

Criminal justice system issues related to the sexual abuse of children with disability

Submission to the Royal Commission
into Violence, Abuse, Neglect and
Exploitation of People with Disability

27 March 2020

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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 Community Legal Centres Australia, 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, Community Legal Centres Australia 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 29 February 2020, knowmore has received 27,837 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 5,943 clients. Twenty-six per cent of knowmore's clients identify as Aboriginal and/or Torres Strait Islander peoples. Almost a quarter (23%) 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.

knowmore's submission

The sexual abuse of children with disability is a significant problem with significant implications for the criminal justice system. In this submission to the criminal justice system issues paper, knowmore has focused on identifying key issues it considers warrant further consideration by the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission).

To this end, this section:

- Provides a brief overview of the sexual abuse of children with disability, to give context to the key criminal justice system issues raised in the submission.
- Discusses the sexual abuse of children with disability within the criminal justice system itself, specifically within youth detention institutions. This includes an examination of the nature of the problem and key strategies for reducing the risk of sexual abuse of children with disability in youth detention institutions.
- Discusses how the criminal justice system responds to the sexual abuse of children with disability. This includes an examination of negative experiences victims and survivors with disability have had with the criminal justice system, particularly in terms of problematic police and prosecution responses. It also includes an overview of key reforms to improve criminal justice responses to the sexual abuse of children with disability and ensure people with disability are able to participate in criminal proceedings to the fullest possible extent.

In drafting its submission, knowmore has particularly drawn on the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), as well as its own work with victims and survivors of child sexual abuse with disability.

The sexual abuse of children with disability

Children with disability have a heightened risk of all forms of violence and maltreatment, including sexual abuse.¹ Research consistently suggests that children with disability are between three and four times more likely to be a victim of sexual abuse than children without disability.² This increased risk is reflected across different types of disability, including intellectual disability,³ physical disability⁴ and conduct disorders,⁵ and

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- 1 L Jones et al., 'Prevalence and risk of violence against children with disabilities: a systematic review and meta-analysis of observational studies', *The Lancet*, 2012, vol. 380, pp. 899–907; Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Volume 2, Nature and Cause*, 2017; HA Turner et al., 'Disability and victimization in a national sample of children and youth', *Child Maltreatment*, 2011, vol. 16, no. 4, pp. 275–286.
 - 2 L Jones et al.; G Llewellyn, S Wayland and G Hindmarsh, *Disability and Child Sexual Abuse in Institutional Contexts*, Royal Commission, Sydney, 2016; PM Sullivan and JF Knutson, 'Maltreatment and disabilities: a population-based epidemiological study', *Child Abuse & Neglect*, 2000, vol. 24, no. 10, pp. 1257–1273.
 - 3 G Byrne, 'Prevalence and psychological sequelae of sexual abuse among individuals with an intellectual disability: a review of the recent literature' [abstract only], *Journal of Intellectual Disabilities*, 2018, vol. 22, no. 3, pp. 294–310; S Euser et al., 'The prevalence of child sexual abuse in out-of-home care: increased risk for children with a mild intellectual disability' [abstract only], *Journal of Applied Research in Intellectual Disabilities*, 2016, vol. 29, no. 1, pp. 83–92.
 - 4 AI Aliksson-Schmidt, BS Armour and JK Thibadeau, 'Are adolescent girls with a physical disability at increased risk for sexual violence?', *Journal of School Health*, 2010, vol. 80, no. 7, pp. 361–367.
 - 5 MJ Maclean et al., 'Maltreatment risk among children with disabilities', *Pediatrics*, 2017, vol. 139, no. 4.

across different types of sexual abuse, including institutional sexual abuse⁶ and online exploitation.⁷ Concerningly, limitations in data collection and suspected underreporting mean that the true extent of sexual abuse perpetrated against children with disability is likely to be even higher than has been estimated.⁸

A number of factors have been identified as contributing to the increased risk of sexual abuse faced by children with disability. These factors are likely to interact in complex ways, and lead to children with certain types of disability being at greater risk of sexual abuse than others. Children with intellectual disability, communication impairments or behavioural disorders appear to be particularly vulnerable to sexual abuse,⁹ consistent with several of the following key risk factors:

- Some children with disability require intimate daily care, including help with personal hygiene and medical assistance. This increases opportunities for sexual abuse, especially in institutional settings and especially given that these activities usually happen in private.¹⁰
- Children with disability often lack knowledge about sexuality and may be less capable of recognising sexually abusive behaviours.¹¹ This can arise both as a consequence of frequent physical contact from carers affecting a child's perception of what is appropriate, and because mainstream education on sexuality either excludes children with disability or is not appropriately tailored to them.¹²
- Some children with disability, especially children with communication disorders, have a reduced capacity to disclose and describe their abuse.¹³
- In some children with disability, non-verbal or behavioural indicators of sexual abuse may be incorrectly attributed to the child's disability by adults who could otherwise help to guard against abuse.¹⁴
- Some children with disability, especially children with intellectual disability or cognitive impairment, may be less likely to be believed when they disclose sexual abuse.¹⁵
- Perpetrators may deliberately target children who are less able to disclose what has happened to them or who are less likely to be believed if they do disclose.¹⁶

6 S Euser et al.; G Llewellyn et al.

7 CL Normand and F Sallafranque-St-Louis, 'Cybervictimization of young people with an intellectual or developmental disability: risks specific to sexual solicitation', *Journal of Applied Research in Intellectual Disabilities*, 2015, vol. 29, no. 2, pp. 99–110; M Wells and KJ Mitchell, 'Patterns of internet use and risk of online victimization for youth with and without disabilities', 2013, <unh.edu/ccrc/pdf/CV245_Wells_Mitchell_2013_Patterns.pdf>.

8 Royal Commission, *Final Report: Volume 2*; K Stalker and K McArthur, 'Child abuse, child protection and disabled children: a review of recent research', 2010, <strathprints.strath.ac.uk/27452/1/strathprints027452.pdf>.

9 L Jones et al.; G Llewellyn et al.; MJ Maclean et al.; K Stalker and K McArthur; PM Sullivan and JF Knutson; IB Wissink et al., 'Sexual abuse involving children with an intellectual disability (ID): a narrative review', *Research in Developmental Disabilities*, 2015, vol. 36, pp. 20–35.

10 G Llewellyn et al.

11 CL Normand and F Sallafranque-St-Louis; S Robinson, *Feeling Safe, Being Safe: What is Important to Children and Young People with Disability and High Support Needs About Safety in Institutional Settings?*, Royal Commission, Sydney, 2016; Royal Commission, *Final Report: Volume 15, Contemporary Detention Environments*, 2017; IB Wissink et al.

12 Royal Commission, *Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, 2017.

13 J Breckenridge and G Flax, *Service and Support Needs of Specific Population Groups that Have Experienced Child Sexual Abuse*, Royal Commission, Sydney, 2016; S Robinson.

