



27 October 2016

Royal Commission into Institutional Responses to Child Sexual Abuse

Email: [criminaljustice@childabuseroyalcommission.gov.au](mailto:criminaljustice@childabuseroyalcommission.gov.au)

Dear Sir/Madam

### **Re: PACT Submission – Criminal Justice Consultation Paper**

Please find below our Submission in relation to the Criminal Justice Consultation Paper. We would like to commend the Royal Commission for their efforts in enhancing the protection of vulnerable young Australians.

Protect All Children Today Inc. (PACT) is a Queensland non-profit community organisation established in 1986 as a service provider of court support as well as advocating for vulnerable children, young people and their families. PACT's Child Witness Support Program provides support for children and young people who are required to give evidence in criminal court matters, either as victims of, or witnesses to, a crime. PACT recruits Child Witness Support Volunteers to provide child victims and witnesses with support and information about the Criminal Justice System. It is through our experience that we offer the following comments.

#### **Introduction**

PACT supports between 1,500-1,600 children and young people each year, of which 65-70% are victims of sexual assault, and approximately 70% of our clients are female. Child sexual assault is extremely complex as children do not have the emotional maturity or life experience to adequately articulate or particularise the level of abuse they have been subjected to. Further, the individual effects of child sexual abuse are generally not known, or become apparent until the child is an adult, forming relationships and having children of their own.

## **The Importance of a criminal justice response**

### **CHAPTER 2**

#### **Criminal Justice for Victims**

We offer the following comments in relation to the myths and misconceptions prominent in child sexual abuse cases:

- **Women and children make up stories of sexual assault.** Young children do not generally have the intelligence or emotional maturity to form complex lies. We have found in our dealings that children tend to be extremely honest, often seeing the world as black and white.
- **A victim of sexual abuse will cry for help and attempt to escape their abuser.** This is absolutely not the case in relation to children who are too immobilised by fear, nor able to envisage alternative options available to them, to escape their abusers. This is particularly relevant with intra-familial offences where children have been threatened to remain quiet or suffer consequences at the hands of their abuser.
- **A victim of sexual abuse will avoid the abuser.** Again this is not an option for children who are being assaulted within the family home, where they are groomed to believe the behaviour of the abuser is "normal" and "acceptable" and a way they show their love for the child. Children also often struggle with genuine positive feelings and affection for their abusers

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- **Child sexual assault can be detected by medical examination.** This is not always the case. Sexual abusers are very clever at ensuring evidence, such as seminal fluid, is corrupted or destroyed.

### **Operation of the Criminal Justice System**

In relation to the principles to ensure trials are conducted fairly, we offer the following comments on a couple of the principles identified.

- **The criminal trial should be conducted without delay.** Sadly, this is not the case. It is often 18 months to two years between the time of arrest and when a child gives pre-recorded evidence within the Queensland Criminal Justice System. As you will appreciate, that is a fair proportion of a young child's life where they have been in limbo awaiting the court outcome. It can also impact on their recollection of events.
- **The prosecution is obliged to act independently and impartially and to conduct the case fairly.** The downside of this approach is they seem to lose sight of the vulnerable child victim involved in the matter. Queensland Prosecutors often tell children that they "do not" represent them, but the State of Queensland. Children have reported finding this advice very confusing and unfair. PACT Volunteers have been asked "*Why do the accused get to have someone represent "them" but I don't*". Therefore, we agree with the view that victims often feel the criminal justice system is weighted in favour of the accused.

As mentioned previously, the individual effects of child sexual abuse are generally not known, or become apparent, until the child is an adult, forming relationships and having children of their own. It is for this reason, we believe Victim Impact Statements are unreliable for younger children as they are reliant on an adult to assist in their completion and especially tarnished in cases where their carer is unsupportive.

### **Other responses to institutional child sexual abuse**

In relation to restorative justice approaches, we believe their value is highly dependent on the age and emotional maturity of the particular victim. Child victims generally fear coming into contact with their abuser and would find this approach extremely stressful and confronting. There is an imbalance of power which needs to be managed if a restorative justice approach is considered.

