

# Improving the response of the justice system to sexual offences

Submission to the  
Victorian Law Reform  
Commission

23 December 2020

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# About knowmore

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## 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). From 1 July 2018, knowmore has been funded 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 is funded by the Commonwealth Government, represented by the Attorney-General's Department and the Department of Social Services, and receives additional funding from the Financial Counselling Foundation.

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 November 2020, knowmore has received 39,627 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 7,502 clients. Thirty per cent 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 — 18 per cent of our current clients reside in the state. We therefore have a strong interest in work to improve Victoria's justice system for victims and survivors of child sexual abuse.

# knowmore's submission

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This section outlines knowmore's overall position on improving the justice system's response to child sexual offences, and details our comments on key areas for reform.

In addressing topics raised in the Victorian Law Reform Commission's issues papers, knowmore has reflected in particular on the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse and its own work with survivors of child sexual abuse.

## knowmore's overall position on improving the justice system's response to child sexual offences

We note that many of the topics identified in the Victorian Law Reform Commission's (VLRC's) issues papers have been examined in a number of major reviews and inquiries over the last five years. We particularly note:

- The VLRC's 2016 report on the role of victims of crime in the criminal trial process, which examined topics including special procedures and alternative arrangements for giving evidence, and restorative justice.<sup>1</sup>
- The 2017 Criminal Justice Report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), which examined all aspects of the criminal justice system's response to child sexual abuse, including reporting; offences; investigations; charging and prosecuting decisions; special procedures and alternative arrangements for giving evidence; and jury directions, evidence law and procedure.<sup>2</sup>

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1 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Melbourne, 2016, <[www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Victims%20Of%20Crime-Report-W\\_0.pdf](http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Victims%20Of%20Crime-Report-W_0.pdf)>.

2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_criminal\\_justice\\_report\\_-\\_executive\\_summary\\_and\\_parts\\_i\\_to\\_ii.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_executive_summary_and_parts_i_to_ii.pdf)>; *Criminal Justice Report: Parts III–VI*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_criminal\\_justice\\_report\\_-\\_parts\\_iii\\_to\\_vi.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_parts_iii_to_vi.pdf)>; *Criminal Justice Report: Parts VII–X and Appendices*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_criminal\\_justice\\_report\\_-\\_parts\\_vii\\_to\\_x\\_and\\_appendices.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_parts_vii_to_x_and_appendices.pdf)>.

- The 2017 Final Report of the Royal Commission, which examined topics including improving service systems for victims and survivors of child sexual abuse (Volume 9)<sup>3</sup> and responding to children engaging in harmful sexual behaviour (Volume 10).<sup>4</sup>
- The VLRC's 2018 report on its review of the *Victims of Crime Assistance Act 1996* (Vic), which examined the operation and effectiveness of the legislation and the Victims of Crime Assistance Tribunal (VOCAT).<sup>5</sup>
- The VLRC's 2020 report on committals, which examined topics including delay, charging and prosecuting decisions, and pre-trial procedures.<sup>6</sup>

This work has led to a large number of sound, evidence-based recommendations that provide a blueprint for significant reform of the justice system which, in our view, would greatly improve how it responds to child sexual offences. Many of the reforms are also likely to offer significant benefits for victims and survivors of other sexual offences. Although the vast majority of these recommendations have been accepted or accepted in principle by the Victorian Government, we understand that many of them are yet to be implemented.

In light of this, our overall position is straightforward — to the extent that the same problems continue to exist, the previously recommended reforms should be implemented. To this end, the main focus of our submission is on flagging key reforms that are still outstanding, focusing particularly on recommendations from the Royal Commission (see the tables in the Appendix for a list of key recommendations). In drafting our submission, we have focused on those issues that are most significant for our client group, but note there are other reforms still outstanding that, if implemented, would help to improve the justice system's response to child sexual offences and sexual offences more broadly.

Our detailed comments on key topics from each of the VLRC's issues papers are provided in the following sections.

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- 3 Royal Commission, *Final Report: Volume 9, Advocacy, Support and Therapeutic Treatment Services*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_9\\_advocacy\\_support\\_and\\_therapeutic\\_treatment\\_services.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_9_advocacy_support_and_therapeutic_treatment_services.pdf)>.
  - 4 Royal Commission, *Final Report: Volume 10, Children with Harmful Sexual Behaviours*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_10\\_children\\_with\\_harmful\\_sexual\\_behaviours.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_10_children_with_harmful_sexual_behaviours.pdf)>.
  - 5 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*, Melbourne, 2018, <[www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Victims%20of%20Crime%20Assistance%20Act%20Report\\_Web.pdf](http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Victims%20of%20Crime%20Assistance%20Act%20Report_Web.pdf)>.
  - 6 Victorian Law Reform Commission, *Committals*, Melbourne, 2020, <[www.lawreform.vic.gov.au/sites/default/files/VLRC\\_Committals%20Report-forweb.pdf](http://www.lawreform.vic.gov.au/sites/default/files/VLRC_Committals%20Report-forweb.pdf)>.

## Issues Paper A: Working together to respond to sexual offences: systems

Q1: What would make it easier for people who have been sexually harmed to get the supports and services they need, so they can decide whether to report the sexual harm?

Q5: How can we improve how other services and systems work with the sexual assault system, so that people are supported to seek justice?

Given our experience providing legal assistance and other support to our clients, we know the important role the broader service system for victims and survivors of child sexual abuse can play in encouraging and supporting victims and survivors to seek justice. As the Royal Commission found, this support can take many forms across the diverse range of mainstream, community support and specialist services that make up the service system.<sup>7</sup> For example, many victims and survivors need counselling and psychological care before they feel ready to report their abuse to police. Other victims and survivors need advocacy to empower them to identify and consider their options for reporting. Support can be particularly important for victims and survivors with additional needs, such as people with disability and people from culturally and linguistically diverse backgrounds. Considering the difficulties of the criminal justice system responding effectively to child sexual offences without the victim's involvement in any subsequent investigation and trial, ensuring the service system provides appropriate support to victims and survivors in the initial reporting stage (and beyond) is essential.

We consider that there are two basic requirements for the service system to perform this particular support role most effectively:

1. Appropriate services must exist.
2. These services must be well equipped to support victims and survivors to consider their options in relation to reporting and make a report to police where this is what they want.

We discuss these issues further below, reflecting particularly on recommendations from Volume 9 of the Royal Commission's Final Report focused on advocacy, support and therapeutic treatment services.

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7 In Volume 9 of its Final Report, the Royal Commission considered services including mental health services, alcohol and other drugs services, community health services, general practitioners, private practitioners such as psychologists, housing services, employment services, peer-based survivor support groups, and child and adult sexual assault services.

## Appropriate services

We note a number of significant shortcomings in support services for victims and survivors of child sexual abuse identified by the Royal Commission. These include:

- Complex, fragmented service systems that are difficult to navigate.
- Limited collaboration between services that make services difficult to access.
- Inadequate services for particular victims and survivors, including Aboriginal and Torres Strait Islander survivors, survivors with disability, survivors living in rural, regional and remote communities, male survivors, and survivors in prison.
- Limited knowledge of child sexual abuse and its impacts among mainstream service providers.
- Long wait times to access specialist services.<sup>8</sup>

We continue to see these general deficiencies in our work with Victorian clients.

In our view, addressing the shortcomings in the existing service system is fundamental to supporting victims and survivors of child sexual abuse to seek a criminal justice response (in addition to the much broader benefits of a responsive service system for victims and survivors, their families and the community). We therefore strongly support the recommendations the Royal Commission made to every state and territory government to help create a service system that meets the needs of all victims and survivors of child sexual abuse. We note in particular the recommendations that governments:

- Fund dedicated community support services for victims and survivors and ensure that these are, among other things, trauma-informed, collaborative, available, accessible, acceptable and high quality (Final Report Recommendation 9.1).
- Fund Aboriginal and Torres Strait Islander healing approaches for victims and survivors (Final Report Recommendation 9.2).
- Fund support services for victims and survivors with disability (Final Report Recommendation 9.3).
- Increase funding for adult and child sexual assault services and ensure that these services are, among other things, trauma-informed, collaborative, available, accessible, acceptable and high quality (Final Report Recommendation 9.6).

All of these recommendations were accepted in principle by the Victorian Government (see Table A.1 in the Appendix).

In reality, the implementation of these recommendations will never be ‘done’. Rather, achieving the Royal Commission’s vision requires governments to have an ongoing dedication to delivering an efficient and effective service system that meets the needs of all victims and survivors of child sexual abuse.

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8 Royal Commission, *Final Report: Volume 9*.



In this context, we acknowledge the Victorian Government's ongoing funding of sexual assault support services, and ongoing work to improve access to these services emerging from the recommendations of the Royal Commission into Family Violence.<sup>9</sup> We also note that work has commenced on a culturally safe sexual assault support model for Aboriginal and Torres Strait Islander victims and survivors.<sup>10</sup> These are positive developments.

Given, however, the broad scope of the Royal Commission's recommendations and the high standard of service delivery they seek to achieve, more needs to be done. Noting that other stakeholders will be able to provide further insights into the current strengths and weaknesses of Victoria's service system, we submit that further consideration should be given to identifying and addressing ongoing shortcomings in mainstream, community support and specialist services for victims and survivors of child sexual abuse. This should particularly consider the extent to which services meet the Royal Commission's principles of being trauma-informed, collaborative, available, accessible, acceptable and high quality.<sup>11</sup>

## Services equipped to support victims and survivors to consider their reporting options and report to police

In our view, services that are delivered in accordance with the Royal Commission's principles of being trauma-informed, collaborative, available, accessible, acceptable and high quality will have an inherent capacity to support victims and survivors of child sexual offences to consider their options in relation to reporting and make a report to police where this is what the survivor decides to do. Based on the Royal Commission's consideration of this issue in its Criminal Justice report, we also note two further ways in which we think services need to be prepared to support victims and survivors with reporting. These follow from the Royal Commission's recommendation, which we support, that all survivor advocacy and support groups a) provide survivors with information about options for reporting to police and b) support survivors to make a report to police where the survivor wants to do so (Criminal Justice Recommendation 19; see Table A.2 in the Appendix).

First, services should have a good understanding of reporting options and how police respond to reports of child sexual offences. This should particularly address concerns victims and survivors commonly have about the consequences of reporting to police, including, for example, that they will inevitably become involved in a lengthy criminal justice process. We note that Victoria Police's recently updated booklet *Reporting Sexual Offences to Police*

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9 Victorian Government, 'Funding for collaboration between specialist family violence and sexual assault services', Melbourne, 2020, <[www.vic.gov.au/family-violence-recommendations/funding-collaboration-between-specialist-family-violence-and-sexual](http://www.vic.gov.au/family-violence-recommendations/funding-collaboration-between-specialist-family-violence-and-sexual)>.

10 Victorian Government, *Victorian Government Annual Report 2019 — Royal Commission into Institutional Responses to Child Sexual Abuse*, Melbourne, 2019, <[content.vic.gov.au/sites/default/files/2020-06/Vic\\_Gov\\_Child\\_Abuse\\_Royal\\_Commission\\_Annual\\_Report\\_2019.pdf](http://content.vic.gov.au/sites/default/files/2020-06/Vic_Gov_Child_Abuse_Royal_Commission_Annual_Report_2019.pdf)>.

11 Further information about what we consider to be key features of advocacy, support and therapeutic treatment services for victims and survivors is included in our 2015 submission to the Royal Commission in response to Issues Paper 10 (<[knowmore.org.au/wp-content/uploads/2018/06/Issues-Paper-10-Submission-53-Knowmore.pdf](http://knowmore.org.au/wp-content/uploads/2018/06/Issues-Paper-10-Submission-53-Knowmore.pdf)>).

provides useful information to assist services in this regard.<sup>12</sup> While information of this kind is likely to be familiar to people working in specialist counselling and support services, for example, consideration should be given to gaps in knowledge among people working in other parts of the service system (for example, mainstream health and housing services).

