

Royal Commission.

**Submission to the Royal commission into Child sexual abuse – police and prosecutions.**

For many years, people have come to VOCAL complaining of poor treatment around sexual assault matters. Some of them suffered in institutions – children’s homes, church-run homes and schools, hospitals, police lock up, mental hospitals. Institutional cover-ups, protection of the employees, bosses, leaders and wrong-doers in institutions, simply added another, often impenetrable layer to any hope of justice for individual caught by the system – a position that is already fraught for child victims outside of institutions. Where someone approached and were willing, we have referred them to various Inquiries, services and opportunities. The majority of this submission relates to cases, not any particular institution. We hope that the general issues and cases we raise are useful.

**About VOCAL:** My organisation, a charity, ‘The Victims of Crime Assistance League Inc NSW’, began in 1987, registered in 1989. Now both a charity and Non-government organisation funded through the NSW Department of Justice, it was first established to provide support for families after homicide, in days where there was very little focus on victims of crime, their stories, needs, processes and outcomes. Those were the days when courts said, glibly ‘The impact on the victim is known. The victim is dead. As recently as 2014 in NSW, finally a judge at sentencing may take into account the horror and pain of ongoing Victim Impacts of family victims in Homicide cases. The rate of change is slow for crime victims.

It became obvious, fairly early, that family members after homicide, were often complex people, having already been, or in the future, would be affected by other crimes. VOCAL Inc NSW soon became a place focused on the needs of other people too, those affected by any type of crime (irrespective of legal convictions) and similar life tragedies, rather than ‘just’ homicide. Direct victims, family members and law-abiding community members. There are no false boundaries of exclusion applied to our clients and members relative to the name given by police to a particular crime – or should we say the name given to a part that may possibly be provable in court, just as in life there is often little common ground in the experiences of crime or challenges of individuals. Our clients are people, not ‘that child sexual assault matter’. We see many people that the system is incapable of serving – victims that ‘don’t measure up’. Too young, no evidence, mental health issues, etc.



### **Issue 1: Children are particularly vulnerable and poorly served by the Adversarial System.**

VOCAL 'morphed', by demand for service, to be a Charity and non-government agency that supports people from all walks of life, affected by any type of crime – mainly violent, personal crime, through any crime-caused or related process in life, including police investigations and prosecutions, court support, and life after crime, often long after the crime. Some people first contact after a court matter, when the reality of the bias against victims seeking safety and justice is beginning to be understood. It is hoped the Commission will recognise our perspective is long, broad and deep and thus relevant because it speaks directly to our victim's experiences, satisfaction and all too often, disgust and betrayal. The system in its current form is failing our children. Add an institutional bias against them and magnify the impact of societal failure, which can already be profound.

### **Issue 2: Legal disrespect:**

Quote from barrister 2014 'These kiddie fiddling cases? Like taking candy from a baby!' Can you imagine this barrister and his cronies, backed by powerful entities like a church or government?

**Issue 3. Adversarial System:** To begin, this may appear to be a scathing critique of the Adversarial System of Criminal Law itself. It is written from the crime victim's perspective. It would be hard to design a system that was more cruel, less restorative or less respectful. It is a Human Rights issue. It denies the basic international covenants on people's rights and in particular, tramples over the idea of the best interests of children. A nation, a democracy, ought to have in its core values, the safety and protection of children. The majority of people as yet unaffected by criminal law would believe it is so.

But, as the barrister said, "it's like taking candy from a baby". His minimisation of the dire effects of abuse which are ignored and manipulated by the legal system, is captured in the diminutive 'kiddie fiddling'.

In similar vein, the Magellan list – supposedly 'fast tracking cases of child abuse including sexual abuse disclosures, in Family Court' is, I believe colloquially known as 'The Mad Mother's list'. And evidence shows that indeed, a mother must be mad to think the court will protect her child from sexual abuse by its father. I later draw you to a Background briefing dated yesterday. Put it all together and you find that systemically, from event, through complaint, report, to police, child protection, through prosecution, courts, compensation, restoration etc, we have a very, very poor understanding and little application of strategies and responses that are current, scientific, expert, and beneficial to society and victims. It, simply put, demonstrates the rot, and the protection of sex offenders and bias that permeates

the entire 'system'. Surely a right-thinking country can better balance the rights of an accused and responses for victims of child abuse? The education must begin at university, the oversight needs to be irresistible. Why would external agencies create a more robust strategy than what governments and courts do themselves – the systemic cover up of sexual abuse of children reaches wide?