### **Approaches to Criminal Justice reforms**

PACT agree that all victims should be encouraged and supported throughout their criminal justice response. Further, the system should make it easier for people to disclose to Police and feel protected throughout the entire criminal justice process. Often resourcing in Police and ODPP do not allow this to occur, resulting in victims feeling ignored, misinformed and disappointed in their dealings. Further, we believe the interpretation of the Privacy Legislation, and the need for ODPP to be provided with written client consent, provides a barrier and obstacle to vulnerable victims receiving the court preparation and support they deserve. Essentially agencies such as PACT are funded to provide a service, though in many cases are not provided with the necessary information to ensure that child victims and witnesses are adequately prepared to give best evidence. Therefore, the interaction between the Privacy Legislation and Evidence Act needs to be reviewed and amended to enable victims' access to much needed support services.

## **Particular Issues in criminal justice responses**

### **CHAPTER 3**

#### **Issues in Police Responses**

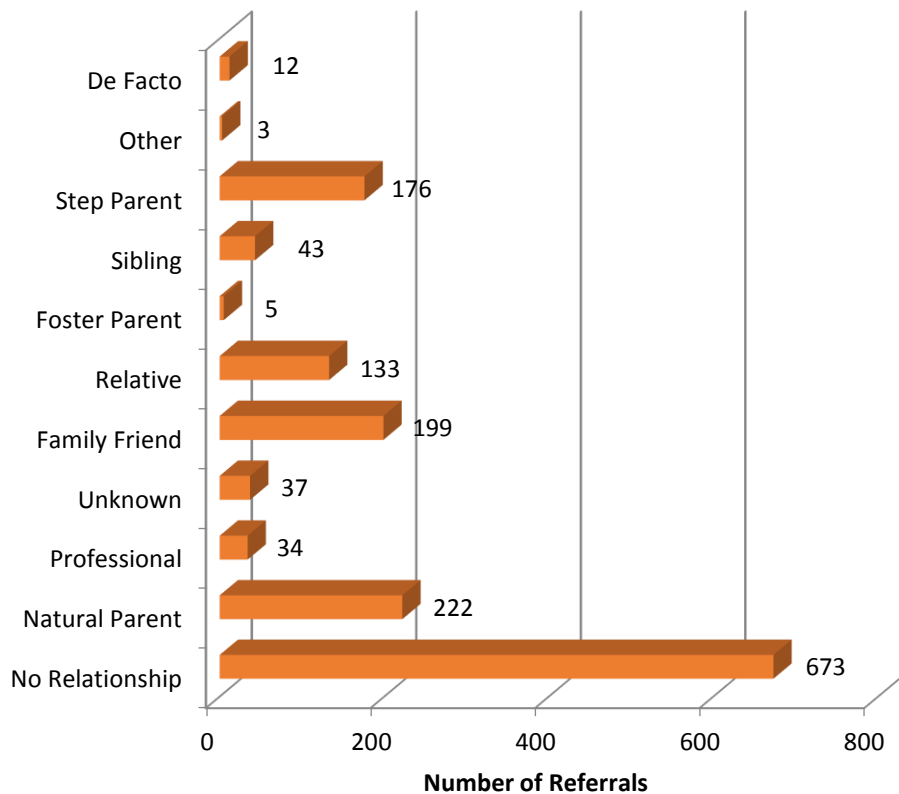
The Queensland Police Service (QPS) utilises the Interviewing Children and Recording of Evidence (ICARE) Training for Police and Child Safety Officers (CSOs) dealing with child victims. PACT provide training at the monthly ICARE courses in relation to the role we play in supporting vulnerable children through the daunting criminal justice process. We believe Queensland Police do possess an understanding of complex trauma and treat people with respect and understanding, especially child victims. Police need to be adequately resourced to continue this valuable training.

### Encouraging Reporting

We appreciate the importance of reporting to enable Police to investigate effectively and to prevent perpetrators from further offending. This is particularly challenging for child victims, who need to establish trust, rapport and feel safe in order to divulge what has happened to them. We do not believe that it is appropriate for younger children to be given the option **not to proceed unless they want to**. We would suggest that they do not have the emotional maturity and experience to make this decision. Further, in matters where the child's carer is unsupportive, such as assaults perpetrated by a step, foster or natural parent, sibling, relative etc., children are likely to be coerced not to proceed.

