National Centre for Action on Child Sexual Abuse

Submission to the Australian Law Reform Commission

Inquiry into Justice Responses to Sexual Violence

Dr Leanne Beagley
On behalf of the National Centre Team
May 2024

National Centre for Action on Child Sexual Abuse

Acknowledgements

The National Centre for Action on Child Sexual Abuse (National Centre) respectfully acknowledges and celebrates the many Traditional Owners of the lands throughout Australia and pay our respects to ancestors of this country and Elders past and present. We recognise that Aboriginal and Torres Strait Islander communities, culture and lore have existed within Australia continuously for over 65,000 years.

We acknowledge the ongoing leadership of Aboriginal and Torres Strait Islander communities across Australia and those who have and continue to work tirelessly to address inequalities and improve Aboriginal and Torres Strait Islander justice outcomes for children and young people. The National Centre is committed to ensuring that the voices of those whose lives are affected by the decisions governments make should fundamentally inform those decisions. First Nations voices must be heard, raised and amplified through a Voice to Parliament. It is time for genuine and significant reform to progress healing through the Uluru Statement from the Heart.

We seek to honour the lived and living expertise of all victims and survivors of child sexual abuse, harnessing all ages, cultures, abilities and backgrounds, and commit to substantially addressing the harm of child sexual abuse, now and well into the future. We recognise that there are children and young people today who are experiencing sexual abuse and dedicate ourselves to doing all we can to promote their effective protection and care.

24 May 2024

Hon Marcia Neave AO, Judge Liesl Kudelka
Commissioners
Australian Law Reform Commission
Inquiry into Justice Responses to Sexual Violence
Australian Law Reform Commission
PO Box 209
Flinders Lane VIC 8009
E: jrsv@alrc.gov.au

Dear Commissioners,

The National Centre for Action on Child Sexual Abuse (the National Centre) welcomes the opportunity to provide a written submission to the Australian Law Reform Commission's (ALRC) Inquiry into Justice Responses to Sexual Violence (Inquiry).

About the National Centre for Action on Child Sexual Abuse

The National Centre is an independent not-for-profit organisation established with funding from the Department of Social Services to increase community understanding of child sexual abuse (CSA), promote effective ways for protecting children, guide best practice responses, and reduce the harm resulting from child sexual abuse. The establishment of the National Centre was a key recommendation of the 2017 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Rec. 9.9) (Royal Commission).[1]

The National Centre is focused on delivering on its 5-year strategic plan *Here for Change*. This plan, developed in consultation with victims and survivors of CSA, identifies seven critical challenges that must be addressed to prevent and better respond to CSA in Australia:

1. CSA and its effects across the lifespan of victims and survivors are not well understood or identified in the community.
2. People with lived and living experiences of CSA are often not believed and responded to with compassion.
3. Children, young people and adults with experiences of CSA (or their parents or carers) are often not identified, protected or well supported when they raise concerns or disclose.
4. Children and young people who have displayed harmful sexual behaviour require adults to better understand and meet their needs.
5. Victims and survivors of CSA are often unable to access the support and resources that meet their changing needs at different times in their lives.
6. Knowledge about complex and intergenerational trauma and dissociation does not generally inform responses to individuals with lived and living experiences of CSA.
7. CSA will not be stopped unless there is a comprehensive framework for addressing the power dynamics and factors which enable it.

Our submissions are informed by the National Centre's continuing work on addressing these challenges. We seek to underline that the advice provided here draws from a range of knowledges including lived experience, cultural advice, practioner expertise, our research efforts and our

[1] Royal Commission into Institutional Responses to Child Abuse, Final Report (Report, 2017).

understanding of systems and organisations. A list of National Centre victim and survivor advocates who have provided their consent to be names is at the end of the Submissions at page 31.

We first provide a snapshot of CSA in Australia; our submissions then follow.[2]

Child sexual abuse in Australia

The statistics on CSA in Australia are deeply concerning: almost 1 in 3 females and 1 in 5 males report being sexually abused as children.[3] Yet CSA is not well understood, given its varied contexts and complex dynamics.[4] The wide variety of contexts include families, relations and acquaintances; institutional, religious and sporting organisations; and online settings.

The impact of CSA differs for all victim-survivors, and changes over time, nevertheless the personal, social and economic costs can be enormous. Adverse impacts can include mental illness, living with complex trauma, poor physical health, missed educational and employment opportunities, drug and alcohol problems, relationship and parenting issues, homelessness, juvenile and adult offending and incarceration, and premature death.[5] For children, CSA often overlaps with other forms of maltreatment over a protracted period.[6] Some victim-survivors may experience more acute impacts in childhood or youth, while others are impacted in adulthood. Some experience profound adverse impacts in all stages of life, yet others experience relatively few. Many do not disclose until adulthood, which can add a burden of secrecy, with feelings of shame and guilt compounding over a protracted period. Commonly, effects emerge at life milestones such as completing school, becoming a parent or raising children, or hearing of others' experiences of CSA.[7]

A victim-survivor's experience of CSA may also be exacerbated where it intersects with challenges faced by any of the marginalised communities to be considered by this Inquiry. It can impact very young infants and children through to elderly people – the entire human life span.[8] Further, CSA has a ripple effect, spreading outwards to 'secondary victims' such as a victim-survivor's family, friends and loved ones, who can experience similar adverse health, social and relational impacts.[9] It also impacts more broadly on the community and wider society.[10] In economic terms, the lifetime costs of CSA to the Australian taxpayer has been estimated at between $7-9 billion per year.[11]

The classes of CSA perpetrators[12] are highly diverse, but girls are between 2 and 7 times more likely to experience CSA from all classes except institutional caregivers.[13] Disturbingly, 1 in 6 Australian men report sexual feelings towards children and 1 in 10 report offending (online and offline);

---

[2] These submissions were developed in conjunction with Dr Amanda-Jane George, CQUniversity.

[3] Divna Haslam et al, *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report* (2023) (ACMS Report).

[4] Ben Matthews et al, 'Child sexual abuse by different classes and types of perpetrator: Prevalence and trends from an Australian national survey' (2024) 147 *Child Abuse & Neglect* 106562 (Matthews et al).

[5] Australian Institute of Family Studies (AIFS), *The economic costs of child abuse and neglect* (Policy and Practice Paper, 2018); Victorian Government, *Board of Inquiry into historical child sexual abuse in Beaumaris Primary School and certain other government schools* (Report, 2024) (Beaumaris Report).

[6] Royal Commission (Volume 3); ACMS Report.

[7] Beaumaris Report 106-113; Royal Commission (Volume 3). The Royal Commission notes average time to disclosure is 23.9 years (Volume 1, 22; Volume 4, at 30).

[8] Including the elderly, as the effects of CSA can impact across the entire human lifespan.

[9] Beaumaris Report 114-116; Royal Commission (Volume 3) 202.

[10] Beaumaris Report 116-118.

[11] AIFS Practice and Policy Paper. Conservative estimate $6.8 billion; with broader definitions of childhood trauma, the estimate increases to $9.1 billion.

[12] Parents/caregivers, other known adults, unknown adults, siblings, other known adolescents, adolescents (current/former partner): Matthews et al 9.

[13] Ibid 6, 10: overall, girls are 2.5 times more likely to experience CSA than boys.

offenders are likely to be married, working with children, and earning high incomes.[14] However, CSA experienced and inflicted by adolescents must not be overlooked: 1 in 8 young people (16-24 years) experience CSA from other adolescents, and more than 1 in 20 experience CSA from their adolescent current or former partners. This type of offending is increasing.[15]

This chilling evidence compels action on a human rights basis, which should reflect understandings of developmental context, trauma, gender, culture and multiple and intersecting forms of disadvantage. Systemic change is required to achieve an effective range of responses to CSA that will implement Australia's obligations under international law to uphold both adult and child victim-survivors' rights, including Indigenous rights, and to protect and support victim-survivors across the age range.[16] Salient rights are: best interests of the child, non-discrimination, the right to life, survival and development, and the right to participate, be heard and taken seriously.[17]

We note that many of the Royal Commission's recommendations that would implement Australia's human rights obligations and raise the level of protection and support for children are yet to be adequately funded and implemented throughout Australia in an effective, consistent fashion. Against this background, we believe the Inquiry is an important mechanism to drive the urgently needed system-level change in justice responses.

Our submissions

Our submissions to the ALRC's Issues Paper do not answer each question, but proceed in the general order of the Issues Paper: Safe Disclosure, Police Responses, Prosecution, Trial, Sentencing, Alternative Pathways and Other Issues. We note the Issues' Paper's use of the umbrella term 'sexual violence'. We acknowledge that there are many forms of sexual violence, but as discussed above, maintain that CSA is a particularly egregious harm, the effects of which can be experienced as a child and for the rest of a victim-survivor's life. The National Centre has an unequivocal focus on CSA and will focus our submissions in that context.

Where relevant and insightful, we include de-identified comments from speakers at a National Centre *In Conversation* webinar on improving justice responses for CSA victim-survivors, and workshops conducted at the National Centre with staff and members of our Colleges to gather responses to the ALRC's Issues Paper.[18]

Safe disclosure

For victim-survivors of CSA, disclosure itself can be like a 'bomb';[19] 'I became very, very sick once I'd disclosed … that is the hardest part'.[20] Their experience of disclosure, and the response received, can significantly shape their subsequent experiences and attitudes.[21]

The experiences and needs of victim-survivors will differ depending on age at disclosure or discovery (in the case of very young children). Research by the National Centre on attitudes,

---

[14] M Salter et al, *Identifying and understanding child sexual offending behaviours and attitudes among Australian men* (Report, 2023) 3.

[15] Matthews et al 10.

[16] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Arts 6, 19(1), (2), 30, 34, 39.

[17] National Centre, *Submissions to the Inquiry into Australia's Human Rights Framework by the Parliamentary Joint Committee on Human Rights* (30 June 2023).

[18] See National Centre, *In Conversation* (Webinar, 2 May 2024); Workshops (staff, Survivor-Led Adult College, First Nations College, 20 May 2024).

[19] Beaumaris Report 107.

[20] Participant, National Centre Workshop, Survivor-Led Adult College.