#### **Issue 4: Prosecutions – are they supposed to prepare the victim/ witness?**

As recently as last week, in a conversation with a [REDACTED] lawyer, the question was asked. “Do you fully prepare victim/witnesses (sex assault) for what lies ahead, and about cross-examination?”

The answer was none the less awful to hear, although it was easily predictable.

It was “Heavens NO! They wouldn't turn up! There's no way!”

#### **Issue 5: Some of those question that need answers and action**

- Why are the rights of victims to a fair go, irrelevant?
- Is the Adversarial System serving the people or the law?
- Why are victims excluded from informed choice and proper legal support?
- Why are their experiences, trauma and recovery irrelevant, or targets to attack, in the legal process?
- Why are the rights of the accused so strong and getting stronger?
- Why is there no balance or fairness in the system?
- Why, in 2015, are university educated people (including lawyers) so frighteningly ignorant of the system, trusting what they learned in various faculties at University prepared them to understand how the entire social systems works for victims, assuming therefore they know how to respond?
- Why are lawyers and judges making decision outside their expertise?
- Why is it nearly impossible to get an apology, an answer, and holistic systemic change despite frequent requests for reports, submissions, advocacy and lobbying about what needs to change?
- Why aren't systems designed that 'fit' into both the state and federal systems, for the protection of citizens?
- Why does it come to the point where the only respect one retains for the legal system is its capacity to protect itself at all costs? And it certainly costs!
- Are we really serious about this scourge of child sexual abuse? Is it really a crime?

There are of course many other questions. Like why do we demand higher accountability from institutions than we will accept for ourselves?

#### **Issue 6: Child Sexual Assault and abuse.**

**2015:** This country cannot be trusted to hear, investigate, protect and hold accountable the majority perpetrators of child sexual assault of young children, in the majority of cases. The most vulnerable are those where the child is being abused in family – the largest institution of all – as if incest is somehow not like other sex crimes. As if ‘family violence’ is not as serious as stranger crimes. As if small children, young people and their mothers are suspected of somehow being involved in a plot to exclude daddy from children’s lives by making false reports. As if somehow, numbers of ‘feminist’ women meet in secret to discuss how to get daddy out of a family? My work shows the exact opposite. Women generally welcome the father, so long as it is safe! Again, if there is this bias against those most affected, what’s to be done to alter the system so that institutions are safe?

**Issue 7:** Mothers who report a child’s disclosure of sexual assault have NO IDEA of what lies ahead. Victims who come forward have no idea.

How can it be such a secret? What is to be done about it?

**Issue 8:** When is a crime, a crime? In this submission, the word ‘crime’ relates to the community level of what ordinary people understand to be a wrong, something harmful, something a child isn’t meant to experience according to ages or events dictated by the law, something you are supposed to report to the authorities. This word is in common usage, and should not be usurped by a legal superiority of application.

Here, then, ‘crime’ is not defined by a successful prosecutions. Notable though, an unsuccessful prosecution often results in consequences for the complainant, and negative inferences against the victim/parent in subsequent legal process. ‘The law’ believes ‘victim’ requires an official legal finding, and all the cases not successfully prosecuted are by definition ‘not victims’. Unfortunately the impact and outcomes of these crimes are not removed by arbitrary word games.

As recently as last week, this was demonstrated in Family Court. The mother and child were getting counselling because of domestic violence under the NSW Government Approved Victims Counselling Scheme. The police had arrested, and kept on remand, the accused. It was clearly more serious than most. The mother was berated and banned from having the child attend counselling, at all, facing a near apoplectic judge, and was accused by him, of trying to cause a rift between the child and the father. This is absurd and more evidence the systems are siloed, and how ignorance about them, child development and trauma abound. If the mother had not sought support for the child, she could be blamed for neglect! While this case was violence, a similar issue would arise if the mother legitimately sought counselling under this scheme had the child been sexually abused! How can

institutions be current, across the latest research, when our courts are decades behind?