The below diagram demonstrates the relationship between the Defendant and child witness in cases PACT supported between 1 July 2015-30 June 2016. In 46% of referrals the child victims and witnesses had no identified relationship with the Defendant. However, in approximately **39% of referrals** the Defendant was a natural, step or foster parent, sibling or other relative. The statistics further indicate that in 13% of cases the Defendant was a family friend.

### Referrals By Relationship



### Police investigations

As mentioned above, the majority of child sexual offences are investigated by an officer of the Child Protection and Investigation Unit (CPIU) across Queensland. These officers received specialist ICARE training and have acquired expertise and experience in child sexual abuse investigations.

We appreciate that **regular communication** is important to ensure that victims are informed, though we express concern over resourcing and whether Police have the capacity to do this. Further, once a matter is committed up to the District Court and transferred to the DPP there appears to be a period of time where victims are left without any contact or progress information.

In relation to **consistency** we believe that Queensland Police do continue carriage of an investigation until the matter is finalised in court. However, we appreciate that Police often work shifts and carry large investigative caseloads, so PACT appreciate being able to contact a corroborating officer to obtain information on the client's behalf.

In relation to **consent**, PACT experiences difficulties obtaining consent for some children, especially in cases where the nominated carer is uncontactable and/or unsupportive or if the child is in out of home care. It is sometimes difficult to obtain written consent from the nominated Child Safety Officer. Without consent the DPP will not provide PACT with information about upcoming court dates to enable optimum client support. We would appreciate consideration being given to alternative ways of sharing information, given everyone should be working collaboratively and in the best interests of the vulnerable child.

### **Investigative interviews for use as evidence in chief**

In Queensland, most affected child witnesses give pre-recorded evidence. However, children generally do not give evidence until between 12-18 months after they have provided their original Police Statement (ICARE). We appreciate the amendments to the *Evidence Act* in early 2004 attempted to reduce this timeframe, but realistically this hasn't been achieved. As the ICARE interview is considered their evidence in chief, cross examination is often short and focusses on clarification of issues contained in the child's ICARE Statement.

However, it is clear from PACT's perspective that pre-recorded evidence significantly reduces the trauma experienced by children and young people. One of their greatest fears is coming into contact with the accused in the courtroom. To substantiate our observations, please find some verbatim feedback to the question.

#### **How did you feel about giving evidence? (PR, CCTV, Court etc.)**

- *It is very difficult to talk about what I have been through. I have always put it to the back of my mind, I think I liked giving evidence by pre-recording because I didn't feel as much tension as I would if I was in the court.*
- *I felt protected where I was.*
- *Slightly under pressure giving evidence in court, screen helped.*
- *It was good to have a separate room where I gave my evidence because none of my family believe me and if I was in the same room as them I would not be able to cope. I was able to give evidence as I didn't need to see them.*
- *It was very nerve-wracking when you go inside the room where you give your evidence. But after a while you calm down when you are talking to them for a short time.*
- *Glad there was a screen between us, like he was not there. PACT support person was helpful.*
- *I felt quite calm and not being in the actual court but giving video evidence made me less nervous.*
- *I can't even remember giving my statement, would have been alright if something was done about this crap a lot earlier than making us grieve and be in the same town as "him".*
- *Pre-record was fine. Court sucked.*
- *Better, because of distance from the court.*
- *The rooms felt safe but awkward because I was talking to a TV, but other than that I was all good and terrified at the same time.*
- *TV graphics were good.*
- *That I was safe. I never want to see him ever again (Defendant) and whatever sentence he gets, he deserves it 😊.*

PACT Volunteers have reported an increase in the quality of Police interviews over the past decade. We commend the QPS for their efforts in improving the quality of recordings and interactions with vulnerable children.