[21] Royal Commission into Institutional Responses to Child Abuse, Final Report Recommendations (Report, 2017) Recommendation 3(a); Beaumaris Report, 16.

knowledge and responses to CSA indicates disclosure can be a precarious undertaking for children. There is a significant risk of being disbelieved, and therefore remaining unprotected, by adult caregivers around them. Interpersonal power differentials abound, as well as structural vulnerability at a societal level. Globally, studies confirm a prevalence of problematic myths, such as generally questioning children's credibility and memory, or that children's disclosures may be vindictive or vengeful. Stigma also inhibits disclosure, and can result in a multitude of adverse outcomes, including judgment and ostracisation.[22]

Our research shows that parents, caregivers and those working with child or adult victim-survivors self-report high confidence levels in knowing the impacts and signs of CSA. However, they are not especially strong at identifying in person or online risks of CSA, which heightens the risk of continued harm for children. Concerningly, a proportion of the Australian population surveyed held problematic attitudes and misconceptions related to CSA, and some lacked compassion toward adult victim-survivors disclosing CSA.[23] Those with lived experience support these research findings; at our workshop, one adult victim-survivor of CSA recalled:

> *[Disclosure] was one of the most horrific journeys … I had collapsed physically and mentally and in one of the many suicide attempts I had I ended up in a mental ward, when they started to encourage me to talk about why I had got to this stage when I mentioned … child sexual abuse. At first I was not believed, which made it very hard, I felt stigmatised and very much not believed. So for me there was absolutely no support whatsoever. I was referred to a group … which was the insurance arm of the Catholic Church, who very quickly sent out a non-disclosure agreement for me to sign to keep it all nicely tapped away, very quickly put an offer of $7,000 on the table to be a good boy and go away. So [this] whilst I was in this period of absolute collapse and trying to process everything. – Workshop participant.*

Thus our research, and lived experience such as this, highlights the urgent need for:

- Specialist training for all staff likely to encounter victim-survivors, including being trauma-informed, knowledge about CSA, its impacts at different ages and developmental stages, and common issues such as delays in reporting (discussed further below);
- A victim advocate role that can support victim-survivors at disclosure stage, before reporting to police, through to trial, and afterwards (discussed further below); and
- Easily locatable information for victim-survivors on disclosure, options, supports, and what to expect.

The latter point is particularly important, given the added complexity of the neurobiological impact of trauma on memory processing over time. Disclosure was described by one victim-survivor as a life-long event:

> *Disclosure is not a once-off event. For me it's been 14 years. Yes I disclosed that first time a Christian Brother assaulted me, but as my mind becomes stronger and starts to unpack these things, there are another 5 Christian Brothers that were involved in abusing me. … it isn't just a once-off event. So I think the Law Commission … have to understand that this is a life journey. Healing is a life journey, but disclosure is a life journey. And I think that really needs to be understood. – Workshop participant.*

---

[22] National Centre for Action on Child Sexual Abuse, *The Australian child sexual abuse attitudes, knowledge and response study: Focus on Tasmania* (Presentation, May 2024) ('Attitudes Study'). See also three forthcoming companion studies by the National Centre, *Stigma Scoping Review* (Report, 2024); *Disclosure Scoping Review* (Report, 2024); *Response Scoping Review* (Report, 2024).

[23] Ibid, Attitudes Study.

On the issue of information resources, there is a need to build up community knowledge of how to respond; some victim-survivors voiced a need for online resources to assist disclosure:

> *I would love as well to see … resources online, to be able to give them to the survivors to say, Look, this is what you … might expect. – Workshop participant.*

> *It would have been brilliant to have had a website to go to, a pamphlet that the police could give me with succinct information, a pamphlet that my counselling service could give me. – Workshop participant.*

We note that online resources will not be effective for many victim-survivors in rural, regional or remote communities, including First Nations communities, who do not have access to computers or mobile telephones and who are unable to access the internet. Telephone hotlines can also be problematic in such areas, given that victim-survivors may be restricted to use of a public landline telephone, where privacy is minimal, and stigma persists:

> *Those communities are so small, so tiny – the discrimination, the stigma that can be attached to someone disclosing this, the shame and all those other factors that are thrust upon the victim as opposed to on the perpetrator. There really needs to be more understanding of how this impacts in regional, rural and remote communities because it is completely different to the enormity of what sits inside the city side of it. – Workshop participant.*

Submission: The Commission should recommend that the States and Territories fund, develop and implement, together with victim-survivors, First Nations peoples, and service and legal system stakeholders, a co-designed range of information aids and resources to assist disclosure, and outline the various options and supports available for victim-survivors.

Resources should be age and developmentally appropriate, trauma-informed, culturally safe, accessible, inclusive, and widely publicised so that victim-survivors and their families or supporters can easily locate them.

Formats should include online and also hard copies for those who do not have access to the internet, and they should be produced in a variety of languages and formats appropriate for victim-survivors with disability.

Victim advocates

General support for victim advocates

The role of 'victim advocate' or 'justice navigator' who is professionally qualified and can assist with disclosure, police and legal processes, as well as navigating the wide range of victim support services and agencies, would significantly improve a victim-survivor's experience of the justice system. Research indicates a link between victim advocate support and a lowering of case attrition; there is widespread support for dedicated roles at State government level, in the Specialist Report by George et al,[24] and at sectoral level. Victim-survivors of CSA were also very enthusiastic about a specialist support person who could assist during disclosure:

[24] Victorian Law Reform Commission, *Improving the Justice Responses to Sexual Violence* (Report, 2021) 254; Queensland Women's Safety and Justice Taskforce Hear her voice - Report two – Women and girls' experiences across the criminal justice system, Volume 1, Queensland (Report, 2022) recommendation 9; George et al, Specialist approaches to managing sexual assault proceedings (Report, 2023) 224 (Specialist Report).

… the police just have no idea, and there's no one sort of place to go where there is a group of people who are trauma informed, and who can support the survivors, and who can help navigate the very complex and very cold, very fraught system. – Webinar speaker.

I would love there to be a trauma informed team, they could go in and sit with survivors while they give statements to the police, even if they were dialling [in]. Just somebody who was more informed. Because I'm sure a lot of these police officers are just like taking it back like, 'Oh, I don't know what to do with you. Oh, awkward!' And so [it would be great] to have a team of people who actually understand and can support survivors to do it. – Webinar speaker.

The difficulty of reporting to police is exacerbated for First Nations victim-survivors against a backdrop of complex factors including racism, colonialism, historical and intergenerational trauma. Again, a professionally qualified victim advocate would assist:

The police and the carceral system in general can be very dangerous for us. It's life or death. So … we do most definitely need support systems that are well funded and legal services that are well funded for survivors to actually go to sit down to have that … culturally safe and trauma-informed environment where they can safely disclose. And then what that service does with that is, you know, wrap around that particular survivor and system in the right way. – Webinar speaker.

Introducing victim advocates could greatly improve police interactions. These advocates would provide emotional support during the reporting process, helping to alleviate fear and anxiety. They could also ensure that police handle the survivor's case with sensitivity and understanding (culturally appropriate and trauma-informed), advocating for the survivor's needs and rights throughout the investigation. By bridging the gap between survivors and law enforcement, victim advocates can foster a more trusting and supportive environment, encouraging more survivors to come forward. – Workshop participant.

… Marginalised individuals, including those with criminal records or from disadvantaged backgrounds, face additional barriers in accessing the justice system. There is a pervasive stigma and bias that can lead to their claims being dismissed or not taken seriously (ie. sex industry workers). The lack of trust in the police and judicial system, often due to past negative experiences, further deters these individuals from seeking justice. Victim advocates can significantly impact marginalised survivors by providing a trusted support figure who understands their unique challenges. … Advocates can work to ensure that these survivors receive fair and unbiased treatment from law enforcement and the judiciary. They can also assist in accessing other essential services, such as legal aid, counselling, and social support, helping to navigate the complexities that marginalised individuals often face. – Workshop participant.

Finding victim advocates

Victim advocates are often embedded in specialist sexual assault services. Where this is the case, there is a risk that many victim-survivors of CSA will not find out about them as most do not disclose to such services. Data indicates the first point of contact is usually trusted friends and family, then therapist or health providers, social workers and the like. The information resources mentioned above would assist these providers:

I was lucky, I told my social worker and the only reason I told her was I'd been working with her about my back injury and different things, and I had been working with her for some time, and I trusted her and it sort of all went from there. But it's imperative that people know about support services, because it's just so hard going to the police and disclosing. – Workshop participant.

Participants also expressed concern for rural, regional and remote communities in both finding victim advocates and availability. One participant suggested consideration be given to embedding victim advocates in Centrelink locations:

> *I see a very strong connection between the … 'Victim Advocate' and the role that I envisioned for social workers deployed by the Dept. of Human Services when I was advocating for trauma-informed support workers (navigating by central point the 'siloed' Welfare, Health, legal aid resources) to be available at all centrelink locations. In my thinking this would allow for [a] National approach, vast footprint, fast establishment and local community needs met more effectively and sensitively, particularly in consultation with First Nation elders and communities. – Workshop participant.*

Another participant in our workshop suggested a notification system be established, similar to the 'Custody Notification Service' (CNS) that advises Aboriginal Legal Services (ALS) when a First Nations person has been taken into custody.[25] This way, a victim advocate could be notified and allocated whenever a victim-survivor presented to the police station to report:

> *There should be an independent person from an ALS or ACCHO [Aboriginal Community Controlled Health Service] that can then be there to stand with that person and ensure that that institution is kept accountable. … Having someone within the police system is not going to work because that person ultimately is accountable to that institution; that's their job and the cultural load that comes with that is enormous. … But definitely ACCHOs, ALSs, and independent organisations like the different CASAs or sexual assault services that are out there. [We] do need people who are well trained who can then be in the room with the person or on the phone (bare minimum) to make sure they can walk alongside that disclosure, and then continue on and case manage.*

For this participant, truly independent victim advocates would be preferable, as Legal-Aid funding means State funding, which could be perceived as placing them in a position of conflict with the interests of First Nations victim-survivors:

> *In terms of disclosure, you've got the situation where, 'ok I'm afraid to come to this institution because I don't know what's going to happen at that point' and I think having some form of independent person from an ALS or ACCHO, and from an ALS perspective having a lawyer, can sometimes be of help and assistance. – Workshop participant.*

This participant also suggested that victim advocates would require specialist training, both in trauma as well as cultural safety, diversity and vulnerable communities.

