

Our Ref: WGS
Please reply to: Brisbane office

21 September 2021

Department of Justice and Community Safety
GPO Box 4356
Melbourne VIC 3001

By email: reviewprojectsandsentencing@justice.vic.gov.au

Dear Colleagues,

Submission to the Review to Improve Victims' Experience of Summary Criminal Proceedings

knowmore commends the Victorian Government for conducting this review. knowmore is supportive of the review's overarching aim to develop options to improve the experience of victims in summary criminal proceedings.

We welcome the opportunity to make a submission to this review. We have no concerns about our submission being published.

About knowmore

knowmore is a national, free and independent community legal centre dedicated to providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse, including institutional child sexual abuse.

Our service was established in 2013 as to assist people who were engaging with or considering engaging with the Royal Commission. Since 1 July 2018, knowmore has been funded by the Australian Government¹ to deliver legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme.

¹ Represented by the Attorney-General's Department and the Department of Social Services. knowmore also receives funding to deliver financial counselling services to people participating in the NRS, and to work with other services in the NRS support network to support and build their capability

Our clients in Victoria

knowmore has a significant client base in Victoria— 17% per cent of our current clients reside in the state.² We therefore have a strong interest in working to improve Victoria’s justice system for victims and survivors of child sexual abuse.

knowmore's submission

We note the review’s scope is to consider criminal proceedings that are dealt with summarily in the Magistrates and the Children’s Courts. The lens with which knowmore has prepared this submission covers survivors of sexual offences, both children and adults, whose matters are dealt with summarily in these courts. While it is acknowledged that most sexual offences are dealt with in Victoria in the County Court, there are issues relating to the experiences of victims and survivors that are common to all court proceedings for sexual offences.

In addressing the issues covered by the review, knowmore has reflected on both the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and its own work with survivors of child sexual abuse. To this end, we have included a table at the conclusion of our submission that maps the Victorian Government’s response to the recommendations from the Royal Commission. We have also reiterated key points from relevant submissions we have previously made to the Victorian Law Reform Commission.³

We encourage the Victorian Government to take all necessary steps to ensure that the Royal Commission’s recommendations are embedded in Victoria’s criminal justice system. We also encourage the Victorian Government to introduce the additional measures recommended below. Together, these recommendations are essential to improving the experience of summary criminal proceedings for survivors of child sexual abuse, and sexual abuse survivors generally, and increasing survivor participation and decision making.

² As at 31 July 2021. See knowmore, National infographic, July 2021, < <https://knowmore.org.au/wp-content/uploads/2021/08/Infographic-July-2021.pdf>>.

³ knowmore, submission to the [Review of Victoria’s committal system Submission to the Victorian Law Reform Commission](#), 15 August 2019; knowmore, [Improving the response of the justice system to sexual offences: Submission to the Victorian Law Reform Commission](#), 23 December 2020.

Improving experience for survivors facing structural barriers and increasing victim-survivor participation

What changes could be made to improve the experience of victims in summary criminal proceedings who have different needs or face structural barriers (for example, Aboriginal and Torres Strait Islander people; children; victim-survivors of family violence or sexual assault; people with disabilities; people from culturally and linguistically diverse communities; people from lesbian, gay, bisexual, trans and gender-diverse, and intersex communities; people living in rural communities; older people; people with intersectional experiences)?

What could improve victims' opportunities to participate in court processes in summary criminal proceedings (such as victim impact statements and sentence indications)?

What could improve victims' understanding, experience and access to at-court support services in summary criminal proceedings?

The availability and accessibility of appropriate support services and resources (such as factsheets, website information and links to services), are crucial to increasing victim-survivor participation and improving the experience of victim-survivors in summary criminal proceedings. Support services and appropriate resources can reduce the trauma victim-survivors of family violence, sexual assault, and child sexual abuse experience in criminal proceedings. In our experience, the availability and accessibility of appropriate and trauma-informed support services and resources for victim-survivors materially affects the likelihood of them feeling safe and supported to share their experiences.

Services and appropriate resources that are specifically focused on the differing needs of the various cohorts that the review has listed can greatly assist with eroding structural barriers and increase survivor participation.

As an example, knowmore has developed a specific range of resources for Aboriginal and/or Torres Strait Islander peoples who may have experienced child sexual abuse in institutional settings. These resources were developed in collaboration with our team of Aboriginal and Torres Strait Islander engagement advisors and reflects feedback provided by our Aboriginal and/or Torres Strait Islander clients about the content of our existing resources and, in particular, language and concepts that they reported as being unclear or difficult to understand.⁴

⁴ knowmore Legal Service, Aboriginal and Torres Strait Islander engagement resources, available [here](#).

