

Review of Victoria's committal system

Submission to the Victorian Law
Reform Commission

15 August 2019

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our mission is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

Our service was established in 2013 to assist people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

knowmore was established by and operates as a program of the National Association of Community Legal Centres (NACLC), with funding from the Australian Government, represented by the Attorney-General's Department. knowmore also receives some funding from the Financial Counselling Foundation.

From 1 July 2018, NACLC has been funded to operate knowmore to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane and Perth. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 June 2019, knowmore has received 18,420 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 4,509 clients. A quarter (25%) of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Just over a fifth (22%) of clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Victoria

knowmore has a significant client base in Victoria — 20 per cent of our current clients reside in the state. We therefore have a strong interest in reforms in Victoria that will help to reduce the stress and trauma experienced by victims and survivors of child sexual abuse as a result of participating in criminal proceedings.

knowmore's submission

This section outlines knowmore's approach to the submission, and details our comments in three key areas relevant to the Victorian Law Reform Commission's (VLRC's) review of the committal system.

In addressing matters raised in the VLRC's issues paper, knowmore has reflected on both the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and its own work with survivors of child sexual abuse.

knowmore's approach to the submission

There are four key issues identified by the VLRC that are most relevant to knowmore's clients — pre-trial delay, guilty pleas, pre-trial witness examination, and charging practices and the decision to prosecute. This reflects three significant sources of stress and trauma for victims and survivors of child sexual abuse as a result of participating in criminal proceedings:

- The length of time taken for matters to be resolved and the experience of delays.
- Giving evidence, especially the experience of being cross-examined or needing to give evidence on multiple occasions.
- Having prosecutions discontinued or charges against the accused downgraded, especially in circumstances where victims feel excluded from the decision-making process.

Reforms in all of these areas would help to achieve the underlying objective of reducing trauma experienced by victims and witnesses, as set out in the Terms of Reference for the review. knowmore is therefore supportive of options for reform in committal and pre-trial proceedings that may help in:

- Reducing delays and promoting the timely resolution of matters, particularly by securing appropriate early guilty pleas.
- Reducing the stress and trauma of giving evidence for victims and witnesses.
- Ensuring that charges are appropriate and victims are consulted about any subsequent decisions to withdraw or downgrade them.

Each of these issues is discussed in more detail below.

Reducing delays and promoting the timely resolution of matters, particularly by securing appropriate early guilty pleas

Key questions

17. Are there other pre-trial procedures that could equally or more effectively ensure:
 - a. appropriate early resolution of cases
 - b. efficient use of court time
 - c. parties are adequately prepared for trial?
18. How should concerns that committal proceedings contribute to inappropriate delay be addressed?
19. How should concerns that other pre-trial processes contribute to inappropriate delay be addressed?

Much of the stress experienced by victims and survivors of child sexual abuse during criminal proceedings stems from the often lengthy nature of the process and the experience of delays that heighten uncertainty and anxiety. This has been highlighted by many of knowmore’s clients,¹ and was well illustrated in stories heard by the Royal Commission:

*...the uncertainty arising from delays, which the complainant has little control over, may exacerbate the stress of participating in the criminal trial process. We have been told that survivors are often left in a heightened state of arousal during the police and prosecution process, and that the wait can be more distressing for victims than knowing the outcome, even if the outcome is not what they were hoping for.*²

Further:

*Delays in the court system can have a negative impact on a victim’s recovery from crimes... Delays can have a ‘rollercoaster effect’ on complainants: they prepare, under significant stress, for a hearing, only to have the trial adjourned, and they then have to prepare again for the new date. The criminal justice process may also be counter to the counselling the complainant is receiving, which may involve putting the abuse behind them, while preparing for a trial requires the complainant to remember the abuse in great detail.*³

In this context, a late guilty plea, especially a plea on the day of the trial, can be a particularly distressing event for victims. As the Royal Commission observed, a late guilty plea can contribute to “profound emotional suffering” for a victim, representing months or years of unnecessary stress and uncertainty.⁴

