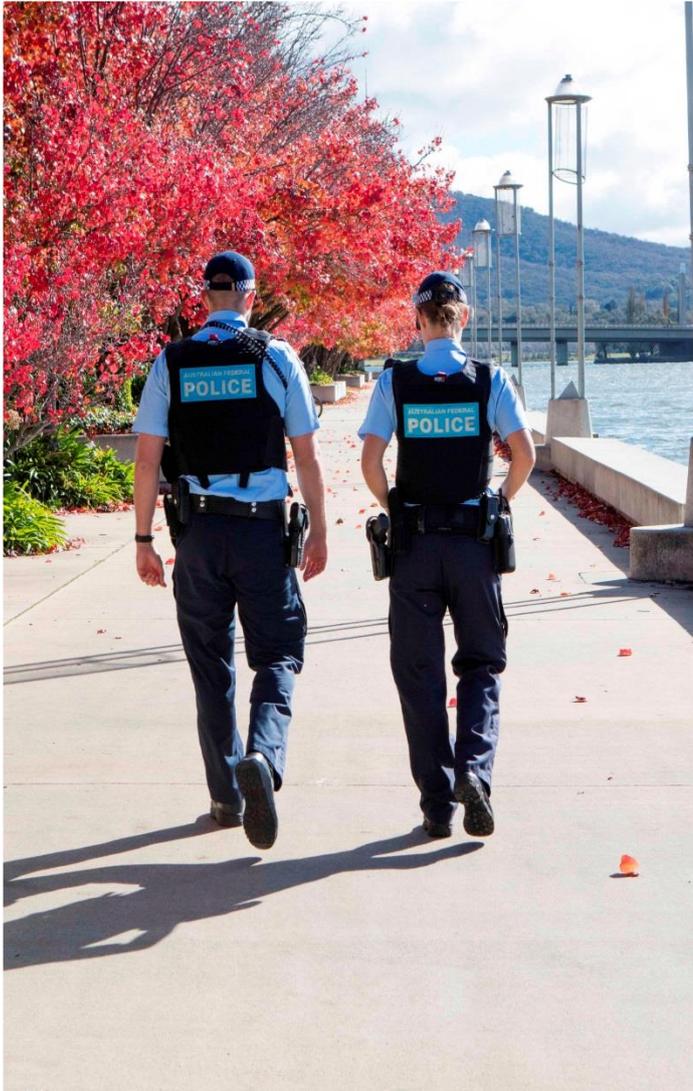




**AFP**  
AUSTRALIAN FEDERAL POLICE



Royal Commission  
into Institutional  
Responses to  
Child Sexual  
Abuse

Consultation  
Paper

Criminal Justice

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Submission by ACT Policing

Contents

Contents ..... 2

Introduction..... 3

Chapter 2: The importance of a criminal justice response ..... 3

Chapter 3: Issues in police responses ..... 4

Chapter 4: Police responses and institutions ..... 4

Chapter 5: Child sexual abuse offences ..... 4

Chapter 7: Issues in prosecution responses ..... 4

Chapter 8: Delays in prosecution..... 5

Chapter 9: Evidence of victims and survivors ..... 5

Chapter 10: Tendency and coincidence evidence and joint trials..... 5

Chapter 11: Judicial directions and informing juries ..... 5

Chapter 12: Sentencing ..... 5

Conclusion..... 5

## Introduction

ACT Policing welcomes the opportunity to provide a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse - Consultation Paper – Criminal Justice. The Consultation Paper provides a comprehensive overview of the criminal justice system’s interactions with child sexual abuse. ACT Policing appreciates the work of the Royal Commission and is committed to providing full cooperation and assistance.

## Chapter 2: The importance of a criminal justice response

### 2.5.1 Restorative Justice

ACT Policing recognises that Restorative Justice is an effective option which can empower victims and assist in offenders gaining insight into the consequences of their behaviour. However, due to the particularly sensitive nature of sexual abuse, full consideration needs to be made on the possible impacts on the victim and the victim’s family in participating in the process.

### 2.6 Our approach to criminal justice reforms

In 2015 the Australian Capital Territory (ACT) amended legislation to remove statute of limitations for some sex abuse offences against males. This reform has assisted in allowing all reports to be fully investigated and put before the court where appropriate.

### 2.7 Regulatory responses to institutional child sexual abuse

The mandatory reporting requirements in the ACT are effective in protecting children at risk. Recent amendments to the *Working with Vulnerable People (Background Checking) Act 2011* and *Children and Young People Act 2008* have assisted timely information sharing between ACT Government agencies.