14 J Breckenridge and G Flax.

15 Royal Commission, *Final Report: Volume 2*.

16 G Llewellyn et al.

Together, these factors not only increase the risk of a child with disability being sexually abused, but they also increase the risk that the abuse will receive an inadequate response or go completely undetected.¹⁷ As a consequence, children with disability may be subjected to more severe and more frequent sexual abuse than children without disability.¹⁸ This can in turn magnify the negative impacts of sexual abuse for children with disability.

Clearly, the sexual abuse of children with disability is a significant problem that has significant implications for the criminal justice system. The next section focuses on the sexual abuse of children with disability within the criminal justice system itself (specifically, within youth detention institutions), before there is a detailed exploration of how the criminal justice system responds to the sexual abuse of children with disability generally.

The sexual abuse of children with disability in youth detention institutions

The nature of the problem

The Royal Commission identified youth detention as a relatively common setting for institutional child sexual abuse. Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention.¹⁹

Although the Royal Commission heard from relatively fewer survivors who had had been abused in contemporary youth detention institutions since 1990 (91 in total),²⁰ it emphasised that youth detention remains a high-risk setting for institutional child sexual abuse. The Royal Commission found that this was particularly true for children with disability, who accounted for 9 per cent of the survivors who spoke about their experiences of sexual abuse in contemporary youth detention institutions.²¹

The risk of children with disability being sexually abused in youth detention institutions reflects two ongoing problems:

- Children with disability are significantly over-represented in youth detention institutions.
- Factors that increase the risk of sexual abuse of children with disability generally are amplified in youth detention institutions.

Each of these points is discussed in more detail below.

Children with disability are significantly over-represented in youth detention institutions

Surveys across Australia consistently show high rates of disability — including intellectual disability, cognitive impairment, speech and language difficulties, brain injury, hearing loss and behavioural disorders — among children in contact with the youth justice system. For example:

- A 2018 survey of 174 young people detained on sentence and remand in youth detention centres in Victoria found that more than a third (38%) had cognitive difficulties that affected their daily functioning.²²

17 Royal Commission, *Final Report: Volume 15*.

18 N Soylu et al., 'Psychiatric disorders and characteristics of abuse in sexually abused children and adolescents with and without intellectual disabilities' [abstract only], *Research in Developmental Disabilities*, 2013, vol. 34, no. 12, pp. 4334–4342.

19 Royal Commission, *Final Report: Volume 2*.

20 The Royal Commission stated that this was “unsurprising”, given that survivors take 23.9 years on average to disclose childhood sexual abuse (*Final Report: Volume 15*, p. 26).

21 Royal Commission, *Final Report: Volume 15*.

22 Department of Justice and Community Safety (Victoria), *Youth Parole Board: Annual Report 2018–19*, Victorian Government, Melbourne, 2019.

- The 2016 Youth Justice Census in Queensland, which included young people detained in youth detention centres and under community supervision, found that more than a quarter had an assessed or suspected disability (12% and 16%, respectively).²³
- A 2015 survey of 227 young people across seven juvenile justice centres in New South Wales found that:
 - Almost one-fifth (17%) had an IQ that indicated a potential intellectual disability.
 - Half (49%) had severe difficulties with core language skills, and the majority (78%) had severe difficulties with reading comprehension.
 - More than half (59%) had an attention or behavioural disorder (for example, attention deficit/hyperactivity disorder or conduct disorder).²⁴

The level of over-representation is even more pronounced for certain groups of children with disability. In particular, research suggests that Aboriginal and Torres Strait Islander children have a higher rate of disability than other children in detention,²⁵ and that Aboriginal and Torres Strait Islander children with disability are more likely to be in youth detention than other children with disability.²⁶ Other risk factors, including being from a culturally and linguistically diverse background or experiencing socio-economic disadvantage, are also likely to intersect with disability to further increase the rate at which some children with disability are detained in youth detention institutions.

Factors that increase the risk of sexual abuse of children with disability generally are amplified in youth detention institutions

Consistent with the general discussion of risk factors on page 4, the Royal Commission found that children with disability, among other groups of children:

*were more likely to encounter circumstances that increased their risk of abuse in institutions, reduced their ability to disclose or report abuse and, if they did disclose or report, reduced their chances of receiving an adequate response.*²⁷

In youth detention institutions, key risk factors for children with disability can interact with key environmental risk factors to heighten the overall risk of sexual abuse. For example:

- The risk that comes from some children with disability being unable to recognise sexually abusive behaviours or to disclose and describe their abuse is exacerbated by the fact that youth detention institutions are closed environments, isolated from society and public scrutiny.²⁸
- The lack of privacy in youth detention institutions can be particularly pronounced for children whose disability means they require intimate daily care. The Royal Commission observed that:

*Frequent physical ‘handling’ can compromise children’s developing sense of bodily integrity and undermine their understanding of acceptable touch, increasing the risk of sexual abuse ‘under the guise of assistance for physical support needs’.*²⁹

23 Department of Justice and Attorney-General (Queensland), *Youth Justice Census March 2016*, cited in K McMillan QC and Professor M Davis, *Independent Review of Youth Detention*, Queensland Government, Brisbane, 2016.

24 Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, *2015 Young People in Custody Health Survey: Full Report*, Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, Sydney, 2017.

25 Justice Health & Forensic Mental Health Network and Juvenile Justice NSW.

26 E Baldry et al., *A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System*, University of New South Wales, Sydney, 2015.

27 Royal Commission, *Final Report: Volume 15*, p. 3.

28 Royal Commission, *Final Report: Volume 15*.

29 Royal Commission, *Final Report: Volume 15*, p. 44.

- Negative attitudes that can lead children with disability to be “treated as of lesser value” in youth detention institutions may further reduce the likelihood of them being believed when they disclose sexual abuse.³⁰
- Children with disability may be particularly likely to be targeted by perpetrators in youth detention institutions when they are isolated and segregated from other detainees.³¹ The use of restrictive practices, which has been raised as an issue of concern by the United Nations,³² is a particular risk factor in this regard.³³

Together, these factors mean that children with disability are at particular risk of sexual abuse in youth detention institutions.

Reducing the risk of sexual abuse of children with disability in youth detention institutions

The above discussion indicates there are two key approaches for reducing the risk of sexual abuse of children with disability in youth detention institutions:

- Reducing the over-representation of children with disability in youth detention institutions.
- Implementing the National Principles for Child Safe Organisations to make youth detention institutions safer for children with disability.

Reducing the over-representation of children with disability in youth detention institutions

In knowmore’s view, consideration must be given to strategies that can help to reduce the over-representation of children with disability in youth detention institutions. In this regard, knowmore highlights its recent support for:

- Raising the minimum age of criminal responsibility in all Australian states and territories to 14 years of age or, as an alternative, introducing a minimum age of detention of 14 years in all Australian states and territories.³⁴
- Legislative reforms in Queensland aimed at keeping young people out of detention wherever appropriate.³⁵ Key strategies include removing legislative barriers to enable more young people to be granted bail; ensuring that bail conditions for young people are appropriate, to reduce the likelihood of breaches; requiring police officers to consider alternatives to arrest for certain breaches of bail conditions; and reducing the time taken to finalise proceedings in the youth justice system.³⁶

knowmore supports these measures on the basis that they will help to reduce the number of children and young people in detention, and the amount of time that children and young people spend there. We consider these positive outcomes that would in turn help to reduce the risk, incidence and impacts of child sexual abuse in youth detention institutions, including for children with disability.