Second, services should have clear guidelines about reporting to police. Consistent with Recommendations 16 to 18 from the Royal Commission's Criminal Justice report (see Table A.2 in the Appendix), services should, at a minimum:

- Make clear that they will encourage and support victims and survivors to report their abuse to police, including by helping them to consider their options.
- Make clear that they will report allegations and disclosures of child sexual abuse to police when required to do so by law.
- Clarify what approach they will take when they receive allegations and disclosures of child sexual abuse that they are not required by law to report to police — that is, whether they will report survivors' details to police without the survivor's consent, or whether they will make a blind report to police (that is, a report that does not disclose the survivor's details).

Guidelines of this nature would help to ensure that all parties, including workers and volunteers within a service and victims and survivors and their families, have a clear understanding of the service's position on reporting. This would in turn help to ensure that the service is better equipped to support victims and survivors to consider their options and make reports to police.

## Issues Paper B: Sexual offences: key issues in the criminal justice system

### Attitudes and understanding

Q1: Is there a need to improve attitudes towards victim survivors or the understanding of sexual harm within the criminal justice system? If so, how?

In knowmore's experience, misconceptions about the nature of child sexual abuse and the behaviour of victims persist. Common misconceptions include that:

- False allegations of child sexual abuse are common.
- 'Real' victims will disclose their abuse straight away.
- 'Real' victims will avoid their abuser.

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12 Victoria Police, *Reporting Sexual Offences to Police*, Melbourne, 2020, <[www.police.vic.gov.au/sites/default/files/2020-03/Reporting%20Sexual%20Offences\\_A6%20booklet\\_web.pdf](http://www.police.vic.gov.au/sites/default/files/2020-03/Reporting%20Sexual%20Offences_A6%20booklet_web.pdf)>.

- Victims will have clear memories of their abuse.<sup>13, 14</sup>

Such beliefs, readily accepted as misconceptions in contemporary research,<sup>15</sup> can impact the criminal justice system's capacity to respond effectively to child sexual offences in multiple ways. Significantly, they can act as a barrier to victims and survivors ever reporting their abuse to police by making victims and survivors feel that they will not be believed. Where a report is made, such beliefs can adversely affect the justice system's response at every key stage. For example:

- When held by police officers and prosecution staff, these beliefs can prevent investigations and prosecutions from progressing.
- When held by judges and legal practitioners, these beliefs can impact the experience of victims and survivors in court proceedings.
- When held more broadly in the community or aired in the media, these beliefs can influence how jurors perceive a complainant's credibility and, ultimately, a jury's decision about an accused person's guilt.

We acknowledge improvements in this area over time, as noted in the issues paper. We note, for example, the comprehensive resource for police and legal practitioners published in 2017 by Victoria Police and the Australian Institute of Family Studies.<sup>16</sup> Nevertheless, we consider that there needs to be ongoing work to ensure that participants in the criminal justice system have a sound understanding of child sexual abuse consistent with contemporary research evidence. In our view, this is fundamental to embedding a trauma-informed approach throughout the criminal justice system and encouraging victims and survivors to come forward and pursue a criminal justice response. To this end, knowmore particularly supports the Royal Commission's recommendations that:

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

14 The Royal Commission also identified a number of specific misconceptions about victims and survivors with disability, including that people with disability lie or exaggerate or are unable to give reliable accounts of their own experiences (*Final Report: Volume 4, Identifying and Disclosing Child Sexual Abuse*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_4\\_identifying\\_and\\_disclosing\\_child\\_sexual\\_abuse.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_4_identifying_and_disclosing_child_sexual_abuse.pdf)>).

15 See, for example, the Royal Commission's findings regarding disclosure (Royal Commission, *Final Report: Volume 4*) and research on the effects of child sexual abuse on memory (J Goodman-Delahunty, MA Nolan and EL Van Gijn-Grosvenor, *Empirical Guidance on the Effects of Child Sexual Abuse on Memory and Complainants' Evidence*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/research\\_report\\_-\\_empirical\\_guidance\\_on\\_the\\_effects\\_of\\_child\\_sexual\\_abuse\\_on\\_memory\\_and\\_complainants\\_evidence.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/research_report_-_empirical_guidance_on_the_effects_of_child_sexual_abuse_on_memory_and_complainants_evidence.pdf)>).

16 Australian Institute of Family Studies and Victoria Police, *Challenging Misconceptions About Sexual Offending: Creating an Evidence-Based Resource for Police and Legal Practitioners*, AIFS, Melbourne, 2017, <[www.police.vic.gov.au/sites/default/files/2019-01/For-Internet--Challenging-Misconceptions-Report.pdf](http://www.police.vic.gov.au/sites/default/files/2019-01/For-Internet--Challenging-Misconceptions-Report.pdf)>.

- All police who provide an investigative response to child sexual offences receive at least basic training in understanding sexual offending, including the nature of child sexual abuse (Criminal Justice Recommendation 9, part a).
- Police who interview children and other vulnerable witnesses have a specialist understanding of child sexual abuse that is kept up to date and consistent with current research through regular refresher training (Criminal Justice Recommendation 9, parts d and e).
- All prosecution staff who liaise with victims of child sexual abuse be trained to have a basic understanding of the nature and impact of child sexual abuse (Criminal Justice Recommendation 37, part a).
- Members of the judiciary and broader legal profession receive regular training and education to ensure they have an up to date understanding of current research on child sexual abuse (Criminal Justice Recommendations 67 and 68).

We note that all of these recommendations were accepted or accepted in principle by the Victorian Government (see Table A.2 in the Appendix), and that further improvements are being made to better align current practices with the Royal Commission's recommendations.<sup>17</sup> We nevertheless consider it important for the implementation of these recommendations to be seen as ongoing actions, with the ultimate aim of ensuring that there is continual improvement in attitudes towards victims and survivors that reflects future developments in research and understanding of child sexual abuse.

We also support the Royal Commission's recommendations regarding jury directions to help improve the attitudes and knowledge of jurors. We discuss this on pages 22 and 23 in relation to Issues Paper E.

## Delay

Q5: How well are reforms working to avoid delays in the criminal justice process, and what other reforms could address delay?

As we wrote in our submission to the VLRC's review of the committal system,<sup>18</sup> the length of time taken for matters to be resolved and the experience of delays is one of the most significant sources of stress and trauma for victims and survivors of child sexual abuse participating in criminal proceedings. This can adversely impact the effectiveness of the criminal justice system's response to child sexual abuse, particularly by "encouraging [complainants] to give up on obtaining a criminal justice response or even discouraging them

<sup>17</sup> Victorian Government, *Victorian Government Annual Report 2019*.

<sup>18</sup> knowmore, *Submission to the Victorian Law Reform Commission's Review of Victoria's Committal System*, 2019, <[knowmore.org.au/wp-content/uploads/2020/11/submission-review-of-the-committal-system-vic.pdf](https://knowmore.org.au/wp-content/uploads/2020/11/submission-review-of-the-committal-system-vic.pdf)>.

from reporting the abuse they have suffered to police”.<sup>19</sup> We consider that reducing delay is therefore one key way of improving the justice system’s response to child sexual offences.

We note that the VLRC has made a number of recommendations in its committals report to reduce delay during the committal process. These include recommendations to introduce a new system of pre-trial case management (Recommendations 8 to 14), recommendations to ensure the early involvement of the Director of Public Prosecutions and defence practitioners (Recommendations 15 to 18) and other recommendations to improve charging and disclosure practices (Recommendations 19 to 37).<sup>20</sup> We support the implementation of these recommendations, noting that they generally align with key Royal Commission recommendations as flagged in our previous submission.<sup>21</sup>

## Support for victims and survivors

Q6: How well are support programs for people who have experienced sexual harm working? How can they be improved?

## Intermediaries

We continue to strongly support the use of witness intermediaries and welcome the continuation of the Intermediaries Pilot Program throughout 2020–21.<sup>22</sup> Consistent with our submission to the VLRC’s review of the committal system, we are pleased to see that the VLRC has also recommended the use of intermediaries be expanded to all witnesses with communication difficulties.<sup>23</sup> This would align the use of intermediaries in Victoria with the Royal Commission’s recommendations (Criminal Justice Recommendations 59 and 60; see Table A.2 in the Appendix) and ensure that all victims and survivors of child sexual abuse are assisted where necessary to give their best evidence.

## Support for Aboriginal and Torres Strait Islander victims and survivors

One particularly significant issue in the criminal justice system’s response to child sexual offences is the system’s capacity to respond effectively to Aboriginal and Torres Strait Islander victims and survivors. This acknowledges the general overrepresentation of

19 Royal Commission, *Parts VII–X and Appendices*, p. 266.

20 Victorian Law Reform Commission, *Committals*.

21 Specifically, Criminal Justice Recommendations 10, 39 and 72 (parts a and d). See further discussion in knowmore, *Submission to the Victorian Law Reform Commission’s Review of Victoria’s Committal System*.

22 Victorian Government, *Victorian Budget 2020/21: Service Delivery — Budget Paper No. 3*, Melbourne, 2020, <[s3-ap-southeast-2.amazonaws.com/budgetfiles202021.budget.vic.gov.au/2020-21+State+Budget+-+Service+Delivery.pdf](https://s3-ap-southeast-2.amazonaws.com/budgetfiles202021.budget.vic.gov.au/2020-21+State+Budget+-+Service+Delivery.pdf)>.

23 Victorian Law Reform Commission, *Committals*, Recommendation 47.

Aboriginal and Torres Strait Islander children in reported child sexual abuse cases.<sup>24</sup> Given the experiences of our Aboriginal and Torres Strait Islander clients, we consider that there is a particular need for Aboriginal and Torres Strait Islander people to be much better supported to report their abuse to police (see further discussion of reporting on pages 17 to 19). However, we have considered the issue of culturally safe and appropriate support for Aboriginal and Torres Strait Islander survivors more broadly here, given its importance across all aspects of the criminal justice system.

Any kind of support program or service relevant to the criminal justice system's response to child sexual offences must recognise the particular support needs of Aboriginal and Torres Strait Islander victims and survivors. This particularly includes understanding the impacts of colonisation, dispossession, forced removals from families, overrepresentation in the criminal justice system and ongoing institutionalised racism, and how these factors continue to act as major barriers to Aboriginal and Torres Strait Islander people seeking criminal justice responses to experiences of child sexual abuse.<sup>25</sup> For many Aboriginal and Torres Strait Islander victims, the experience of intergenerational trauma and lack of trust in the police makes reporting their abuse very difficult and, for some, simply not an option. Respect for cultural protocols, practices and norms is also essential. Services must recognise, for example, the importance of gender-specific support (male victims having access to support from males and female victims having access to support from females) and the need for privacy and confidentiality.<sup>26</sup> The communication needs of Aboriginal and Torres Strait Islander survivors are also important considerations, noting in particular low literacy rates<sup>27</sup> and differences in Aboriginal and non-Aboriginal communication styles.<sup>28</sup>

We acknowledge the ongoing and commendable efforts of local support services to support Aboriginal and Torres Strait Islander victims and survivors. However, our view is that much more could and needs to be done to recognise and meet, in culturally safe and appropriate

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24 For example, Aboriginal and/or Torres Strait Islander survivors accounted for 14 per cent of all survivors who spoke to the Royal Commission in private sessions (Royal Commission, *Final Report: Volume 5, Private Sessions*, 2017, p. 126, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_volume\\_5\\_private\\_sessions.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_volume_5_private_sessions.pdf)>). See also relevant statistics in Bravehearts, *Child Sexual Assault: Facts and Statistics*, 2019, <[bravehearts.org.au/wp-content/uploads/2019/10/WIP\\_Facts-and-stats\\_updated-Oct-2019.pdf](http://bravehearts.org.au/wp-content/uploads/2019/10/WIP_Facts-and-stats_updated-Oct-2019.pdf)>.

25 See further discussion of additional barriers to reporting for Aboriginal and Torres Strait Islander victims and survivors in Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*.