It is clear from this that there can be significant benefits for victims when criminal proceedings are finalised more quickly, and securing an appropriate early guilty plea is a key way of achieving this. We note, however, the barriers to appropriate early guilty pleas and the timely resolution of matters identified by the New South Wales Law Reform Commission in 2014, as outlined in the VLRC’s issues paper and previously reflected on by the Royal Commission.⁵ To the extent that these same barriers are found in Victoria, knowmore supports the implementation of measures recommended by the Royal Commission that may help to overcome them. These include:

- Consultation between police and prosecutors to ensure that appropriate charges are laid as early as possible (Recommendations 10 and 39; see further discussion on pages 7 and 8).
- The early allocation of prosecutors and defence counsel (Recommendation 72, part a).
- Effective case management processes (Recommendation 72, part d).
- The pre-recording of complainants’ evidence (Recommendations 52 to 54; see further discussion on pages 6 and 7).

We note that these measures were generally well supported by Victorian stakeholders in submissions to the Royal Commission’s Criminal Justice Consultation Paper,⁶ and all of the relevant recommendations

1 knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Consultation Paper — Criminal Justice*, 2016.

2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Parts VII–X and Appendices*, 2017, p. 210.

3 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 207.

4 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 246.

5 See paragraph 5.69 of the issues paper, and section 32 of the Royal Commission’s Criminal Justice Report.

6 For example, the then Victorian Director of Public Prosecutions supported further investigation of the now-implemented reforms in New South Wales, and Victoria Legal Aid and the previous Victorian Victims of Crime Commissioner both supported an alternative system of case management. These submissions are available at <www.childabuseroyalcommission.gov.au/document-library>.

have since been accepted or accepted in principle by the Victorian Government (see Table A.1 in the Appendix).

Reducing the stress and trauma of giving evidence for victims and witnesses

Key questions

11. Are there any additional classes of victims or witnesses who should not be cross-examined pre-trial? If so, who?
12. What additional measures could be introduced to reduce trauma for victims or other vulnerable witnesses when giving evidence or being cross-examined at a committal or other pre-trial hearing?

Giving evidence in court is an especially difficult experience for many victims. In particular, being cross-examined was described by some survivors at the Royal Commission as “re-traumatising and offensive” and “as bad as the child sexual abuse they suffered”.⁷ Many of knowmore’s clients have likewise reported difficulties in persisting with their complaint due to the stress and trauma of being examined in court.

As knowmore submitted to the Royal Commission, a key way of addressing this is to embed a trauma-informed approach to working with survivors at every level of the criminal justice system.⁸ In this regard, knowmore acknowledges existing measures available to victims of child sexual abuse in Victoria that are designed to reduce the stress and trauma involved in giving evidence in court. These include:

- Provisions that prevent complainants in child sexual abuse cases from being cross-examined in pre-trial proceedings if they were under the age of 18 or had a cognitive impairment at the start of the criminal proceeding.⁹
- Provisions to allow all witnesses in child sexual abuse cases who are under the age of 18 or who have a cognitive impairment to have a recording of their police interview played at trial instead of giving evidence-in-chief.¹⁰
- The use of ‘special hearings’ to record all of the evidence (including cross-examination and re-examination) of complainants in child sexual abuse cases who were under the age of 18 or had a cognitive impairment at the start of the criminal proceeding. Special hearings may be held before or during the trial.¹¹
- The use of intermediaries and ground rules hearings to help complainants in child sexual abuse cases who are under the age of 18 or who have a cognitive impairment to give evidence.¹²

While these are important protective measures, they are generally not available to adult survivors of child sexual abuse. This is a significant shortcoming given that:

- A considerable proportion of complainants in child sexual abuse cases are adults. This reflects the fact that many survivors take years, even decades, to disclose their abuse.¹³ The Royal Commission found

7 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 5.

8 knowmore, *Submission to the Royal Commission: Consultation Paper — Criminal Justice*, p. 6.

9 Sections 123 and 198A, *Criminal Procedure Act 2009*.

10 Section 367, *Criminal Procedure Act*.

11 Section 370, *Criminal Procedure Act*.

12 Part 8.2A, *Criminal Procedure Act*; County Court of Victoria, *Multi-Jurisdictional Court Guide for the Intermediary Pilot Program: Intermediaries and Ground Rules Hearings*, 2018, Section 11.1.