30 Royal Commission, *Final Report: Volume 15*, p. 50.

31 Royal Commission, *Final Report: Volume 15*.

32 United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN CRPD, Geneva, 2019.

33 Royal Commission, *Final Report: Volume 15*.

34 knowmore, *Submission to the Working Group of the Council of Attorneys-General on the review of the age of criminal responsibility*, 2020, <knowmore.org.au/wp-content/uploads/2020/03/knowmore-submission-Review-of-the-age-of-criminal-responsibility-1.pdf>.

35 knowmore, *Submission to the Legal Affairs and Community Safety Committee on the Youth Justice and Other Legislation Amendment Bill 2019*, 2019, <knowmore.org.au/wp-content/uploads/2019/07/Submission-on-the-Youth-Justice-and-Other-Legislation-Amendment-Bill-2019.pdf>.

36 *Youth Justice and Other Legislation Amendment Act 2019* (Qld).

Broader youth justice reforms — including, for example, early intervention and diversion initiatives stemming from the Royal Commission into the Protection and Detention of Children in the Northern Territory³⁷ — are also important to consider in this area.

Implementing the National Principles for Child Safe Organisations to make youth detention institutions safer for children with disability

A key series of recommendations made by the Royal Commission centred on the implementation of 10 Child Safe Standards for child-related institutions (see text box below). These were developed by the Royal Commission following a rigorous, evidence-based process that involved extensive consultations with experts and stakeholders, and were designed to ensure that institutions act in the best interests of children by creating institutional cultures that focus on child safety.³⁸

The Child Safe Standards are:

1. Child safety is embedded in institutional leadership, governance and culture
2. Children participate in decisions affecting them and are taken seriously
3. Families and communities are informed and involved
4. Equity is upheld and diverse needs are taken into account
5. People working with children are suitable and supported
6. Processes to respond to complaints of child sexual abuse are child focused
7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training
8. Physical and online environments minimise the opportunity for abuse to occur
9. Implementation of the Child Safe Standards is continuously reviewed and improved
10. Policies and procedures document how the institution is child safe

(Royal Commission Recommendation 6.5)

With respect to youth detention institutions specifically, the Royal Commission recommended that:

- State and territory governments introduce legislation to require all institutions that engage in children-related work, including youth detention institutions, to meet the Child Safe Standards (Recommendations 6.8 and 6.9; see Table A.1 in the appendix).
- All youth detention institutions implement the Child Safe Standards (Recommendation 15.1; see Table A.1 in the appendix).

knowmore notes that the Royal Commission's Child Safe Standards have been incorporated into the new National Principles for Child Safe Organisations (the National Principles), which were endorsed by all Australian governments in February 2019.³⁹ With this foundation in place, knowmore is eager to see all jurisdictions act on the Royal Commission's key recommendations in this area through the application of the National Principles.

37 Royal Commission into the Protection and Detention of Children in the Northern Territory, *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, 2017.

38 Royal Commission, *Final Report: Volume 6, Making Institutions Child Safe*, 2017.

39 Australian Human Rights Commission, *National Principles for Child Safe Organisations*, AHRC, Canberra, 2019, <childsafe.humanrights.gov.au/sites/default/files/2019-02/National_Principles_for_Child_Safe_Organisations2019.pdf>.

While implementing the Royal Commission's recommendations will help to make youth detention institutions safer for all children, they are especially important for children with disability. In giving effect to the Royal Commission's recommendations in youth detention institutions, there needs to be a particular focus on:

- Ensuring that children with disability are able to have their concerns heard and feel as though they are taken seriously, consistent with Child Safe Standard 2/National Principle 2. A key element of this includes providing accessible avenues for children with disability to raise their concerns, ensuring in particular that children with disability are given sufficient time and opportunities to communicate with staff and are given appropriate support and communication tools to facilitate their engagement.⁴⁰
- Ensuring that the diverse needs of children with disability are taken into account, consistent with Standard 4/Principle 4. Key elements of this include developing a better understanding of the prevalence and nature of disability among children in youth detention (for example, through improved diagnosis of disability and regular independent health surveys), and tailoring support, educational programs and prevention strategies to the needs of children with disability.⁴¹
- Ensuring that staff are equipped with the knowledge, skills and awareness to keep children with disability safe, consistent with Standard 7/Principle 7. Key elements of this include providing all staff with training about both a) the needs and experiences of children with disability, particularly highlighting the barriers these children may face in disclosing sexual abuse, and b) the nature and indicators of abuse in children with disability (note that Recommendation 15.6 from the Royal Commission is also relevant here; see Table A.1 in the appendix).⁴²

In knowmore's view, implementing the National Principles for Child Safe Organisations in youth detention institutions, consistent with the Royal Commission's key recommendations regarding Child Safe Standards, is an essential measure for reducing the risk of sexual abuse of children with disability in these settings.

Criminal justice system responses to the sexual abuse of children with disability

Whether child sexual abuse occurs in institutional or non-institutional settings, people with disability, especially children, face particular challenges in disclosing their abuse. Specifically:

- As noted above, people with disability may lack knowledge about sexuality and what constitutes sexual abuse, or be unable to disclose or describe their abuse in a way that is readily understood by the person to whom they disclose.
- People with disability may have a strong expectation that they will not be believed, given some persistent misconceptions in the community about people with disability (for example, that they lie or exaggerate, or that they are unable to give reliable accounts of their own experiences).⁴³
- People with disability (and their carers) may be concerned about having critical support services taken away from them if they report sexual abuse, particularly institutional sexual abuse.⁴⁴

All of these factors reduce the likelihood that the sexual abuse of children with disability will come to the attention of the criminal justice system, and people with disability may be particularly unlikely to report their own sexual abuse to police.

40 Royal Commission, *Final Report: Volume 6* and *Final Report: Volume 15*.

41 Royal Commission, *Final Report: Volume 6* and *Final Report: Volume 15*.

42 Royal Commission, *Final Report: Volume 6* and *Final Report: Volume 15*.

43 Royal Commission, *Final Report: Volume 4*.

44 J Breckenridge and G Flax.

The significant underreporting of the sexual abuse of children with disability makes it all the more important for the criminal justice system to respond effectively when such abuse is reported. Unfortunately, the Royal Commission found that while some victims and survivors with disability had positive experiences with the criminal justice system, most found the experience difficult and stressful and were left frustrated, disappointed or traumatised.

This section begins by describing in detail some negative experiences with the criminal justice system shared with the Royal Commission by victims and survivors with disability (and their relatives, in some cases), and highlighting some of the common barriers people with disability encounter. It then identifies key underlying problems in the criminal justice system that give rise to these barriers, before outlining a range of strategies for improving the criminal justice system's response to the sexual abuse of children with disability.