Further, the verbatim feedback obtained directly from the children and young people PACT support in our Post Evidence Feedback Surveys is overwhelmingly positive in relation to their interactions with police. Here are some responses to the question **What was it like talking to the Police?**

- *It was calming and it felt good.*
- *The police made me feel comfortable to speak to and easy to tell the truth to.*
- *It was alright. They weren't mean and were good listeners and understood me as I spoke.*
- *Wasn't bad. Felt good after cause I told them what happened.*

- *I was relieved because it was getting it off my mind.*
- *Scary, shy at first and then I developed confidence.*
- *Good, let me take time to tell the truth.*
- *I felt comfortable and safe by sharing what happened and knowing what happened will be dealt with.*
- *I felt safe and like I could talk to them about anything.*
- *I felt really good talking to the Police about what happened. It was like a heavy pain on my chest wanting freedom.*

We support the identified principles and again believe that Queensland Police already achieve many of these. However, in relation to the use of **intermediaries** we question the benefit in them being involved in the initial Police interview and fear that their presence could inhibit the ability for the child to build rapport and trust with the Arresting Officer. Their role would have to be clearly defined and documented.

#### CHAPTER 4

##### Police responses and institutions

We believe there should be consistency in the way all child sexual abuse is investigated regardless of the environment. Steps should be taken to ensure all affected children are protected.

We believe the issue of privacy needs to be considered with steps taken to ensure that information is shared appropriately to enable optimum support and court preparation for the child victim.

#### CHAPTER 5

##### Child sexual abuse offences

**Persistent child sexual abuse offences** – When prompted, children are often able to ‘particularise’ the approximate timing of an offence, such as school holidays, close to a birthday, etc. This is obviously more complex when the abuse has occurred extensively over many years. However, this should not be a barrier to arrest and Prosecution. Therefore, we strongly support the Queensland Government legislation regarding the maintenance of an unlawful sexual relationship.

**Grooming offences** – sadly many child victims experience grooming as a result of an adult gaining their trust in order to take advantage of their vulnerability and lack of awareness and experience. Again, we commend Queensland on introducing grooming offences in 2013.

**Position of authority offences** - We believe all children under 18 years should be protected from perpetrators in a position of authority. Therefore, we strongly support that all jurisdictions adopt person in authority offences. PACT has expressed concern over the number of young people being sexually assaulted by someone in the workforce, often a supervisor in a fast food outlet, retail, café, etc. Sadly, this is not considered “child related employment” and not captured under the current Working with Children screening processes. In our view, the legislation needs to be amended to address this significant risk and ensure that young people are adequately protected from offences by someone in a position of trust and authority.

##### **Limitation periods on criminal prosecutions** -

PACT support the recommendation to create a more accessible civil litigation system for survivors of child sexual abuse where that abuse has occurred in an Institutional setting.

The abolition of the limitation periods will ensure that victims are afforded the opportunity to seek retribution and apply for compensation. In regard to personal injury claims, PACT is of the view that the effects of child sexual and physical abuse are often not evident until the child becomes an adult, forms relationships and has children of their own. It is for these reasons, that we commend the removal of any time barriers or restrictions to victims of child sexual assault.

#### CHAPTER 6

##### Third party offences

We appreciate the complexities associated with third-party offences in an institutional context and whether they should be legally binding, with breaches punishable by law.

There are so many conflicting issues associated with child sexual abuse generally including a carer's inability to be able to accept that the perpetrator may be someone they love and trust. There are often a myriad of reasons why carers are unsupportive of their child who has been sexually abused. Guilt plays a significant part in the process and sometimes people may experience doubts but not the actual evidence to substantiate if offending is occurring. People should definitely be encouraged to report abuse, but we question the value of this action becoming a criminal offence taking the focus and resources away from the real perpetrator.

### **Failure to report**

We appreciate the complexities associated with third-party offences and whether they should be legally binding, with breaches punishable by law. There are so many conflicting issues associated with child sexual abuse including a carer's inability to accept that the perpetrator may be someone they love and trust. There are often a myriad of reasons why carers are unsupportive of their child who has been sexually abused. Guilt plays a significant part in the process and sometimes people may experience concerns about a possible offence, but not the actual evidence to substantiate if it is actually occurring. People should definitely be encouraged to report abuse, but we question the value of this action becoming a criminal offence taking the resources (policing and legal) away from real perpetrators and their victims.