26 For more information, see knowmore's 2015 submission to the Royal Commission on Issues Paper 8: Police and Prosecution Responses (<[knowmore.org.au/wp-content/uploads/2018/06/Issues-paper-8-submission.Final\\_.pdf](http://knowmore.org.au/wp-content/uploads/2018/06/Issues-paper-8-submission.Final_.pdf)>).

27 J Korff, 'Aboriginal literacy rates', Creative Spirits, 2020, <[www.creativespirits.info/aboriginalculture/education/aboriginal-literacy-rates](http://www.creativespirits.info/aboriginalculture/education/aboriginal-literacy-rates)>.

28 La Trobe University (The School of Nursing and Midwifery) and Victorian Aboriginal Community Controlled Health Organisation, *Koorified: Aboriginal Communication and Well-being*, VACCHO, Fitzroy, 2014, <[www.vaccho.org.au/vcwp/wp-content/uploads/2011/03/Koorified-Aboriginal-Communication-and-Well-Being.pdf](http://www.vaccho.org.au/vcwp/wp-content/uploads/2011/03/Koorified-Aboriginal-Communication-and-Well-Being.pdf)>.



ways, the needs of Aboriginal and Torres Strait Islander victims engaging with the criminal justice system. High-level shortcomings inherent in the current system include:

- A lack of culturally safe and appropriate supports in mainstream services, including police and health services. Key limitations include a lack of Aboriginal-led programs within these services (for example, Aboriginal-led investigation units) and the minimisation and undervaluing of some Aboriginal liaison roles.
- A lack of specialist support services specifically for Aboriginal and Torres Strait Islander victims and survivors, as noted in our discussion on page 7.
- Barriers to accessing dedicated services for Aboriginal and Torres Strait Islander victims and survivors, including requests for confirmation of a person's Aboriginality.

In light of the above discussion, we suggest that there are five key avenues for improving the support provided to Aboriginal and Torres Strait Islander victims and survivors seeking a criminal justice response to their abuse.

1. Ensuring there is adequate funding for dedicated and acceptable support services for Aboriginal and Torres Strait Islander victims and survivors. This should include ongoing funding for Aboriginal and Torres Strait Islander healing approaches, consistent with Recommendation 9.2 from the Royal Commission's Final Report (noted also on page 7). A dedicated telephone service to help Aboriginal and Torres Strait Islander victims and survivors to access specific support services and obtain advice about reporting would also be valuable.
2. Developing culturally specific and Aboriginal-led programs within mainstream services. We note, for example, the suggestion of Aboriginal-led sexual offence investigation units, and consider that this could be a valuable way of overcoming the significant barriers to reporting for Aboriginal and Torres Strait Islander victims and supporting them to seek a criminal justice response.
3. Ensuring victims and survivors have widespread access to Aboriginal and Torres Strait Islander people in community liaison and engagement roles within mainstream services, and that these roles are recognised as integral to service delivery. Aboriginal Hospital Liaison Officers and Victorian Police Aboriginal Community Liaison Officers have a particularly valuable role to play in providing a culturally safe way for Aboriginal victims and survivors to report their abuse.<sup>29</sup>
4. Ensuring that all communication about and within the criminal justice system accounts for the communication needs of Aboriginal and Torres Strait Islander victims and survivors. For example, information about what child sexual abuse is and how it can be reported to police should be available in audio, visual and kinaesthetic formats suited to different communication styles and victims and survivors with low literacy levels. We also support Victoria's intermediary program including specialist

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29 We note some cases, for example, where Aboriginal Community Liaison Officers have been critical in referring Aboriginal victims and survivors to Sexual Offences and Child Abuse Investigation Teams (SOCITs).

Aboriginal and Torres Strait Islander intermediaries to assist Aboriginal and Torres Strait Islander witnesses.

5. Ensuring that support options for Aboriginal and Torres Strait Islander victims and survivors include gender-specific and age-specific options and accommodate the diverse other needs of Aboriginal and Torres Strait Islander people (including, for example, people with disability and LGBTQI+ people). There needs to be a particular focus on ensuring Aboriginal men have access to male workers as an essential part of providing a culturally safe environment for male victims and survivors to speak about their abuse.

In knowmore's view, the development and implementation of any specific programs, services or strategies captured under these broad approaches should be led by Aboriginal and Torres Strait Islander Community Controlled Organisations.

On page 19, we discuss further strategies for encouraging and supporting victims and survivors to report their abuse to police. A number of these are particularly important for Aboriginal and Torres Strait Islander survivors.

## Issues Paper C: Defining sexual offences

Q1: Is there a need to change any of Victoria's sexual offences, or their application? If so, what changes?

knowmore submits that, in accordance with recommendations of the Royal Commission, changes need to be made to two sexual offences against children contained in the *Crimes Act 1958* (Vic) [Part I, Division 1, Subdivision (8B)]:

1. Persistent sexual abuse of a child under the age of 16 (section 49J).
2. Failure by a person in authority to protect a child from a sexual offence (section 49O).

### Persistent sexual abuse of a child under the age of 16 (section 49J)

Currently, section 49J of the Crimes Act provides that a person commits the offence of persistent child sexual abuse if they sexually abuse a child under the age of 16 years on at least three occasions during a particular period. In examining this and comparable offences in other jurisdictions, the Royal Commission identified a number of shortcomings in the offences' current scope and operation given what is known about the effects of trauma on memory and the difficulties that victims and survivors face in providing detailed accounts of the child sexual abuse they suffered, especially when it involved multiple occasions of abuse. In particular, the Royal Commission found that existing offences tended to:

- "require particularisation in a manner inconsistent with the ways in which complainants remember the child sexual abuse they suffered"



- prevent “the effective charging and successful prosecution of repeated but largely indistinguishable occasions of child sexual abuse”.<sup>30</sup>

To address these limitations, the Royal Commission recommended that a number of amendments be made to the relevant offence in each state and territory, including amendments to ensure that:

- The offence is established by more than one unlawful sexual act.
- The trier of fact must be satisfied beyond reasonable doubt that the offence is established but, where the trier of fact is a jury, all jurors need not be satisfied of the same unlawful sexual acts.
- The offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed (Criminal Justice Recommendations 21 and 22; see Table A.2 in the Appendix).

Noting that no relevant amendments have been made to section 49J since the Royal Commission’s Criminal Justice report was released, we support changes being made to Victoria’s persistent child sexual abuse offence so that it is consistent with the Royal Commission’s recommendations.<sup>31</sup> We note that these recommendations have previously been accepted by the Victorian Government.

Briefly, we also note here Victoria’s course of conduct charge provision in Schedule 1, clause 4A of the *Criminal Procedure Act 2009* (Vic), which the Royal Commission examined as part of its consideration of persistent child sexual abuse offences. As the Royal Commission noted, a significant limitation of that charge as it applies in cases of repeated child sexual abuse is that it can only cover offending under the same offence provision — that is, a course of conduct charge cannot be used in circumstances of repeated sexual abuse involving different types of sexual offences (for example, where some are penetrative and some are not penetrative).<sup>32</sup> Criminal Justice Recommendation 24 is therefore also relevant here, and we support its implementation.

## Failure by a person in authority to protect a child from a sexual offence (section 49O)

Section 49O of the Crimes Act makes it an offence for a person in authority in an organisation to fail to reduce or remove a substantial risk of institutional child sexual abuse that they have the power or responsibility to address. While we acknowledge that the offence is not a sexual offence per se, we raise it here given the importance of the offence in helping to prevent children from becoming victims of sexual abuse in the first instance.

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30 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 66.

31 We note that these recommendations have already been implemented in full in the ACT [section 56, *Crimes Act 1900* (ACT)] and South Australia [section 50, *Criminal Law Consolidation Act 1935* (SA)]. Some relevant amendments, including in relation to the number of unlawful sexual acts required to establish the offence, have also been introduced in NSW [section 66EA, *Crimes Act 1900* (NSW)].

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

The Royal Commission supported Victoria's failure to protect offence<sup>33</sup> and noted it was "a useful precedent" for the other states and territories.<sup>34</sup> However, it did identify one way in which the offence could be improved — by extending the application of the offence to protecting children aged 16 or 17 years from sexual abuse by people who hold positions of authority in relation to them.<sup>35</sup> This is reflected in part d of Criminal Justice Recommendation 36, which the Victorian Government has accepted in principle (see Table A.2 in the Appendix). In formulating this part of its recommendation, and consistent with the rationale for Victoria's 'position of authority' offences,<sup>36</sup> the Royal Commission emphasised the importance of "protecting older children who, despite being old enough to consent to sex, remain vulnerable to sexual abuse by those who hold positions of authority in relation to them".<sup>37</sup> We concur with this, and support changes being made to Victoria's failure to protect offence to implement the Royal Commission's recommendation.

## Issues Paper D: Sexual offences: report to charge

### Encouraging reporting

Q5: Do you support access to alternative ways of reporting sexual harm? Why or why not?

Q6: If you support alternative ways of reporting sexual harm, what features should they have?

The criminal justice system obviously cannot provide an effective response to child sexual offences if many victims and survivors never report their abuse to police. In our view, increasing the typically low rates of reporting among victims and survivors of child sexual abuse should therefore be one of the highest priorities in any attempt to improve the justice system's overall response to child sexual offences.

In our experience, and consistent with the Royal Commission's findings,<sup>38</sup> low reporting rates for child sexual offences reflect a number of significant barriers that victims and survivors face in reporting their abuse to police. These include:

- A fear of not being believed. This can particularly arise for victims and survivors who have previously had negative disclosure or reporting experiences.
- A lack of understanding that the abuse they experienced was a crime.

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33 As it existed at that time in section 49C(2) of the *Crimes Act 1958* (Vic).

34 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 245.

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

36 Sections 49C, 49E, 49G, 49I, 49L, *Crimes Act 1958* (Vic).

37 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 248.

38 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II; Final Report: Volume 4*.

- A mistrust of or aversion to the police. This can be a particular problem for Aboriginal and Torres Strait Islander survivors, given negative intergenerational experiences with police, and for survivors who have a criminal history.
- A fear of being re-traumatised by the criminal justice process. This can particularly arise from an expectation of being involved in a long and complex investigation and trial, which many victims and survivors feel ill-equipped to cope with.
- A fear that relatives, friends and others in their community will find out they were sexually abused. This can be a particular concern for victims and survivors living in small communities.

Even if these barriers can be overcome, there can be a lack of appropriate and accessible avenues for victims and survivors to make a police report. For example:

- The prospect of making a report at the local police station can be very intimidating for victims and survivors. This can be a particular problem in rural, regional and remote communities where specialist police services are less widely available.
- For Aboriginal and Torres Strait Islander survivors, reporting options are often not culturally safe (see related discussion on pages 12 to 15).
- Survivors in prison face significant practical difficulties in making complaints about their child sexual abuse.
- Some victims and survivors may be unable to report their abuse because of language barriers, literacy issues or other communication difficulties (as in the case of some victims and survivors with disability, for example).<sup>39</sup>

The nature of the barriers above reinforces the importance of reforms in a number of areas discussed elsewhere in our submission. These particularly include ensuring participants in the criminal justice system have a sound understanding of child sexual abuse, as discussed on pages 9 to 11; ensuring victims and survivors are well supported to consider their reporting options and make a report to police, as discussed on pages 6 to 9; and ensuring specialist approaches are prioritised in the initial police response to child sexual offences, as discussed on pages 20 and 21. In these ways, victims and survivors can be better encouraged and supported to report their abuse to police, in turn opening up the possibility of an effective criminal justice response.

In our view, the above barriers also highlight the need for a range of tailored, appropriate and supportive reporting options. We particularly support:

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39 For example, the Royal Commission found that police frequently failed to ensure people with disability had adequate and appropriate communication supports in their early engagements with police. This included some deaf survivors being interviewed without an AUSLAN interpreter, and survivors with other disabilities not having these accommodated for in a way that would have given them the best opportunity to tell their story to police (see, for example, the stories of Finlay John, Carly, and Summer and Peter in Royal Commission, *Narratives*, <[www.childabuseroyalcommission.gov.au/narratives/](http://www.childabuseroyalcommission.gov.au/narratives/)>).