Negative experiences of victims and survivors with disability

A common theme in many of the negative experiences shared with the Royal Commission by victims and survivors with disability and their supporters was a struggle for people with disability to be heard and to obtain justice. This is illustrated below in the stories of:

- Judy Louise and her son Hugo, who has autism
- Clarice, who was born deaf
- Kathryn and her son Mitchell, who was diagnosed with autism spectrum disorder as a young child
- Samantha and her son Jordan, who has an intellectual disability.

The story of Judy Louise and her son Hugo, who has autism

Judy's eight-year-old son Hugo was attending a Victorian state school for children with disabilities when he was sexually abused by Craig, a teacher's aide, a couple of years ago...

Judy and Hugo's father decided to report the matter to police. She was contacted by an officer, Karen, from a specialised sexual offences and child abuse team. Karen advised Judy to bring Hugo in but not to talk to him about Craig on the way there. This was against the way Judy usually approached new situations with Hugo, but nonetheless she told him they were just going to speak with a lady.

When they arrived at the station Hugo appeared "overstimulated" and "hyperactive" because of his new surroundings. Karen introduced herself and they went through to an interview room. At first they just chatted with Hugo about some toy cars that were in the room. Karen was having difficulties understanding Hugo's speech, and it was up to Judy to explain what he was telling her.

Karen took Judy downstairs and asked her some questions about what Hugo had said about Craig. Hugo was left alone in the room, which concerned Judy as there was a window and equipment there, and she did not know what he might do if unsupervised.

Next, Karen interviewed Hugo on his own — he was not given the option of having a support person familiar with communicating with autistic children — while Judy waited in the foyer. This interview was "ten minutes at the most", and Karen then told her they should go outside to discuss it. They went and put Hugo in the car, and stood on the street talking about the interview, which Judy found strange.

Karen said that she hadn't been able to understand what Hugo told her, "and that if she had trouble understanding him then, if this went to court, the court would have trouble understanding Hugo too". When Judy asked what they might do from here, Karen enquired if there was another school Hugo could attend. Karen also stated that Hugo looked "happy enough" and didn't "seem like's he's

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traumatised”, and said he had indicated he liked Craig. She informed Judy that she would notify the school of the issue, but did not do this...

[A few weeks later] Judy contacted a disability support organisation and was assigned one of their advocates, Emma. Both she and Emma attempted to organise another police interview for Hugo, this time with an appropriate support person present. Karen was aggressive in her manner when dismissing this request, saying to Judy “I’ve told you there was nothing to investigate. How do I know you have not put words into Hugo’s head?” ...

Extract from Royal Commission, *Narratives: Judy Louise’s story*,
<www.childabuseroyalcommission.gov.au/narratives/judy-louises-story>. Real names of individuals have not

The story of Clarice, who was born deaf

“It’s like, why do I have to make the fight all the time? Why am I the one that keeps the ball rolling when it should never have even happened? It should not be like this.”

Clarice was born deaf and began attending a specialist school in the late 1980s. The school hired taxis to assist with transporting the deaf children. When Clarice was 10 years old her regular taxi driver was a man called Nick. Nick would collect Clarice and two other young students and transport them to school in the mornings, returning them to their homes in the afternoons.

Clarice was always the last one dropped off by Nick and it was then that he sexually abused her...

Clarice did not disclose the abuse at the time because she thought it was normal. It didn’t feel ‘right’ to her, but she thought she had no alternative but to trust the adult and climb into the taxi each day.

“I remember one particular afternoon I was being silly... I will never forget it because by then I could lip-read very well. I remember he said to me, ‘Stop what you are doing or I will f*** you’. I knew instantly that this was not right but I was so scared I immediately stopped being silly, sat quietly and looked out the window the whole time until I got home.”

The abuse continued for two years until Nick was assigned to transport different children.

“The abuse has had a huge impact on my life and my health. I have developed anxiety and emotional problems... I have had a lot of sick leave and stress days off, and also time off to go to psychology appointments. I do not feel calm or rested every day, and have not felt this peace since before the sexual abuse occurred, when I was 10 years old.”

When Clarice was 17 she clearly understood that children should not be touched as Nick had touched her. She disclosed her abuse to her teacher at the college she attended at that time. The teacher and the college ignored mandatory reporting laws. “All she did was left it up to me to decide whether or not I wanted to report it to the police and left it to me whether or not I told my parents.” Clarice felt isolated. She asked her teacher to help her approach the police.

Clarice found her interaction with the police distressing. “The police didn’t follow their protocols. They didn’t even provide me with a support person. I was under-age at the time. They used my teacher as an interpreter, which wasn’t practice. I mean there’s a conflict there in itself.”

No action was taken against the taxi driver who had abused Clarice. “They knew who he was at the time. They just said — this sentence still remains in my mind — they said to me, ‘It is your word against his’, and I was like, ‘I’m 17’. I was 17... That was verbatim what they said to me, and they said, ‘There’s nothing we can do about that. Move on.’”

Clarice only got updates when she asked her teacher to contact the police on her behalf. Clarice felt

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that because of her deafness the police put her complaint in the 'too hard' basket. "It's like they didn't care. Where's my justice in that because of that incident? The taxi driver is still walking around as a free man. So how will that help me move on and, you know, move forward with this?"

Clarice has recently begun a push to have the case re-investigated. "I feel like I just keep hitting barriers... I feel like the justice is just beyond the other side of the wall and I'm on the other side and I don't know how to break through that wall to get the justice."

"The reason that I wanted to go through the Royal Commission is to just stand up and say, 'Enough is enough', because I have a disability and there are future kids who will be born with disabilities... They need to be protected. Our story needs to be heard. And because of the police and the way they handled it, their behaviour, it just shows the system is not enough. It's not good. Where's our safety? Where's our trust and our faith? I want to change that."

Extract from Royal Commission, *Narratives: Clarice's story*,
<www.childabuseroyalcommission.gov.au/narratives/clarices-story>. Real names of individuals have not been used.

The story of Kathryn and her son Mitchell, who was diagnosed with autism spectrum disorder as a young child

Kathryn thought it was strange that Mitchell returned from his bike ride half an hour earlier than expected. Having been diagnosed with autism spectrum disorder as a young child, Mitchell required ongoing supervision. In the 2010s, Mitchell's parents organised for the then 16-year-old to spend one afternoon a week with a carer from their local disability support service.

"Everyone at the disability service in [regional New South Wales] told me that Mitchell really liked Harry, who would have been in his early 20s, so we agreed he could take Mitchell out for respite care. But when Harry came to pick him up, Mitchell had this look on his face of 'Oh no', and I could tell he didn't like him at all."

When Mitchell returned early from the bike ride with Harry, Kathryn said, he appeared distressed, and she later pressed Mitchell to find out why.

"Mitchell communicates very well by typing, and he disclosed that Harry had been sexually abusing him in the toilets at the disability service, and showing him pornographic videos involving young boys."