Although there is no ‘one size fits all’ answer to fulfilling the needs of diverse populations, further examples that can assist with victim-survivor experience and increasing victim-survivor participation are listed below:

- Consulting with the specific groups listed by the review as experiencing structural barriers, to understand specifically what will improve their experience in summary criminal proceedings and increase participation.
- The Royal Commission recommended that legislative provisions and physical resources be in place for the prerecording of the entirety of a witness’s evidence in child sexual abuse prosecutions. The recommendation specified that in summary and indictable matters, the use of a pre-recorded investigative interview as some or all the witness’s evidence in chief should be used.⁵
- The Royal Commission recommended that state and territory governments should introduce legislation to require the audio-visual 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 pre-recorded hearing.⁶
- Incorporating measures that de-formalise the courtroom atmosphere.
- Interpreters and translators should be available where necessary. The availability of interpreters and translators should be made clear to all survivors, and uptake should be encouraged.⁷
- All forms and resources should be accessible, in an easy read format, and made available in multiple languages. Currently, the Victim Impact Statement (VIS) form is only available in English, it is not accessible, and is not in an easy read format. Suggested changes include the VIS being available in multiple languages, with standard margins, clear colour contrasts, and an increase in font size and spacing between paragraphs.
- Providing additional training to investigators, prosecutors, and judicial officers about the importance of victim-survivor participation in court processes, this includes the opportunity for survivors to make a VIS.

⁵ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, recommendation 52, p. 92.

⁶ Royal Commission, *Criminal Justice Report: Parts VII–X and Appendices*, recommendation 56, p. 96.

⁷ This should be provided during court proceedings, but should also be offered from the beginning of any engagement with the criminal justice system, including when reporting to police. 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](#).

- Ensuring that victim-survivors are notified very early on in proceedings of the opportunity to make a VIS. This would ensure that a victim-survivor who wishes to make a VIS has sufficient time to do so and VISs can be more routinely included in proceedings.
- Introducing a “first point of contact” for all at court services that provides victim service information and referrals to help victim-survivors navigate existing at-court support services.
- Enable victim-survivors to access specialised support services that can respond to victim-survivor’s safety concerns, provide information about the court process, and help victim-survivor’s identify other supports.
- All communication about and within the criminal justice system should be culturally informed and account for the communication needs of Aboriginal and Torres Strait Islander victims and survivors.
- Support services should have Aboriginal and/or Torres Strait Islander identifying staff members and staff from CALD backgrounds to provide culturally safe support. All support service workers should receive trauma informed training.
- 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.

In addition to the principles outlined above, knowmore submits that when criminal proceedings involve children as victims-survivors or as defendants, all participants must consider the best interests of the child, as per Article 3(1) of Convention on the Rights of the Child, which provides:

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*⁸

This is an integral inclusion, as the impacts that participation in court proceedings can have on children can be particularly severe and different to that of adults. Adherence to this principle will help to ensure that children, whether accused or the victims of crime, are supported and treated appropriately. In this context, we note that while Victoria’s Charter of Human Rights and Responsibilities (the Charter) identifies specific rights for children who are being detained or convicted of an offence,⁹ it contains no corresponding specific rights for children, nor for adults, who are victims-survivors of criminal offending. While there is in place the *Victims’ Charter Act 2006* (the Victims’ Charter), it is the Charter of Human Rights

⁸ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, available at: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

See also section 17 of Victoria’s Charter of Human Rights and Responsibilities, recognising that children have the right to be protected and may need particular protection, to ensure the way they are treated is in their best interests.

⁹ Victoria’s Charter of Human Rights and Responsibilities, section 23

and Responsibilities that sets out the basic rights, freedoms and responsibilities of Victorians. In knowmore's submission, this omission should be addressed through amendment of that Charter to reflect the commitment that government and our society has to recognising the rights of, and properly supporting, all victims of criminal offences.

Furthermore, there needs to be ongoing work to ensure that all 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:

- 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.1 in the Appendix), and that further improvements are being made to better align current practices with the Royal Commission's recommendations.¹⁰ 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 and its impacts.

Victim-survivor involvement in decisions

What could help victims be better informed and included in decisions made by prosecutors in summary criminal proceedings?

We note and support initiatives in Victoria to improve communication between prosecutors and victim-survivors to allow for greater victim participation in key prosecution decisions,

¹⁰ Victorian Government, *Victorian Government Annual Report 2019*.

including the Intermediaries Program.¹¹ This aligns with the Royal Commission's recommendations (Criminal Justice Recommendations 59 and 60; see Table A.1 in the Appendix), and helps to ensure that all victims and survivors of child sexual abuse are assisted where necessary to give their best evidence.

knowmore supports the Intermediaries Program being available to all victim-survivors of sexual offences, regardless of whether the offence is an indictable or summary sexual offence. knowmore also supports Victoria's intermediary program including specialist Aboriginal and Torres Strait Islander intermediaries to assist Aboriginal and Torres Strait Islander witnesses.

