

Criminal Justice Consultation Paper.

I wish to respond the Key Issues identified and the questions asked, in the Criminal Justice Consultation Paper. We agree fully with the sentiments expressed in the paper and we endorse the relevance of each of the key issues that are identified. From experience, I believe that there are additional ones that are not identified. I shall elaborate upon these towards the end of this response.

The Starting Point.

It is a fundamental right of every child in Australia that it be enabled to grow, develop and learn in environments that are always safe, supportive and secure. These environments must respect culture and must always provide opportunity for the child to be a child. If all of these facets of growing up are provided for, then the expectation can be that the adult person who comes out of the child will be empathetic, resilient emotionally strong and respectful of his/her own and other's culture. He/she will be drawn to citizenship, respect of the law, respect of themselves and of others and in the conduct of their daily lives, each will display behaviours that support community rather than destroy it. This should then become the individual's enduring Persona.

All of this does not always happen for every child because along this progressive, developmental pathway the child may encounter risks that can compromise development and expression of the Persona. I believe that for any child (a developing Persona) and for any adult (a Persona) there are five sets of risks that may be encountered. For the child the critical time of encounter is the first 10-14 years of life while for the adult these risks might be encountered at any time.

These risks are always negative/harmful experiences and circumstances. There are five categories, and they are the **NAILS**:

- Experiences of Neglect.
- Experiences of Abuse.
- Experiences of Insecurity.
- Experiences of Loss.
- States of prolonged Fear.

There are four aspects to a Persona's experience of any of these risks. The

- nature of the experience itself.
- The duration of the encounter.
- The severity of the encounter and experience.
- The sensitivity of the particular Persona.

The table shows examples of the five risk.

RISK TYPES	Childhood	Adult life
N eglect	Institutional upbringing. Toxic parenting.	Failure of others to be respectful. “Invisible grandmother” experience.
A buse	Sexual, physical and psychological abuse. School bullying. Cyber bullying.	Domestic violence. Toxic workplaces. Workplace harassment and bullying.
I nsecurity	All of the above. Parental insistence about performance/competition.	All of the above.
L oss	Death of loved adults, siblings etc. Separation from siblings or important friends. Innocence Self esteem Ability to form memory	Death of others. Relationship breakdown and divorce. Retrenchment/work loss. Loss of assets. Loss of health. Loss of status. Loss of purpose.
S tates of prolonged fear	Natural disasters, wars and civil strife, life-threatening events.	Natural disasters, wars and civil strife, life-threatening events.

Individuals can have multiple negative experiences and these can layer one on top of another. Furthermore there can be cross overs between the experience of a child and an adult. For example children who may be witnessing domestic violence between adults in the household, may themselves not be feeling very insecure.

There is also an important difference between the child's experience and the adult's experience. This is the fact that the child can rarely do anything to rectify the exposure whereas an adult may be able to act in ways to rectify further exposure.

It is fundamental that other persons, who may be in some role of supporting a survivor of child sexual abuse have an understanding of this.

The period to 14 years is critical in respect of child sexual abuse because this is the period when structures are developing in the young brain that will "wire up" to form the Limbic System. These sites will be involved in the **expression and regulation of emotions**, for all of the Persona's life. Other secondary, regulatory mechanisms will develop later, primarily in the pre-frontal lobe of the cortex. The other key human attribute that is regulated by the limbic structures is **the ability to form memory**.

When the child experiences sexual abuse, the impact is most often devastating. The full effects of four of the five risks **A, I Land S** are encountered, and often associated with extreme physical pain. For children who have been sexually abused in institutional settings, they have often experienced neglect (**N**) as well. In addition these children have already experienced the worst loss that can be encountered. This is forced separation (that is sometimes legally sanctioned) from the mother and/or other parental figures. All of this can either obliterate all that has been built up so far, as the individual Persona or it can compromise its further development – for years! I suspect that this explains a great deal of the time delay that is seen between the experience of sexual abuse by the child and the reporting of it by the adult. Reporting will not be carried out until some semblance of a new Persona is able to develop. An early sign in the child will be declining school performance and then behaviour changes. This is the memory impact at a time when recognition by peers becomes important. Furthermore the child's ability to learn has now been severely compromised. The message is that parents, guardians, welfare workers, police and judges need to understand what is going on and has been going on.

I am reminded of the man in NSW who, some years ago, fire-bombed the Whisky-a-Go-Go Night Club in Kings Cross. Several people died in that fire. This person went from one institution to another and finished in juvenile detention in the notorious juvenile correctional facility at Grafton, NSW. Upon release at about age seventeen, he commenced his life of crime which finished in Kings Cross less than twenty years later. People can speculate as to what **NAILS** he may have encountered as a child and what he was able to do as an adult.

Issues in Police responses.

The role of police is central to the optimal performance of the criminal justice system. In child sexual abuse cases police will have to maintain close personal contact with the individual who has made the allegation. What the police do will always be important to the investigation. How the police go about doing this will be important to the potential witness. Police do need to have a basic understanding of trauma and its effects and they need to have insight into what survivors may be experiencing. This relates to development of the Persona having been compromised and the consequences thereof. If there is this understanding it will greatly enhance this temporary relationship between police and the potential witness. Police need to understand the role of trust and they need to understand how the potential witness sees the world.