Mitchell wrote: "Harry said, 'Here Mitchell, get a load of this!' It was a video on his phone. Then he tried to have some fun by feeling me for a while. Dreadful decision, he felt my penis. I did not know what to do."

Kathryn believes Mitchell was 12 when Harry started sexually abusing him. She reported the abuse to police, and Harry was stood down from his job at the disability service.

A month later, Mitchell disclosed further sexual abuse at the hands of "men from church".

"Mitchell used text to communicate, and told me two ministers at our Christian fellowship church had been sexually molesting and raping him since he was 13. Our church was a large building and while we were running around, these two men had him in a room. They put a hood on his face, tied his hands with felt, and then attacked him during worship sessions while all these bands were playing. I tried those doors many times, but they were locked. I didn't even think Mitchell could have been in there."

Again, Kathryn said, police were notified but concluded prosecution would not be possible for either

continued >

case, as an assessment found Mitchell to be severely autistic.

“No action was taken against any of the men, the police have disempowered my son. He was violently assaulted and the Joint Investigation Response Team (JIRT) seemed to think, ‘Well he’s got a disability, no point doing anything, can’t get a conviction’, so they didn’t follow through the investigation.”

Kathryn feels JIRT’s approach to interviewing Mitchell weakened any hope of mounting a strong legal case.

“Mitchell’s non-verbal. He can type, he can comprehend, but he needs time to build trust with people and tell his story, so really needed multiple interviews. The police did one.”...

Mitchell attends school on a part-time basis, but still holds fear for the safety of his family following the abuse.

“Mitchell thinks one of the ministers will come and shoot us, because they threatened to kill us if Mitchell told. He tells me he feels defeated, he calls himself ‘Mr no-hope for justice’. He’s angry that he’s written a statement 60 pages long, and it’s come to nothing.”

Extract from Royal Commission, *Narratives: Kathryn’s story*,
<www.childabuseroyalcommission.gov.au/narratives/kathryns-story-0>. Real names of individuals have not been used.

The story of Samantha and her son Jordan, who has an intellectual disability

Samantha estimated that her son Jordan was abused by Owen Greenwood, the school bus driver, over a period of eight weeks in the 2010s.

She said Jordan’s behaviour changed over this time as he went from being a happy-go-lucky six-year-old to acting out aggressively. He’d complained of having a sore bottom and had been checked by his parents and taken to a doctor, but no one could find a reason for his discomfort.

With two younger children, Samantha and her husband were dependent on the bus to take Jordan, who had an intellectual disability, to the special needs class at his mainstream primary school. Greenwood drove the bus for two school terms. During this time Samantha said he sexually abused six of eight children in Jordan’s class, as well as a boy from another class.

Samantha told the Commissioner that Jordan was the youngest on the bus, and first on and last off. She said some mornings she’d make Greenwood a coffee. The children transported on the bus had a range of disabilities, and Jordan’s speech was limited.

One day, his teacher asked him what was troubling him... Taken aside, Jordan told teachers the bus driver was hurting him. School staff rang Samantha and then notified the police...

...Greenwood was taken in for questioning and over the next week, further incidents of sexual abuse came to be reported by parents of children on the bus.

Jordan was taken to the children’s hospital for medical examination and further questioning by staff of the Child Protection Unit. “Jordan was taken into a room with a psychologist and a two-way police mirror which I felt — I just didn’t want to leave him with a stranger”, Samantha said. “He had already been through something so traumatic, to do that again to him was difficult for us and that went for over an hour or so. Then he was subjected to a medical examination which I don’t have any information on — that was all kept with the Child Protection Unit.”

continued >

Some months later, Samantha was told by Director of Public Prosecutions (DPP) staff that they wouldn't be pursuing charges against Greenwood in relation to Jordan. "Unfortunately for us, because my son was not verbal enough and wasn't seen as a credible witness, the charges relating to him were dropped and same with another little boy, and so that's when I wrote a letter to the DPP to have a senior person look at the case."

She said charges regarding five other children were dropped for the same reason, and Greenwood was eventually acquitted of all charges...

Samantha told the Commissioner that she may never know the full extent of her son's abuse, and she wasn't hopeful of seeing justice in his case. She recommended changes to laws and the system and processes for everyone reporting child sexual abuse, particularly those with a disability...

Extract from Royal Commission, *Narratives: Samantha's story*, <www.childabuseroyalcommission.gov.au/narratives/samanthas-story>. Real names of individuals have not been used.

The above stories particularly highlight three common problems in the responses of police and prosecutors to the sexual abuse of children with disability, as identified by the Royal Commission.

- Police are often dismissive of reports of sexual abuse of children with disability. In relation to their (or their carer's) initial attempts to report abuse to police, many survivors and their advocates spoke to the Royal Commission about police not believing their accounts, refusing to take a report, discouraging them from pursuing the matter or failing to follow-up their initial contact.⁴⁵
- Police frequently fail to ensure that people with disability have adequate and appropriate communication supports, both when making the initial report and in their early engagements with police. For example, the Royal Commission was told that some other deaf survivors, like Clarice, were interviewed without an AUSLAN interpreter,⁴⁶ while survivors with other disabilities did not have these accommodated for in a way that would have given them the best opportunity to tell their story to police.⁴⁷ In some cases, survivors were also interviewed without a support person present.⁴⁸
- There is often an unwillingness among police and prosecutors to pursue criminal charges in cases involving a victim with a disability. As illustrated in the stories of Kathryn and Mitchell and Samantha and Jordan, this is often based on an assumption that the victim does not have the capacity to give evidence or would not be seen as a credible witness in court, even if police or prosecutors believe the victim's account or if a third party is able to provide evidence supporting the allegations.⁴⁹

45 People with Disability Australia, *Royal Commission into Institutional Responses to Child Sexual Abuse: Submission Regarding Criminal Justice*, PwDA, Sydney, 2016; Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017 and *Final Report: Volume 5*. See also the stories of Archie James, Edward John, Kat, Maura and Nadine (Royal Commission, *Narratives*, <www.childabuseroyalcommission.gov.au/narratives>).

46 Royal Commission, *Narratives: Finlay John's story*, <www.childabuseroyalcommission.gov.au/narratives/finlay-johns-story>.

47 See, for example, the stories of Carly, and Summer and Pete (Royal Commission, *Narratives*, <www.childabuseroyalcommission.gov.au/narratives>).

48 See, for example, the story of Summer and Pete (Royal Commission, *Narratives*, <www.childabuseroyalcommission.gov.au/narratives>).

49 People with Disability Australia; Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*, *Criminal Justice Report: Parts III–VI*, 2017 and *Final Report: Volume 5*. See also the stories of Davida, Gina, Marina, Lianna and Sondra (Royal Commission, *Narratives*, <www.childabuseroyalcommission.gov.au/narratives>).

Although many of the accounts shared at the Royal Commission reflected past practices of the criminal justice system, the recency of some victims' experiences, including those of Mitchell and Hugo, indicate that these problems continue to persist to some degree.