Another participant who was groomed while a child, then sexually abused at consensual age, indicated victim advocates would need to know of the difficulties for victim-survivors trying to navigate this complex legislative and procedural space:

> *… what happens when a child turns 18 and the trial has not begun? If this [victim advocate] model is considered it absolutely needs to be instigated prior to charges being laid. I say this knowing of charges being laid by police relating to a 17yo abused by a person in authority, as a combination of CSA and Adult rape charges, the former later removed by a judge to 'reduce jury confusion about alternate charges'. Adding a navigator to witness anomalies developing such as this, might prevent attitudinally distorted decision making from progressing. – Workshop participant.*

Submission: The Commission should recommend that the States and Territories, in consultation with victim-survivors, First Nations peoples and service and legal system stakeholders, fund, develop and implement a professional victim advocate service to be available from before police disclosure, through to report, trial, and post-trial.

[25] National Centre Workshop (20 May). See Aboriginal Legal Service, *Custody Notification Service* (Website, 2024).

Training should be trauma-informed, including training on the specific experiences and needs of CSA victim-survivors, age and developmental impacts, as well as cultural safety, diversity and the intersecting needs of marginalised 'overrepresented' communities. Knowledge of police and legal processes, the range of services and support options, and alternatives to the criminal justice system, would also be required to provide the much needed informational 'bridge' across institutions, agencies and services for victim-survivors. The training should be developed with expert input on evidence-based best practice principles, and ongoing on a 'refresher' basis.

Consideration should be given to funding a notification scheme similar to CNS, and independent advocates for First Nations victim-survivors. Consideration should also be given to location of victim advocates and whether embedding in specialist sexual assault services would make them most widely locatable, or alternatives such as Centrelink. Implementation efforts should focus on wide dissemination of information about this service.

Police Responses

Given the difficulties inherent in disclosure for CSA victim-survivors, their initial contact with police can determine their satisfaction with the entire criminal justice response, and influence whether they proceed with a report and participate in a prosecution:[26]

> *One of the first points of contact for survivors seeking justice is the police. However, this interaction can be fraught with challenges. Survivors often experience feelings of fear, shame, and distrust, which can be heightened by an unsympathetic or inadequately trained police force. The process of making a statement can be re-traumatising, requiring survivors to relive their abuse in a formal and often intimidating setting. Additionally, there is a prevalent fear among survivors that their claims will not be believed or taken seriously, especially if there is a lack of physical evidence or the abuse occurred many years prior. – Workshop participant.*

The Royal Commission recommended all police (generalist and specialist) have a basic understanding of complex trauma and its impact on reporting, including for those that have difficulty dealing with authorities; that police treat those reporting CSA with consideration, respect, and consider cultural safety issues; and that they ensure referral to appropriate services. Information should be provided on ways to report, or advice and options, in a format allowing institutions, advocacy and support groups to provide to victim-survivors. A range of channels for reporting, including specialist telephone numbers and online reporting, should be made available. Police should be willing to take statements even if the alleged perpetrator is dead or unlikely to be tried.[27]

Further, the Royal Commission recommended all police CSA investigators be trained in current interview methods, how memory works, knowledge about CSA, and the developmental and communication needs of children and vulnerable witnesses. And if a police agency does not provide a specialist response, it should develop a 'guarantee of service' document outlining what victim-survivors can expect.[28]

To date, we do not have consistent, effective implementation of such recommendations.

We note that victim-survivors have had some positive experiences, with police officers displaying empathy and a desire to connect a victim-survivor with specialist support services:

> *The police officer … she was absolutely brilliant [but I left off reporting for some time. When I went back] the detective that I met with, she said I will put you in contact with [a sexual assault*

[26] Royal Commission recommendation 3(a).

[27] Ibid recommendations 3(a), (b), (c), 4(c), (f).

[28] Ibid recommendations 9(b), (c), 12.

service] and within 24 hours I got a phone call … from the Head of the [sexual assault service] and … it all went from there. – Workshop participant.

The ACT police were absolutely phenomenal [in dealing with my son's CSA]. When my wife … contacted the police, they had a support person, yes she was employed by the police but she was employed in purely a support capacity and then when I got home the following day she was actually there for me. – Workshop participant.

I've been locked up in remand for things I didn't do, I've been locked up for being drunk … and on suspicion of a few things … so my interactions with police aren't good. In the 1990s I demonstrated for gay rights, got beaten up by Queensland police plenty of times … When I disclosed I spoke to a sergeant … he was able to look at a history that I don't have access to, a police record from when I was 9 years old, and this sergeant – Matthew – he was so kind, he apologised right away and he looked at my history and went, 'yeah, you can see something was going on there', you know? … – Workshop participant.

Other participants in our workshops gave accounts of extremely re-traumatising police responses:

I got a young female detective and … we met, and I remember she sat back very sternly and said 'why do you want to do this?' but we went on with it, and … she actually joked with her other detectives, 'should I be doing a case that's older than me?' … She worked me very hard, I've got a back injury, there was no breaks, we worked for 5 hours straight, I took bottles of water and muesli bars and Panadeine Forte, that's the only way I did it. In the end, she said 'you're crying, I'm exhausted, we'll stop.' So [in another month] we went back at it and she said … 'I know you're a morning person, so, can you do it in the afternoon?' She said 3:30pm … we worked till 9:30pm at night, there was no cup of tea, no stop, … and there was no support. We walked out of the police station, they went to their car, it was pitch black, I went to my car and I was not in a good place. – Workshop participant.

The policewoman I spoke to unfortunately reinforced all my shame-based beliefs at the time - that I was old enough to know this was wrong, that police and the law would see me as 'consenting', that I should have told someone, it would never pass a test of evidence etc, etc. All because I was 16. There was no concern on her part about the fact that this man was my teacher and had breached his duty of care and his position in loco-parentis. No concern that he was still teaching, that he lived with a former student, and he had told me that he had repeated his behaviour with another student after me. The only concession was to agree to take down the details so if there was a future investigation it was on record. And I, in my conflicted shame, fear and self-loathing at the time accepted this. – Workshop participant.

I was just put into a cold room, I waited for a sergeant, he took my details, 'Is there anything else you want to say?' 'I don't know!' – I'm in a state of absolute confusion, panic, flux and all the rest. – Workshop participant.

The first time I went to the police, it felt so cold that I dropped the whole case. – Workshop participant.

A lot of my friends when I was homeless in Sydney were rent boys, and … we knew the police very well. And they. Were. Monsters. … We were afraid of the police. … My disclosure and my interaction with the redress scheme was difficult because then Covid happened… I couldn't get therapy, I couldn't interact with lawyers, it was all online, which is ok but it was difficult. I had to do it alone … I started experiencing domestic violence with my housemates … and that turned into a really violent situation which put me again at risk of being homeless … I don't think I've got complex post-traumatic stress disorder. … There's nothing post about it. I live my fucking trauma regularly still. – Workshop participant.

At my counselling service … they told me the odds were against me. I had nobody to navigate the police system with, I had no information, I just wanted to do it because my perpetrator was still teaching children and was being lauded in Armidale so I just went in blind and hoped for the best and somehow muddled through. … I just had to encounter each event as it unfolded … there was just a lot of inconsistency and right to the very moment we went to court there was a change of counsel at the last minute … what I went through is just sheer determination and luck. – Workshop participant.

One First Nations workshop participant summed it up:

When it comes to disclosing to police it can be hit and miss. Sometimes you'll have one officer that's kind, but the majority of them aren't. As a system and institution it's not safe for mob and people from intersecting backgrounds whether it's class or sexuality there's a whole range of issues that these institutions will inflict on so many marginalised groups. - Webinar speaker

Specialist training

The National Centre strongly supports specialist training for all police personnel regardless of whether they are generalist or specialist sexual assault personnel, as recommended by the Royal Commission. Such training would be cognisant of the different developmental experiences and needs of child, teen and adult victim-survivors of CSA. It would also include trauma impacts on behavioural and memory responses, neurobiology, cultural safety, diversity and working with vulnerable communities, and would be conducted on an ongoing 'refresher' basis.

Specialist police interview training is also required as a separate skillset. Given the many adverse experiences with police interviewing conveyed by victim-survivors, some have suggested that the initial police interview be 'scrapped', particularly where it is expected disclosure will happen in one session in sequential articulation, ie. the 'who, what, when, where, how, why' is to be covered in one session. Appropriate training in current, trauma-informed and evidence-based methods would be required to address this issue.

There was also victim-survivor support for specialist sexual assault divisions:

Improving the police response to reporting of sexual violence needs to include a greater awareness about the blind spots regarding the risk to older children, the situations in which "consent" does not apply i.e. where the perpetrator is a person in a position of authority, supervision and care of children. Specialist sexual offences divisions within the police force would assist the oversight of this issue and consolidate a detailed knowledge base of CSA. – Workshop participant.

Submission: The Commission should recommend that all States and Territories adequately fund and implement specialist training for all police personnel, and specialist interview training for all police interviewers handling CSA cases. Such training would be cognisant of the different developmental experiences and needs of child, teen and adult victim-survivors of CSA. It would also include trauma impacts on behavioural and memory responses, neurobiology, cultural safety, diversity and working with vulnerable communities. The training should be developed with expert input on evidence-based best practice principles, and ongoing on a 'refresher' basis.

Consideration should be given to specialist police divisions or units where not otherwise available, and where this is not possible, a 'guarantee of service' document should outline the minimum rights and expectations for victim-survivors.

A range of information aids and resources (such as those discussed above) should be available at all police stations, with police personnel instructed on the need to actively refer victim-survivors to such information and relevant support services. A range of reporting channels, including

telephone hotlines and online portals (with capacity for anonymous reporting) should be implemented, per the Royal Commission recommendations.

Intermediaries

We note an intermediary service exists in most, but not all, jurisdictions to support vulnerable persons, including children, First Nations persons, and persons with disability, but that jurisdictions vary in availability and qualifications (if any) required.

