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The following is a response by the Victorian CASA Forum to issues raised as part of the Commission's work examining the Criminal Justice System. This response predominantly focuses on our experience of working with people in Victoria, whose experience of institutional sexual abuse was in Victoria and elsewhere.

CASA Forum is the peak body of the 14 regional Centres Against Sexual Assault (CASAs) in Victoria, which, along with the Victorian Sexual Assault Crisis Line, provide a 24 hour service for people who have experienced sexual assault across Victoria. CASA Forum is a member of the National Association of Sexual Assault Support Services (NASASV).

This submission addresses some, but not all, areas of the consultation paper.

If you would like any further information or comments, please contact either of the following:

Charmaine Farrell  
Manager  
Northern Centre Against Sexual Assault



Carolyn Gillespie,  
CASA Forum Convenor  
CASA House



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

CASA Forum wholeheartedly supports the approach of the Commission to criminal justice reforms, as outlined in Chapter 2. We believe that victims and survivors of institutional sexual abuse have a right to seek justice through a criminal justice response, if they wish, and should be supported through the legal system to seek a criminal justice response. There are a range of different reasons victims and survivors might not seek a criminal justice response including lack of knowledge and information and/or lack of support. It is important to note that some people do feel discouraged, for a range of different social, systemic and historical reasons, from seeking a criminal justice response by reporting to police and having to attend court. CASA Forum believes that ongoing education and training for police, prosecutors, magistrates and judges, focussed on building a sound understanding of these barriers to reporting, is critical.

### Restorative Justice

The criminal justice system does not always contribute positively to the resolution or recovery aspects of the sexual offence/s, including the potentially ongoing relationship with the institution and even the offender. CASA Forum believes that Restorative Justice is an alternative to Criminal Justice which is able to provide “justice” for SOME survivors. Over the past 10 years, SECASA and other CASAs have facilitated numerous “in-house” Restorative Justice sessions instigated by victims and survivors. In terms of the sense of justice experienced by the victim or survivor, this option has proved to be successful in many cases. The model provides a sense of justice through:

- acknowledgement of the crime
- an opportunity for the person who has experienced the abuse to tell the story or as much of the story as s/he wants to tell, in her/his own words and ways and to highlight the impacts of the abuse
- an opportunity for the offender to hear and understand the extent of the impacts on the life of the person who was assaulted
- an opportunity for the offender to express to the victim an increased understanding of the impact on her/his life, to admit responsibility and to apologise

### The Criminal Justice SYSTEM

In Victoria and Australia, in our legal system, the usual rules of fairness and a fair trial exclude the opportunity to demonstrate that an offender is, or has been, consistently unreliable, abusive or a compulsive liar - i.e. the person who has experienced the abuse has many examples of devious and undermining behaviours and has evidence of other examples of abuse, lying etc but is unable to present this in court. This type of abusive, controlling behaviour is seen commonly in offenders and may be part of their controlling and/or grooming behaviour.

### Adversarial System

Our adversarial system is weighted against the victim in many cases of institutional abuse. The adversarial system does not acknowledge the inequality inherent in the situation of institutional sexual abuse where many victims are extremely vulnerable due to age or disability compared to (for example) paid, adult staff of the institution. They may be children or people with a disability living in care or being supported during some period of the day or week, due to family inability to care for them in some way. Where there has been a sexual assault or repeated and even extensive sexual abuse within an institutional context and a vulnerable person has been the

victim of crime, then this needs to remain the focus, through all aspects of the process – from disclosure, allegation, investigation, laying of charges, trial and consideration of the evidence etc and then conviction and punishment and compensation. What is the point of all of these individual steps if not to provide justice for the person who has been harmed? In our experience, it does seem that sometimes, and at various points along the way, this focus does get lost, or even subsumed, by the needs of the SYSTEM ITSELF.