Another measure that may improve victim-survivor involvement in decisions includes amending the Victim's Charter. The Victim's Charter provides that the DPP must seek the views of the victim-survivor before making a decision to substantially modify the charges, discontinue the prosecution of the charges, or to accept a plea of guilty to a lesser charge, unless it is not practical to contact the victim-survivor given the speed or nature of the proceeding.¹² The DPP is to also give a victim, as soon as reasonably practicable, the reasons for any of these decisions.¹³ These provisions of the Victim's Charter do not apply to police prosecutors, meaning that a victim-survivor of a sexual offence may not be consulted and may not be fully informed about the reasons for particular decisions.

We note that summary criminal proceedings are often dealt with in fast paced environments. However, given the nature and impact of sexual abuse, knowmore recommends that the Victim's Charter be amended.

knowmore recommends the following changes for any proceedings involving a sexual offence:

- Section 9B(3)(b) of the Victim's Charter be repealed. The DPP must fulfil their obligations under sections 9B and 9C; and
- Sections 9B and 9C of the Victim's Charter must also apply to a police prosecutor.

Conclusion

We encourage the Victorian Government to continue to take all necessary steps to ensure that the Royal Commission's recommendations are embedded in Victoria's criminal justice system. We also encourage the Victorian Government to introduce the additional measures recommended above, with a particular focus on victim-survivors of child sexual abuse.

Together, these recommendations will contribute to improving the experience of summary criminal proceedings for victim-survivors of child sexual abuse, and sexual abuse survivors

¹¹ Daniel Andrews, '[Supporting Victims Of Crime In The Justice System](#)', (Media Release, 7 May 2017).

¹² *Victims' Charter Act 2006* (VIC) s 9B.

¹³ *Ibid* s 9C.

generally. These changes will increase victim-survivor participation, enhance decision making and ultimately ensure that appropriate justice is achieved for victim-survivors.

Thank you again for the opportunity to provide this submission and your consideration of these important issues.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'W. Strange', written in a cursive style.

WARREN STRANGE

Chief Executive Officer

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

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

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

	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"> a. Recognising that it is important to complainants that the correct charges be laid as early as possible so that charges are not significantly downgraded at or close to trial, police should ensure that care is taken, and that early prosecution advice is sought, where appropriate, in laying charges. b. In making decisions about whether to charge, police should not: <ol style="list-style-type: none"> i. expect or require corroboration where the victim or survivor’s account does not suggest that there should be any corroboration available ii. rely on the absence of corroboration as a determinative factor in deciding not to charge, where the victim or survivor’s account does not suggest that there should be any corroboration available, unless the prosecution service advises otherwise. 	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 (Vic)</i> 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
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> <ol style="list-style-type: none"> 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 	Accepted

	Recommendation	Victorian Government response
	<p>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> <ul style="list-style-type: none"> 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. 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. 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. 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"> 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 ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant. 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 	

	Recommendation	Victorian Government response
	increased risk into account in any decisions they make in relation to prosecuting child sexual abuse offences.	
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"> a. Prosecutors should recognise the importance to complainants of the correct charges being laid as early as possible so that charges are not significantly downgraded or withdrawn at or close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought. b. Regardless of whether such advice has been sought, prosecutors should confirm the appropriateness of the charges as early as possible once they are allocated the prosecution to ensure that the correct charges have been laid and to minimise the risk that charges will have to be downgraded or withdrawn closer to the trial date. c. While recognising the benefit of securing guilty pleas, prosecution agencies should also recognise that it is important to complainants – and to the criminal justice system – that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse they suffered. d. Prosecutors must endeavour to ensure that they allow adequate time to consult the complainant and the police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance from relevant witness assistance officers or other advocacy and support services before they give their opinion on the proposal. If the complainant is a child, prosecutors must endeavour to ensure that they give the child the opportunity to consult their carer or parents unless the child does not wish to do so. 	Accepted

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

	Recommendation	Victorian Government response
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> <ol style="list-style-type: none"> requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses 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 makes intermediaries available at both the police interview stage and trial stage 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. 	Accepted in principle
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

	Recommendation	Victorian Government response
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"> 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 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 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 clearing the public gallery of a courtroom during the witness's evidence the judge and counsel removing their wigs and gowns. 	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

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>; 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>.