- Victims and survivors having the choice of a variety of reporting methods, including in person, by phone, in writing and online. This is consistent with Criminal Justice Recommendation 4 (part c) from the Royal Commission, and would enable victims and survivors to report in the way they feel most comfortable with, while also helping to address practical barriers to reporting.
- Victims and survivors having access to a safe and supportive environment when they make a report to police, regardless of their reporting method. Consistent with our discussion on pages 20 and 21 below, we especially support victims and survivors being able to make all reports directly to specialist police officers, and ideally outside of the normal police station environment.<sup>40</sup>
- Victims and survivors having access to reporting avenues that respect their need for privacy and confidentiality. This especially includes options for anonymous reporting. In our experience, some survivors do not wish to disclose their details to police or pursue a criminal justice response for themselves, but still want police to be aware of their perpetrator's abuse in case that information can help protect other children. Consistent with Criminal Justice Recommendations 5 and 6 from the Royal Commission, we consider that special attention should also be given to ensuring appropriately private and confidential reporting options are available for Aboriginal and Torres Strait Islander survivors and survivors who are or have been in prison.

We also note a range of broader strategies the Royal Commission recommended to encourage reporting of child sexual offences in Criminal Justice Recommendation 4. These include ensuring victims and survivors receive detailed information about their reporting options and what to expect from these, although we note that little information of this kind is currently included in Victoria Police's *Reporting Sexual Offences to Police* booklet. We support the effective implementation of the Royal Commission's recommended strategies in Victoria as important complements to the specific reporting options we have outlined above.

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40 Relevant to this, we note research into all-female police stations in South America. This highlights the importance of environmental design and multi-disciplinary approaches in encouraging and supporting women specifically to report sexual and domestic violence. See K Carrington et al., *The Role of Women's Police Stations in Widening Access to Justice and Eliminating Gender Violence*, Presentation to United Nations 63rd Commission on the Status of Women, NGO Sessions, New York, 21 March 2019, <[eprints.qut.edu.au/127632/13/UN%2BCSW%2Bwomen%27s%2Bpolice%2Bstations%2B16%2BMarch.pdf](https://eprints.qut.edu.au/127632/13/UN%2BCSW%2Bwomen%27s%2Bpolice%2Bstations%2B16%2BMarch.pdf)>.

## Police responses

Q2: What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?

Q3: What other issues need to be addressed to improve the experience of the police investigation process for children who have been sexually harmed? How can they be addressed?

The experiences of our clients indicate that arguably the most significant aspect of the police investigation process for victims and survivors of child sexual abuse is the initial response to their complaint. The initial police response is also likely to be central to the criminal justice system's response overall. As the Royal Commission noted:

*A victim or survivor's initial contact with the police is likely to be highly influential in determining how they view the criminal justice system as a whole and whether they are prepared to continue to seek a criminal justice response.*<sup>41</sup>

Our discussion here therefore focuses on the initial police response to reports of child sexual abuse, although we also note our support for improving other aspects of the police investigation process as recommended by the Royal Commission.<sup>42</sup>

Generally, we have received very positive feedback from survivors about their reporting experiences in Victoria when they have engaged with the Sexual Offences and Child Abuse Investigation Teams (SOCITs) and the SANO Taskforce. SOCIT and SANO staff have been noted as very well informed about institutional and other child sexual abuse, and are often familiar with particular institutions and perpetrators. Survivors have said that this has helped them to feel immediately believed when reporting their abuse to police, establishing the foundation for a positive experience of the investigation process. The overall approach of SOCIT and SANO is perceived as a victim-centric one that prioritises respect, dignity and support.

Unfortunately, survivors have often had much more negative experiences when reporting their abuse to a local police station. Within the last eighteen months, we have received feedback from clients who have been required to disclose a large amount of detailed information about their abuse before being referred to a SOCIT. This can be distressing and confronting for survivors, especially where they are not well supported. In our experience, survivors reporting to non-specialist police officers are also more likely to encounter other factors that can contribute to a negative experience, including not having their complaint taken seriously or being dissuaded from pursuing a police investigation.

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41 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*, p. 395.

42 See, for example, Criminal Justice Recommendations 7 and 9 regarding police investigations, and Criminal Justice Recommendations 10 and 11 regarding police charging decisions.

Overall, our clients' experiences demonstrate the importance of police officers having specialist expertise to deliver trauma-informed and survivor-focused responses to child sexual offences. While we continue to support the Royal Commission's recommendations to improve generalist responses to child sexual abuse (as part of ensuring that all police officers have at least a basic ability to respond to victims and survivors in a way that does not cause further harm),<sup>43</sup> we consider that a specialist response from beginning to end will ultimately be far more effective in encouraging victims and survivors to report their abuse and stay engaged with the criminal justice process. We therefore support expanding and enhancing Victoria Police's specialist approach to investigating child sexual offences. This includes by:

- Establishing more Multi-Disciplinary Centres (MDCs), especially in rural and regional areas.
- Where SOCITs are not able to be located in MDCs, locating SOCITs away from the normal police station environment.
- Ensuring the capability is in place for all victims and survivors to report their abuse directly to specialist police, and supporting and encouraging victims and survivors to do so.

## Issues Paper E: Sexual offences: the trial process

### Special procedures and alternative arrangements for giving evidence

Q3: How well are special procedures and alternative arrangements for giving evidence in sexual offence cases working? How can they be improved?

As we noted in our submission to the VLRC's review of the committal system,<sup>44</sup> we consider it a significant shortcoming of Victoria's current approach that key measures designed to reduce the stress and trauma of giving evidence in court, including the use of visual and audio recorded evidence and special hearings, are not generally available to adult survivors of child sexual abuse. Given the importance of reducing the stress and trauma of court proceedings to ensuring victims and survivors of child sexual offences can pursue a criminal justice response, we continue to strongly support these and other special measures being made available to all complainants in child sexual abuse cases and, ultimately, other prosecution witnesses as necessary. This is consistent with three key recommendations from the Royal Commission's Criminal Justice report,<sup>45</sup> as well as the VLRC's 2016

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43 Recommendation 3, part b and Recommendation 9, part a.

44 knowmore, *Submission to the Victorian Law Reform Commission's Review of Victoria's Committal System*.

45 Recommendations 53, 56 and 61.

recommendation that special procedures be extended to “protected victims”.<sup>46</sup> In our view, these reforms are essential to improving the criminal justice system’s response to child sexual offences, and we consider that implementing the outstanding recommendations should be a key priority for the Victorian Government.

## Jury directions

Q4: How well are jury directions for sexual offence trials working? How can they be improved?

The Royal Commission made a number of recommendations to improve the operation of jury directions in child sexual offence proceedings.<sup>47</sup> While these recommendations are largely satisfied in Victoria by the existing provisions of the *Jury Directions Act 2015* (Vic), one area where we consider that further improvement is required is in relation to educative jury directions to address misconceptions about child sexual abuse. These are particularly important in light of the impact such misconceptions can have on the progress of child sexual abuse matters through the criminal justice system, as highlighted on pages 9 and 10.

In exploring this issue, the Royal Commission considered previous work by the Australian Law Reform Commission (ALRC) and New South Wales Law Reform Commission (NSWLRC). This included a joint 2010 report by the ALRC and NSWLRC that recommended jury directions about children’s abilities as witnesses and responses to sexual abuse be developed and authorised for use across Australia.<sup>48</sup> Similarly, the NSWLRC recommended in 2012 that a national study into misconceptions about the reliability of children’s evidence and their responses to sexual abuse be conducted, with a view to amending the uniform Evidence Acts to facilitate expert evidence and jury directions on these matters.<sup>49</sup>

Despite the length of time that had passed since these recommendations were made, the Royal Commission concluded that very little had been done to progress relevant reforms to jury directions, aside from work in Victoria that is now reflected in the provisions in Part 5, Division 3 of the *Jury Directions Act*.<sup>50</sup> The Royal Commission therefore recommended further work in this area, calling on all states and territories to:

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46 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Recommendations 38 and 40.

47 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, Recommendations 64 to 66, 70 and 71.

48 Australian Law Reform Commission and New South Wales Law Reform Commission, *Family Violence — A National Legal Response*, ALRC, Canberra, 2010, <[www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114\\_WholeReport.pdf](http://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC114_WholeReport.pdf)>.

49 New South Wales Law Reform Commission, *Jury Directions*, Sydney, 2012, <[www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-136.pdf](http://www.lawreform.justice.nsw.gov.au/Documents/Publications/Reports/Report-136.pdf)>.

50 We also note the provisions inserted in 2018 into Part 4, Division 11 of the *Jury Directions Act* regarding the language and cognitive skills of child witnesses.



*consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given... (Criminal Justice Recommendation 70)<sup>51</sup>*

We note that this recommendation has been accepted by the Victorian Government, and we strongly support its implementation given persistent misconceptions about the nature and impacts of child sexual abuse and the behaviour of victims. We further suggest that this recommendation be regularly revisited to ensure that jury directions continue to reflect our developing understanding of child sexual abuse.

## Tendency and coincidence evidence

Q5: Is there a need to change any laws on evidence or procedure for sexual offences? If so, what should be changed?

The Royal Commission found that tendency and coincidence evidence is critically important for securing convictions in many child sexual abuse cases. It highlighted a number of instances where significant injustices had resulted from these types of evidence being excluded from criminal proceedings, preventing juries from getting a true picture of the perpetrator's alleged offending. The Royal Commission concluded that laws relating to the admissibility of tendency and coincidence evidence have become "unfairly protective of the accused", to the detriment of complainants and the community.<sup>52</sup>

In light of these problems, knowmore strongly supports reforms that have been developed for use in Uniform Evidence Law (UEL) jurisdictions in response to Criminal Justice Recommendations 44 to 51 (see Table A.2 in the Appendix). These comprise:

- Amendments to the UEL to reform the test for admissibility of tendency and coincidence evidence, in the form of:
  - A new, targeted provision to supplement the first limb of the test, providing that tendency evidence about a defendant in a child sexual offence proceeding that shows the defendant's tendency to have a sexual interest in children or to act on such an interest must be taken to have significant probative value.
  - An amended second limb of the test, requiring that tendency or coincidence evidence have probative value that "outweighs", rather than "substantially outweighs", any prejudicial effect on the defendant.
- Supplementary reforms to further facilitate the admissibility of tendency and coincidence evidence, including:

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51 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 200.

52 Royal Commission, *Criminal Justice Report: Parts III–VI*, p. 591.



- A provision to explicitly exclude the application of any principle or rule of the common law or equity that prevents or restricts the admission of propensity or similar fact evidence about a defendant in a proceeding on the basis of its inherent unfairness or unreliability, consistent with Criminal Justice Recommendation 46.
- A provision to explicitly provide that the possibility of concoction, collusion or contamination should not be considered in the application of either limb of the test for admissibility of tendency or coincidence evidence, consistent with Criminal Justice Recommendation 47.
- A provision to clearly recognise improbability of similar lies evidence as a form of coincidence evidence.<sup>53</sup>

These reforms are reflected in the Uniform Evidence Law (Tendency and Coincidence) Model Provisions 2019 (the Model Bill)<sup>54</sup> that all UEL jurisdictions agreed to implement at the Council of Attorneys-General meeting on 29 November 2019.<sup>55</sup> New South Wales and the ACT have both since implemented the Model Bill, with amendments commencing on 1 July 2020 and 1 September 2020 respectively.<sup>56</sup> Given the great importance of these reforms for ensuring that the criminal justice system can respond more effectively to child sexual offences, we support relevant amendments to the *Evidence Act 2008* (Vic) being progressed as a matter of priority.

## Sentencing

Q8: What are other issues with the trial process for sexual offences, and how should they be addressed?