The adversarial system is not focussed on ensuring justice for people who have experienced interpersonal crimes such as sexual abuse. In many ways, the system itself, with its complex processes, requiring others to make the meanings and understandings, parallels the violence already experienced by the victim. The experience of many victims is that it has not provided them with justice or even a sense of justice. For many CASA clients, navigating and understanding the criminal justice system is extremely difficult and, ultimately, unsatisfying.

## The Criminal Justice PROCESS

### Challenges for victims attending courts & trials

- In many cases, victims and survivors have not been prepared and informed about what to expect from the legal processes i.e. how long the whole process could take, what their role will be as a witness, the experience of cross-examination
- Similarly, people are often unaware of their options i.e. (in Victoria) that they can provide testimony from video link or private room
- It is often a shock to a person who has experienced sexual abuse to learn that they will not actually be central to the criminal justice process but will simply be a WITNESS for the state
- Not being linked in with court supports, such as Witness Assistance Service or Victims Assistance Program, which is able to provide someone to go with the victim to court or show them around the court before their court date
- Being confused about what is required of them –i.e. etiquette of who to address and how in court, how to prepare a Victim Impact Statement or even that that is an option.
- The court cross examination should be recorded. This recording should be used for children and adults if there is an appeal so the victim does not have to go through the process again.
- The court process requiring a victim to give evidence again if there is a retrial demonstrates a fundamental lack of understanding of the impact of sexual abuse. This possibility definitely puts victims at very high risk of re-traumatisation and is absolutely not in the best interest of victims - and therefore of society. Consequently, it is undermining of the very purpose of the criminal justice system.
- All material should be admitted into the trial and not made inadmissible. Current laws should be changed so that there can be more material admitted into court and also joint trials for child abuse matters can take place, rather

than separating trials so that a jury is unaware of the number of victims who might have made a complaint against the perpetrator.

- Prosecutors: meeting prosecutors before trial helps our clients. CASAs always attempt to arrange this but it is not guaranteed.
- The seeming lack of any follow up support after court, particularly if alleged perpetrator found not guilty.
- A court finding of “Not guilty”: while this might be a reasonable justice/legal statement it is always harmful for victims and survivors of sexual assault. For many years, we’ve discussed alternatives and it is time another statement is made available that is more considerate of the courage of the witness/survivor
- Children: many adjustments have been made for children since 2006 and yet it remains a hostile place/experience for them. Further work to create child friendly and considerate environments is essential.

### **Chapter 3 Police responses**

CASA Forum agrees that the establishment of Principles for an initial police response would be a very positive and useful recommendation to come from the Commission (p. 14 Consultation Paper Criminal Justice).

We agree with the observations and recommendations identified in the paper regarding barriers for children, Aboriginal and Torres Strait Islanders as well as prisoners and former prisoners in terms of disclosing and reporting sexual abuse that occurred in an institution when they were a child.

One of the most significant elements of sexual abuse of children within an institutional context is that, in many cases, the victims were, at the time of the abuse, extremely vulnerable - perhaps very young children, a child with a disability, a child without protective parents. This vulnerability is then compounded in subsequent years as the person grows to adulthood, due to the impacts of the sexual abuse. The adult reporting the past sexual abuse may well have mental health issues, a history of substance use/abuse and few family or social supports, as a consequence of the abuse. The initial police response is critical in terms of (a) the person continuing with the process and (b) the victim having the opportunity to seek and secure a criminal justice response. Police need to be well trained to ensure they have the skills and understanding to enable them to respond respectfully to adult victims of past childhood institutional abuse. The point of first disclosure or approach to police is critical in terms of determining whether a person will proceed. A positive and understanding/ sympathetic response, demonstrating belief, will give confidence to the victim and reinforce that disclosing was a positive step.