Intermediaries can play a critical role in improving a CSA victim-survivor's ability to provide best evidence in police interviews, both for children and for vulnerable adult victim-survivors of historical abuse needing communication assistance. The Royal Commission recommended intermediaries for assistance with police interviews and during the trial process;[29] several State reports recommend expansion of their existing services;[30] and they are also recommended following an integrative literature review of comparable international jurisdictions in the Specialist Report by George et al as a best practice measure (Specialist Report).[31]

Victim-survivors observe, however, that the intermediary scheme is focused on children and those with cognitive vulnerability. For victim-survivors of CSA where grooming occurred as a child but sexual assaults occurred after they reached consensual age, a victim advocate and independent legal representative (ILR) would be appropriate. (We make submissions on ILRs below).

The National Centre strongly supports the funding and availability of intermediaries for all children complainants (mandatory under 16 years), and vulnerable witnesses, from police reporting through to the trial process. Intermediary training, ideally with standardised qualifications, would be cognisant of the different developmental experiences and needs of child, teen and adult victim-survivors of CSA. It would also include trauma impacts on behavioural and memory responses, neurobiology, cultural safety, diversity and working with vulnerable communities. The training should be developed with expert input on evidence-based best practice principles, and ongoing on a 'refresher' basis.

We see an important role for the intermediary as distinct from the victim advocate role (which, as noted, could be augmented with access to an ILR where appropriate (see below)). These services would offer victim-survivors of CSA the necessary range of developmentally appropriate support.

Submission: The Commission should recommend that all States and Territories adequately fund and make available professionally qualified intermediaries for children (mandatory under 16 years) and vulnerable victim-survivors.

Prosecution

Specialist training

In relation to the prosecution of CSA, the Royal Commission recommended a suite of reforms. On training, the Commission recommended all prosecutors dealing with adult victim-survivors of

[29] Ibid recommendation 9(j).

[30] Victorian Law Reform Commission, *Improving the Justice Responses to Sexual Violence* (Report, 2021) 322; ACT Government, *Listen. Take Action to Prevent, Believe and Heal Report* (Report, 2022) ('ACT Report') 47, 59, recommendation 9; Queensland Women's Safety and Justice Taskforce Hear her voice - Report two – Women and girls' experiences across the criminal justice system, Volume 1, Queensland (1 July 2022) recommendation 62.

[31] Specialist Report 224.

historical abuse be specialist trained; sensitive to the difficulties of some victim-survivors in dealing with institutions or persons in positions of authority; non-judgmental regarding substance abuse, mental illness and criminal records; they should also focus on the credibility of the allegation, not the complainant. Prosecution decision-making should also take into account the fact that children with disability are at a significantly higher risk of CSA and should take this into account in prosecution decisions.[32]

The National Centre strongly supports the specialist training of all prosecutors, including police prosecutors, and specialist prosecution units such as the Australian Capital Territory (ACT) model which appears to be working successfully.[33] Specialist training would be cognisant of the different developmental experiences and needs of child, teen and adult victim-survivors of CSA, and the issues flagged by the Royal Commission. It would also include trauma impacts on behavioural and memory responses, neurobiology, cultural safety, diversity and working with vulnerable communities. The training should be developed with expert input on evidence-based best practice principles, and ongoing on a 'refresher' basis.

Vertical prosecution

The Royal Commission also recommended vertical prosecution, regular communication to inform about the status of the prosecution (unless asked not to), and standard information to provide to complainants in CSA matters.[34] Similar recommendations were made in the Specialist Report.[35] We note our comments on information aids and resources above.

Vertical prosecution is a resource intensive but particularly important measure for CSA victim-survivors. Continuity in prosecution team staffing not only builds rapport, facilitates communication, and potentially achieves better evidence; it reduces changes in legal strategy, which can reduce delays. Critically, it also eliminates the re-traumatising effect of successive changes in a victim-survivor's legal team. This was a consistent theme raised by victim-survivors, sometimes in conjunction with the need for a victim advocate:

> *… the changes of legal teams, or the changes of location of where the court happened. There was so much that I had no idea, I would love to see just some people there who are specifically there to help people navigate through the legal system. I think that's something that's absolutely doable. Now.*

Decision-making, plea negotiation

Victim-survivors also underscored the deeply challenging situation of being left uninformed about prosecution decision-making:

> *I know of too many victim-survivors left utterly bereft, without reasoning or information behind Prosecution decisions, powerless and fearful of continued perpetrator offending against themselves or others. Most people who report, we know do so largely from the altruistic notion of preventing others from suffering the same abuse not just for their own justice. – Workshop participant. – Workshop participant.*

Accordingly, we support the Royal Commission's recommendations regarding plea negotiations: that charges reasonably reflect the true criminality of the abuse suffered, and that adequate time for consultation with victim-survivors and police is allowed where prosecutors are considering

[32] Royal Commission, recommendation 37.

[33] Specialist Report 195-197. We note the disbanding of the Victorian specialist prosecution unit as outlined in the Specialist Report 197-199, but understand the Australian Capital Territory model is more robust and could be implemented widely.

[34] Royal Commission, recommendation 37.

[35] Specialist Report 232-234.

negotiations to downgrade or withdraw charges. We also support the Specialist Report's suggested best practice measure of an independent review mechanism for prosecution decisions.[36]

Court preparation programs

We note that some jurisdictions require prosecutors to conduct court preparation programs,[37] but that in view of time and workload commitments the implementation is not necessarily effective. We would see benefit in expanding the victim advocate role to encompass such initiatives.

Written guidelines

We would also see benefit in written guidelines for prosecutors, similarly to the Aotearoa New Zealand model, as discussed in the Specialist Report.[38]

Submission: The Commission should recommend that the States and Territories uniformly implement specialist training for all prosecutors dealing with CSA cases. Wherever resourcing permits, vertical prosecution should be the aim for all cases, particularly those involving children. Victim-survivors should be kept informed by regular communications with prosecutors, according to a communications protocol, unless requested otherwise. The process of plea negotiations should involve prior consultation with victim-survivors with time for them to consult relevant support and advocacy services before providing their opinion on the proposal. All victim-survivors should have the benefit of a court preparation program.

The Commission should recommend that all of the above measures be incorporated in consistent, consolidated and regularly updated written prosecution guidelines for each State and Territory, and independent reviews of prosecution decision-making should be available.

Independent legal representatives (ILRs)

The role of an ILR addresses a distressing and disempowering experience for victim survivors – the fact that the prosecutor acts for the State and the victim survivor is a mere witness to their own sexual violence. While some States and Territories have ILRs available, they are generally restricted to acting in pre-trial applications to introduce evidence and after trial. The Victorian Law Reform Commission (VLRC) has recommended a UK model that allows the ILR into court during trial as a 'silent party' to make sure sexual history evidence is not improperly introduced, and that its subsequent evaluation consider the merits of ILR attendance during cross-examination. The Queensland Women's Safety and Justice Taskforce noted ILRs can be particularly useful for overrepresented communities who struggle to have their voices heard, and recommended similarly.[39] ILRs were generally supported by victim-survivors at the National Centre workshop:

[36] Specialist Report 224.

[37] Ibid 122, 218.

[38] Ibid 192-193, 217.

[39] Victorian Report, recommendation 46; WSJT Report, recommendations 63-65.

The inclusion of an ILR would ultimately serve the court to ensure justice was seen to be done and assist the court in its deliberations. The work of people outside of the legal fraternity, people like journalist Louise Milligan, have made cogent analysis of the abuse of victim-witnesses, particularly children, during court processes. Both defence and prosecution approaches and behaviour can have significant impact on victim-survivors who have no rights or means to alert the court about that impact or transgressions that may not be apparent to others. The VLRC notion of piloting might be of use and not just for participating in cross examination. – Workshop Participant.

However, as a First Nations participant at our workshop indicated, a truly independent lawyer with sufficient practical experience would be preferable in their view:

… at the end of the day if they are employed by Legal Aid, they are employees of the State. If you're in the situation where a person has disclosed abuse by someone who is employed by the State you have the whole issue of conflicts of interest … but I do definitely think [ILRs have] merit … it comes down to how well trained that person would be. … I think you have to have some parameters around those particular positions, making sure they have experience with working with survivors, and working with people who have disclosed, working with various communities across different intersects of life because … a lot of people don't understand what it means to work with people from eg the LGBT community – there's a misconception and they won't go near it, but we still experience family violence in our home and that's something no-one wants to discuss. So … well trained, well experienced, understanding.

The National Centre would support funding and implementation of ILRs in all States and Territories for victim-survivors from police report through to trial and afterwards, but we are cognisant that immediate introduction of ILRs into the courtroom during trial could prove challenging for various legal reasons, logistics and funding. As such, we support the VLRC model of a trial ILR presence as a 'silent party' in the courtroom, and continued evaluation to consider whether introduction in trial during cross-examination would be feasible.

As an immediate measure, the National Centre supports an expanded role for the victim advocate, again similar to the model proposed by the VLRC, for victim-survivor support from before police report, through the court process (particularly cross-examination), after trial at sentencing, and post-trial for follow-up and support.

Submission: The Commission should recommend the adequate funding and availability of independent legal representatives for victim-survivors, on the model proposed by the VLRC.

Trial

Delays, pre-recorded audio-visual evidence

It is well known that delays are a particularly re-traumatising aspect of the justice process.[40] At the workshops, victim-survivors raised the following issues:

The length of time from reporting to trial has a major impact on accessing treatment for recovery that is constantly overlooked. Survivors are made aware that evidence-based treatment for trauma such Eye Movement Desensitisation and Reprocessing Therapy (EMDR) is endorsed by the World Health Organisation (WHO) for the treatment of PTSD. However, as its main mechanism involves disrupting working memory to process traumatic events, they are also advised that if they are required to give evidence in court that EMDR should not be commenced

[40] Specialist Report 30-31.

until after that.

The stark, irrefutable reality is that protracted delays deny survivors the ability to seek effective help to recover from their trauma which is further compounded by the trial itself. All reforms aimed at reducing delays must be prioritised. – Workshop participant.

One of the consequences of delay in court proceedings is that while older children abused by persons in positions of authority, supervision and care may report while under the age of 18, by the time a trial begins they are likely to be an adult and the consideration and protection provided to 'children' under the law appears to disappear. They now present as and are viewed by prosecutors, judges and juries as an adult witness. This area of procedure falls victim itself to the delay as a child victim transitions into an adult witness. It is this unconscious bias that I believe the system fails to identify and guard against. – Workshop participant.