One key issue examined by the Royal Commission in relation to sentencing for child sexual offences was the application of current versus historical sentencing standards. It described the current approach in Victoria as a partial application of historical sentencing standards, noting that section 5(2)(b) of the *Sentencing Act 1991* (Vic) requires the court to have regard to “current sentencing practices”. It also noted, however, that the Victorian Court of Appeal has held that these provisions are not exclusive, and that sentencing practices at the time of a person’s offending may also be a factor that the sentencing court can have regard to.<sup>57</sup> This approach leaves open the possibility of people who have committed historical child

53 Council of Attorneys-General Working Group, ‘Proposal paper: Proposed reform to facilitate greater admissibility of tendency and coincidence evidence in criminal proceedings’, 2019.

54 Available at <[pcc.gov.au/uniform/2019/29%20November%202019%20amendments.pdf](http://pcc.gov.au/uniform/2019/29%20November%202019%20amendments.pdf)>.

55 Council of Attorneys-General, *Communique*, 29 November 2019, <[www.ag.gov.au/sites/default/files/2020-03/Council-of-Attorneys-General-communique-November-2019.pdf](http://www.ag.gov.au/sites/default/files/2020-03/Council-of-Attorneys-General-communique-November-2019.pdf)>.

56 *Evidence Amendment (Tendency and Coincidence) Act 2020* (NSW); *Royal Commission Criminal Justice Legislation Amendment Act 2020* (ACT).

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

sexual offences receiving sentences that are now regarded as out of step with community and survivor expectations.

Having considered reforms to address this issue in England and Wales, the Royal Commission recommended that all states and territories require sentences for child sexual abuse offences to be set in accordance with sentencing standards applicable at the time of sentencing rather than at the time of offending (Criminal Justice Recommendation 76). The Royal Commission concluded that, provided that the maximum penalty that applied at the time of offending continued to apply, this was an appropriate approach that ensured “a fair balance in the complex task of sentencing for these types of offences”.<sup>58</sup>

We note that this recommendation was accepted by the Victorian Government, but no relevant legislative amendments have yet been introduced. Consistent with recent reforms in Queensland,<sup>59</sup> we support Victoria’s Sentencing Act being amended for consistency with the Royal Commission’s recommendation.

## Issues Paper F: People who have committed sexual offences

### Children engaging in harmful sexual behaviour

Q6: What is working well in responding to harmful sexual behaviour in children? What improvements can be made?

The Royal Commission gave detailed consideration to the issue of harmful sexual behaviour in children in Volume 10 of its Final Report. It found, as the VLRC has noted in the issues paper, that harmful sexual behaviour in children is a significant problem that accounts for a considerable proportion of child sexual abuse. Of the 6,875 people the Royal Commission heard from in private sessions, nearly one in six had been sexually abused in an institution by another child. Importantly, the Royal Commission also found that harmful sexual behaviour in children is frequently a time-limited problem, with most children’s harmful sexual behaviours ceasing in childhood.

In light of these findings, the Royal Commission emphasised the need for a broad range of strategies to identify and respond to harmful sexual behaviour in children as soon as possible, including early intervention strategies to prevent children’s behaviour from escalating into more high-risk behaviour, and specialist assessment and therapeutic treatment strategies to prevent further instances of abuse. The Royal Commission also

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58 Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, p. 321.

59 Section 9(4), paragraph (a), *Penalties and Sentences Act 1992* (Qld), as amended by section 53(1) of the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020* (Qld).

emphasised the importance of primary prevention strategies to educate family members, carers, professionals and the wider community about preventing harmful sexual behaviour in the first instance.

We acknowledge, as the Royal Commission did, the relative strengths of Victoria's current approach to addressing harmful sexual behaviour in children. These include:

- School-based sexuality and Respectful Relationships education focused on helping children to identify their personal rights and responsibilities and teaching positive behaviours.
- Victoria's Child Protection Manual including standalone policies and procedures and advice and protocols for responding to children engaging in sexually abusive behaviours.
- Victoria's Sexually Abusive Behaviour Treatment Services providing specialist assessment and therapeutic interventions to children of all ages who engage in problem or abusive sexual behaviours.
- Victoria's Male Adolescent Program for Positive Sexuality (MAPPS) providing therapeutic interventions to children and young men between the ages of 10 and 21 who have been convicted of a sexual offence.
- The capacity for children engaging in harmful sexual behaviour to access therapeutic interventions voluntarily or compulsorily via the child protection and criminal justice systems.
- The adoption of the CEASE Standards of Practice for Problem Sexual Behaviours and Sexually Abusive Behaviour Treatment Programs across all funded services.<sup>60</sup>

The Royal Commission's analysis suggests that Victoria's approach was, in many respects, best practice within Australia at that time.

Notwithstanding this, the Royal Commission made a suite of recommendations directed at all state and territory governments to further improve responses to harmful sexual behaviour in children. Specifically, the Royal Commission recommended that:

- Harmful sexual behaviour in children be addressed as part of its recommended national strategy to prevent child sexual abuse (Final Report Recommendation 10.1), having found a lack of coordination and consistency in jurisdictions' responses.
- There be timely expert assessments available for children engaging in harmful sexual behaviour (Final Report Recommendation 10.2), having found that current approaches to assessment were inconsistent and reliant on limited assessment tools.
- There be a network of specialist and generalist services delivering therapeutic interventions to meet the needs of all children engaging in harmful sexual behaviour (Final Report Recommendation 10.3), having found a lack of appropriate services for certain groups of children, including children with disability, Aboriginal and Torres

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60 Royal Commission, *Final Report: Volume 10*; Victorian Government, *Victorian Government Annual Report 2019*.

Strait Islander children, children from culturally and linguistically diverse backgrounds, and children in regional and remote communities.

- There be clear referral pathways for children engaging in harmful sexual behaviours to access expert assessment and therapeutic intervention (Final Report Recommendation 10.4), having found that these did not always exist.
- Therapeutic interventions for children engaging in harmful sexual behaviours be delivered in accordance with nine key principles, including that interventions are trauma-informed, culturally safe and accessible to all children engaging in harmful sexual behaviours (Final Report Recommendation 10.5), noting in particular the lack of suitable services for certain groups of children mentioned above.
- All services providing therapeutic interventions for children engaging with harmful sexual behaviour provide their staff with professional training and clinical supervision (Final Report Recommendation 10.6), having found that there was insufficient therapeutic expertise among professionals working in this area.
- Services providing therapeutic interventions for children engaging in harmful sexual behaviour be rigorously evaluated (Final Report Recommendation 10.7), having found that few such evaluations have been conducted.

All of these recommendations were accepted or accepted in principle by the Victorian Government (see Table A.1 in the Appendix).

We note that a number of the recommendations appear especially relevant to Victoria given commentary during the Royal Commission highlighting particular areas for improvement:

- Relevant to Recommendations 10.2, 10.3 and 10.5, CEASE noted in its submission to the Royal Commission that services are not sufficiently timely, and that improvements were also required to ensure services are more accessible to children with disability and more readily available in rural and remote communities.<sup>61</sup> Similarly, the Royal Commission noted that “MAPPS is limited in that it is tailored for boys and not girls, nor for children with disability”.<sup>62</sup>
- Relevant to Recommendation 10.6, CEASE noted in its submission that the workshops and peer mentoring sessions currently delivered through the Sexually Abusive Behaviour Treatment Services Workforce Development Program, while working well, needed to be “increased to ensure a well-trained, effective workforce”.<sup>63</sup>
- Relevant to Recommendation 10.7, the Royal Commission noted that Victoria’s approach of enabling children to access therapeutic interventions via multiple

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61 CEASE, *Response: Issues Paper 10 — Advocacy and Support and Therapeutic Treatment Services*, 2015, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Issues%20Paper%2010%20-%20Submission%20-%2018%20CEASE.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Issues%20Paper%2010%20-%20Submission%20-%2018%20CEASE.pdf)>.

62 Royal Commission, *Final Report: Volume 10*, p. 124.

63 CEASE, *Response: Issues Paper 10 — Advocacy and Support and Therapeutic Treatment Services*, p. 5.

pathways, while appearing promising, had not been formally evaluated. It also noted that MAPPS had not been evaluated since 1998.<sup>64</sup>

We acknowledge that, given the focus of our service, we do not have practical insights into these matters or the extent to which this commentary remains relevant. However, we note that the limited information available to us regarding the implementation of relevant recommendations in Victoria does not suggest that significant changes have been made to address the identified shortcomings. In particular, the relevant sections of the Victorian Government's 2018 and 2019 progress reports largely consist of general overviews of prevention and intervention strategies that existed at the time of the Royal Commission's report, noting as exceptions that Therapeutic Treatment Orders are now able to be made for children between the ages of 14 and 17 years, and that work is underway to design a Sexually Abusive Behaviour Treatment Service for Aboriginal children.<sup>65</sup> We therefore submit that:

- Further consideration be given to possible ongoing shortcomings in Victoria's approach to responding to children engaging in harmful sexual behaviour, particularly in the areas highlighted in the Royal Commission.
- Further action be taken as necessary to ensure Victoria's approach to responding to children engaging in harmful sexual behaviour fully delivers on the intent of Recommendations 10.1 to 10.7 in the Royal Commission's Final Report.

## Issues Paper G: Sexual offences: restorative and alternative justice models

### Restorative justice

Q1: Do you support adopting a restorative justice model for sexual offences? Why or why not?

We acknowledge that, compared to a criminal trial, restorative justice processes can have a number of benefits for victims of crime. In particular, we note a review into the use and effectiveness of restorative justice following child sexual abuse, adult sexual abuse, and similar harms conducted for the Royal Commission. This concluded that "under specific conditions, participation [in restorative justice processes] improves victim wellbeing and is

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64 Royal Commission, *Final Report: Volume 10*.

65 Victorian Government, *Victorian Government Annual Report 2018 — Royal Commission into Institutional Responses to Child Sexual Abuse*, Melbourne, 2018, <[content.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Child%20Abuse%20Royal%20Commission%20Annual%20Report%202018%20FINAL.pdf](https://content.vic.gov.au/sites/default/files/2019-11/Victorian%20Government%20Child%20Abuse%20Royal%20Commission%20Annual%20Report%202018%20FINAL.pdf)>; *Victorian Government Annual Report 2019*.

perceived by victim-survivors as satisfying, worthwhile and procedurally fair”.<sup>66</sup> We note some similar findings in Victoria, from the Community-Based Survivor-Victim Focussed Restorative Justice Pilot conducted at the South Eastern Centre Against Sexual Assault and Family Violence between 2016 and 2018. In that study, all participants said that they would recommend the process to other victims and survivors, with some conditions.<sup>67</sup>

Consistent with these findings, we support victims and survivors of child sexual abuse having the option to participate in restorative justice processes within or alongside the criminal justice system, provided there are appropriate safeguards. Recognising our limited expertise in this area, we would simply say that the specific form of these processes should be evidence-based and informed by the insights of experts and experienced practitioners. Above all, any restorative justice approach should be trauma-informed and culturally safe, and must ensure that any decision by a survivor to participate in such processes is fully informed and free from the alleged perpetrator’s influence, and made with appropriate support (including legal advice) and after proper consideration.

Notwithstanding the above, our experience suggests that generally few victims and survivors of institutional and other child sexual abuse will seek to participate in restorative justice processes. This reflects a number of barriers to adopting restorative justice processes in child sexual abuse matters, including:

- The complex power dynamics in child sexual offending, especially in institutional settings.
- The unwillingness and unavailability of perpetrators to participate, particularly given the long time it takes for many victims and survivors to disclose and report their abuse.
- The limited effectiveness of any restorative justice approach in deterring criminal offending by others and reflecting society’s condemnation of the perpetrator’s conduct (as is done through the criminal justice process).

As the Royal Commission noted, these and other factors may explain why it was unable to identify any examples of where restorative justice processes had been used in criminal justice responses to institutional child sexual abuse specifically.<sup>68</sup>

For institutional child sexual abuse, elements of restorative justice approaches are reflected in the direct personal response component of the National Redress Scheme.<sup>69</sup> This enables

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66 J Bolitho and K Freeman, *The Use and Effectiveness of Restorative Justice in Criminal Justice Systems Following Child Sexual Abuse or Comparable Harms*, 2016, p. 7, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Restorative%20justice%20following%20child%20sexual%20abuse%20or%20comparable%20harms%20-%20Government%20responses.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Restorative%20justice%20following%20child%20sexual%20abuse%20or%20comparable%20harms%20-%20Government%20responses.pdf)>.