CASA Forum strongly supports the notion of ongoing education and training for police about these issues, including the impact of complex trauma and the barriers to disclosure and reporting. Whilst we do indeed support and agree with all of the proposed principles to inform police investigation outlined, as well as the possible principles to inform the initial police response, we would encourage the following to be framed as explicit recommendations:

- All police who may come into contact with victims or survivors of institutional child sexual abuse be trained to:
  - develop 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 people in positions of power (such as police)
  - treat anyone who approaches police to report abuse with consideration and respect
  - develop cultural awareness in respect of Aboriginal and Torres Strait Islander victims and survivors and develop an understanding of the barriers which prevent many Aboriginal and Torres Strait Islanders from disclosing and reporting. In respect of this, Victoria has been working on a project for about 8 years between the Department of Justice and Aboriginal Family Violence Prevention and Legal Service - the Koori Family Violence Police Protocols project - aimed at improving the police response to Family Violence in Aboriginal community in Victoria.

This includes Police training in the introductory course for General Duties policing. General Duties, uniformed police in local stations need to have at least a basic understanding of complex trauma as they are the first port of call for many people who have experienced sexual assault.

Principles for police decision-making regarding laying charges (p.18)  
Costs should not ever be awarded against police; this should not be an option.

Possible principles to guide Police investigative interviewing (pp.17 &18) – CASA Forum supports these proposed principles.

**Keeping victims informed of the process:** this is often seen as a low priority by police, understandably, as police are very busy, however, this is actually a critical aspect for victims and survivors who have disclosed and reported. In our experience, people who have experienced sexual abuse do need to be supported and encouraged by the police dealing with their case, and to be kept in the loop about progress, or they will lose faith in the process and disengage. Unsurprisingly, trust is a major issue for people who have experienced sexual abuse. Specialist police services should be resourced to ensure that victim support can be central to their role in investigating these crimes.

Problems experienced in Victoria with Police processes:

1. Police frequently use language victims and survivors do not understand: information sheets with acronyms and brief explanations for each step of the way would help.
2. In situations where SOCIT police have neglected to include the local CASA at point of statement making, clients are compelled to find their own way through a system they're not familiar with and frequently reach the CASA, at some point down the track, in a very distressed state, confused about where things are at and what they might expect.

#### **Chapter 4 Police responses and institutions**

In many cases, a child who has experienced sexual assault in an institution will continue to maintain a very close involvement with that institution, e.g. a school, church or sporting or social network such a gym or Scouts. There may have been one offender, who may have been removed or left, and the staff and managers of the institution are left with responsibility to manage traumatised individuals, families and community as best they can. Police are not required to provide any information to institutions in these circumstances, however, this is an opportunity for police to liaise more closely with the institution as one element of supporting the victim/s. If the relevant senior people at the institution were kept informed about what is going on with the charges and other legal processes, the institution would be in better position to provide the most appropriate response and day to day support to the child/ children who have been abused. Working closely with the local CASA would definitely facilitate this process of support. CASAs have understanding of the system and processes, are able to liaise with police and are experienced and skilled in the provision of support to individual families and communities impacted by sexual assault advocacy

#### **Chapter 5 Child sexual abuse offences**

##### **Limitation periods on criminal prosecutions (p. 25)**

CASA Forum supports the removal of limitation periods for prosecuting people with child sexual abuse offences and that the removal should have retrospective effect. And of course, that this removal should not revive any sexual offences that are no longer in keeping with community standards.

#### **Chapter 6 Third party offences**

CASA Forum believes the new *Failure To Protect* legislation in Victoria is appropriately targeted. We are not aware of any unintended adverse consequences on the capacity of institutions to provide children's services. However, reading the comments in the Consultation Paper (p. 29) we are not sure whether this has been tested. Since the Betrayal of Trust Inquiry and Report and the new legislation, there has definitely been an increased focus on child sexual abuse and the risks of institutional abuse in Victoria. For example, in 2016, the Victorian Government introduced Child Safe Standards, compulsory minimum standards which all organisations that provide services to children are required to meet. The Child Safe Standards form part of the Victorian Government's response to the Betrayal of Trust Inquiry. Education, awareness raising and helping organisations to create and maintain child safe environments will be the initial focus of the Child Safe Standards.

Anecdotally, organisations in Victoria do seem more aware of their responsibilities and are establishing policies and procedures to protect children and ensure the safety of children.