Police and prosecution responses characterised by the above problems can not only have significant adverse impacts for individual victims and survivors, including increasing their vulnerability to further abuse,⁵⁰ but can also lead to a culture where perpetrators may offend against children with disability with virtual impunity.⁵¹ Consistent with this, studies have shown that the sexual abuse of children with disability is significantly under-represented in the criminal justice system, with such abuse less likely to be investigated and less likely to result in convictions.⁵²

Underlying problems in the criminal justice system

The findings of the Royal Commission, and other research, indicate that there are three key factors underlying the above problems.

- A lack of awareness and understanding of disability in the criminal justice system, and a lack of knowledge about how to respond to people with disability. This has previously been raised as a significant concern by People with Disability Australia, particularly with regard to police. On this point, it has been noted that there is a lack of expertise among police officers in interviewing people with disability, even in specialist investigative units.⁵³
- A lack of appropriate practical supports to help people with disability communicate and participate in criminal justice processes. For example, concerns have been raised about the inadequate availability of interpreting services, communication aids designed to support disclosure that do not necessarily support disclosure for all children with disability (for example, children who are non-verbal), and a lack of alternative avenues for people with disability to give evidence (both to police and in court).⁵⁴
- Problematic assumptions about people with disability, their capacity to give evidence and how they will be perceived in court. As indicated above, sexual abuse against children with disability is often not prosecuted because of beliefs that the victim will not be understood by a jury, will not withstand cross-examination and generally will not be regarded as a credible witness. While some research suggests that these assumptions may not be completely unfounded, it has also challenged the validity of these assumptions and highlighted the important role the criminal justice system can play in overcoming them.⁵⁵

Clearly, these factors overlap with each other. It is therefore important for all three factors to be addressed in order to improve how the criminal justice responds to the sexual abuse of children with disability.

50 Royal Commission, *Final Report: Volume 5*.

51 People with Disability Australia.

52 Balogh et al., cited in Wissink et al.; Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, 2017.

53 People with Disability Australia; N Westera, E Darwinkel and M Powell, *A Systematic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse*, Royal Commission, Sydney, 2016.

54 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices* and *Final Report: Volume 4*.

55 DA Brown and CN Lewis, 'Competence is in the eye of the beholder: perceptions of intellectually disabled child witnesses', *International Journal of Disability, Development and Education*, 2013, vol. 60, no. 1, pp. 3–17; A Harridge, 'Adolescent victims with an intellectual disability: perceived credibility in cases of sexual abuse', doctoral thesis [Doctor of Psychology (Forensic)], 2011, Deakin University, <dro.deakin.edu.au/eserv/DU:30041760/harridge-adolescentvictims-2011A.pdf>; L Henry et al., 'Perceived credibility and eyewitness testimony of children with intellectual disabilities', *Journal of Intellectual Disability Research*, 2011, vol. 55, no. 4, pp. 385–391.

Improving criminal justice responses to the sexual abuse of children with disability

In knowmore's view, a key way of improving criminal justice responses to the sexual abuse of children generally is to embed a trauma-informed approach to working with victims and survivors at every level of the criminal justice system. As knowmore stated in submissions to the Royal Commission:

*knowmore's primary recommendation is that police and prosecution agencies adopt trauma-informed practices in dealing with survivors of childhood institutional sexual abuse. The adoption of trauma-informed practices will be of benefit to both survivors and to police and prosecution agencies. It will improve the response to survivors of childhood sexual offences by maximising their wellbeing during a complex and stressful process of interacting with police and prosecution agencies. It will also enhance the ability of the criminal justice system to make offenders accountable for their criminal conduct.*⁵⁶

A trauma-informed approach is particularly important for victims and survivors with a disability, given the specific challenges they face when engaging with the criminal justice system.

Consistent with this view, the Royal Commission made a number of recommendations to increase the accessibility of the criminal justice system for victims and survivors with disability and to improve their experiences in criminal proceedings. These recommendations, as outlined below, relate to three key areas:

- Improving awareness and understanding of disability among participants in the criminal justice system
- Considering the needs of people with disability in police and prosecution responses
- Supporting people with disability to give their best evidence.

Some of the Royal Commission's recommendations include reforms specifically aimed at improving responses for people with disability, while others are aimed at improving responses for victims and survivors generally. Regardless, they are all likely to help address the problems identified above and to lead to more positive experiences with the criminal justice system for people with disability who have experienced childhood sexual abuse. For this reason, knowmore considers that the implementation of these recommendations should be a priority for all jurisdictions.

A number of other potentially useful reforms were also identified during the Royal Commission, but were not formalised as recommendations. knowmore nevertheless supports their consideration in seeking to help victims and survivors with disability obtain justice, and they are also discussed below.

Improving awareness and understanding of disability among participants in the criminal justice system

Improving awareness and understanding of disability among participants within the criminal justice system was not a specific recommendation of the Royal Commission. It is, however, consistent with the Royal Commission's recommended standards for child safe institutions, particularly *Standard 7: Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training* (see Table A.1 in the appendix). In knowmore's view, this is as applicable to the criminal justice system in responding to allegations of child sexual abuse as it is to institutions in preventing child sexual abuse, and should be a key foundation of the criminal justice system's response to the sexual abuse of children with disability.

Improving awareness and understanding within the criminal justice system is also commonly recommended within the broader research literature on the sexual abuse of children with disability. Harridge, for example, highlighted the importance of widespread education about the sexual abuse of vulnerable people, including those with disability, "to dissipate the perpetuation of 'myths' and to encourage and support... the passage of their allegations through the criminal justice system".⁵⁷ Other

⁵⁶ knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Consultation Paper — Criminal Justice*, 2016, p. 7, <knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf>.

⁵⁷ A Harridge, pp. 179–180.

authors have similarly emphasised the need for targeted training and education of all people involved in the criminal justice system — particularly police officers, prosecutors, judges and juries — to help them understand the circumstances and needs of people with disability.⁵⁸

To overcome the problematic ways that people with disability may be perceived by judges and juries, education within the courtroom itself has also been suggested. One survivor's mother, for example, told the Royal Commission that there should be more opportunities for expert evidence regarding specific disabilities, such as autism, to be given in court.⁵⁹ This is consistent with some research suggesting that negative stereotypes about the credibility and reliability of witnesses with intellectual disability may be overcome when jurors are given more information and direction about the nature of a person's disability.⁶⁰

Overall, knowmore is of the view that a range of strategies should be considered to help challenge problematic assumptions about people with disability and increase the likelihood of their child sexual abuse complaints being prosecuted.