13 The Royal Commission reported that survivors who participated in private sessions took, on average, 23.9 years to disclose the abuse to someone (*Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, 2017, p. 9).

that almost a quarter of reported cases of child sexual abuse in Victoria between 2010 and 2014 involved a victim who was aged 20 years or older when the abuse was reported to police.¹⁴

- Many adult survivors of child sexual abuse are vulnerable. As the Royal Commission stated: *It is clear to us, including from what we have heard in public hearings and private sessions, that many survivors of institutional child sexual abuse who are now adults and do not have disability are ‘vulnerable’, particularly when they are describing their experiences of abuse and particularly in the very unfamiliar and stressful environment of a court.*¹⁵

knowmore submits that, at a minimum, existing special measures should be made available to all complainants in child sexual abuse cases. This is consistent with the approach taken in the ACT, where the full range of special measures is available to all complainants in sexual offence proceedings,¹⁶ and in Queensland, South Australia and the Northern Territory, where all complainants in sexual offence proceedings are considered “special” or “vulnerable” witnesses to whom various special measures are available.¹⁷ It is also consistent with the Royal Commission’s findings and key recommendations regarding the use of intermediaries, ground rules hearings and pre-recorded evidence (similar to Victoria’s pre-trial special hearings), all of which have been accepted or accepted in principle by the Victorian Government (see Table A.1 in the Appendix).

In line with these recommendations from the Royal Commission, knowmore further submits that these measures should be extended to other witnesses in child sexual abuse cases. Specifically:

- Victoria’s intermediary scheme and ground rules hearings should eventually be extended to any prosecution witness with a communication difficulty (see Recommendation 59), pending positive outcomes from the Intermediary Pilot Program (due to conclude on 30 June 2020) and as resourcing allows.¹⁸
- Special hearings should be made available to any other witness who is a child or vulnerable adult, and any other prosecution witness as necessary (see Recommendation 53).¹⁹

Finally, knowmore submits that in implementing part b of Recommendation 52, Victoria’s provisions regarding special hearings should be amended to require that, unless otherwise requested by the complainant,²⁰ the court must order that a special hearing be held before the trial (and as soon as

14 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017, Table 7.2.

15 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 91.

16 Section 43, Table 43.4, *Evidence (Miscellaneous Provisions) Act 1991*.

17 Part 2, Division 4, *Evidence Act 1977* (Qld); section 13A, *Evidence Act 1929* (SA); Part 3, *Evidence Act 1939* (NT). In all three jurisdictions, the special measures available to complainants are similar to the measures available to all witnesses in sexual offence proceedings in Victoria under section 360 of the Criminal Procedure Act. However, the provisions in these other jurisdictions go further, including in allowing all complainants to record their evidence and have it played back in the court [s. 21A(2)(e), *Evidence Act* (Qld); s. 13A(2)(b), *Evidence Act* (SA); s. 21B(2), *Evidence Act* (NT)].

18 In recognition of the costs of intermediary schemes, including the costs of meeting extra demands on court time and resources, the Royal Commission stated that “states and territories should work to make intermediary schemes available as quickly as possible but recognising that they may need to be expanded incrementally over time — potentially by area and by eligibility — as resources allow” (*Criminal Justice Report: Executive Summary and Parts I–II*, p. 82).

19 The Royal Commission gave several examples in support of extending pre-recording to other witnesses as per Recommendation 53, including where relatives of the complainant are also witnesses (*Criminal Justice Report: Parts VII–X and Appendices*, pp. 90–91).

20 Or other witness eligible for a special hearing.

practicable after the matter is committed for trial).²¹ The Royal Commission heard key benefits of recording evidence before the trial included that:

- Witnesses are given more certainty about when they are going to give their evidence, avoiding what is a key source of stress for them.
- Witnesses are able to give their evidence sooner, removing this as an obstacle to their recovery.
- Pre-recording may reduce delays and increase the likelihood of appropriate early guilty pleas (see the further discussion of these issues on page 4).^{22, 23}

The final evaluation of the New South Wales Child Sexual Offence Evidence Pilot, of which pre-recording was a key component, has recently provided further evidence of these benefits.²⁴

These outcomes highlight the desirability of complainants pre-recording their evidence over giving their evidence in special hearings held during the trial. knowmore nevertheless considers it appropriate for victims and survivors of child sexual abuse to continue to have the option to give evidence at a special hearing during the trial, or to give evidence live in court, if they choose to do so.²⁵

Ensuring that charges are appropriate and victims are consulted about any subsequent decisions to withdraw or downgrade them

Key questions

2. What, if any, measures should be introduced to:
 - a. reduce the difference between charges that are initially filed and those ultimately prosecuted?
 - b. ensure appropriate charges are filed at the earliest possible stage in a case?
3. Should the OPP be involved in determining appropriate indictable charges at an earlier stage? If so, how?

