 'beyond reasonable doubt' or 'on the balance of probabilities' is necessary to achieve the scheme's primary goal of assisting victims. Among other things, lack of evidence and witnesses and credibility issues due to psychological problems will often prevent the success of a large proportion of these claimants in any formal judicial process.¹⁶ The less

¹⁵ Victorian Equal Opportunity and Human Rights Commission, *Independent review into sex discrimination and sexual harassment, including predatory behaviour in Victoria Police*, Phase One Report (2015) 44.

¹⁶ The Honourable Len Roberts-Smith RFD QC, 'Address to the Institute of Arbitrators & Mediators Australia Conference', Canberra, 3 May 2014, accessed 25 June 2015, <http://www.defenceabusetaskforce.gov.au/newsroom/Documents/RestorativeEngagementBeyondTheHorizonTheHonLenRoberts-SmithRFDQCAddressToIAMAC3May2014.pdf>, page 8

demanding plausibility test allows victims to have their harm acknowledged without stringent evidentiary requirements.

- Secondly, use of a plausibility tests means the scheme's taskforce can maintain its focus on victims without needing to divert resources to the questioning or punishment of alleged perpetrators. Although the alleged perpetrator's rights and interests should not be disregarded in this process, the plausibility test means that they do not have to be directly involved and allows complete commitment to victim assistance.
- Thirdly, a less burdensome evidentiary test means complaints can be processed much more expediently than they would be if assessors were using a civil or criminal threshold. LIV members anticipate that the volume of complaints that is likely to be received would not permit the lengthy process of evidence and witness gathering that a criminal or civil standard of proof would require.

The kinds of evidence that might be included in a claim are statements from the victim and third parties who either directly or indirectly witnessed the harm, medical records and internal complaint records. Additionally, a statutory declaration should be required.

Should this be different to assessing appropriateness for a reparation payment?

The LIV submits that a single standard of plausibility should be used to assess eligibility for both financial and non-financial components of the scheme, while recognising that many victims may only choose to access one part of the program. This conforms with the victim-centric model on which such a scheme operates; the protracted and potentially traumatising process that is required to meet a higher standard of proof can be avoided.

The LIV suggests that a gradation of payment levels be established, whereby more extreme levels of harassment and discrimination would correspond to an increase in payment. Claimants would be eligible for a further payment for mismanagement; that is, if they had made a complaint at the time of the incident that was mishandled or ignored. Both DART and state-level child abuse redress schemes used four categories of abuse, graded according to seriousness and ranging from \$5000 - \$65,000 (initial Tasmanian scheme). The DART scheme also made an extra \$5000 available in each category for mismanagement if appropriate.¹⁷ Without commenting on the precise quantity of payments that should be made available, the LIV submits that a graded model would be appropriate.

Additionally, payments should be assessed using the highest category of payment as a starting point, making reductions for less severe cases as appropriate. This approach is in keeping with a model based on believing victims and acknowledging their harm...

LIV members suggest that the kinds of factors that should be taken into account in making an assessment about the appropriate level of payment are:

- The nature and seriousness of the harassment and/or discrimination;
- The length of time over which the harassment and/or discrimination occurred;
- Whether there was one or more alleged perpetrators;
- Whether the perpetrators held a position of seniority in Victoria Police;
- Any information about the poor handling of a discrimination and/or harassment complaint.

¹⁷ Defence Abuse Response Taskforce, Parliament of Australia, *Final Report* (2016) 15; Debra Rosser, *Redress WA (2008 – 2011)* (12 February 2015) Find & Connect <https://www.findandconnect.gov.au/ref/wa/biogs/WE00505b.htm>.

Are there any other issues that need to be taken into consideration in the development of a scheme which focusses on workplace harm?

In developing a scheme focusing on workplace harm, it must be recognised that, in some cases, the alleged perpetrator will be a continuing employee of Victoria Police, whom the victim may be required to continue working with following the conclusion of the scheme. As such, the LIV considers it imperative that, where the victim chooses not to pursue other avenues of disciplinary or judicial action, their participation in the scheme remains confidential and identity anonymous to anyone not dealing directly with their claim.

Ultimately, the scheme must be guided by the wishes of complainants; although it is *prima facie* contrary to public interest to allow alleged perpetrators to continue working without investigation into their conduct, it must be stressed that the focus of the scheme is to assist victims, not to seek out abusers for punitive redress.

What skills or attributes should the decision-maker have?

The LIV submits that taskforce members and the reparation payment assessor would ideally have experience adjudicating administrative or legal matters as well as a background in social services or psychology. This would enable decision-makers to consider the merits of a claim while taking into account the possibility of psychological problems and any potential implications for the victim's mental health.

Regardless of their background, all decision-makers should receive training prior to the commencement of their position to enable them to deal with the specific issues that are likely to arise from a scheme such as this.

CONCLUSION

As outlined in this submission, the LIV's comments are made in light of existing approaches to restorative justice and redress, in particular the implementation of such schemes in comparable institutions such as the Australian Defence Force. In addition to our members' practice experience, this submission has been prepared with regard to the review conducted by VEOHRC into sexual harassment and discrimination in Victoria Police.

The LIV would be pleased to participate in any ongoing work proposed by the Department in addressing these issues.