Considering the needs of people with disability in police and prosecution responses

The Royal Commission made several recommendations aimed at ensuring that police and prosecution responses to child sexual abuse consider the specific needs of victims and survivors with disability. This includes recommendations to encourage allegations of sexual abuse of children with disability to be reported to police in the first instance, and to increase the likelihood of such allegations being investigated and prosecuted. Specifically, the Royal Commission recommended that:

- All police agencies work with disability advocacy and support groups and support services to facilitate reporting by victims and survivors (Recommendation 4, part d; see Table A.2 in the appendix).⁶¹
- All police agencies adopt four specific principles to guide their responses to victims and survivors with disability (Recommendation 13; see Table A.2 in the appendix), including that police officers who have initial contact with a victim or survivor or who assess or investigate their allegations should be non-judgemental and not make any adverse assessment about the person's credibility or reliability because of their disability.⁶²
- All prosecution agencies adopt six principles to guide their responses to child sexual abuse generally (Recommendation 37; see Table A.2 in the appendix), including one principle to encourage prosecutors to commence and continue prosecutions in matters where the victim is a person with disability who wants the prosecution to proceed (part f).⁶³

Some broader recommendations intended to benefit all victims and survivors are also relevant here (for example, Recommendation 3, regarding ensuring that a victim's or survivor's initial contact with police is trauma-informed and responsive to their needs and Recommendation 10, regarding principles to guide police charging decisions; see Table A.2 in the appendix).

On the whole, it appears there has been little progress on these recommendations across Australia.⁶⁴ Given the significant barriers people with disability face as victims and survivors engaging with the criminal justice

58 A Browning and L Caulfield, 'The prevalence and treatment of people with Asperger's Syndrome in the criminal justice system', *Criminology and Criminal Justice*, vol. 11, no. 2, pp. 165–180.

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

60 DA Brown and CN Lewis.

61 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

62 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

63 Royal Commission, *Criminal Justice Report: Parts III–VI*.

64 Based on knowmore's review of the state and territory governments' annual reports on their progress in implementing the Royal Commission's recommendations (see www.childabuseroyalcommissionresponse.gov.au/annual-progress-reporting/state-and-territory-reports).

system, knowmore considers that these recommendations should be implemented by all jurisdictions as a matter of priority.

Supporting people with disability to give their best evidence

Perhaps the Royal Commission's most important recommendations for victims and survivors with disability are those focused on supporting them to give their 'best evidence'. For people with disability, who may be dismissed as not credible and who may struggle to be heard in criminal proceedings, having the opportunity to give the most complete and accurate evidence they are able to give is essential for making the criminal justice more accessible, and for increasing the likelihood of perpetrators being brought to justice

The most significant strategy for supporting people with disability to give their best evidence is the introduction and use of witness intermediaries, as recommended by the Royal Commission (Recommendation 59; see Table A.2 in the appendix). The primary role of witness intermediaries — trained professionals such as speech pathologists and psychologists with specialist skills in communication — is to ensure witnesses' communication needs are taken into account during questioning by police and in court. As People with Disability Australia noted at the Royal Commission, having intermediaries support people with disability at the police and court stages of the criminal justice process "has the potential to demonstrate that people with disability are actually great witnesses when they are given the adequate support to do that".⁶⁵ A powerful example of this in New South Wales was highlighted at the Royal Commission.

We recently did an intermediary matter at Ballina, and although it was outside of the pilot scheme, [the Department of Justice] assisted us in interviewing a little girl there who was suffering from cerebral palsy.

*It was a matter that, more than likely, police wouldn't have been able to gain a disclosure from the child. Because of the input from the intermediary, the police were enhanced in relation to the way that they interviewed that child and they got a full disclosure from that child, and, as a result of that disclosure, the person pleaded guilty and got a custodial sentence. That more than likely wouldn't have happened unless for that intermediary.*⁶⁶

knowmore strongly supports witness intermediary schemes being established in all jurisdictions, and we have been very pleased to see most states and territories prioritising the Royal Commission's recommendations in this area.⁶⁷ In our view, all intermediary schemes should:

- Ensure that intermediaries are available to all complainants with disability in child sexual abuse matters.
- Include specialist Aboriginal and Torres Strait Islander intermediaries to assist Aboriginal and Torres Strait Islander people with disability, noting that many Aboriginal and Torres Strait Islander people face specific communication challenges during criminal justice proceedings.⁶⁸
- Be supported by ground rules hearings, as per Recommendation 60 from the Royal Commission (see Table A.2 in the appendix).

65 Evidence of Dr Jess Cadwallader, People with Disability Australia, cited in Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 73.

66 Evidence of Detective Chief Inspector P Yeomans, New South Wales Police Force Child Abuse Squad, cited in Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 69.

67 New South Wales, Victoria and the ACT all have intermediary programs in place. Queensland has recently introduced legislation to establish a pilot intermediary scheme [Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Bill 2019], and Tasmania is currently consulting on a draft bill that includes provisions to establish its pilot scheme [Evidence (Children and Special Witnesses) Bill 2020 — Consultation Draft].

68 Aboriginal Legal Service (NSW/ACT) Ltd, *Criminal Justice Consultation Paper: Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse*, 2016.

knowmore will continue to advocate for witness intermediary schemes across Australia that are consistent with the Royal Commission's recommendations. As schemes evolve in more states and territories, further consideration will need to be given to how effectively they are operating in practice.

In addition to witness intermediaries, there are a number of other ways that people with disability can be supported to engage in police and prosecution processes. These particularly include:

- Allowing the entirety of a complainant's evidence to be pre-recorded, consistent with Recommendations 52 to 54 from the Royal Commission (see Table A.2 in the appendix).⁶⁹
- Ensuring that people with disability who require an interpreter are provided with an interpreter who has sufficient expertise to provide an accurate and impartial translation, consistent with Recommendation 63 from the Royal Commission (see Table A.2 in the appendix).⁷⁰
- Providing people with disability with assistive technology to help them communicate.⁷¹
- Ensuring that the physical environment in which people with disability give evidence accommodates their particular needs (for example, a quiet and distraction-free environment for people with autism spectrum disorder).⁷²
- Enabling greater admissibility of tendency and coincidence evidence, such as evidence about an accused person's tendency to have a sexual interest in children, consistent with Recommendations 44 to 52 from the Royal Commission (see Table A.2 in the appendix)⁷³ and legislative reform already underway in New South Wales.⁷⁴ Given the circumstances of vulnerability and heightened risk for children with disability, this is a vital reform to ensure perpetrators targeting these children are brought to account.

In knowmore's view, these measures must be considered in addition to witness intermediaries to enable victims and survivors with disability to participate in criminal proceedings to the fullest possible extent.

69 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

70 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

71 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

72 KL Maras and DM Bowler, 'Eyewitness testimony in Autism Spectrum Disorder: a review', *Journal of Autism and Developmental Disorders*, 2014, vol. 44, no. 11, pp. 2682–2697.

73 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

74 Evidence Amendment (Tendency and Coincidence) Bill 2020 (NSW).

Conclusion

Children with disability are at an increased risk of all forms of violence and maltreatment, including sexual abuse. This has significant implications for the criminal justice system.

First, the Royal Commission into Institutional Responses to Child Sexual Abuse highlighted that children with disability are at risk of sexual abuse in the criminal justice system itself, specifically within youth detention institutions. This reflects two ongoing problems: the significant over-representation of children with disability in youth detention institutions, and the interaction between key environmental risk factors in youth detention institutions and key risk factors for children with disability generally.