The Royal Commission noted that withdrawing and downgrading charges and accepting pleas of guilty to lesser charges are among the most significant decisions that prosecutors can make for victims of child

21 We note concerns raised by Victoria Legal Aid during the Royal Commission that special hearings are not normally held until just before the jury is empaneled, which can sometimes lead to late resolutions and discontinuances (*Child Sexual Abuse and Criminal Justice: Response to Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Criminal Justice*, 2016, p. 6). knowmore's view is that pre-trial special hearings should be held as soon as practicable after the accused is committed to stand trial to obtain the maximum benefits of pre-recording.

22 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*.

23 The Royal Commission also heard about potential drawbacks of pre-recording, including the risk that a witness might need to be recalled at a later stage of proceedings. Nevertheless, it was "satisfied that pre-recording the entirety of a witness's evidence is likely to have clear benefits for both the witness and the parties in a prosecution" (Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 88).

24 J Cashmore and R Shackel, *Evaluation of the Child Sexual Offence Evidence Pilot: Final Outcome Evaluation Report*, Social Policy Research Centre, University of New South Wales, Sydney, 2018.

25 See section 370(2), Criminal Procedure Act. As the Royal Commission noted, "...some survivors have told us of the satisfaction and pride they have taken in their ability to confront their abuser in court, face to face. We consider that victims and survivors should always have the option to give evidence live in court if they wish to do so." (*Criminal Justice Report: Parts VII–X and Appendices*, p. 91)

sexual abuse.²⁶ As the issues paper highlights, these decisions can all cause victims great distress, especially if “they feel that the charges... do not reflect the worst abuse or the extent of the abuse they suffered”.²⁷

In knowmore’s experience, these decisions are particularly difficult for victims when they do not understand the prosecutor’s decision or feel as though they have not been properly consulted about it:

We have raised before concerns expressed by our clients about prosecutorial decisions to discontinue or ‘downgrade’ charges, and the importance of effective consultation with survivors impacted by those decisions... Many survivors have told us that they have experienced difficulty in understanding the process and reasons for such prosecutorial decisions, in that they were simply unable to understand — particularly in a situation that was very stressful for them — the information being provided to them by prosecution staff and the reasons for the decision. Some have spoken of feeling that they had no ‘voice’ to raise their concerns, or that they simply did not know what questions to ask as they could not understand the legal issues...²⁸

These problems underscore the importance of:

- Appropriate charges being laid at an early stage, to minimise the likelihood that they are later withdrawn or downgraded.
- Victims being meaningfully informed and consulted about any proposal to withdraw or downgrade charges or accept a negotiated plea.

Charging decisions

To help ensure that early charging decisions are appropriate, knowmore strongly supports the implementation of Recommendations 10 and 39 from the Royal Commission’s Criminal Justice Report, which outline a set of principles to guide police and prosecutors in this area (see Table A.1 in the Appendix). Together, these principles emphasise how important it is to complainants for the correct charges to be laid as early as possible, and recommend that police seek, and prosecutors provide, early advice on charges. We note that both recommendations have been accepted by the Victorian Government, and that the VLRC’s current review is relevant to their implementation.²⁹

In terms of putting these principles into practice, knowmore notes the charge certification process recently implemented in New South Wales, as outlined in the issues paper.³⁰ Pending an assessment of the practical outcomes of this new process, knowmore submits that this may be a useful mechanism for ensuring that appropriate charges are laid at an early stage.

Victim consultation

With regards to consultation with victims, we note that prosecutors in Victoria are required to:

- Inform victims of any decision to substantially modify charges, withdraw charges, or accept a plea of guilty to a lesser charge.³¹
- Consult with victims before discontinuing prosecutions or accepting negotiated pleas.³²

26 Royal Commission, *Criminal Justice Report: Parts III–VI*, 2017, p. 273.

27 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 322.