67 B Loff, B Naylor and L Bishop, *A Community-Based Survivor-Victim Focussed Restorative Justice — A Pilot*, Report to the Criminology Research Advisory Council, Australian Institute of Criminology, Canberra, 2019, <[www.aic.gov.au/sites/default/files/2020-05/CRG-33-14-15-Final-Report.pdf](http://www.aic.gov.au/sites/default/files/2020-05/CRG-33-14-15-Final-Report.pdf)>.

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

69 Sections 54 to 56, *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).



interested survivors to seek, for example, an apology from the institution responsible for their abuse, and is consistent with our experience that victims and survivors of this type of abuse are more likely to seek a restorative response from institutions than from individual perpetrators. To date, about 45 per cent of survivors who have received an offer of redress have taken up the option of receiving a direct personal response from an institution.<sup>70</sup> For child sexual abuse generally, similar restorative justice elements are included in the recognition stream of the VLRC's proposed new victims of crime financial assistance scheme (see further discussion on pages 34 and 35). We agree with the Royal Commission that these types of approaches, especially in cases of institutional abuse, are "more likely to be taken up by more survivors and are in general likely to be more effective for survivors who seek a restorative justice response".<sup>71</sup>

## Inquisitorial models

Q3: Is there a role for an inquisitorial model or features for sexual offences? If so, what should this look like?

We note that inquisitorial models were considered in detail by both the Royal Commission in its Criminal Justice report<sup>72</sup> and by the VLRC in its report on victims of crime in the criminal trial process.<sup>73</sup> Notwithstanding differences in the focus and scope of these inquiries, the Royal Commission and the VLRC both ultimately came to the same conclusion — enhancing the adversarial system was preferable to fundamentally changing it. We support this general view.

In relation to child sexual abuse cases specifically, we note that the Royal Commission's focus, in lieu of advocating for an inquisitorial model, was on reforming those aspects of the criminal justice system that are the most challenging for victims and survivors and most contribute to them feeling marginalised, vulnerable, attacked and traumatised.<sup>74</sup> This includes initial police responses, how police and prosecutors engage with survivors, how and when survivors are required to give evidence in court, and how trials are conducted, including the admissibility of tendency and coincidence evidence. Acknowledging as the Royal Commission did that the victim is an essential participant in almost every criminal investigation or prosecution for a child sexual offence, this makes the implementation of the outstanding reforms discussed elsewhere in this submission all the more important for improving the criminal justice system's response to child sexual offences.

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70 National Redress Scheme, *Strategic Success Measures*, October 2020, p. 7, <[www.nationalredress.gov.au/sites/default/files/documents/2020-11/d20-1438397-national-redress-scheme-strategic-success-measures-report-oct-2020.pdf](http://www.nationalredress.gov.au/sites/default/files/documents/2020-11/d20-1438397-national-redress-scheme-strategic-success-measures-report-oct-2020.pdf)>.

71 Royal Commission, *Criminal Justice Report: Executive Summary and Parts I–II*, p. 190.

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

73 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*.

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

One area where we consider the existing adversarial system should be reformed beyond the Royal Commission's recommendations, to incorporate more features of an inquisitorial model, is in relation to independent legal assistance for victims and survivors. This reflects a number of criticisms and concerns commonly raised by victims and survivors about the criminal justice system's response to child sexual offences and their participation as complainants in criminal proceedings. For example, many knowmore clients have previously raised concerns about their inability to meaningfully participate in proceedings, noting the difficulties they have understanding procedural matters in court, engaging in discussions about prosecution decisions, and knowing what questions to ask to resolve their concerns. These difficulties contribute to what the Royal Commission found was a perception among many victims and survivors that they are marginalised by or excluded from the criminal justice system.<sup>75</sup> While many of our clients have been very grateful for the information and assistance provided by services like the Victims Assistance Program, they often remain frustrated by their inability to access truly independent support and have their individual interests represented in proceedings.

We submitted to the Royal Commission that, to help victims and survivors of child sexual abuse overcome the challenges they face in meaningfully participating in criminal proceedings, it would be very beneficial for complainants to be given access to independent legal advice and, where needed for specific issues, legal representation.<sup>76</sup> We continue to hold this view, and note that a number of other parties also expressed to the Royal Commission their support for providing complainants with independent legal assistance. This included the former Victorian Victims of Crime Commissioner, who was of the view that independent legal representation for victims would be highly desirable in certain circumstances, such as if a victim is asked to give evidence against a close relative or applications are made in relation to confidential communications.<sup>77</sup> Consistent with this, we note that the VLRC has previously recommended that Victoria Legal Aid be funded to establish a service for victims of violent crimes modelled on the Sexual Assault Communications Privilege Service in New South Wales.<sup>78</sup>

To conclude, we strongly support complainants in child sexual offence proceedings being given access to independent legal assistance as a way of further improving the justice system's response to these offences. We support the VLRC's previous recommendation regarding a service for victims of violent crimes, although we would ultimately like to see victims and survivors of child sexual abuse be given access to specialist, trauma-informed assistance in relation to a broader range of issues throughout the prosecution process. We also consider it important for any service delivering this assistance to be free from conflicts arising from the concurrent representation of alleged perpetrators, to ensure victims and survivors have confidence in the service. Based on the insights we have gained from our

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

76 knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's Criminal Justice Consultation Paper*, 2016, <[knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf](https://knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf)>.

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

78 Victorian Law Reform Commission, *The Role of Victims of Crime in the Criminal Trial Process*, Recommendation 23.



clients about the challenges they face in criminal proceedings, we believe these reforms would be strongly supported by victims and survivors of child sexual abuse and may encourage more victims and survivors to seek a criminal justice response and maintain their engagement in criminal proceedings.

## Issues Paper H: Sexual offences: civil law and other non-criminal responses

Q1: What aspects of other justice processes provide best practice examples for supporting people who have experienced sexual harm?

Q2: How can the interaction between other justice processes and the criminal justice system be improved?

### The Victims of Crime Assistance Tribunal

Compared to the criminal justice system, statutory victims of crime compensation schemes like Victoria's Victims of Crime Assistance Tribunal (VOCAT) offer a number of advantages for victims and survivors of child sexual abuse. In particular, proceedings are non-adversarial in nature, helping to 'level the playing field' for victims and survivors and providing them with a greater sense of control over the proceedings. The schemes are also more victim-focused — in theory, they have a restorative or therapeutic goal, with a focus on acknowledging the wrongdoing that has been perpetrated against a victim and providing assistance to help them recover. For victims and survivors of child sexual abuse, having their abuse acknowledged is a very important outcome. One knowmore client explained that they had made an application for compensation under a statutory scheme following a police complaint that was investigated but did not lead to charges, for the sole reason of having "some official acknowledgement that a crime had been committed against me".

Despite these possible benefits, knowmore's experience is that victims of crime compensation schemes are less attractive than the other compensation options potentially available to survivors of institutional child sexual abuse, namely redress schemes, including the National Redress Scheme, and common law/civil claims. In particular, the very limited financial assistance that can be awarded under statutory compensation schemes acts as a major disincentive to victims and survivors. When many victims of institutional and other child sexual abuse have suffered debilitating and lifelong trauma as a result of the crimes committed against them, the amounts of financial assistance available to them — no more than \$70,000 in Victoria, and only \$10,000 of which is available as special financial assistance<sup>79</sup> — are perceived by many survivors as signalling that their experiences are not seen as significant. Other major shortcomings of these schemes for victims and survivors of child sexual abuse include difficulties meeting the eligibility criteria and, for victims of

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79 Sections 8 and 8A, *Victims of Crime Assistance Act 1996* (Vic).

institutional abuse, a view that the schemes fail to hold institutions accountable given awards of assistance are paid for by the government.

Given these general experiences, knowmore made a detailed submission to the VLRC's review of the VOCAA in 2017.<sup>80</sup> In that, we outlined a number of ways we thought VOCAT (and the VOCAA) should be improved to better meet the needs of victims and survivors of child sexual abuse. These included:

- Increasing the amounts of financial assistance available to victims and survivors of child sexual abuse, to better recognise the significant and often lifelong impacts of abuse and more accurately reflect community standards about such crimes.
- Expanding the scope of VOCAT to ensure more victims and survivors of child sexual abuse are able to access assistance, including by:
  - Expanding the definition of 'act of violence' to encompass all sexual offences, including non-contact sexual offences such as grooming and image-based sexual offences, to reflect contemporary notions of violent crime and the various ways people can be victimised.
  - Expanding the definition of 'act of violence' to include physical, psychological/emotional and cultural abuse and neglect that occurred in connection with child sexual abuse, to acknowledge the reality that many victims and survivors, especially in institutional settings, are also subjected to other forms of maltreatment.
  - Expanding the definition of 'injury' to include other forms of harm caused by child sexual abuse, to better reflect the full range of devastating impacts experienced by victims and survivors of abuse (including, for example, a sense of violation, reduced self-worth or perception, a lost or reduced capacity to trust and develop relationships with others, and lost educational opportunities).
  - Amending provisions that require VOCAT to have regard to a victim's character and behaviour 'at any time', to acknowledge the reality that many survivors of child sexual abuse, especially in institutional settings, have histories of criminal offending that stem from the crimes committed against them as children.
- Removing requirements in the VOCAA that severely restrict the ability of victims and survivors of child sexual abuse to access assistance, including:
  - Removing the two-year limit on claims, to recognise the significant barriers to disclosure for victims and survivors of child sexual abuse and the long delays in disclosure that arise as a result. [We acknowledge that the time limit was

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80 knowmore, *Submission to the Victorian Law Reform Commission's Review of the Victims of Crime Assistance Act 1996*, 2017, <[knowmore.org.au/wp-content/uploads/2020/11/submission-review-of-the-victims-of-crime-assistance-act-1996-vic.pdf](https://knowmore.org.au/wp-content/uploads/2020/11/submission-review-of-the-victims-of-crime-assistance-act-1996-vic.pdf)>.

subsequently removed in April 2018 for applications related to child sexual abuse (and physical abuse).]<sup>81</sup>

- Removing the obligation on victims to report their abuse to police (or otherwise explain why they failed to report it), to avoid re-traumatising victims and survivors by compelling them to take actions they do not want to take.
- Removing the requirement that the injury suffered by the victim be a ‘direct’ result of the child sexual abuse they suffered, to recognise the difficulties of proving causation when many victims and survivors have experienced multiple episodes of violence across their lives.
- Ensuring victims and survivors of child sexual abuse can access the support they need, including specialist and longer term therapeutic treatment services, medical care, education, and family location and unification services, to address the diverse and complex impacts of childhood sexual abuse, especially that which occurs in the context of institutionalisation.
- Establishing a specialist arm of VOCAT to deal exclusively with claims relating to sexual offences, to more effectively deliver trauma-informed assistance to victims and survivors.

We refer readers to our full submission for further details.

We note that in its final report on the review, the VLRC recommended that VOCAT be replaced by a more flexible financial assistance scheme administered by the Victims of Crime Commissioner.<sup>82</sup> Although the VLRC’s proposed scheme does not incorporate all of the elements knowmore advocated for in its submission, it offers a number of significant and necessary improvements on VOCAT. We especially support:

- Victims having the option of participating in a conference with a scheme decision-maker, as a way to have the crimes committed against them and the impacts of these acknowledged (Recommendations 13 and 14).
- Specialised case management and decision-making within the proposed scheme, including, for example, for victims of sexual offences (Recommendation 19).
- All sexual offences being captured within the definition of a criminal act (Recommendation 27).
- Victims of criminal acts that would constitute sexual offences not being required to provide proof of injury (Recommendation 31).
- The increased maximum amounts of assistance proposed for the scheme (Recommendation 43).

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81 Section 29(1A), *Victims of Crime Assistance Act 1996* (Vic), inserted by section 37, *Justice Legislation Amendment (Victims) Act 2018* (Vic).