### Victim considerations

ACT Policing regularly receives comments from victims expressing that the Court system is heavily favoured towards the offender. Following are a list of suggestions received directly from victims relating to improving the court system for victims (Note these are comments from victims, not a submission from ACT Policing):

- If an offender chooses not to give evidence in court then the victim shouldn’t have to either. In this circumstance victim evidence should rely solely on the statement of recorded evidence;
- Increased court protections for adult victims;
- If it is proven an offender has lied about the incident, the offender should be held accountable or made to give reasons why;
- Introduction of legislation to revoke the offenders right to silence;
- Similar acts with the same offender and different victims automatically being heard at the same trial so the jury hears the pattern of behaviour; and
- To reduce the perception that psychological reports are weighed in the favour of the offender an independent Court appointed psychologist should be implemented for any reports submitted to the Court.

## Chapter 3: Issues in police responses

Police agencies having a consistent approach for sexual abuse offences would assist in progressing historical and multi-jurisdictional investigations. Uniformed training and processes would ensure that all victims are dealt with the same way, regardless of where they make the report. Allowing statements or interviews made by a victim in any jurisdiction to be submitted in any Court in Australia as evidence would ease the burden on victims re-telling their story numerous times.

### Cost orders

ACT Policing does not support costs for failed prosecutions being imposed on police unless police are responsible for an illegal act that causes the prosecution to fail. The risk of a cost order being awarded has the potential to influence a decision by police to charge an offender.

## Chapter 4: Police responses and institutions

Privacy laws and legislation complicate information sharing with other agencies in the ACT. ACT Policing submits that an agreement that allows agencies to freely share information when it relates to an allegation of criminal behaviour would assist police responses. This process would also relieve stress on victims where they currently have to assist police in gathering evidence from other agencies.

## Chapter 5: Child sexual abuse offences

Currently accurate particularisation of historic child abuse offences can be very difficult because of the victim's recollection of offences. Victims often inform investigators that offending *happened all the time or about 20 times*. In these circumstances it is extremely difficult to particularise offences so that it accurately reflects offending behaviour. A process which allows for a pattern of continued offending over a period of time to be considered when prosecuting historic child abuse offences would assist in these circumstances.

## Chapter 7: Issues in prosecution responses

ACT Policing recommends that victims and police are engaged in plea bargaining processes between the Director of Public Prosecutions (DPP) and defence. Involving the victim in the process gives them a better understanding and makes it easier for them to accept the outcome.

ACT Policing and the DPP currently have a close working relationship. The DPP have a specialised sex offences team and meet with ACT Policing's Sexual Abuse and Child Abuse Team every six weeks to discuss issues and upcoming matters. This corroboration is beneficial for both parties.

## Chapter 8: Delays in prosecution

The current ACT waiting time for a Supreme Court trial is around 18 months to 2 years. This wait time can be extremely difficult for victims and in some instances detrimental to their health. Detainees in the ACT have been applying for bail citing section 22(2)(c) of the *Human Rights Act 2004* - the right to be tried without unreasonable delay.

## Chapter 9: Evidence of victims and survivors

To ensure maximum protection is provided to all sexual abuse victims', evidence in chief recording provisions and witness protections could be expanded to adult victims.

## Chapter 10: Tendency and coincidence evidence and joint trials

A simplified process to submit tendency and coincidence evidence would improve chances of a successful court outcome for victims. It would allow for all relevant information to be presented to the court and allow patterns of behaviours to be shown.

## Chapter 11: Judicial directions and informing juries

Codifying and standardising jury directions would reduce confusion amongst jury members and the risk of matters being appealed. Currently some jury directions are extensive and can take days to deliver, which has the risk of confusing the jury. Many trial outcomes have been appealed in the ACT based on directions given to the jury.

## Chapter 12: Sentencing

ACT Policing submits an offenders' good character should not be considered in sentencing where the good character circumstances have assisted in offending behaviour. For example a teacher who has offended against pupils should not be able to argue the good character based on the contribution they have made to the community as a teacher, because being a teacher has enabled their offending.

Consistency in sentencing across all jurisdictions would assist in managing the sentencing expectations of victims and families.

## Conclusion

ACT Policing aspires to achieving the best possible outcomes for the community and victims in our response to child sexual abuse. ACT Policing values the work of the Royal Commission and welcomes any future recommendations that will assist victims' interactions with the criminal justice

system and increases the community's awareness of the issues surrounding child sexual abuse.