In knowmore's view, reducing the risk of sexual abuse of children with disability in youth detention institutions requires measures that address both of these problems. In particular:

- Broader reforms of the youth justice system — including raising the minimum age of criminal responsibility to 14 years or introducing a minimum age of detention, introducing measures to keep young people out of detention wherever appropriate, and implementing early intervention and diversion initiatives — will be important for reducing the over-representation of children with disability.
- To make youth detention institutions safer for children with disability, it is essential that all state and territory governments implement the National Principles for Child Safe Organisations in these institutions, consistent with the Royal Commission's recommendations regarding Child Safe Standards.

Secondly, the experiences of many people with disability show that the criminal justice system's response to the sexual abuse of children with disability is often inadequate and can leave victims and survivors feeling frustrated, disappointed or traumatised. People with disability, especially children, often struggle to be heard by the criminal justice system and have difficulty obtaining justice when they have experienced childhood sexual abuse. They particularly encounter inadequate police responses, including being discouraged from reporting their abuse and not being supported to communicate what has happened to them, and there is often an unwillingness among police and prosecutors to pursue criminal charges against their perpetrators. This stems from a lack of awareness and understanding of disability in the criminal justice system, a lack of appropriate practical support for people with disability to communicate and participate in criminal justice processes, and problematic assumptions about people with disability, their capacity to give evidence and their credibility as witnesses.

To improve criminal justice responses to the sexual abuse of children with disability, knowmore advocates for a trauma-informed approach to working with victims and survivors to be embedded at every level of the criminal justice system. There especially needs to be:

- Education and training to improve awareness and understanding of disability among all people involved in the criminal justice system, particularly police officers, prosecutors, judges and juries.
- Greater consideration of the specific needs of victims and survivors with disability in police and prosecution responses to child sexual abuse, consistent with key Royal Commission recommendations.
- Increased support to help people with disability to give the most complete and accurate evidence they are able to give, both during questioning by police and in court. This particularly includes the establishment of witness intermediary schemes in all states and territories, the increased use of pre-recorded evidence and the greater availability of interpreters and assistive technology, as the Royal Commission recommended.
- Legislative reform to enable greater admissibility of tendency and coincidence evidence.

knowmore believes that further consideration of these issues by the Disability Royal Commission is warranted to protect children with disability from sexual abuse within the criminal justice system itself, and to ensure that victims and survivors with disability are supported to participate in criminal proceedings and obtain justice.

Appendix: Key recommendations from the Royal Commission

Table A.1: Key recommendations from the Royal Commission’s Final Report

Recommendation	
Child Safe Standards	<p><i>Recommendation 6.5</i></p> <p>The Child Safe Standards are:</p> <ol style="list-style-type: none"> 1. Child safety is embedded in institutional leadership, governance and culture 2. Children participate in decisions affecting them and are taken seriously 3. Families and communities are informed and involved 4. Equity is upheld and diverse needs are taken into account 5. People working with children are suitable and supported 6. Processes to respond to complaints of child sexual abuse are child focused 7. Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training 8. Physical and online environments minimise the opportunity for abuse to occur 9. Implementation of the Child Safe Standards is continuously reviewed and improved 10. Policies and procedures document how the institution is child safe.
	<p><i>Recommendation 6.8</i></p> <p>State and territory governments should require all institutions in their jurisdictions that engage in child-related work to meet the Child Safe Standards identified by the Royal Commission at Recommendation 6.5.</p>
	<p><i>Recommendation 6.9</i></p> <p>Legislative requirements to comply with the Child Safe Standards should cover institutions that provide:...</p> <ol style="list-style-type: none"> k. justice and detention services for children, including immigration detention facilities...

Recommendation	
Youth detention	<p><i>Recommendation 15.1</i></p> <p>All institutions engaged in child-related work, including detention institutions and those involving detention and detention-like practices, should implement the Child Safe Standards identified by the Royal Commission.</p>
	<p><i>Recommendation 15.6</i></p> <p>All staff should receive appropriate training on the needs and experiences of children with disability, mental health problems, and alcohol or other drug problems, and children from culturally and linguistically diverse backgrounds that highlights the barriers these children may face in disclosing sexual abuse.</p>

Table A.2: Key recommendations from the Royal Commission’s Criminal Justice Report

Recommendation	
Principles for initial police responses	<p><i>Recommendation 3</i></p> <p>Each Australian government should ensure that its policing agency:</p> <ol style="list-style-type: none"> recognises that a victim or survivor’s initial contact with police will be important in determining their satisfaction with the entire criminal justice response and in influencing their willingness to proceed with a report and to participate in a prosecution ensures that all police who may come into contact with victims or survivors of institutional child sexual abuse are trained to: <ol style="list-style-type: none"> have a basic understanding of complex trauma and how it can affect people who report to police, including those who may have difficulties dealing with institutions or persons in positions of authority (such as the police) treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues establishes arrangements to ensure that, on initial contact from a victim or survivor, police refer victims and survivors to appropriate support services.
	<p><i>Recommendation 4</i></p> <p>To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:...</p> <ol style="list-style-type: none"> works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors...

Recommendation

Police charging decisions

Recommendation 10

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:

- 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.
- b. In making decisions about whether to charge, police should not:
 - i. expect or require corroboration where the victim or survivor's account does not suggest that there should be any corroboration available
 - ii. rely on the absence of corroboration as a determinative factor in deciding not to charge, where the victim or survivor's account does not suggest that there should be any corroboration available, unless the prosecution service advises otherwise.

Police responses to reports of child sexual abuse made by people with disability

Recommendation 13

Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles:

- a. Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability.
- b. Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability.
- c. Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview.
- d. Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.

Principles for prosecution responses

Recommendation 37

All Australian Directors of Public Prosecutions, with assistance from the relevant government in relation to funding, should ensure that prosecution responses to child sexual abuse are guided by the following principles:...

- f. Prosecution agencies should recognise that children with disability are at a significantly increased risk of abuse, including child sexual abuse. Prosecutors should take this increased risk into account in any decisions they make in relation to prosecuting child sexual abuse offences.

Recommendation	
Tendency and coincidence evidence and joint trials	<p><i>Recommendation 44</i></p> <p>In order to ensure justice for complainants and the community, the laws governing the admissibility of tendency and coincidence evidence in prosecutions for child sexual abuse offences should be reformed to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials.</p>
	<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.
Prerecording	<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.
	<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>

Recommendation

Recommendation 59

Intermediaries

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. Governments should ensure that the scheme:

- a. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses
- b. provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial
- c. makes intermediaries available at both the police interview stage and trial stage
- d. enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.

Recommendation 60

Ground rules hearings

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.

Recommendation 63

Use of interpreters

State and territory governments should provide adequate interpreting services such that any witness in a child sexual abuse prosecution who needs an interpreter is entitled to an interpreter who has sufficient expertise in their primary language, including sign language, to provide an accurate and impartial translation.

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