82 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996*.

- Victims being able to provide a much broader range of documentary evidence to establish the relevant criminal act, including a report from a counsellor or social worker (Recommendation 60).
- Decision-makers no longer having regard to the broad character and behaviour of the victim ‘at any time’ when deciding an application for assistance, and limiting consideration of a victim’s criminal behaviour to activities with a clear nexus to the criminal act that is the subject of their application (Recommendation 77).

Notwithstanding our view that most victims and survivors of institutional child sexual abuse in Victoria will continue to prefer alternative avenues for seeking compensation (especially given significant legislative changes since 2017 that make it easier for survivors to sue institutions),<sup>83</sup> we note that the proposed scheme may have particular benefits for the not insignificant number of survivors who are currently unable to access redress under the National Redress Scheme.<sup>84</sup>

We understand that the Victorian Government has accepted all of the VLRC’s recommendations, though they are yet to be implemented. Given the relative recency of the VLRC’s recommendations, the significant body of work underpinning their development, and the importance of an improved victims of crime assistance scheme for victims and survivors of sexual offences, we would support the Victorian Government pursuing these reforms as a matter of priority.

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83 As introduced by the *Wrongs Amendment (Organisational Child Abuse) Act 2017* (Vic) and *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic).

84 Because, for example, the institution responsible for their abuse is not participating in the Scheme or their abuse has been determined to be outside the scope of the Scheme.

# Appendix: Key recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse

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

	Recommendation	Victorian Government response
Advocacy, support and therapeutic treatment services	<p><i>Recommendation 9.1</i></p> <p>The Australian Government and state and territory governments should fund dedicated community support services for victims and survivors in each jurisdiction, to provide an integrated model of advocacy and support and counselling to children and adults who experienced childhood sexual abuse in institutional contexts. Funding and related agreements should require and enable these services to:</p> <ul style="list-style-type: none"> <li>a. be trauma-informed and have an understanding of institutional child sexual abuse</li> <li>b. be collaborative, available, accessible, acceptable and high quality</li> <li>c. use case management and brokerage to coordinate and meet service needs</li> <li>d. support and supervise peer-led support models.</li> </ul>	Accepted in principle

	Recommendation	Victorian Government response
	<p><i>Recommendation 9.2</i></p> <p>The Australian Government and state and territory governments should fund Aboriginal and Torres Strait Islander healing approaches as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse. These approaches should be evaluated in accordance with culturally appropriate methodologies, to contribute to evidence of best practice.</p>	Accepted in principle
	<p><i>Recommendation 9.3</i></p> <p>The Australian Government and state and territory governments should fund support services for people with disability who have experienced sexual abuse in childhood as an ongoing, integral part of advocacy and support and therapeutic treatment service system responses for victims and survivors of child sexual abuse.</p>	Accepted in principle
	<p><i>Recommendation 9.6</i></p> <p>The Australian Government and state and territory governments should address existing specialist sexual assault service gaps by increasing funding for adult and child sexual assault services in each jurisdiction, to provide advocacy and support and specialist therapeutic treatment for victims and survivors, particularly victims and survivors of institutional child sexual abuse. Funding agreements should require and enable services to:</p> <ul style="list-style-type: none"> <li>a. be trauma-informed and have an understanding of institutional child sexual abuse</li> <li>b. be collaborative, available, accessible, acceptable and high quality</li> <li>c. use collaborative community development approaches</li> <li>d. provide staff with supervision and professional development.</li> </ul>	Accepted in principle
	<p><i>Recommendation 9.8</i></p> <p>The Australian Government and state and territory government agencies responsible for the delivery of human services should ensure relevant policy frameworks and strategies recognise the needs of victims and survivors and the benefits of implementing trauma informed approaches.</p>	Accepted in principle

	Recommendation	Victorian Government response
Children with harmful sexual behaviours	<p><i>Recommendation 10.1</i></p> <p>The Australian Government and state and territory governments should ensure the issue of children's harmful sexual behaviours is included in the national strategy to prevent child sexual abuse that we have recommended (see Recommendations 6.1 to 6.3).</p> <p>Harmful sexual behaviours by children should be addressed through each of the following:</p> <ul style="list-style-type: none"> <li>a. primary prevention strategies to educate family, community members, carers and professionals (including mandatory reporters) about preventing harmful sexual behaviours</li> <li>b. secondary prevention strategies to ensure early intervention when harmful sexual behaviours are developing</li> <li>c. tertiary intervention strategies to address harmful sexual behaviours.</li> </ul>	Accepted in principle
	<p><i>Recommendation 10.2</i></p> <p>The Australian Government and state and territory governments should ensure timely expert assessment is available for individual children with problematic and harmful sexual behaviours, so they receive appropriate responses, including therapeutic interventions, which match their particular circumstances.</p>	Accepted in principle
	<p><i>Recommendation 10.3</i></p> <p>The Australian Government and state and territory governments should adequately fund therapeutic interventions to meet the needs of all children with harmful sexual behaviours. These should be delivered through a network of specialist and generalist therapeutic services. Specialist services should also be adequately resourced to provide expert support to generalist services.</p>	Accepted in principle

	Recommendation	Victorian Government response
	<p><i>Recommendation 10.4</i></p> <p>State and territory governments should ensure that there are clear referral pathways for children with harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice systems.</p>	Accepted
	<p><i>Recommendation 10.5</i></p> <p>Therapeutic intervention for children with harmful sexual behaviours should be based on the following principles:</p> <ul style="list-style-type: none"> <li>a. a contextual and systemic approach should be used</li> <li>b. family and carers should be involved</li> <li>c. safety should be established</li> <li>d. there should be accountability and responsibility for the harmful sexual behaviours</li> <li>e. there should be a focus on behaviour change</li> <li>f. developmentally and cognitively appropriate interventions should be used</li> <li>g. the care provided should be trauma-informed</li> <li>h. therapeutic services and interventions should be culturally safe</li> <li>i. therapeutic interventions should be accessible to all children with harmful sexual behaviours.</li> </ul>	Accepted
	<p><i>Recommendation 10.6</i></p> <p>The Australian Government and state and territory governments should ensure that all services funded to provide therapeutic intervention for children with harmful sexual behaviours provide professional training and clinical supervision for their staff.</p>	Accepted in principle



	Recommendation	Victorian Government response
	<p><i>Recommendation 10.7</i></p> <p>The Australian Government and state and territory governments should fund and support evaluation of services providing therapeutic interventions for problematic and harmful sexual behaviours by children.</p>	Accepted in principle

Source: Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Preface and Executive Summary*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_-\\_preface\\_and\\_executive\\_summary.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_-_preface_and_executive_summary.pdf)>; Victorian Government, *Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Melbourne, 2018, <[www.vic.gov.au/sites/default/files/2020-03/Royal\\_Commission\\_Victorian\\_Government\\_response\\_table.pdf](http://www.vic.gov.au/sites/default/files/2020-03/Royal_Commission_Victorian_Government_response_table.pdf)>.

**Table A.2: Key recommendations from the Royal Commission's Criminal Justice Report and the Victorian Government's response**

	Recommendation	Victorian Government response
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"> <li>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</li> <li>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"> <li>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)</li> <li>treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues</li> </ol> </li> <li>establishes arrangements to ensure that, on initial contact from a victim or survivor, police refer victims and survivors to appropriate support services.</li> </ol>	Accepted in principle

	Recommendation	Victorian Government response
Encouraging reporting	<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"> <li>takes steps to communicate to victims (and their families or support people where the victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the process and to decline to proceed further with police and/or any prosecution</li> <li>provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors</li> <li>makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting</li> <li>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</li> <li>allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence</li> <li>is willing to take statements from victims and survivors in circumstances where the alleged perpetrator is dead or is otherwise unlikely to be able to be tried.</li> </ol>	Accepted in principle

	Recommendation	Victorian Government response
	<p><i>Recommendation 5</i></p> <p>To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, among Aboriginal and Torres Strait Islander victims and survivors, each Australian government should ensure that its policing agency:</p> <ol style="list-style-type: none"> <li>takes the lead in developing good relationships with Aboriginal and Torres Strait Islander communities</li> <li>provides channels for reporting outside of the community (such as telephone numbers and online reporting forms).</li> </ol>	Accepted in principle
	<p><i>Recommendation 6</i></p> <p>To encourage prisoners and former prisoners to report 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"> <li>provides channels for reporting that can be used from prison and that allow reports to be made confidentially</li> <li>does not require former prisoners to report at a police station.</li> </ol>	Accepted
Police investigations	<p><i>Recommendation 7</i></p> <p>Each Australian government should ensure that its policing agency conducts investigations of reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles:</p> <ol style="list-style-type: none"> <li>While recognising the complexity of police rosters, staffing and transfers, police should recognise the benefit to victims and their families and survivors of continuity in police staffing and should take steps to facilitate, to the extent possible, continuity in police staffing on an investigation of a complaint.</li> <li>Police should recognise the importance to victims and their families and survivors of police maintaining regular communication with them to keep them informed of the</li> </ol>	Accepted in principle

	Recommendation	Victorian Government response
	<p>status of their report and any investigation unless they have asked not to be kept informed.</p> <p>c. Particularly in relation to historical allegations of institutional child sexual abuse, police who assess or provide an investigative response to allegations should be trained to:</p> <ul style="list-style-type: none"> <li>i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record</li> <li>ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant.</li> </ul>	
	<p><i>Recommendation 9</i></p> <p>Each Australian government should ensure that its policing agency conducts investigative interviewing in relation to reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles:</p> <ul style="list-style-type: none"> <li>a. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should receive at least basic training in understanding sexual offending, including the nature of child sexual abuse and institutional child sexual abuse offending.</li> <li>b. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should be trained to interview the complainant in accordance with current research and learning about how memory works in order to obtain the complainant's memory of the events.</li> <li>c. The importance of video recorded interviews for children and other vulnerable witnesses should be recognised, as these interviews usually form all, or most, of the complainant's and other relevant witnesses' evidence in chief in any prosecution.</li> <li>d. Investigative interviewing of children and other vulnerable witnesses should be undertaken by police with specialist training. The specialist training should focus on:</li> </ul>	Accepted in principle

	Recommendation	Victorian Government response
	<ul style="list-style-type: none"> <li>i. a specialist understanding of child sexual abuse, including institutional child sexual abuse, and the developmental and communication needs of children and other vulnerable witnesses</li> <li>ii. skill development in planning and conducting interviews, including use of appropriate questioning techniques.</li> <li>e. Specialist police should undergo refresher training on a periodical basis to ensure that their specialist understanding and skills remain up to date and accord with current research.</li> <li>f. From time to time, experts should review a sample of video recorded interviews with children and other vulnerable witnesses conducted by specialist police for quality assurance and training purposes and to reinforce best-practice interviewing techniques.</li> <li>g. State and territory governments should introduce legislation to remove any impediments, including in relation to privacy concerns, to the use of video recorded interviews so that the relevant police officer, his or her supervisor and any persons engaged by police in quality assurance and training can review video recorded interviews for quality assurance and training purposes. This should not authorise the use of video recorded interviews for general training in a manner that would raise privacy concerns.</li> <li>h. Police should continue to work towards improving the technical quality of video recorded interviews so that they are technically as effective as possible in presenting the complainant's and other witnesses' evidence in chief.</li> <li>i. Police should recognise the importance of interpreters, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses.</li> <li>j. Intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses.</li> </ul>	

	Recommendation	Victorian Government response
Police charging decisions	<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> <ol style="list-style-type: none"> <li>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.</li> <li>In making decisions about whether to charge, police should not: <ol style="list-style-type: none"> <li>expect or require corroboration where the victim or survivor's account does not suggest that there should be any corroboration available</li> <li>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.</li> </ol> </li> </ol>	Accepted
	<p><i>Recommendation 11</i></p> <p>The Victorian Government should review the operation of section 401 of the <i>Criminal Procedure Act 2009</i> (Vic) and consider amending the provision to restrict the awarding of costs against police if it appears that the risk of costs awards might be affecting police decisions to prosecute. The government of any other state or territory that has similar provisions should conduct a similar review and should consider similar amendments.</p>	Accepted in principle