The other concerns we have with this approach are:

- if an offence is fabricated due to a personal vendetta or grievance with an individual person or institution;
- if the abuse is not actually occurring or unsubstantiated, much needed resources could be wasted investigating unwarranted claims; or
- if an actual perpetrator accuses someone else of the abuse to take the focus away from their offending.

We also suggest the term "reasonable suspicion" is open to interpretation and a clear definition would need to be established and communicated.

### **Failure to protect**

We strongly believe that people in positions of authority need to ensure the safety of any child they come into contact with. A key example is the current deficiencies of the Queensland Blue Card System where young people have been sexually assaulted by a Supervisor in the workplace. The Employers (Fast food outlets, cafes, restaurants, retail, theme parks etc.) should be held accountable for not putting in place the necessary safe guards and measures to prevent this abuse from occurring.

We would suggest that all Employers that employ young people under 18 years of age, be requested to ensure that their staff apply for and obtain a Working with Children Bluecard prior to the commencement of their employment. This should be at the expense of the individual, rather than the organisation.

As mentioned previously, PACT support any intervention that can prevent the sexual assault of children and young people.

### **Offences by institutions**

PACT support the proposed institutional offences identified.

## **CHAPTER 7 – Issues in prosecution responses**

PACT consistently receives feedback from child victims about the lack of communication between them and their Prosecutor or Victim Liaison Officer. We strongly believe that this is a resourcing issue with Prosecutors receiving files the day prior to the child giving evidence. Prosecutors tend to meet the child witness either the day before, or morning of, their pre-recording of evidence. Therefore, there is much room for improvement and we strongly believe that there is insufficient liaison between a victim child and the assigned Prosecutor.

Having said that, please find below verbatim comments from children and young people in response to the question **Do you have anything you would like to say about the Prosecutor?**

- *I couldn't have asked for someone better. Lovely person.*
- *She seemed nice, was very helpful and gave me a lot of information on how it would all go.*
- *He was really helpful. He made me feel safe and that everything was going to be okay.*
- *The Prosecutor was a very nice man to speak to. I have no concerns.*
- *The Prosecutor was awesome. I couldn't have asked for anyone better.*
- *He was very helpful with letting me know what was going to happen so I wasn't so worried.*
- *The Prosecutor made sure I understood everything and who everyone was.*
- *Thanks for being there.*
- *I was okay talking to the Prosecutor.*
- *The Prosecutor was kind and understanding of my situation.*
- *At first I was a bit scared of him, but once we had a chat I felt more comfortable. He's very good at what he does and I wouldn't have asked for a better Prosecutor.*

Again, we point out the interpretation of the Privacy Legislation, and the need to for ODPP to be provided with written client consent, provides a barrier and obstacle to vulnerable victims receiving the court preparation and support they deserve. Essentially agencies such as PACT are funded to provide a service, though in many cases are not provided with the necessary information from the DPP to ensure that child victims and witnesses are adequately prepared to give best evidence. Therefore, the interaction between the Privacy Legislation and Evidence Act needs to be reviewed and amended to enable victims' access to much needed support services. In addition, Departmental Guidelines, Policies and Procedures also need to reflect these relationships and ensure effective practice in relation to the sharing of information.

#### **Possible principles for prosecution responses**

- We support that prosecution staff, including Victim Liaison Officers should be **trained** to have a basic understanding of the complexities of child sexual assault.
- We appreciate that victims respond well to **continuity in staffing**. However, given the limited interaction between the Prosecutor and victim, we do not consider this to be a significant issue in the Queensland context. Victim Liaison Officers are assigned to different chambers or regions so provide a level of consistency to victims.
- **Regular communication** continues to be an issue and adequate resourcing needs to be allocated to enable this to occur.
- **Witness Assistance Services**, such as PACT, do provide an important level of focussed support to adequately prepare children for the daunting court process.

#### **Changing the plea decisions**

Families do report not being adequately consulted in relation to decisions made about their case. We have had many examples where a Prosecutor has asked a child in the presence of their PACT Volunteer, not carer, if they would like to take a plea to lesser charges, which would mean they do not have to give evidence. We strongly believe, that children should not be put in this position as they do not fully understand the implications of agreeing to this. Also, often these decisions are made in haste, during a court adjournment, which does not give the child or their family adequate time to fully consider the request or the likely future impacts.