Pre-recorded audio-visual evidence can reduce delays for victim-survivors, as well as reducing the number of times a victim-survivor must relive their experience. The Royal Commission recommended:

- The entirety of a child witness' evidence – including cross-examination and re-examination – to be pre-recorded so the child does not participate in the trial;
- Full pre-recording for all complainants in CSA prosecutions and other witnesses who are children or vulnerable adults;
- Pre-recording to be accompanied by intermediaries for any prosecution witness with a communication difficulty and ground rules hearings to maximise benefits.[41]

Such measures would certainly be beneficial where implemented effectively, if adequate arrangements for court technology, qualified operators, and court scheduling is made. Resourcing, technology and timetabling issues played at least some part in the lack of success of the 2002 New South Wales specialist jurisdiction for child sexual offences.[42]

We also note the critical role of supporters including (non-offending) caregivers and family for victim-survivors of CSA, particularly child complainants. In the Australian Capital Territory, parents, caregivers or other individuals who have a 'special relationship' with a child complainant (close family member, beneficial supporting relationship and can provide emotional support after the proceeding) may also give evidence at a pre-trial hearing, which may consist of a police interview, and can be recorded.[43] This measure prevents these witnesses having to wait (possibly for a long time) until trial to give evidence, when the child witness has already provided their evidence in a pre-recorded hearing. Importantly, it enables them to discuss the case with the child victim-survivor. We support the consistent introduction of this measure across the States and Territories, at least for child victim-survivors, to maximise the benefits of pre-recorded evidence and allow them to start their healing journey together with their supporters.

I whole heartedly support the ACT provision in child sexual abuse trials, of parents/caregivers who have a 'special relationship' with the child being able to also give evidence at a pre-trial hearing so that they do not have to wait until trial to give evidence. Their role in supporting the child complainant and allowing them to get on with their lives is paramount. The idea that parents/caregivers cannot discuss what has happened with a child until giving evidence in court is a structurally enforced, discriminatory anti-child requirement overdue for attention in all jurisdictions. – Workshop participant.

---

[41] Royal Commission recommendations 52, 53, 54, 59, 60.

[42] Specialist Report 124-125.

[43] *Evidence (Miscellaneous Provisions) Act 1991* (ACT) Division 4.3.3, s 62.

[In the ACT] the court process - it was fantastic, they interviewed [my son], his testimony was done, pre-recorded whilst he was in the court building, he was in a separate room nowhere near the perpetrator. … There was a female police officer, she wasn't necessarily trauma-informed or trained, but she had the empathy and the compassion for what a young child is going through … She put it into easy-read language, so making sure that when she spoke to him she spoke to him as an 8 year old child, if there were fancy police terms or legal terms she would make it understandable for him to process, she was there — and it was the same person the whole way through, which I think is a key component, that relationship that is built, and the trust, and the 'safe zone' that is built for that individual but also for the parents so that we know that our child, who is very vulnerable, is being looked after properly – so we had that consistent person the whole way through from the interview through the actual trial and then after the trial. … They really understood the impact that it does have on a young child, supportive of us as parents, … they were very very attentive in terms of understanding. – Workshop participant.

Submission: The Commission should recommend that the States and Territories uniformly implement pre-recording of all evidence, including evidence in chief, cross-examination and re-examination for victim-survivors of sexual violence. Pre-recording should be available as a standard measure, without having to apply (but with the option to opt-out for adult victim-survivors, with availability of other measures such as screens, CCTV, remote evidence). Where a child victim-survivor's evidence is pre-recorded, 'special relationship' witness evidence should also be pre-recorded and/or supplied by recorded police interview as standard.

Rape myths: juryless trials

Research shows that consent in an adult sexual assault trial 'is a vessel that will be filled by the moral and cultural values of the fact-finder'.[44] Numerous studies show the extent to which members of the public – the fact-finding jury – endorse rape myths, and the correlation between a high level of rape myth acceptance and victim-blaming, low perceptions of victim credibility and defendant culpability, and tendency to acquit in sexual assault trials.[45]

It is well known that rape myths are used with great influence as a deliberate defence strategy. In relation to adult sexual violence, such myths commonly include: 'she asked for it', 'it wasn't really rape', 'he didn't mean to', 'she wanted it', 'she lied', 'rape is a trivial event', 'rape is a deviant event'.[46] For adult victim-survivors, studies indicate that where a jury perceives a non-stereotypical victim in ambiguous circumstances (lack of vigorous resistance, no physical injury, no immediate report to police, not outwardly traumatised), the level of victim stereotypicality may contaminate perceptions of the perpetrator and the offence itself, according to a 'spreading activation' model. For example, where there is physical resistance, the force used is typically viewed as more aggressive and aligning with perpetrator conduct; if there is no physical resistance the perpetrator's conduct may be interpreted as being less aggressive and the incident more likely to be consensual.[47]

This has relevance for victim-survivors of CSA who were groomed as children but where sexual assaults occurred or continued after the age of consent; they can present as non-stereotypical victims (no resistance, no immediate report), triggering spreading activation in jurors.

[44] Annie Cossins, 'Why her behaviour is still on trial: the absence of context in the modernisation of the substantive law on consent' (2019) 42(2) *UNSW Law Journal* 462, 470 (Cossins, Behaviour on Trial).

[45] Ibid 463.

[46] Ibid 466.

[47] Shannon M Stuart, Blake M McKimmie and Barbara M Masser, 'Rape Perpetrators on Trial: The Effect of Sexual Assault-Related Schemas on Attributions of Blame' (2019) 34(2) *Journal of Interpersonal Violence* 310, 328-329.

In relation to children, where consent is not in issue, the Specialist Report shows the following misconceptions were used pervasively by defence counsel in Aotearoa New Zealand child sexual abuse trials: 'child sexual abuse is rare', 'false allegations are common', 'children will scream, call for help or try to escape during the abuse', 'sexual abuse cannot occur with others near the location', 'there will be physical evidence of the abuse', 'children will attempt to avoid the offender', 'children will report abuse immediately (delay is not common)', 'children will disclose the abuse when asked directly about it', and 'the offender is usually a stranger'.[48] Recent National Centre research confirms that 'a sizeable number of adults … dismiss children's credibility in truth telling when they disclose information about abusive incidents'.[49]

Again, this has clear implications for juror unconscious bias and acquittals in CSA trials. As Crowe and Sveinsson observe:

> People typically react to ethical dilemmas by first forming snap judgments and then rationalising or modifying [them] through further reflection … These snap judgments are not arbitrary, but are generally based on rough rules of thumb or heuristics … The soundness of the judgments will then depend on the reliability of the heuristics involved.[50]

Juryless trials are being considered globally as a measure that may address juror reliance on rape myths in decision-making. There is growing support globally for greater consideration and evaluation of this measure. Literature from Aotearoa New Zealand indicates juryless trials may assist in addressing misconceptions and juryless trials are available there; South Africa has operated a judge and two-person lay panel system for decades; Scotland will pilot a juryless model if a recent Bill passes; juryless trials have been suggested as a reform measure in England and Wales, and they are available in several Australian jurisdictions.[51]

In addition to addressing rape myths, the increasing complexity of the law in this area make specialist judicial officers and potentially a panel of lay assessors more suitable fact-finders than a jury, and a specialist-trained judge may be more inclined to step in and address re-traumatising inappropriate questioning where there is less concern about creating impressions of bias in a jury and laying grounds for appeal. The requirement for written judicial reasons can also assist a victim-survivor in the healing journey. Victim-survivors commented as follows:

> *I do believe serious consideration of juryless trials is warranted for crimes of sexual violence and child sexual abuse. Integration of expert evidence regarding the influence of trauma on victim responses, their diversity, attitudinal bias and media coverage are becoming more and more complex and should not be left to community members to balance in deliberations. – Workshop participant.*
>
> *Judgments in writing have an incredibly powerful role to play for both the survivor's recovery and the further refinement of effective law and legal processes and this feature alone for me, overrides the usual principle of judgement by a jury of peers. – Workshop participant.*
>
> *My experience was overall positive but I put this down almost exclusively to being VERY lucky with who I happened to get as a judge (and prosecutor, and detective – they were an extraordinary team and the opposites of my similar experiences 20 years prior). A few observations:*
>
> *• The judge was personally very empathetic and sensitive, more so than any other judge I have seen. He ensured victims' cross examinations did not get too out-of-hand, and he excused certain*

[48] Specialist report 113.

[49] National Centre, *Disclosure Scoping Review* (Report, 2024) 7.

[50] Jonathan Crowe and Lara Sveinsson, 'Intimidation, Consent and the Role of Holistic Judgments in Australian Rape Law' (2017) 42(1) *University of Western Australia Law Review* 136, 149.

[51] Specialist Report, 229-230; George et al, The 'trauma-informed' court: specialist approaches to managing sexual offence proceedings (Part Two)' (forthcoming, *Journal of Judicial Administration*).

defence witnesses that he felt were not useful to the trial, eg, a forensic psychiatrist who was brought into to argue I was an unreliable witness when I'd never even had a conversation, far less a psychiatric assessment, with him.

• All the victims/witnesses, although of different backgrounds, had relatively high levels of education and were able to articulate and present themselves in a way that was suited to the expectation of the court. I was quite surprised by how frequently throughout the judgement, the judge's comments were subjective assessments of the witness being "credible", "articulate" and the testimony "having a ring of truth to it".

• The accused/convicted chose to take the stand which was probably unwise as our prosecutor was able to trip him up on all sorts of technicalities.

• The judge did not seem to take much interest in, and did not remark much on, the character witnesses for the accused/convicted, which potentially jurors may have… hard to say.

• There were a lot of failings by the education system and police over decades, the nuances of which the judge could understand from his extensive experience; not sure if all of these would have been understood as comprehensively by jurors.

• An advantage of judge-alone is that the judge must lay out his or her reasoning in far more detail than a jury does. The downside from this can be that this leaves you far more open for appeals in the Supreme court based on the details of the judgement, as occurred for us.

• Another benefit of judge-alone of course is that there is far less chance of a mistrial, especially if the accused is or becomes publicly well known – I appreciated this.

