



Jannawi
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SUBMISSION by Jannawi Family Centre

to the

**Royal Commission Into Institutional Responses to
Child Sexual Abuse**

CRIMINAL JUSTICE CONSULTATION PAPER

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Introduction

Jannawi Family Centre welcomes the opportunity to make a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse. Criminal Justice Consultation paper. Jannawi is a small NGO with 9 staff employed in part time roles. This submission provides a response based on practice experience and knowledge gained from working directly with children at significant risk and their families in our local area. It will not refer to extensive literature reviews and research regarding the factors facing at risk families, as we believe it is important to highlight the issues which arise in our interventions and our observations of what may create positive change in the lives of children and families.

Jannawi recognises that NSW faces problems in child sexual abuse not dissimilar to other states in Australia and which have come about as a result of historical complex organisational, political and structural pressures. We understand that as a NGO offering services funded by the NSW Government, we are also responsible for the safety, protection and welfare of children in our community and wish to be part of solutions. We believe that child sexual abuse has not received the attention it deserves as a risk issue for children in this state and that this needs to change. We appreciate the Royal Commissions focus on this very important issue, understanding the positive consequences which can also occur for victims of intra-familial abuse.

Who We Are

Jannawi Family Centre is a specialist tertiary child protection service funded by the NSW Family and Community Services. It was established in the late 1970's as a therapeutic pre-school known as the Wiley Park Centre to provide a child protection intervention program to local children. Following a restructure, it re-opened in 1991 and re-named with permission to use the Dharug word Jannawi, meaning 'with me'. Jannawi is located in Wiley Park, a south west suburb of Sydney which is a religiously, culturally and linguistically diverse area. Jannawi is committed to reducing the incidence of child abuse and neglect and assisting families to provide a safe environment for their children. Within this broad purpose we work with children who have experienced all forms of harm, and provide specialist intervention for children and families who have experienced or continue to experience Domestic & Family Violence and Child Sexual Assault. It is a member of the CASAC Inc network, representing NGO community based services which provide child and adolescent sexual assault counselling.

Jannawi aims to provide a holistic model of service delivery to children aged 0-12 years and their families who live in the Sydney District. This includes specialist child protection counselling; case management; risk assessment; parent skills development, education and support; child development interventions; home visiting; group work; advocacy; referral; direct practical support; transport and court support. We provide a restoration service for children in OOHc which includes facilitated contact. We also:





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- Consult, collaborate with and actively support individuals, agencies and networks that share our purpose;
- Provide training and consultation for staff from welfare, health, education and children's services to enhance their ability to respond to 'at risk', abused and neglected children and their families;
- Contribute to service system and policy development through various networks.

Summary

Whilst we were unable to review the full consultation paper, we will respond to the issues highlighted in the summary. It is important to note that whilst we hold a position of supporting many of the recommendations outlined, Jannawi Family Centre does not agree with the key premise that survivors seek and obtain a criminal justice response (outlined in Chapter 2). We acknowledge that the criminal justice system has an important role to play, however considering the issues outlined, it is our belief that victims and survivors do not necessarily obtain a criminal justice response in order for justice, healing and recovery to take place. It is also our belief that requiring survivors to be in a position to seek and obtain a response may in fact place victims at further harm. Considering the process is fraught with difficulties and barriers as outlined in the consultation paper, it can lead to systems abuse and exacerbate already significant issues facing victims.

Proposed Approach

Jannawi therefore proposes a position where victims and survivors are not to be discouraged from seeking a criminal justice response, that they are informed of their rights and the processes available to them. However, it is important that victims be supported whether they choose a criminal justice response or not and that any response must be victim focused and centred. At the present time, it is our professional experience and opinion that the criminal justice response is placed above the needs and interests of victims and is a process that does not achieve the outcomes outlined such as recognising the harm done to the victim or increasing awareness of the occurrence of child sexual abuse. These are achieved by successful public education campaigns which Australia has been lacking.

Jannawi also does not agree with the premise that seeking a criminal justice response is an important way of increasing institutions, governments and community's knowledge and awareness of child sexual abuse. Unfortunately, decades of criminal responses has not led to an increase of societal knowledge about child sexual abuse, but perhaps further exacerbated assumptions and myths regarding 'victims' and 'offenders'. In our opinion, there has been little shift in public awareness about child sexual abuse and criminal responses are not effective in acting as deterrents as already stated in the consultation paper. We believe that it may in fact be more effective if child safe policies and procedures were required to ensure institutions complied or else be unable to obtain and maintain adequate insurance policies if unable to





demonstrate compliance. Significant culture change is required within organisations who engage with children and this requires that the voices of victims and vulnerable groups are heard and responded to. It is also our belief that criminal justice responses at times has led to the building of stigma against the institution, rather than broadening awareness of child sexual abuse or keeping the perpetrator accountable.