28 knowmore, *Submission to the Royal Commission: Consultation Paper — Criminal Justice*, p. 29.

29 The Victorian Government has highlighted the VLRC’s review and its terms of reference in discussing the Royal Commission’s recommendations regarding prosecution decision-making and communication with victims (*Victorian Government Annual Report 2018: Royal Commission into Institutional Responses to Child Sexual Abuse*, Melbourne, 2019, p. 20).

30 Paragraphs 4.4 and 5.26.

31 Section 9(c), *Victims’ Charter Act 2006*.

32 Director of Public Prosecutions Victoria, *Policy of the Director of Public Prosecutions for Victoria*, 27 March 2019, paragraphs 26 and 31.

Despite these requirements existing in Victoria and other jurisdictions for some time, the Royal Commission found that proper consultation with victims of child sexual abuse was not always occurring:

*...it is clear from evidence we have heard in public hearings and accounts we have been given in private sessions that victims do not always consider that appropriate consultation occurred. Some survivors have told us they found the consultation process difficult to understand or that it had been too rushed. Others felt that they were pressured to accept pleas recommended by the prosecution.*³³

This is consistent with the experiences of many knowmore clients, as noted earlier.

Given these deficiencies, knowmore welcomes recent initiatives in Victoria to improve communication between prosecutors and victims and allow for greater victim participation in key prosecution decisions.³⁴ These initiatives include:

- Implementing a Discontinuance Review Framework, which gives victims an additional opportunity to have their say before a final decision is made to discontinue a prosecution.³⁵
- Amending the Victims' Charter to require the Director of Public Prosecutions to seek victims' views before deciding to substantially modify charges, discontinue a prosecution, or accept a plea of guilty to a lesser charge (to commence by 4 November 2019).³⁶
- Amending the Victims' Charter to require the Director of Public Prosecutions to give victims reasons for the above decisions, either orally or in writing (to commence by 4 November 2019).³⁷

knowmore also welcomes new accountability mechanisms that will help to ensure that meaningful consultation with victims actually occurs, particularly a new complaints oversight role for the Victims of Crime Commissioner (also to commence by 4 November 2019).³⁸

On the issue of accountability, knowmore submits that section 35A of the New South Wales *Crimes (Sentencing Procedure) Act 1999* provides another option for consideration. Under section 35A, any statement of agreed facts settled between the prosecution and the defence as part of charge negotiations cannot be taken into account by the court unless the prosecution has filed a certificate verifying that the victim (and the investigating police officer) has been consulted. As suggested by the Royal Commission, a similar procedure could be adopted in Victoria to ensure prosecutors meet their consultation obligations.³⁹ We note that the previous Victorian Victims of Crime Commissioner was supportive of such an approach in his submission to the Royal Commission, and had previously endorsed the New South Wales model in a submission to the VLRC.⁴⁰

33 Royal Commission, *Criminal Justice Report: Parts III–VI*, pp. 346–347.

34 Victorian Government, *Victorian Government Annual Report 2018: Royal Commission*, p. 20.

35 Director of Public Prosecutions Victoria, *Discontinuance Review Framework*, 2019, paragraph 8.

36 New section 9B, Victims' Charter Act, as per section 9, *Victims and Other Legislation Amendment Act 2018*.

37 New section 9C, Victims' Charter Act, as per section 9, *Victims and Other Legislation Amendment Act*.

38 New Division 3A, *Victims of Crime Commissioner Act 2015*, as per section 20, *Victims and Other Legislation Amendment Act*.

39 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 350.

40 Victorian Victims of Crime Commissioner, *Submission on Criminal Justice Consultation Paper*, 2016, pp. 9–10.

Conclusion

The VLRC's review is important for knowmore's clients, and we are supportive of any reforms to Victoria's pre-trial procedures that will reduce the trauma experienced by victims and survivors of child sexual abuse in criminal proceedings.

In knowmore's view, any reforms recommended by the VLRC should incorporate the implementation of key recommendations from the Royal Commission as highlighted in this submission. Ensuring that all adult survivors of child sexual abuse have access to the protections currently provided to child complainants when giving evidence is especially important.

