



## Criminal Justice report: Outline of recommendations

The criminal justice system is often seen as not being effective in responding to crimes of sexual violence, including child sexual abuse. These crimes have: lower reporting rates; higher attrition rates; lower charging and prosecution rates; fewer guilty pleas; and fewer convictions.

In prosecutions for child sexual assault offences finalised in New South Wales courts between July 2012 and June 2016, the defendant was not convicted of any child sexual assault offence in 40 per cent of prosecutions.

### Child sexual assault offences, New South Wales courts, 2012–2016 – all matters (see Table 2.1 in report)

Total number of matters	2,604
Convicted of all relevant offences (%)	33
Convicted of at least one but not all relevant offences (%)	27
Convicted of no relevant offences (%)	40

During this four-year period – which includes 3.5 years in which the Royal Commission has been in operation – the defendant was not convicted of any child sexual assault charge in more than 50 per cent of the prosecutions that were finalised at a defended hearing or trial.

### Child sexual assault offences, New South Wales courts, 2012–2016 – matters finalised at a defended hearing or at trial (see Table 2.2 in report)

Total number of matters	725
Convicted of all relevant offences (%)	32
Convicted of at least one but not all relevant offences (%)	16
Convicted of no relevant offences (%)	52

The criminal justice system is unlikely ever to provide an easy or straightforward experience for a complainant of institutional child sexual abuse.

However, it is important that survivors seek and obtain a criminal justice response to any child sexual abuse in an institutional context in order to:

- punish the offender for their wrongdoing and recognise the harm done to the victim
- identify and condemn the abuse as a crime against the victim and the broader community
- emphasise that abuse is not just a private matter between the perpetrator and the victim
- increase awareness of the occurrence of child sexual abuse through the reporting of charges, prosecutions and convictions
- deter further child sexual abuse, including through the increased risk of discovery and detection.



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The first recommendation in our criminal justice report provides:

In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:

- a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
- b. criminal justice responses are available for victims and survivors
- c. victims and survivors are supported in seeking criminal justice responses.

The other 84 recommendations provide for reforms to achieve these objectives.

The recommendations address the following areas for reform in relation to child sexual abuse, including institutional child sexual abuse.

**19 recommendations to improve police responses** – including by: encouraging reporting; improving police investigative interviewing techniques and training; and addressing particular issues in police responses to reports of historical child sexual abuse and reports of child sexual abuse made by people with disability (*recommendations 2–20*)

**11 recommendations to improve particular child sexual abuse offences** – including:

- making the offences of persistent child sexual abuse/maintaining an unlawful sexual relationship more effective to reflect how complainants experience and remember repeated child sexual abuse

- expanding grooming offences to include any communication or conduct with a child undertaken with the intention of grooming the child to be involved in a sexual offence, and to cover grooming of persons other than the child (such as parents, carers etc) (*recommendations 21–31*)

**Five recommendations introducing third party offences** of failure to report and failure to protect, targeted at institutional child sexual abuse (*recommendations 32–36*)

**Seven recommendations to improve prosecution responses** – including by: improving communication with victims and police about key prosecution decisions; developing standard material for complainants and other witnesses to better inform them about giving evidence; and introducing complaints mechanisms and internal audit processes for Directors of Public Prosecutions (*recommendations 37–43*)

**Eight recommendations to facilitate greater admissibility of tendency and coincidence evidence and more joint trials** in child sexual abuse matters – because we are satisfied that this evidence will often have a high probative value in child sexual abuse offences and the risk of unfair prejudice to the accused has been overstated (*recommendations 44–51*)

**12 recommendations to improve special measures and courtroom experiences** to help complainants and other witnesses in child sexual abuse prosecutions to give their best evidence – including by prerecording evidence in chief and cross-examination, recording evidence given during a trial for use in any subsequent trial or retrial, and introducing intermediary schemes (*recommendations 52–63*)



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### **Eight recommendations to reform judicial directions and improve information for judges, legal practitioners and juries** – including by:

- removing any directions that judges give to juries that rely on outdated assumptions in relation to complainants, children's ability to give evidence and delays in complaint
- implementing regular training and education for the judiciary and legal profession to understand current social science research in relation to child sexual abuse
- developing standard directions for judges to provide educative information to the jury about children and the impact of child sexual abuse (*recommendations 64–71*)

### **Two recommendations to reduce delays and improve case management** (*recommendations 72–73*)

### **Five recommendations to reform elements of sentencing** – including:

- excluding good character as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending

- requiring sentences for child sexual abuse offences to be set in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, subject to the maximum sentence that applied at the date of the offence
- improving the information and support for victims in relation to making a victim impact statement (*recommendations 74–78*)

### **Four recommendations to reform elements of appeal processes** (*recommendations 79–82*)

### **Two recommendations to address issues that arise when the offence was committed by a juvenile** (*recommendations 83–84*)

**one recommendation to improve interaction between criminal justice and regulatory responses** to ensure that they work together to respond effectively to institutional child sexual abuse (*recommendation 85*).