Jannawi family Centre deeply understands the value of a criminal justice response in achieving public safety and protection of children from future harm. Unfortunately, it is in an ideal world that this is achieved as for many children, particularly those who are current victims; their right to a criminal justice response has its limitations. The requirement of a threshold to be met prior to charges being laid or a matter to be substantiated to even begin the criminal justice process means that many perpetrators of child sexual abuse are not charged or a matter is not heard before a criminal court. This creates a tension in which there are limited options available in Australia if a criminal justice response does not occur. It is Jannawi's belief that there be an alternate process developed which is restorative and supportive of victims, acknowledging the current criminal justice system is unable to adequately and effectively respond to matters of child sexual abuse, whether it be intrafamilial or institutional.

We consider that by encouraging and supporting victims to seek a criminal justice response can lead to further psychological and emotional harm, as well as potential backlash which ostracises members from their community. Other avenues should be developed and made available, which perhaps may include a criminal justice response, however the purpose and aim is restorative, that it occurs to achieve and promote the safety, protection and welfare of the victim. Unfortunately, we do not believe that the current system in Australia achieves these outcomes. Reporting harm to police also unfortunately does not necessarily achieve public safety. This position is based on our interventions with both current victims of child sexual abuse and those abused in childhood. We also work with culturally and linguistically diverse communities which do not wish to use a criminal justice process and those who have used it and have not experienced the outcomes which others have wanted for them. We cannot assume that a criminal justice response is beneficial for all victims, and at the present time, without reform, it is difficult for us to support a position that encourages this response. Jannawi proposes that victims be provided with relevant information and adequate support in order to effectively engage in a criminal justice process. We agree with the position that the system should not discourage victims from seeking a response through reporting to police if they chose to do so.

There also seems to be a disconnect within the consultation paper. Whilst outlining the very factors which make the current criminal justice system so problematic, such as the range of myths and misconceptions about sexual offences which jury members bring to decision making, as well as noting the adversarial system used, it is our position that it is incongruent practice to then encourage victims to engage in this process. As a child protection service which works with managing and intervening with risk on a daily basis, we do this for the





benefit of the child, irrespective of whether of there is a criminal justice process or not. We believe that the same approach be applied to child sexual assault as it is to domestic violence, child physical assault and neglect.

Particular issues:

Chapter 3: Issues in police responses

Jannawi agrees with the position that all police who may come into contact with victims or survivors receive training in complex trauma, noting that the majority of police work involves contact with survivors of child sexual abuse. This is not only for those victims seeking a response to their own experiences, but who come into contact with the criminal justice system as a consequence of their childhood victimisation. It is our belief that it will lead to a reduction in victim blaming, better awareness and understanding of perpetrator tactics, including the use of significant psychological harm and manipulation required to sexually abuse children. It would also assist in police understanding the role and process of recanting statements and disclosures.

This leads to the second point regarding police encouragement and information which is provided. Currently, the system is not as responsive to the needs of victims as it could be, and a criminal justice response which is victim focussed provides information, choice and adequate support to proceed. In working with culturally and linguistically diverse communities, or those communities which have experienced significant disadvantage and discrimination, their access to and desire to engage with a criminal justice process is severely limited, almost seen as one to be avoided. Options need to include processes which acknowledge harm done and bear witness to suffering and pain caused, prior to there being an experience of accessing and being able to utilise the criminal justice process. This is in no way to deter or redirect those who wish to or feel ready to engage with the criminal process, it is to highlight that various communities and individuals may not have a certain readiness or willingness to engage and they too deserve justice. We believe that police maintaining regular communication is vital for victims and survivors in order to be kept informed and minimise the role of silence, ideally to engage with the same police would be preferable and seen as best practice, as relationship is key to ensuring people remain engaged in the process. Furthermore, it is our opinion that the criminal justice systems become trauma informed and receive appropriate and relevant training.

Chapter 4: Police responses and institutions

Jannawi believes that consent be obtained from the victim/survivor prior to passing on identifying information to police. Clearly, any process depends on the relationship between the client and service provider. However, in building trust and honouring the importance of relationship, particularly for victims of childhood trauma, to pass on information without client consent is problematic. It is a process which can further exacerbate issues which mirror tactics of abuse such as secrecy, powerlessness and lack of consent. There are many reasons for





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victims to seek support from a service and not wanting to report directly to police. This may include: past experiences of attempting to report to police and it not being taken seriously or adequately responded to; experiences have been negative; they have observed negative media coverage; or have heard of other situations which were poorly handled. Another factor which cannot be underestimated is the immense sense of shame which many victims and survivors may still be feeling which is a barrier to reporting directly to police. This process mirrors the very same reasons victims of domestic violence may not want to report to police or undertake a criminal process. The people we work with have spoken of judgemental attitudes, a lack of understanding of the dynamics of child sexual abuse and not being believed when disclosing. These are powerful deterrents.