There is a vast gap between an event, a report of harm, and a successful prosecution. The system is frequently incompetent at many levels, with each 'error' or mess-up compounding the likelihood of a 'justice' outcome detrimental to the victim.

**Case 1. Mrs WS (anonymised).** [REDACTED]  
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**Support:** The mother in this case was VOCAL’s primary contact with the family. Despite the dreadful ordeals, she is functional, successful and alive. Where VOCAL has been involved, where we can explain the process, debrief after the various stages, assist in the challenges, including the adversarial system, prepare them for the task ahead, and if we accompany a victim to make the police statement, again as an uninvolved but confident support person, and support them at court and afterwards, people describe higher levels of satisfaction, irrespective of outcome. When there is no prosecution, we assist them to understand why, and we support them for as long as they need it into the future. Many more people are victims of crimes of violence than prosecutions can address – the failure of the system does not mitigate the impacts of the crime – it just exacerbates the trauma making recovery more tenuous. Yet so many are judged by the court outcome only, with scant regard for the non-party position of the victim. Litigating against institutions has been reported frequently by victims as soul-destroying, difficult, unfair, harsh, another type of abuse.

**Case 2: The case of Ronnie (not his real name).**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Issue 9: Background briefing 14/6/2015**

<http://www.abc.net.au/radio/programitem/pgoMGrBb1G?play=true> 'In the **child's best interests**. This program ought to be listened to. It is typical of the cases that come to VOCAL. Desperate for sense, logic, support and strategies. Caught in a corrupt system that sacrifices children rather than protecting them. Corrupt because it is a unaccountable sequence of secret, inexpert, financially rewarding associations. See the example of one infamous psychiatrist, with 2000 cases who couldn't claim expertise apart from his early training, who believes 90% of mothers lie about abuse, and he uses discredited junk science from a doctor who suicided by stabbing himself with a large carving knife – who believed mothers must stop children disclosing abuse by a father, must punish the child, lose the child and be jailed! There are several court favourites, just like him, protected by judges despite their **in**expertise. The assumptions made, the inexpert submissions, the price both financial and in life that the mothers and children and society will pay, smacks of corruption and a pro-paedophile, incest is OK, father's rights agenda – which the court always denies. So many people try to explain what is wrong, but the court doesn't want to listen. It

needs to listen and ask 'could these hundreds of mothers and children have a point? Is this corruption when secret arrangements, and public humiliations, jailing of mothers, actions for a lot of money, are untouchable?

What Background Briefing does not get into, is the failing of the state systems to investigate, then the outcomes from state courts are treated as if they are somehow truth seeking investigations, which they are not.

### **Case 3: Generic: The common experience:**

Victim discloses sexual abuse. Often to mum.

Or mum notices symptoms suggestive of sexual interference, child upset with daddy/ grandpa, other. May say 'daddy hurt me'. 'Someone at school did something sexual to me'. The music teacher did whatever. The priest did something..

**Issue:** Mum becomes person of first report if a court case ensues.

**Issue:** There is no general education given to people as to what mum, or any other ought to do and not do to protect the integrity of the case. There is no booklet, website, pregnancy support literature, information in domestic violence literature. No one to call.

**Issue:** Mum asks child about what they are saying. She is inadvertently ruining the case. She may have an emotional reaction. She can't believe he would hurt their child, often even though he hurt her sexually. That's why she left him.

**Issue:** Note that Family Courts are often very hostile to mum, demanding to know 'What reality testing did she do?' (How did she know what that is, or what to do or not do? – and if she did, she corrupts her own evidence and is accused of colluding with the child.)

### **Mum takes child to the family doctor.**

**Issue:** Doctor HAS NOT BEEN TRAINED to understand what they should or should not do, and he's been taught to stay out of court. Child says 'daddy / teacher/ someone hurt my bottom'. Bottom is red, torn.

**Issue:** Doctor cannot identify what caused it, who did it, when it was done. It could be constipation – the child hasn't been with mum, so she can't know, and she has said he was crying when he tried to 'go'. Nothing certain here. The doctor is not going to give useful evidence. He tells mother to call child protection.

She calls child protection. She does the intake.