#### **Chapter 7 Issues in prosecution responses**

CASA Forum supports all of the possible principles suggested to guide prosecution (pp. 271- 276)

CASA Forum supports the suggestions in relation to complaints (p.35). Victims do need to be kept informed and especially of the reasons for not proceeding with prosecution and there should definitely be an option for a formalised internal complaints process.

## **Chapter 8 Delays in prosecution**

## **Chapter 9 Evidence of victims and survivors**

We believe the option of prerecording earlier, before a trial starts, would be very helpful for some victims and survivors. Attending a trial can be extremely stressful and triggering of past trauma for many clients. This option could be very helpful for some survivors who are adults at the time of trial.

Special measures are essential and have significantly improved the processes in Victoria over the years by making the criminal justice system and the courts in particular less daunting and more manageable for vulnerable victims such as children and people with a cognitive disability.

We support the idea of prerecording all evidence so victims don't have to go through it all a second time, in the event of an appeal or retrial

CASA Forum most definitely supports the idea of setting ground rules for how a victim or survivor should be questioned before they are cross examined to ensure that questions are asked in a way that is not confusing. People will give their best evidence if they feel safe and confident and clear about what they are being asked.

Particularly vulnerable victims also routinely face numerous additional barriers and challenges. We believe it is essential that intermediaries are available to provide supports for vulnerable people to facilitate communication between victims and survivors on the one hand and courts and lawyers on the other hand.

## **Chapter 10**

## **Chapter 11 Judicial Directions and Informing Juries**

As discussed in the Consultation Paper, there is minimal understanding of the impacts of child sexual abuse within society. Juries cannot be assumed to have this specialist knowledge and understanding. CASA Forum believes that juries do need a high level of support to understand the impacts of sexual abuse and the behaviours of children who have been abused – and the reasons for those behaviours (e.g. not disclosing immediately following the abuse). CASA Forum supports implementation of ALL of the following methods to support and educate juries:

- the use of expert evidence
- particular judicial directions
- giving judicial directions early and repeating them throughout the trial
- providing other educational material, as required, eg education about complex trauma

Similarly, relevant education and training should be provided to all legal personnel involved in supporting people who have experienced sexual abuse, and to lawyers, barristers and judges involved in criminal trials of people accused of sexual crimes. Relevant education and training might include:

- impacts of sexual abuse

- barriers to disclosure
- symptoms of complex trauma and post traumatic stress
- evidence, myths and facts about sexual abuse
- work aimed at preventing gender based violence and violence against women

### **Chapter 12 Sentencing**

*Whether provision should be made to exclude good character as a mitigating factor in sentencing*

A very strange inclusion. It almost pre-empts the charge and suggests "How could he have done it? He is such a good person." Is this provision included in every criminal charge?

CASA Forum believes convicted offenders should be prevented from raising their supposed past "good character" as a way to influence sentencing. Grooming methods used by offenders often include being 'of good character' (friendly, helpful, trustworthy, going beyond what might be expected of them) to gain the trust of children, families, managers of institutions and bureaucracies that might surround them.

### **Chapter 14 Post Sentencing Issues**

*Effectiveness of sex offender programs in prison and run by Community Corrections and in community*

These programs may have some impact but, as far as we are aware, none have been carefully or methodically evaluated in terms of effectiveness and looking at recidivism or whatever.

Sex offending against children is viewed in many different ways. It could be viewed as one expression of the social problem of gender based violence. Our society very strongly presents and reinforces gender stereotypes which privilege males over females and identify the power and privilege of males. Sex offending against children may in part be due to these social values and the social conditioning that reinforces male entitlement. In an institutional setting, this sense of entitlement and the opportunities granted by a position of authority and power may create a situation in which sex offending is possible and even sanctioned. Many governments and organisations in Australia have recognised this and have been devoting resources to the prevention of gender based violence through challenging these social values. Aimed at bringing about cultural change, this is long term work.

*Whether child sexual abuse offences should be sentenced in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, as now occurs in England and Wales.*

If one of the motivations of or purposes is to deter future offending, it would be necessary to reflect current values and expectations.