Families also report not being informed that a prosecution may not go ahead if the child is distressed and unable to give best evidence on a particular day. We have had a number of cases that have been "Nollied" due to the child's inability to compose themselves to answer the questions of Prosecution and Defence.

We believe that in relation to cases involving offences against children, often assumptions and decisions are made without adequate consultation. The families that PACT support, struggle to fully understand the complex court process and the information provided. In fact, families in crisis only take in a small percentage of what they are told.

We believe that consultation needs to be strongly enhanced in all interactions relating to child related matters.

### **DPP complaints and oversight mechanisms**

In Queensland, victims of crime do have a mechanism to lodge a complaint where they believe the Fundamental Principles of Justice have been breached by accessing the following link <https://www.qld.gov.au/law/your-rights/victim-rights-and-complaints/victim-rights/>. However, there is definitely room for improvement when consulting with young victims of crime. Especially taking the time to ensure they fully understand the possible ramifications of the decisions proposed.

PACT advocates on behalf of children and young people through the lodgement of Incident Reports which provide evidence-based feedback on the child protection, policing and legal sectors, to elicit positive changes and legislative reforms.

### **CHAPTER 8 - Delays in Prosecutions**

Sadly, there are usually lengthy delays to hear child-related offences, often 18 months to two years between the time of arrest and when a child gives pre-recorded evidence within the Queensland Criminal Justice System. As you will appreciate, that is a fair proportion of a young child's life where they have been in limbo awaiting the court outcome.

Some Defendants change their counsel which can cause delays in the court matters being heard.

Children also report lengthy delays on the day of court which increases their anxiety and stress prior to giving evidence.

Below please find some verbatim feedback from children and young people to the following question. **Is there anything else you would like to say about your Court experience?**

- *The court process was too long.*
- *It's hard trying to remember when giving evidence because it's been so long.*
- *I felt okay about going to court even though it took very long.*
- *Scary and emotional – long delays.*
- *It was a long experience.*
- *Unpleasant, long wait to give evidence, nervous about giving evidence.*
- *It has been a long day. There is too much pressure on kids like me.*
- *A very long, long, long, long, long, long, long, long, long day.*
- *Waiting time very long.*
- *Scary, embarrassing and long.*
- *It was a long stressful day but I was happy with all the support I had.*

### **Suggested options to address delays:**

- **Specialised Courts and Prosecution:** We support the introduction of specialist courts and prosecutions to address sexual assault offences but again believe this could pose a resourcing issue for the Queensland Government and also likely to have a high turn-over rate of staff due to the confronting nature of offences against children which may cause burnout.
- **Early allocation of Prosecutors:** This would enable cases to be managed more effectively and the ability for rapport to be built with the child which would increase their level of comfort and trust. This could facilitate further disclosure and encourage early guilty pleas. All of which would be significantly beneficial to the victimised child or young person.

We strongly support the principles identified and believe they should be clearly articulated the Director's Guidelines to influence Prosecution behaviour.



## **CHAPTER 9 – Evidence of victims and survivors**

PACT's purpose is *"To enhance child protection by reducing the trauma experienced by all children and young people (3-17 years) required to give evidence within the Queensland Criminal Justice System victims or witnesses."*

Our carefully trained Child Witness Support Volunteers:

- Are thoroughly screened and trained to be impartial, unbiased and are required to hold a current Working with Children "Blue Card".
- Are court approved and accepted.
- Provide information to the child witness and their carer/s about court proceedings.
- Prepare the child witness for the court process.
- Visit the Vulnerable Witness Suites, Recording of Evidence or Court Room prior to the court hearing, if appropriate.
- Accompany the child witness whilst they meet with their Prosecutor and view their original Police Statement.
- Support and reassure the child during their waiting time in the court building.
- Accompany the child whilst they give their evidence.
- Maintain appropriate contact with the child and their carer/s until the child witness has given evidence.
- Liaise with a broad range of individuals (community, legal profession, police, Government).
- Remain impartial and do not discuss evidence.