**Issue:** She 'has insufficient' proof to meet ROSH'. Risk of Substantial Harm. How does sexual abuse 'measure up' on this scale? Child lives with mum, so is not at risk. In 2014, **FACS (Family and Child Services NSW) informed VOCAL that even when cases do meet ROSH, only 20% are likely to be reached, and sexual assault is generally not serious enough.**

**Issue: BUT nobody tells mum how it ;works'**

**Issue:** She stops access to daddy, the teacher, the priest . She thinks her highest function is to protect the children from harm. She keeps the child home from school. She makes a complaint about the teacher /the priest. She doesn't know what 'the right thing is' so she acts instinctively.

**Issue:** Dad takes it to Family Court. He gets access as there is no 'formal' investigation or records to prove he is a risk to the child. He gets access. The school goes in to protection mode. It's just the child's word.

**Issue:** A couple of months on, the child is refusing access, complaining about daddy hurting him. The education department is now targeting mum for keeping the child from school. She can't get any response from them about an investigation.

She rings police, seeking help. They might try to dismiss her by saying 'take it back to Family Court' about daddy, or they may tell her to bring him in for an interview with JIRT.

**Issue:** Children less than 7 (more often 10-ish) are not very good witnesses generally. Unless they are very clear, very articulate, it can be a lot of work for nothing.

**Issue:** The police do not suggest mum gets some victim support, they do not ask mum to come in first, or explain how the system works, the penalties for false accusation, how cases involving young children are often not able to be prosecuted, what records are kept, how the process will evolve, what she might do instead, how to collect evidence or how to keep her child safe.

Police are even more cautious in investigating institutions. See the police witch hunt over Peter Fox (Detective) when he blew the whistle on interventions in the Hunter Region after complaints of Sexual assault of children.

**Issue:** They may also say 'I wouldn't send him'. But may not document that instruction so there is no evidence to support her breaching a Family Court Order, or to verify police concerns. Police 'what I would do' advice, are often not suitable.

They arrive at the JIRT office. The child is nervous, asks mum to go with him. Mum says' It's OK sweetheart, the person will just ask you some questions, and it's OK to tell them. I'll be here when you come back.

The child is taken to the interview room. Unsupported. No witness.

**Issue:** The meeting is not taped.

**Issue:** I have seen examples of where a mother has secretly taped interviews with Jirt and FACS. The tapes have shown that the recording of children's disclosures, clear disclosures, were wrongly included, minimised or excluded.

**Issue:** In one case in Family Court, a mother illegally taped the Single expert's interview. It showed bullying, nastiness to the child by the single expert, and that the report was inaccurate, biased and omitted clear disclosures by the child. The Self-representing mother (anathema to the court) attempted to get the tape and transcript admitted into evidence to permit cross-examination of the Single Expert. The judge refused to hear the evidence, any submissions about it, and ordered the tape destroyed on the spot. **The best interest of the child test or lawful action falls well below the protection of the process.** The child has now been removed from the mother and given to the father.

**Issue:** No child will just blurt out information about what happened. The police ask questions. One of those questions is 'Who told you to say this?'

The question is a complex one. No one told him what to say, but mum said it was Ok to talk about (the yukky thing) , whereas, she doesn't talk about it usually. The child says 'Mummy'.

**Issue:** The mother becomes a vindictive woman trying to use her own child and denying the father access or get another good man into trouble, to sully the schools name, etc. The 'case' will not proceed. Police ought to be 'tested' and have to disclose political and religious affiliations before being allocated cases where a conflict is potential.

**Issue:** The mother is often spoken to very judgementally, not given any evidence, not privy to see what is written

**Case 3:** VOCAL sees a steady procession of these cases. Recently another case with circumstances similar to the one above,

[REDACTED]



often happens at or during court and the victim hears a case proceed by someone who knows little about it, is not prepared, and who does a poor job.

There are many aspects of cases, their investigation and responses that harm victims. This sample is but a small glimpse at a few issues that arise.

I hope they are useful and am happy to provide any further material.

I look forward to the day when the Royal Commission into institutions looks at the legal system, per se and particularly the Family Court. If we cleaned up the law, made it fair and reasonable, victims within institutions may be better afforded 'justice'.

Yours sincerely

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