• A downside can be that judge-alone trials in closed courts, especially with the accused person's details suppressed on court listings, can occur with absolutely no awareness in the public/media/political spheres (unless you have an annoying witness who makes a noise about it themselves!) – Workshop participant.

Specialist training would be an essential component of any such juryless model – for judicial officers, as well as any lay assessors, prosecution, and defence counsel. Recent reports highlight the dangers of a judge-alone CSA trial that did not appear to be conducted in a trauma-informed fashion, and where it appears misconceptions such as 'sexual abuse cannot occur with others near the location' were relied on to the victim-survivor's detriment.[52]

Submission: The Commission should recommend a pilot juryless specialist sexual violence court, following further research and evaluation as to the appropriate model for the Australian context.

Specialist approaches

There is a well-established need for specialist training

Many research reports and the Royal Commission have recommended that all judiciary, prosecutors, public defenders, legal aid and private Bar engage in regular training and education programs, including in understanding CSA and current social science research.[53] The Specialist Report notes:

> The literature shows that a lack of specialisation in justice system stakeholders is a fundamental systemic barrier that deters reporting of sexual violence and engagement with

[52] Lucy Rutherford, 'Teacher cleared of sex abuse', *The Advertiser* (29 April 2024).

[53] Royal Commission, recommendation 67; the Specialist Report surveys global literature on this issue.

> the criminal justice process. Where victim-survivors do report and engage, a lack of specialisation can lead to dissatisfaction and attrition.
>
> Accordingly, specialist training is the critical foundation upon which to build a better justice system response to victim-survivors, reduce risks of re-traumatisation, and dismantle systemic barriers. Specialist training has direct influences (for example, on judicial decision-making and management of trials, defence counsel cross-examination style), as well as indirect influences, by underpinning the success of other measures discussed in this section (for example, provision of information to victim-survivors).[54]

Consistently with the Royal Commission, the Specialist Report considers ongoing specialist training is necessary for all stakeholders in the justice system, particularly defence counsel:

> … the literature overwhelmingly indicates that victim-survivors' fear of what is not uncommonly 'brutal' cross-examination acts as a significant barrier and 'stops a lot of people coming forward'. It is a 'key issue' in re-traumatisation and a 'key factor' in the high attrition rate after a complaint is made. Specialist trauma-informed training can address this by equipping defence counsel with the expertise to properly test a complainant's evidence in a manner that reduces the risk of re-traumatisation. Indeed, several Australian state and territory reports have recommended ongoing specialist training for all stakeholders in the criminal justice system, to provide a deep and nuanced understanding of sexual violence, its impacts, and the impacts of court proceedings.[55]

As one speaker at the National Centre *In Conversation* webinar noted:

> *So the biggest thing I would say is that taking a trauma informed approach doesn't mean you are a soft pushover. But if you understand the way that trauma functions in the brain and you understand what it means to take a trauma informed approach, you will actually get better evidence, you will get better testimony. You will get better recall. You will get better leads to be able to follow out of that taking a trauma informed approach. [This,] I think, needs to be understood as actually getting better evidence. And if you don't care about people, but you care about evidence, then it's still the thing that you should do. It's a crappy motivation, but it's still the thing you should do, because you'll get better evidence. – Webinar speaker.*

Content and format of specialist training

As discussed above, such training should be trauma-informed, including knowledge of trauma impacts on behavioural and memory responses, neurobiology, the specific experiences and needs of CSA victim-survivors, age and developmental impacts, as well as cultural safety, diversity and the intersecting needs of marginalised 'overrepresented' communities. The training should be developed with expert input on evidence-based best practice principles, and ongoing on a 'refresher' basis.

The training should not just consist of written materials to be passively read by participants; there is a sound pedagogical evidence base linking active strategies (such as role plays, group work, debates) with more effective learning – material not processed through the decision making functions of the mind is less likely to be recalled after an extended period of time.[56] The process of active learning involves 'building mental models of whatever is being learned, *consciously and*

[54] Specialist Report 220.

[55] Ibid 221-222.

[56] Ben Graffam, 'Active learning in medical education: Strategies for beginning implementation' (2007) 29(1) *Medical Teacher* 38, 40.

deliberately testing those models to determine whether they work, and then repairing those models that appear to be faulty'.[57]

A good example of the latter training in this space is the successful 'Advocacy and the Vulnerable Training' in the UK, which splits the modules into three sections covering ground rules hearings and questioning: (i) a pre-training online course, (ii) a face-to-face component where participants, as a group, discuss principles surrounding questioning, peer review drafted questions, and undertake an informal advocacy exercise to *put the principles into practice*, and (iii) post-training learning.[58]

Specialist training across the professional life span

Further, to encourage a broad focus on trauma-informed practice by legal professionals across their professional life span, we maintain that suitable training should be embedded in undergraduate law programs (and/or postgraduate pre-practice courses). Accordingly, we support the introduction of such training as a new prescribed area of knowledge, as recommended in Queensland.[59] As one participant in the workshop stated:

> *We do need to go back a step, I think, within law school well, and even high school, for that matter. There needs to be a lot more understanding around these important issues. And I think most definitely in law school. You know, we don't get taught about trauma-informed practice … And it is true. You know, we will say we aren't social workers. But part of our role as a lawyer is almost a pseudo social worker, because we're often at times the first person that someone is disclosing. I've seen a lot of lawyers completely incapable of dealing with that themselves. I think what we do need is more support within the legal system. – Webinar speaker.*

Specialist training to address vicarious trauma

The literature also suggests a need for measures to assist the judiciary to address vicarious trauma and compassion fatigue. Judicial officers are increasingly speaking out about the 'ridiculous, absurd and offensive' caseloads they are required to carry; the judicial officer that presided over the well-known Lazarus judge-alone sexual assault trial, for example, told the Sydney Morning Herald:

> I fear for the wellbeing of many of my colleagues on this bench who have far less experience, are much younger and perhaps aren't quite the bastard that I am.[60]

The Specialist Report notes that:

> Wellbeing issues are mentioned in state reports as a 'challenge' of stand-alone specialist courts, a potential factor in recruiting personnel, and a supporting reason to train all judicial officers who sit in crime so that rotation can be facilitated. The issue is clearly significant: the Southport specialist DFV court initially scheduled judges on a two-year rotation but this has been reduced to six months. Australian initiatives recognise the need for clear policy and programs on this issue; it is mentioned in the jurisdictional literature in the sexual offences domain (South Africa, Aotearoa New Zealand).[61]

---

[57] Michael JA and Modell HI, *Active Learning in Secondary and College Science Classrooms: a Working Model of Helping the Learning to Learn* (Erlbaum, 2003) (emphasis added), as cited in Joel Michael, 'Where's the evidence that active learning works?' (2006) 30 *Adv Physiol Educ* 159, 160.

[58] UK Law Society, *Advocacy and the Vulnerable Training* (Website, 2024).

[59] WSJT Report recommendation 66.

[60] Angus Thompson, ''I fear for my colleagues': Judge warns NSW judiciary workload could have tragic consequences' (5 October 2018).

[61] Ibid 223.

We therefore support specialist supervision for judicial officers to combat vicarious trauma, burnout and compassion fatigue.

Specialist training must include police as well as legal personnel

As previously discussed, we maintain specialist training should extend across the justice system including police personnel. At the workshops, participants and victim-survivors raised the following issues:

> *When I walked in that first time going into the police station … I automatically went into my 11 year old self. I was terrified. ... There was no understanding of me, how they were going to get me to talk. I couldn't articulate, because my little 11 year old brain was in fear … even though I was 48 at the time my persona quickly went back to that vulnerable stage. So really understanding how trauma does impact on us [is necessary]. That's part of our trauma process, our nervous system and our vagus system, so instead of spiralling up I spiralled down – so if they're informed, and understand those things they can better support us because it's about getting us to feel safe that we can talk and they can actually proceed forward. [But in my experience, after a taped telephone conversation, the police] said 'alright, thanks for that, off you go', and I … went back to living on the streets; I was shattered because I had just spoken to one of the mongrels that had interrupted my life. And there was a suicide attempt that night. Trauma-informed is such a critical component, probably the most important component when we look at how we're going to start this and get the process to work best. If we're not starting from trauma-informed, then we're doing everyone a major disservice. – Workshop participant.*
>
> *Training and CPD [for lawyers] … as a lawyer we don't get any CPD on cultural awareness training, cultural safety, diversity, working with vulnerable communities. None of that happens, you have to seek that out independently. It's not a mandatory type of CPD that we have. Usually we are the first person that is at the disclosure stage. So the person on that end needs to have the ability to … speak to the person respectfully and not condescendingly or not black and white because they're a lawyer and robotic. I do think we need much more training at that profession level. – Workshop participant.*
>
> *I'm investigating trauma-informed training for the judiciary. I just wanted to flag that … in Australia our expectation of what is trauma-informed is on the floor. There are multiple textbooks that are out there, there are multiple countries teaching trauma-informed lawyering, Dr Caroline Bruce heads up the trauma-informed training in Scotland – Scotland is literally passing a Bill that embeds trauma-informed practice complete with definitions and practice guidelines and a framework in e-modules for leaders, and Harvard is doing it as well. … Trauma-informed training isn't just about the four Fs (fight, flight, freeze and fawn) or choosing a comfy spot to have an interview with a client, it's about letting them speak, and share their story in batches. It's the intersection of memory, learning, narrative impacted by trauma, nervous system including the parasympathetic and sympathetic responses, body language, somatic responses, survival responses with the limbic brain. It is psychology and law and we do not learn it in law school … [or] College of Law … it should be mandatory and it should be in every single university in Australia.*
>
> *I wholeheartedly support the idea of a specialist sexual offence court as well as intense training for those who work in that space. This training would ideally be trauma and culturally informed by VS co-designers. It may help to have VS speak at trainings, Q&A's even, so that they are seen as humans, not statistics.*

Specialist courts

The Specialist Report amply demonstrates the necessity of specialist courts or lists, to consolidate and maximise the benefits of specialist training. We note that a 'list' model could, potentially, secure these benefits with the additional advantages of reducing the risk of postcode injustice, and lower

implementation costs. However, specialist lists could still effectively facilitate procedural and other changes, scheduling, and prioritisation of sexual offence cases to reduce delays.[62]

Submission: The Commission should recommend that the States and Territories fund, develop and implement a range of specialist training packages and resources for police, legal professionals, the judiciary, and justice system stakeholders such as court staff, which is co-designed with victim-survivors, First Nations peoples, service and legal system stakeholders. The specialist training should address vicarious trauma, and be regularly internationally benchmarked and evaluated.[63]

Such specialist training should be a mandatory and ongoing requirement for all justice system stakeholders, as well as a curriculum component in the undergraduate law programs at all Australian universities or part of the postgraduate practical legal training requirement for graduate law students.