	Recommendation	Victorian Government response
Blind reporting	<p><i>Recommendation 16</i></p> <p>In relation to blind reporting, institutions and survivor advocacy and support groups should:</p> <ol style="list-style-type: none"> <li>be clear that, where the law requires reporting to police, child protection or another agency, the institution or group or its relevant staff member or official will report as required</li> <li>develop and adopt clear guidelines to inform staff and volunteers, victims and their families and survivors, and police, child protection and other agencies as to the approach the institution or group will take in relation to allegations, reports or disclosures it receives that it is not required by law to report to police, child protection or another agency.</li> </ol>	Noted
	<p><i>Recommendation 17</i></p> <p>If a relevant institution or survivor advocacy and support group adopts a policy of reporting survivors' details to police without survivors' consent – that is, if it will not make blind reports – it should seek to provide information about alternative avenues for a survivor to seek support if this aspect of the institution or group's guidelines is not acceptable to the survivor.</p>	Noted
	<p><i>Recommendation 18</i></p> <p>Institutions and survivor advocacy and support groups that adopt a policy that they will not report the survivor's details without the survivor's consent should make a blind report to police in preference to making no report at all.</p>	Noted
	<p><i>Recommendation 19</i></p> <p>Regardless of an institution or survivor advocacy and support group's policy in relation to blind reporting, the institution or group should provide survivors with:</p> <ol style="list-style-type: none"> <li>information to inform them about options for reporting to police</li> <li>support to report to police if the survivor is willing to do so.</li> </ol>	Noted



	Recommendation	Victorian Government response
Persistent child sexual abuse offences	<p><i>Recommendation 21</i></p> <p>Each state and territory government should introduce legislation to amend its persistent child sexual abuse offence so that:</p> <ol style="list-style-type: none"> <li>the actus reus is the maintaining of an unlawful sexual relationship</li> <li>an unlawful sexual relationship is established by more than one unlawful sexual act</li> <li>the trier of fact must be satisfied beyond reasonable doubt that the unlawful sexual relationship existed but, where the trier of fact is a jury, jurors need not be satisfied of the same unlawful sexual acts</li> <li>the offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed</li> <li>on sentencing, regard is to be had to relevant lower statutory maximum penalties if the offence is charged with retrospective application.</li> </ol>	Accepted
	<p><i>Recommendation 22</i></p> <p>The draft provision in Appendix H provides for the recommended reform. Legislation to the effect of the draft provision should be introduced.</p>	Accepted
	<p><i>Recommendation 24</i></p> <p>State and territory governments should consider providing for any of the two or more unlawful sexual acts that are particularised for the maintaining an unlawful sexual relationship offence to be particularised as courses of conduct.</p>	For further consideration
Failure to protect offence	<p><i>Recommendation 36</i></p> <p>State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows:</p> <ol style="list-style-type: none"> <li>The offence should apply where: <ol style="list-style-type: none"> <li>an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against:</li> </ol> </li> </ol>	Accepted in principle

	Recommendation	Victorian Government response
	<ul style="list-style-type: none"> <li>• a child under 16</li> <li>• a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child</li> <li>ii. the person has the power or responsibility to reduce or remove the risk</li> <li>iii. the person negligently fails to reduce or remove the risk.</li> </ul> <p>b. The offence should not be able to be committed by individual foster carers or kinship carers.</p> <p>c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included.</p> <p>d. State and territory governments should consider the Victorian offence in section 49C of the <i>Crimes Act 1958</i> (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child.</p>	
Principles for prosecution responses	<p><i>Recommendation 37</i></p> <p>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:</p> <p>a. All prosecution staff who may have professional contact with victims of institutional child sexual abuse should be trained to have a basic understanding of the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and how it can affect people who are involved in a prosecution process, including those who may have difficulties dealing with institutions or person in positions of authority.</p>	Accepted

	Recommendation	Victorian Government response
	<ul style="list-style-type: none"> <li>b. While recognising the complexity of prosecution staffing and court timetables, prosecution agencies should recognise the benefit to victims and their families and survivors of continuity in prosecution team staffing and should take steps to facilitate, to the extent possible, continuity in staffing of the prosecution team involved in a prosecution.</li> <li>c. Prosecution agencies should continue to recognise the importance to victims and their families and survivors of the prosecution agency maintaining regular communication with them to keep them informed of the status of the prosecution unless they have asked not to be kept informed.</li> <li>d. Witness Assistance Services should be funded and staffed to ensure that they can perform their task of keeping victims and their families and survivors informed and ensuring that they are put in contact with relevant support services, including staff trained to provide a culturally appropriate service for Aboriginal and Torres Strait Islander victims and survivors. Specialist services for children should also be considered.</li> <li>e. Particularly in relation to historical allegations of institutional child sexual abuse, prosecution staff who are involved in giving early charge advice or in prosecuting child sexual abuse matters should be trained to: <ul style="list-style-type: none"> <li>i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record</li> <li>ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant.</li> </ul> </li> <li>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.</li> </ul>	

	Recommendation	Victorian Government response
Charging and plea decisions	<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> <ol style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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.</li> <li>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.</li> </ol>	Accepted

	Recommendation	Victorian Government response
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>	For further consideration
	<p><i>Recommendation 45</i></p> <p>Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible:</p> <ol style="list-style-type: none"> <li>a. if the court thinks that the evidence will, either by itself or having regard to the other evidence, be ‘relevant to an important evidentiary issue’ in the proceeding, with each of the following kinds of evidence defined to be ‘relevant to an important evidentiary issue’ in a child sexual offence proceeding: <ol style="list-style-type: none"> <li>i. evidence that shows a propensity of the defendant to commit particular kinds of offences if the commission of an offence of the same or a similar kind is in issue in the proceeding</li> <li>ii. evidence that is relevant to any matter in issue in the proceeding if the matter concerns an act or state of mind of the defendant and is important in the context of the proceeding as a whole</li> </ol> </li> <li>b. unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both: <ol style="list-style-type: none"> <li>i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant</li> <li>ii. if there is a jury, the giving of appropriate directions to the jury about the relevance and use of the evidence will not remove the risk.</li> </ol> </li> </ol>	For further consideration

	Recommendation	Victorian Government response
	<p><i>Recommendation 46</i></p> <p>Common law principles or rules that restrict the admission of propensity or similar fact evidence should be explicitly abolished or excluded in relation to the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution.</p>	For further consideration
	<p><i>Recommendation 47</i></p> <p>Issues of concoction, collusion or contamination should not affect the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution. The court should determine admissibility on the assumption that the evidence will be accepted as credible and reliable, and the impact of any evidence of concoction, collusion or contamination should be left to the jury or other fact-finder.</p>	For further consideration
	<p><i>Recommendation 48</i></p> <p>Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.</p>	Accepted
	<p><i>Recommendation 49</i></p> <p>Evidence of:</p> <ul style="list-style-type: none"> <li>a. the defendant's prior convictions</li> <li>b. acts for which the defendant has been charged but not convicted (other than acts for which the defendant has been acquitted)</li> </ul> <p>should be admissible as tendency or coincidence evidence if it otherwise satisfies the test for admissibility of tendency or coincidence evidence about a defendant in a child sexual offence prosecution.</p>	For further consideration
	<p><i>Recommendation 50</i></p> <p>Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.</p>	For further consideration

	Recommendation	Victorian Government response
	<p><i>Recommendation 51</i></p> <p>The draft provisions in Appendix N provide for the recommended reforms for Uniform Evidence Act jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non–Uniform Evidence Act jurisdictions.</p>	For further consideration
Pre-recorded evidence	<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"> <li>in summary and indictable matters, the use of a prerecorded investigative interview as some or all of the witness’s evidence in chief</li> <li>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.</li> </ol>	Accepted in principle
	<p><i>Recommendation 53</i></p> <p>Full prerecording should be made available for:</p> <ol style="list-style-type: none"> <li>all complainants in child sexual abuse prosecutions</li> <li>any other witnesses who are children or vulnerable adults</li> <li>any other prosecution witness that the prosecution considers necessary.</li> </ol>	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



	Recommendation	Victorian Government response
Recorded evidence	<p><i>Recommendation 56</i></p> <p>State and territory governments should introduce legislation to require the audiovisual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness's evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a prerecorded hearing.</p>	Accepted in principle
Intermediaries	<p><i>Recommendation 59</i></p> <p>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:</p> <ul style="list-style-type: none"> <li>a. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses</li> <li>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</li> <li>c. makes intermediaries available at both the police interview stage and trial stage</li> <li>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.</li> </ul>	Accepted in principle

	Recommendation	Victorian Government response
Ground rules hearings	<p><i>Recommendation 60</i></p> <p>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.</p>	Accepted
Other special measures	<p><i>Recommendation 61</i></p> <p>The following special measures should be available in child sexual abuse prosecutions for complainants, vulnerable witnesses and other prosecution witnesses where the prosecution considers it necessary:</p> <ol style="list-style-type: none"> <li>giving evidence via closed circuit television or audiovisual link so that the witness is able to give evidence from a room away from the courtroom</li> <li>allowing the witness to be supported when giving evidence, whether in the courtroom or remotely, including, for example, through the presence of a support person or a support animal or by otherwise creating a more child-friendly environment</li> <li>if the witness is giving evidence in court, using screens, partitions or one-way glass so that the witness cannot see the accused while giving evidence</li> <li>clearing the public gallery of a courtroom during the witness's evidence</li> <li>the judge and counsel removing their wigs and gowns.</li> </ol>	Accepted
Judicial directions and informing juries	<p><i>Recommendation 67</i></p> <p>State and territory governments should support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.</p>	Accepted in principle

	Recommendation	Victorian Government response
	<p><i>Recommendation 68</i></p> <p>Relevant Australian governments should ensure that bodies such as:</p> <ul style="list-style-type: none"> <li>a. the Australasian Institute of Judicial Administration</li> <li>b. the National Judicial College of Australia</li> <li>c. the Judicial Commission of New South Wales</li> <li>d. the Judicial College of Victoria</li> </ul> <p>are adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.</p>	Accepted in principle
	<p><i>Recommendation 70</i></p> <p>Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given. The National Child Sexual Assault Reform Committee's recommended mandatory judicial directions and the Victorian Government's proposed directions on inconsistencies in the complainant's account should be the starting point for the consultation process, subject to the removal of the limitation in the third direction recommended by the National Child Sexual Assault Reform Committee in relation to children's responses to sexual abuse so that it can apply regardless of the complainant's age at trial.</p>	Accepted

	Recommendation	Victorian Government response
Delays and case management	<p><i>Recommendation 72</i></p> <p>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:</p> <ul style="list-style-type: none"> <li>a. the early allocation of prosecutors and defence counsel</li> <li>b. the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions</li> <li>c. appropriate early guilty pleas</li> <li>d. case management and the determination of preliminary issues before trial.</li> </ul>	Accepted in principle
Sentencing	<p><i>Recommendation 76</i></p> <p>State and territory governments should introduce legislation to provide that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, but the sentence must be limited to the maximum sentence available for the offence at the date when the offence was committed.</p>	Accepted

Source: Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Executive Summary and Parts I–II*, 2017, <[www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final\\_report\\_-\\_criminal\\_justice\\_report\\_-\\_executive\\_summary\\_and\\_parts\\_i\\_to\\_ii.pdf](http://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_executive_summary_and_parts_i_to_ii.pdf)>; Victorian Government, *Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse*, Melbourne, 2018, <[www.vic.gov.au/sites/default/files/2020-03/Royal\\_Commission\\_Victorian\\_Government\\_response\\_table.pdf](http://www.vic.gov.au/sites/default/files/2020-03/Royal_Commission_Victorian_Government_response_table.pdf)>.

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Image inspired by original artwork by Dean Bell depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands across Australia upon which we live and work. We pay our deep respects to Elders past, present and emerging.