There are three main understandings here. Children who have been sexually abused can no longer trust anyone beyond immediate family. Sometimes, even trust within the family is gone. For children in institutional settings, there was seldom opportunity for the child to develop the ability to trust. This inability to trust can endure for decades and the compromised Persona lives out every day in a hyper-vigilant state. With every decision, every interaction, every thought, the place of trust is being factored in. The key messages for police are “engage slowly, interact regularly and always on time”. If it is allowed, sometimes put away the uniform. The ideal police practise should be a form of case-management.

The second matter is to understand how the compromised Persona interacts with others. This is the interpersonal arena. For the child who is able to develop without encountering sexual and/or physical trauma, that Persona reaches a stage where it always sees itself as being at the centre of the interactions with others. Life milestones that are being celebrated, rituals like weddings, the judge who speaks to a learned society. The individual concerned is always able to look outward. For the individual whose Persona has been compromised, he/she had always had to look inwards. The individual prefers always to stay on the outside because trust is always the primary consideration and, this way, control is still possible.

The third factor is the high probability that the potential witness has been experiencing the effects of complex psychiatric disorder for years. Most often this has never been diagnosed and seldom been treated.

Police responses and institutions.

Practises and procedure are very important here, particularly around collection, confidentiality, use, processing and transfer of information. Always the permission of the survivor/witness must be sought and there must be regular feedback given in private. If there are deficiencies here, then trust will collapse. The stop-gap has been counselling but counselling is not treatment. Most often counselling means that the individual might be kept in a satisfactory holding pattern

Child sexual abuse offences.

There is a glaring need for greater flexibility in regards to the quality and standard of evidence that will be accepted, witness recall, reliability of evidence where there has been serial crime etc. This is because in so many children their ability to form memory will have been severely compromised. For the same reason, in these cases, Statutes of Limitations should not prevail as it is discriminatory.

Third party offences.

There must be provision for third party offences with very high penalties. Broken Rites is fearful that this is going to be a major issue as the NDIS comes into operation.

Issues in prosecution responses.

Staff involved with survivors in the lead up and conduct of a trial need to have the same levels of training and understanding as has been indicated for police. Again the approach to the conduct and management of a case could engage in a form of case management.

Introduction of a right to complain would be an important and progressive development.

The matter of guilty plea is a complex one. The criminal law rightly provides for this and it can be seen as a human right irrespective of the seriousness of the alleged crime. We understand why witnesses become angry and upset when guilty pleas are introduced. May be it would be possible for judges be required in their practice to consult with learned colleagues in respect to impact statements or it might be possible for additional impact statements to be obtained from family members, persons providing treatments, counselling etc.

Discontinuation of a trial is a major problem for survivor witnesses. When it happens, it completely destroys trust once again. It can result in psychiatric symptoms etc ramping up again and hurt full behaviours starting again. It might be possible to provide for indeterminate adjournment in order to give police and legal staff to do more work with witnesses.

The conduct of joint trials is a major problem for survivors and we consider it to be a manipulation of legal process. It destroys trust and causes extreme stress. I understand that there has been at least one witness suicide in a multi trial case.

Advances in procedures need to be given serious consideration. Collection of pre-trial evidence would probably be a major advance for indigenous people in remote locations In Victoria, survivors can choose to appear with them sitting in a “Tardis” within the OPP, rather than sitting in the court setting.

Sentencing.

The matter of the use of good character is a complex issue. This is because many offenders within themselves have serious psychopathy. In so many cases offenders should have been removed from any opportunity to access children. This did not happen because the institution leadership was negligent in not getting proper forensic assessment with “nudge, nudge, wink, wink” responses by school leadership and School Councils, leaders of churches wanting to get a professional opinion about a suspected offenders that would give them comfort etc. Always there have been conflicted views about protection of reputation and standing, and protection of children.

Other matters.

For years we have had real concerns about practises and clear conflicts of interest with persons employed in Professional Standards Offices etc. In respect of response practises by churches and religious organisations we have seen instances of the same person first presenting as a “facilitator”, the mediator and at the same time the person has been running a psychology practice! There have been occurrences of professional standards employees treating survivors privately and even carrying out counselling sessions “over lunch” Presumably the Institution is paying for professional work and the practitioners bills Medicare as well?

In all of these activities a great deal of information has been collected from a possible witness. Since supervision of professional standards

activities are so lax, we are concerned that information might then get into the hands of persons engaged to defend in a criminal case and in future criminal cases. With the “Towards Healing” process a lot of information that was collected from complainants has been collected by church-appointed interviewers. For a few years, there was a situation where the Director of the Catholic Profession Standards Office (CPRO), who was a nun and employed by the Conference of Catholic Bishops, was also a Director on the board of Catholic Church Insurance (CCI). CCI is a wholly-owned entity “belonging” to the same Conference! It was having to attend mediations for compensation claims that were being organised and managed by staff of the CPRO. One priest who held some advisory position linked to the CPRO was subsequently charged for paedophilia offences! No, there were no conflicts of interest in these arrangements.

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