The Commission should recommend the establishment of specialist lists to consolidate and maximise the benefits of specialist training.

Sentencing

Currently Australia's State and Territory sentencing laws are very inconsistent (maximum penalties, reductions for guilty pleas, considerations to be taken into account, mandatory sentencing, different types of penalties). This problem is not evident at Commonwealth level as all crimes are charged under the one legislation. However, many victim survivors report being re-traumatised by the sentencing process.

Victim impact statements

One way to empower victim-survivors at sentencing is to engage with the victim impact statement (VIS) process. VIS are an important mechanism for victims and survivors to communicate to the court the far-reaching impacts of the abuse and the gravity of harms caused by offending that can be used in determining sentences for Commonwealth Offences.

The Royal Commission recommended that State and Territory governments in consultation with Directors of Public Prosecution improve the information given to victims and survivors regarding victim impact statements, their role in the sentencing process and preparing for making one, including the type of content that might result in objections to the statement or parts of it.[64]

The National Centre is focused on amplifying the voices of victims and survivors of child sexual abuse, and has commissioned research specifically examining the use of VIS in the Family Law Court in cases involving child sexual abuse. Although the research is still in progress, emerging insights highlight how important VIS are to ensuring victim/survivor voices are heard throughout the judicial sentencing process. We highlighted this research in recent submissions to the *Statutory review of sentencing for Commonwealth child sex offences*.[65]

Consistently with the Royal Commission recommendation, the National Centre considers it is vital that victims and survivors are assisted in preparing VIS. They need to understand the purpose of the statements so they can make informed decisions about their participation in this process, and to

[62] Specialist Report 53.

[63] See Economist Impact, *Out of the Shadows: Index 2022* (Report, 2022).

[64] Royal Commission recommendation 77.

[65] National Centre, *Submissions: Statutory review of sentencing for Commonwealth child sex offences* (2024) (National Centre Sentencing Submissions) 6.

prepare VIS that are permissible in light of the conviction, be given adequate time to develop their VIS statement (that is trauma-informed), and provided with psychological support throughout the process. Such support and trauma-informed practices must also be afforded to other relevant persons (e.g., non-offending family members) when providing a statement.[66] When this approach is coupled with the training recommended above, the system will become safer and less harmful for victim-survivors.[67]

The National Centre sees a role here for victim advocates and intermediaries to provide victim-survivors with assistance in preparing victim impact statements, and drawing out further information on impacts in all aspects of life, not just mental health.

Submission: The Commission should recommend that State and Territory governments in consultation with Directors of Public Prosecution improve the information given to victims and survivors regarding VIS, their role in the sentencing process and preparing for making one, including the type of content that might result in objections to the statement or parts of it.

The Commission should also recommend that the intermediary and victim advocate role encompass relevant explanation, advice, assistance and support to victim-survivors that choose to engage with the VIS process.

Use of standing in commission of an offence

In the National Centre's submissions to the *Statutory review of sentencing for Commonwealth child sex offences*[68] we supported an amendment to introduce an aggravating factor in sentencing, where an offender used their standing in the community to assist commission of an offence.[69] This is consistent with the growing evidence base about the nature of grooming, particularly perpetrators who rely on their reputation and thus power to evade detection or punishment for lengthy periods.[70] It is also consistent with the Royal Commission's recommendations. We support consistent, nation-wide legislation on this issue, as well as removal of good character evidence (see below).

Submission: The Commission should recommend the States and Territories work together towards consistent implementation of an amendment in sentencing legislation to introduce an aggravating factor in sentencing where an offender used their standing in the community to assist commission of an offence.

Character evidence

Generally a court is permitted to take a defendant's 'character' into account in sentencing. The National Centre echoes previous calls and new campaigns[71] to exclude 'good character'—in its entirety—as a mitigating factor in sentencing for child sex offences, even if the outwardly good

[66] For example, at Commonwealth level, if the court grants leave to do so in keeping with Part IB Division 16AAAA of the *Crimes Act 1914* (Cth).

[67] National Centre Sentencing Submissions 6.

[68] Ibid 4.

[69] Ibid.

[70] See for example: SJ Nicol, J Ogilvie, MR Kebbell, DA Harris and A Phelan, 'Dodging justice: Characteristics of men with multiple victims who evade detection for long periods' (2022) *Journal of Sexual Aggression*.

[71] YourReferenceAin'tRelevant: Lottie Twyford, 'Mates Harrison James and Jarad Grice are on a mission to scrap good-character references for convicted paedophiles', *ABC News* (3 Nov 2023).

character was not explicitly used to facilitate the sex offence.[72] We note that this position on character evidence has met with some resistance from the ACT Bar Association,[73] but we also note that in New South Wales a review is underway on the issue and the Attorney General has referred the matter to the Standing Council of Attorneys General.[74]

The introduction of such evidence denies justice to CSA victim-survivors, minimises the harm caused to them, and is irrelevant to the sentencing penalty for child sex offences. The Royal Commission and extensive other evidence clearly shows that children are sexually abused by trusted adults and adults with good standing in the community such as teachers, priests, sports coaches, community leaders etc. We understand that prior criminal history is relevant to consider, even though it is an imperfect measure of actual criminal activity, but any inclusion of character references should be precluded, and legislation amended accordingly. If this is not possible then we urge amendments to allow those providing character references to be cross-examined in the sentencing process rather than their references being accepted on face value. The National Centre considers this to be critical for achieving appropriate sentencing outcomes given the nature of how children come to be sexually abused by adults.[75]

Submission: The Commission should recommend that State and Territory governments work toward a consistent legislative approach, with a view to the exclusion of good character evidence for child sexual offences.

Mandatory sentencing

The National Centre's sentencing submissions noted that the introduction of mandatory minimum sentencing at Commonwealth level may have unintended and harmful impacts on victims and survivors. Before the amendments, alleged perpetrators could enter an early guilty plea to receive penalty discounts and more lenient outcomes, including non-custodial sentences as deemed appropriate. This is advantageous from the perspective of some victim-survivors as they are saved the distress and trauma of a trial.

With mandatory minimum sentencing, a defendant's early guilty plea no longer provides penalty discounts which has the perverse consequence in some cases of the accused proceeding to trial to challenge the evidence to avoid the risk of lengthier custodial sentences. We are concerned by this and the impact it will have on the mental health and wellbeing of those victims and survivors who would prefer to avoid trial, and in particular children and young people.[76] We note that such provisions have already been appealed this year up to the High Court.[77]

Submission: The Commission should recommend that the Commonwealth review and evaluate the operation of mandatory minimum sentencing, with a view to removing this requirement, and work with the State and Territory governments toward a consistent legislative approach.

[72] National Centre Sentencing Submissions 7.

[73] Charlotte Gore, 'ACT Bar Association rejects proposal to scrap good-character references in sentencing convicted child sexual abusers' (6 Feb 2024).

[74] Harrison James, LinkedIn post (18 May 2024).

[75] National Centre Sentencing Submissions 7.

[76] Ibid 4.

[77] *Hurt v R; Delzotto v R* [2024] HCA 8.

Judicial discretion

The National Centre supports strong and proportionate sentencing penalties for child sex offences, and we also support and respect discretion in judicial decision-making, particularly as no two child sex offence cases are the same. However, we have some concerns in this regard. For example, amendments at Commonwealth level widen the reach of severe punishment which potentially has impacts for (1) young offenders (under 18 years) who have not fully matured and developed, (2) young adults in otherwise age-appropriate, lawful, and consensual relationships, and (3) marginalised population groups. We note that the *Criminal Code Act 1995* (Cth) makes an effort to protect alleged perpetrators under 18 years by legislating the need for consent to commence proceedings against juveniles for certain offences and by stipulating that other offences only apply if the alleged perpetrator was over 18 at the time of offending and therefore an adult. The need for consent to commence proceedings could be broadened in its application.[78]

Submission: The Commission should recommend that the Commonwealth work with the State and Territory governments toward a consistent legislative approach to judicial discretion in sentencing, reviewing the scope of discretion for unintended adverse outcomes for children, young people and marginalised population groups, and potentially broadening the need for consent to commence proceedings.

Alternative pathways

Civil actions

The Royal Commission recommended that State and Territory governments remove any limitation period for compensation claims related to child sexual abuse.[79] However, where victim-survivors of CSA sue an institution in the tort of negligence, a defendant in response may argue that the action is an abuse of process and seek a permanent stay of proceedings. The defendant ran such an argument in *GLJ v Trustees of the Roman Catholic Church for the Diocese of Lismore*.[80] In this case, the abuse was said to arise by way of the effects of effluxion of time: the claim was commenced 52 years after the sexual assault, and the perpetrator and other critical witnesses had died; these were presented as 'exceptional' circumstances making the trial necessarily unfair.

The *GLJ* dispute was appealed up to the High Court, where a 3:2 decision of the High Court favoured the appellant and a permanent stay was refused. The majority stated that permanent stays are an option of 'last resort', and that only an 'exceptional' case would justify its use.[81] Such a decision supports the Royal Commission's view, and acknowledges the common delay in disclosure of CSA, which should not be interpreted as a victim-survivor sleeping on their rights.

However, we note there is significant uncertainty following this case; consequently, the *Limitation and Civil Liability Amendment (Permanent Stays) Bill 2024* (NSW) was recently introduced in the New South Wales Parliament to provide greater certainty for victim-survivors. As was noted in the second reaching speeches:[82]

> The ruling pertains to the specific circumstances of GLJ and it is still an open question as to how factually different cases may be interpreted, so uncertainty and risk is not eliminated for survivors. Doubt also remains because the High Court was split 3-2, one of the majority has

[78] National Centre Sentencing Submissions 4.

[79] Royal Commission recommendation 85.

[80] [2023] HCA 32.

[81] Ibid [3], [18].