We question the need for intermediaries in Queensland as we would see some overlap/duplicate with the role that PACT plays. We also express concern that the introduction of intermediaries would be costly and have the potential to negatively impact on the rapport building between the Arresting Officer, Prosecutor and victim. The building of trust is extremely important when dealing with child-related cases.

## **CHAPTER 10 – Tendency and coincidence evidence and joint trials**

PACT does not have the expertise to provide comment on this section.

## **CHAPTER 11 – Judicial directions and informing juries**

As mentioned previously, we do not believe that younger children have the emotional maturity to tell complex lies and in our experience are more likely to provide honest evidence, based on the abuse they endured, or what they witnessed.

In relation to improving information for Jurors PACT believe a basic overview of the likely responses to child sexual abuse is needed. However, there are too many varying factors and complexities to fully educate jurors on the likely impact of the abuse on the child. In PACT's experience, we have supported child witnesses to a crime who have been outwardly much more stressed by the experience than the actual child complainant (victim). People react to stress in different ways, especially children and the long term or likely effects of the trauma are often not evident until a child is an adult, forming meaningful relationships or starting a family.

One of the major challenges is the diverse approaches by people dealing with children, which are mainly personality and/or experience based. Many Police, Prosecutions and Judges treat children extremely well and make every effort to ensure their safety. Further, between 2012 and 2016 PACT has seen a tangible improvement in the feedback about Defence, but sadly, there are still many Defence Lawyers who continue to harass children giving evidence. Educating Judges and Prosecutors assists in ensuring that children are better protected during cross-examination and not subjected to unnecessary trauma as a result of their involvement in the criminal justice system.

PACT firmly believe the most effective education and training for lawyers is verbatim feedback directly from the children and young people who have interacted with the criminal justice system. Initiatives such as the Post Evidence Feedback Surveys provide information on how they child has seen their interaction with Police, Prosecutions, Defence, Judiciary, giving evidence and their overall court experience.

We understand that several States have implemented processes to obtain feedback from the children and young people they support. Therefore, there is a body of evidence that should be used to inform future reforms and education strategies for all members of the judiciary.

#### **CHAPTER 12 - Sentencing**

In relation to sentencing, PACT does not have the expertise or experience to comment as our involvement in the court process ceases once a child gives their evidence. However, we believe that judicial discretion is extremely important in sentencing and Magistrates and Judges have the necessary expertise, training and experience to make decisions in relation to sentencing.

#### **CHAPTER 13 - Appeals**

Again, PACT does not have the expertise to provide comment on this section. However, the pre-recording of evidence should be mandatory to ensure that children and young people are seldom required to be further called to give evidence or subjected to further cross-examination.

Further, adequate communication with the victim and their family is extremely important in relation to the Defendant appealing the sentencing enforced. One of the major concerns of children is that the person will get out of prison and come after them.

#### **CHAPTER 14 – Post-sentencing issues**

PACT feel very strongly that the community needs to be adequately protected from recidivism and repeat offenders. We do not support the notion that if an adult sex offender completes a treatment program that they should be eligible for a Working with Children Check clearance. That is introducing a significant and unnecessary risk to vulnerable children.

We support the need for current child sex offender registries to be maintained and for regular Police inspections to occur to maintain community safety.

#### **CHAPTER 15 – Juvenile offenders**

Sadly, PACT supports children who have to give evidence in Children Court matters as victims of child sexual assault perpetrated by another minor.

We believe comprehensive investigation is needed in regard to consensual sex to ensure that minors are not unjustly accused of sexual assault, should the sexual relationship come to an end.

**PACT strongly believe that a child does not become an adult until the age of 18, so should be treated as such in all their dealings with the criminal justice system.** This is extremely important in relation to the decisions as to where they serve their punishment in a Youth Detention Centre or Adult Prison. The potential long-term negative impacts on a young person being exposed to adult perpetrators is significant and should be strongly considered during sentencing.

### **General Comments – Are there other improvements you would like to see in the criminal justice response**

#### **Working with Children Checks**

Further, we were extremely disappointed with the outcomes of the Commissions review into Working with Children Checks and the exemptions and exclusions outlined on pages 76-81 of the Report.