We have also highlighted some initiatives in New South Wales that may help to inform charging and prosecution decisions, particularly to ensure that appropriate charges are laid early on in a case. In doing so, we note the Royal Commission's caution that what works in one jurisdiction may not work in others. Other stakeholders will be better placed to speak to the value of these initiatives and their possible application in Victoria.

Finally, we acknowledge that resources are finite, and that the comprehensive implementation of some of the measures discussed here (the use of intermediaries, for example) may not be immediately possible. Nevertheless, we encourage Victoria to continue to demonstrate leadership in pursuing reforms to ultimately improve the experience of the criminal justice system for all victims and survivors of child sexual abuse.

Appendix: Key recommendations from the Royal Commission’s Criminal Justice Report

Table A.1: Key recommendations from the Royal Commission’s Criminal Justice Report and the Victorian Government’s response

	Recommendation	Victorian Government response
Principles for police	<p><i>Recommendation 10</i></p> <p>Each Australian government should ensure that its policing agency makes decisions in relation to whether to lay charges for child sexual abuse offences in accordance with the following principles:</p> <ul style="list-style-type: none"> a. Recognising that it is important to complainants that the correct charges be laid as early as possible so that charges are not significantly downgraded at or close to trial, police should ensure that care is taken, and that early prosecution advice is sought, where appropriate, in laying charges <p>...</p>	Accepted
	<p><i>Recommendation 39</i></p> <p>All Australian Directors of Public Prosecutions should ensure that prosecution charging and plea decisions in prosecutions for child sexual abuse offences are guided by the following principles:</p> <ul style="list-style-type: none"> a. Prosecutors should recognise the importance to complainants of the correct charges being laid as early as possible so that charges are not significantly downgraded or withdrawn at or close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought. b. Regardless of whether such advice has been sought, prosecutors should confirm the appropriateness of the charges as early as possible once they are allocated the prosecution to ensure that the correct charges have been laid and to minimise the risk that charges will have to be downgraded or withdrawn closer to the trial date. c. While recognising the benefit of securing guilty pleas, prosecution agencies should also recognise that it is important to complainants – and to the criminal justice system – that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse they suffered. <p><i>[continued on next page]</i></p>	Accepted

Recommendation

Victorian Government response

- d. Prosecutors must endeavour to ensure that they allow adequate time to consult the complainant and the police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance from relevant witness assistance officers or other advocacy and support services before they give their opinion on the proposal. If the complainant is a child, prosecutors must endeavour to ensure that they give the child the opportunity to consult their carer or parents unless the child does not wish to do so.

Measures to promote the timely resolution of matters

Recommendation 72

Each state and territory government should work with its courts, prosecution, legal aid and policing agencies to ensure that delays are reduced and kept to a minimum in prosecutions for child sexual abuse offences, including through measures to encourage:

- a. the early allocation of prosecutors and defence counsel
- b. the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions
- c. appropriate early guilty pleas
- d. case management and the determination of preliminary issues before trial.

Accepted in principle

Intermediaries

Recommendation 59

State and territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution...

Accepted in principle

Ground rules hearings

Recommendation 60

State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a prerecorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.

Accepted

Recommendation	Victorian Government response
<p><i>Recommendation 52</i></p> <p>State and territory governments should ensure that the necessary legislative provisions and physical resources are in place to allow for the prerecording of the entirety of a witness’s evidence in child sexual abuse prosecutions. This should include both:</p> <ol style="list-style-type: none"> in summary and indictable matters, the use of a prerecorded investigative interview as some or all of the witness’s evidence in chief in matters tried on indictment, the availability of pre-trial hearings to record all of a witness’s evidence, including cross-examination and re-examination, so that the evidence is taken in the absence of the jury and the witness need not participate in the trial itself. 	Accepted in principle
<p><i>Recommendation 53</i></p> <p>Full prerecording should be made available for:</p> <ol style="list-style-type: none"> all complainants in child sexual abuse prosecutions any other witnesses who are children or vulnerable adults any other prosecution witness that the prosecution considers necessary. 	Accepted in principle
<p><i>Recommendation 54</i></p> <p>Where the prerecording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.</p>	Accepted in principle

Pre-recorded evidence

Source: Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017; Victorian Government, *Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2018.

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NACLC acknowledges the traditional owners of the lands across
Australia upon which we live and work. We pay deep respect to
Elders past and present.