[82] See New South Wales, *Parliamentary Debates,* Legislative Council, 15 May 2024 (Jeremy Buckingham).

> now retired, and the full bench of seven justices was not empanelled for this important case. The decision may be affirmed, altered or even overturned in years to come. This is why it is critical that we enshrine the lessons of GLJ into New South Wales statute law. We need to finish the job started by the Royal Commission into Institutional Responses to Child Sexual Abuse and clear the obstacles to justice for sexual abuse survivors.

Such legislation would not breach the Kable principle (that legislation cannot direct judges to certain outcomes) because, while the Bill 'directs what circumstances do not count as "exceptional circumstances" warranting a permanent stay, it does not preclude a judge from forming the opinion that a permanent stay is necessary, given the totality of the case.'[83] The Bill inserts an object clause to the *Limitation Act 1969* (NSW); section 6A limits the ability for a defendant to argue for a permanent stay simply because of the passage of time. As such, the 'fading of memories and loss of evidence—whether from death, illness, infirmity or the loss and destruction of documents—should not of themselves be viewed as "exceptional circumstances" and therefore grounds for a permanent stay'.[84]

Submission: The Commission should recommend that State and Territory governments work towards a consistent position legislatively embedding the *GLJ* decision along the lines of the New South Wales model.

Restorative justice

The Specialist Report notes that several Australian jurisdictions are considering expanding alternatives to the criminal justice system, including restorative justice options. The recent Senate Legal and Constitutional Affairs References Committee Report on *Current and proposed sexual consent laws in Australia* also heard evidence on the issue from a wide range of stakeholders. The option of a restorative justice program was supported by many stakeholders including the Law Council of Australia and ANROWS, although others, while agreeing, maintained that it was equally important that the criminal justice system be fixed. Most importantly, witnesses emphasised that it would be essential for each victim-survivor to choose for themselves whether or not to utilise a restorative justice option.[85] The Committee stated that:[86]

> 5.46 The committee supports alternative approaches to the traditional criminal court process, provided these are effective alternatives with clear outcomes and the process respects the agency of victim-survivors as detailed in Recommendation 1.
>
> 5.47 The committee heard that one such alternative could be restorative justice options. The committee understands that this may be a controversial suggestion; however, the committee accepts that it could offer some victim-survivors the redress and justice that they are seeking. The choice of whether to utilise restorative justice must be that of the victim-survivor. It is also essential that the implementation and use of restorative justice mechanisms does not come at the expense of genuine reform of the criminal justice system.
>
> 5.48 Consistent with its views on having an evidence-base for reform, the committee considers that the Commonwealth government should investigate the impact of restorative justice approaches to sexual offences, both nationally and internationally.

[83] Ibid.

[84] Ibid.

[85] Senate Legal and Constitutional Affairs References Committee, *Current and proposed sexual consent laws in Australia* (Report, September 2023) [3.32]-[3.41] (Senate Sexual Consent Laws Report).

[86] Ibid [5.46]-[5.48], recommendation 9.

The Committee therefore recommended that State and Territory governments consider establishing a restorative justice pilot program 'to explore more sensitive and trauma-informed approaches to sexual violence in the criminal justice system'.[87]

At the National Centre *In Conversation* webinar, speakers and participants indicated strong support for the flexibility and accessibility of a restorative justice program that meets victim-survivors' justice needs:

> *Often, you know, when they've experienced harm [victim survivors have] justice needs and interests … so [in restorative justice programs] this might be a need to tell their story in their own words, in their own way to be listened to. It might be that they have a need to be validated and acknowledged like, yes, we believe you. Yes, this happened. It might be that they're seeking some form of accountability that's actually different to punishment. … There might be a tangible action to show that someone is taking responsibility, but it might not be that they want their family member imprisoned. It might be that they want to ask a person who has hurt them a question about why, or something. That kind of is on a loop in their brain, and they need the answer to that question. But … the criminal justice system isn't interested in answering that question, so it never gets answered through that process. Or it might be that they have a need, particularly when it's within a family they have a need to negotiate. Okay, who comes to the family Christmas, or what happens when we meet each other in the supermarket. – Webinar speaker.*

> *… from a personal experience, you know, as someone who did counselling for years and years with victim survivors, and then has moved into you know, facilitating potentially a 2 to 3 hour [restorative justice] conversation with the leader of an institution that's responsible for the harm and they are able to tell their story. They're able to receive a really personalised, meaningful, genuine apology. They're able to contribute to cultural change within that institution. … And I'm like that is efficient. That's actually cost effective … and I just felt I was like, 'oh, more has happened in that 2 hour conversation than I could have done in 2 years of counsel[ling]' – Webinar speaker.*

One First Nations webinar speaker noted that they 'most definitely' favoured:

> *… alternative approaches. And I guess you know, from our perspective, that would be community driven approaches to violence, prevention and ways that can potentially engage perpetrators, and whether that is in alternative programs outside of the criminal justice system and looking at the effects of what that could have for the broader community leads to a kind of transformative process. I think you know it gets down to self determination again. I know, we've heard this quite often. And yeah, just having that culturally grounded approach to justice. – Webinar speaker.*

At the National Centre workshops, participants and victim-survivors conveyed mixed views on restorative justice, similarly to the witnesses before the Senate Committee:

> *It's about the victim-survivor having the choice. … But what that means then is that there must be much better education for people about what the options are. There needs to be proper funding for alternative models, for those kind of restorative models. – Workshop participant.*

> *There are multiple different types of perpetrator and multiple different reasons why restorative justice is good for multiple different cultures. It's not just about thinking about a seedy old man preying on little kids, it's also about young women and young men and young queer people who somehow find themselves in the justice system and end up being re-traumatised when they've already been victims. – Workshop participant.*

[87] Ibid recommendation 9.

I am reasonably familiar with restorative justice processes and despite that I am concerned that it is not sufficiently child focussed as it relates to CSA child victims and in its failure to protect the community from further offending. – Workshop participant.

It clearly has a place (and I understand is preferred) in Indigenous communities where collective processing is a norm and in acting to alter trajectories of younger offenders but I cannot see it as being a reasonable alternative to criminal prosecution for serious CSA. I don't see how a child can be an informed and equal participant in a RJ process. – Workshop participant.

It is reliant on voluntary participation and while it has healing capacity for adults, I do not want us to give up on reforming criminal law and processes because it appears so difficult to gain justice for victim survivors in the current system. We have to continue all efforts to adjust and reform our legal system to reflect the expectations we have of it to both provide justice and minimise harm. – Workshop participant.

For some survivors, traditional court proceedings may not be the best route to justice. The formal and confrontational nature of courtrooms can be more damaging than healing. Unfortunately, alternative justice pathways, such as restorative justice, are not widely available or recognised in Australia. This limits the options for survivors seeking a sense of closure and justice outside of the traditional legal framework. … Victim advocates can help explore and facilitate alternative justice pathways. … Advocates can work with legal professionals and community organisations to develop and promote these alternatives, ensuring they are accessible and tailored to the needs of CSA survivors. – Workshop participant.

Submission: The Commission should recommend that the State and Territory governments work together with victim-survivors, First Nations peoples and stakeholders, to fund, develop and implement restorative justice programs, to be available for victim-survivors as an alternative to the criminal justice system.
Information on such programs should be included in the informative aids and resources discussed earlier, and all intermediaries and victim advocates should be well acquainted with the restorative justice models and processes, and requirements for eligibility.

Other issues

Consent laws

The Issues Paper states that it is predominantly directed to procedural issues, and that the Commission will consider legislative amendments later in the Inquiry process. At this stage, the National Centre wishes to state its support for the harmonisation of Australia's consent laws. Harmonisation was a key finding in the *Stakeholder Consultation Report for the National Plan,*[88] and service system stakeholders considered:

> *It would make a huge change to the service system because they'd be operating more similarly rather than with the differences, which really impact women who move between states. We should be heading for a national definition. … [E]very jurisdiction has a different legal system, different approach to this. So it has to be implemented and translated on the ground in different jurisdictions.*[89]

[88] Kate Fitz-Gibbon et al, *National Plan Stakeholder Consultation: Final Report* (Report, 2022) key finding 2.2, 12, 101.
[89] Ibid 100.

The Senate Committee also recently recommended harmonisation:

> [That] the Australian Law Reform Commission includes an affirmative consent standard in any proposal to harmonise Australia's sexual consent laws and taking into account the evidence of the operation of recently adopted affirmative consent laws.[90]

We look forward to the Commission's future proposals on the issue of consent and will make further submissions in due course.

Inconsistent legislated age of 'child'

The National Centre advocates strongly for adopting a consistent definition of 'child' throughout Australia's criminal legislation on child sexual offences; we made submissions to this effect regarding inconsistencies in Commonwealth legislation to the Sentencing Review.

For example, there are inconsistencies in the *Criminal Code Act 1995* (Cth). For sexual activity and grooming, a child victim is deemed to be under 16 years however this is increased to 18 years in cases involving defendants in positions of trust or authority. International evidence shows that older adolescents who are marginalised (e.g., experiencing financial and housing insecurity, substance dependency, trauma backgrounds, disability, diverse sexual identities etc) may be vulnerable to abuse and exploitation where they may exchange international (or local) sexual activity for much needed commodities. All young people under 18 years require legal protections from sexual exploitation. In contrast, for child abuse material offences and possession of child sex dolls, a child is defined as someone under 18 years. We believe these inconsistencies create confusion about who is considered a 'child' when it comes to child sex offences, and creates potential loopholes enabling offending. The question arises as to why, for example, child abuse material depicting, or a child sex doll representing, a 16- or 17-year-old is a crime, but sexual activity with those of the same age is lawful.[91]

We note that the Commonwealth's definition of 'child' as it relates to child abuse material offences is older than State and Territory jurisdictions (under 18 years versus under 16 years). National harmonisation of definitions relating to children and child sexual abuse are an important area of future law reform.

With thanks for your consideration,

The National Centre Team including the following victim and survivor and First Nations advocates:

Amanda Morgan
Hanina Rind
Wanda Matthews
Paul Klotz
Robbie Gambley
Malika Elizabeth
Craig Mahoney

[90] Senate Sexual Consent Laws Report recommendation 4 [5.29] vii, 103.

[91] National Centre Sentencing Submissions 5.