1. **Children** - As evidenced in Chapter 15, child-to-child sexual offences occur. Exempting someone from obtaining a Working with Children Check until the age of 18, so poses unnecessary risks to vulnerable children.
2. **Employers and Supervisors of children engaging in a workplace that is not child-related** - In September 2015 several PACT Child Witness Support Volunteers referred to their involvement providing support to young people who had been physically or sexually abused by their supervisors in a work setting.

**The PACT Chief Executive Officer (CEO) emailed Blue Card Services with the below query:**

*Protect All Children Today Inc. (PACT) is a non-profit community agency that supports child victims and witnesses of crime, who are required to give evidence in criminal court matters.*

*This support is provided by carefully screened and trained Child Witness Support Volunteers who teach children about the court process and prepare them to give evidence. They accompany children when they meet with their Prosecutor and when they give their evidence. All PACT Volunteers must hold a current Blue Card.*

*At a Volunteer Conference last week, a number of the Volunteers expressed concern about recent sexual assault cases involving staff members from fast food outlets. We are wanting to advocate on behalf of vulnerable children suggesting that it should be a requirement for adults working in this area to hold a current Blue Card when supervising children and young people.*

*I contacted the Blue Card office and was instructed to provide an email that would be forwarded to the most appropriate person. We would appreciate the opportunity to further discuss this issue.*

*Thanks very much for your assistance in this important matter.*

**Response from Blue Card Services**

Dear PACT CEO

Thank you for your enquiry to Blue Card Services.

The blue card system is regulated by specific categories of employment or business which are outlined in the *Working with Children (Risk Management and Screening) Act 2000* (the Act). We confirm that an individual is not required to obtain a blue card if the individual is merely giving help or guidance to a child as part of the child's employment. Therefore, staff members of fast food outlets are currently not required to obtain blue cards. However, organisations are encouraged to implement child and youth risk management strategies which assist in identifying and minimising the risk of harm to children and young people.

Further, we can confirm that the Blue Card Services maintains a policy issues register to record matters for potential consideration as part of any future policy and legislative review. Accordingly, Blue Card Services will forward your suggestions to the team responsible for reviewing and actioning policy proposals within our Agency.

We hope this information is of assistance. If you require further information please telephone Blue Card Services on **1800 113 611** or **07 3211 6999** between **8am – 5pm** on **Monday to Thursday** and between **9am-5pm** on **Friday**. Alternatively, please access our website at [www.bluecard.qld.gov.au](http://www.bluecard.qld.gov.au) for general information and application forms.

Yours sincerely

Blue Card Services  
Operations Division  
Public Safety Business Agency

PACT then wrote to the Premier and relevant Ministers outlining our concerns. However, a response has not been received from the Minister for Police and Minister for Corrective Services so a further letter was provided in August 2016.

### Key Issues

Until the legislation is reviewed and amended young people will remain at risk of being abused and violated in the workplace by people in positions of trust and authority. These young people often do not possess the level of maturity to protect themselves adequately or to question the situation they are being put in, particularly when asked to do the closing shifts late at night.

We appreciate that organisations, such as many fast food and store chains, are encouraged to implement child and youth risk management strategies and to identify and minimise the risk of harm to children and young people. However, this is not enforced in any sense and does not otherwise apply to a large range of smaller employers; such as cafes, fish and chip shops, retail, petrol stations etc. PACT is aware of a number of matters that have involved physical and sexual abuse of young people by supervisors in these smaller types of workplaces.

This is an unnecessary and unacceptable risk and one that should be managed consistently with other areas recognised by the Blue Card requirements as exposing young children to vulnerability and risk of harm by persons in positions of authority. This matter needs to be rectified as a matter of priority.

PACT understands that in some other States, Blue Cards contain photo identification which makes them more meaningful and ensures they cannot be used by someone who hasn't undergone the necessary screening and Police checks. We believe this practice should be introduced into Queensland as a matter of priority.

The relevant legislation needs to be reviewed and amended to ensure that any agency employing young people be required to have their staff obtain a Working With Children Blue Card.

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Thank you for the opportunity to provide this Submission. We trust that PACT's input has been of value.

Yours sincerely



Alexandra Marks  
Chairperson



Jo Bryant  
Chief Executive Officer