Chapter 5: Child Sexual abuse offences

Jannawi is enthusiastically supportive of the recommendations to reform the offence of persistent child sexual abuse and remove any limitation periods that prevent charges from being laid. The lack of recognition of the way complex trauma impacts on brain functioning, particularly memory and the ability to provide significant recall is one of the most detrimental deterrents of our current criminal justice system. It further exacerbates a sense of shame and downplays the role of the perpetrator to confuse and manipulate this aspect of functioning for their own benefit. It also adds to the misconceptions in the community about 'real' victims and memory and the lack of knowledge regarding the impact of trauma is the most significant barrier which requires urgent reform.

Chapter 6: Third Party Offences

Jannawi believes that there needs to be a shared responsibility for noticing and acting to protect children from sexual abuse and that the education and information required for professionals to undertake their responsibilities is severely lacking and ineffective. Whilst we hold a position that intervention must occur where child sexual abuse is a concern, the reality is that we currently have a system in which reporting occurs and there may not be an adequate response to this concern. As a service which aims to intervene to protect children, there are many systemic and social barriers which we confront in doing so. These barriers are significant and powerful and can deter many from adequately undertaking their roles, fulfilling obligations or developing confidence to intervene. The use of a criminal offence to induce action is a doubtful approach to use, in the same way that it does not necessarily act as a deterrent. A potential approach could be to utilise insurance premiums and liability in gross failures to report harm as the experience and clarity of hindsight does not necessarily transfer to current harm which may be occurring.





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Chapter 7: Issues in Prosecution Responses

As mentioned previously, it is our belief that all professionals coming into contact with victims of child sexual abuse receive adequate and appropriate training in the dynamics of child sexual abuse and the significant trauma it creates for victims, survivors and their families and communities. Continuity of relationships are important, however we also acknowledge that maintaining the same prosecution staff may be difficult to achieve over the many years required for a criminal matter to be finalised. Either the court process must proceed more efficiently, or a system of support services be implemented to maintain continuity of care. This is where specialist community based organisations such as CASAC's in NSW (Child and Adolescent Sexual Assault Counsellors, funded by NSW FaCS) be further supported to continue to provide court support which they have experience and practice wisdom in providing. They provide a link to the witness assistance services, police and legal personnel as well offering emotional and practical support to assist and support children and their families to adequately engage in the criminal justice process. As specialist services, the role CASAC's play in NSW are vital to support victims and survivors in the criminal justice process. Without specialist knowledge and training, there may be significant barriers or practice which could hinder the healing process, or further exacerbate feelings of shame or trauma. There are many examples of systems abuse which require significant advocacy and education regarding child sexual abuse. It is our belief that specialist services be provided and made available to all victims and must be available on an ongoing basis, at a minimum, throughout the duration of a criminal process.

We support the position that there is a right to complain and seek a review of prosecutor's decisions. Many victims we have supported over the years have struggled with the process of plea bargaining, particularly when they have experienced a lack of choice regarding their engagement with the criminal justice process, to then have that choice offered to the offender seems incongruent and unjust. Whilst we understand the significant cost in proceeding with trials and that plea bargains are seen to be cost effective, it is our belief that prioritising cost and use of an economic excuse is hurtful to victims, as well as giving a sense of negotiating with someone who is in court for their complete lack of negotiation in hurting another. It is not supported and many victims understand that they would prefer to complete a criminal justice process rather than have the process negotiated with a person who they believe should not have that right, particularly when it occurs without the agreement of the victim. It is a process which we believe potentially causes further harm. This is not to remove the option of plea bargaining however, as it should provide choice, if the victim wishes to proceed with it.





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Chapter 9: Evidence of victims and survivors and Chapter 10: Tendency and coincidence evidence and joint trials Chapter 13- Appeals

Jannawi agrees with the suggestions regarding pre-recording, use of intermediaries and setting ground rules for cross examination. It is disappointing to note that these practices have not already been imbedded in the NSW criminal justice system; however the changes to current practices are promising. The use of appeals can have devastating consequences for victims and use of recording of evidence reduces the consequences for victims to have to repeat the already difficult process. It is our belief that reducing ongoing contact between the accused and victims assists somewhat in ensuring that harassment of victims via the court system ceases or is significantly reduced. This may lead to better outcomes and engagement in the criminal justice process.

What we would like to recommend is the broadening of who is viewed as a victim, as many women who are victims of domestic violence or experienced serious psychological harm perpetrated by the offender (their partner) is not viewed as a victim if their child is a victim. These women are viewed as witnesses and give evidence in the usual manner, which does not acknowledge their own trauma and suffering as victims, nor does it acknowledge the profound sense of responsibility, self-blame and barriers (placed on them by the system or society) regarding their inability to intervene and adequately protect their child from abuse. This is a form of systems abuse and requires urgent reform. We also support joint trials which we believe provide transparency and efficiency in the justice process, in addition to reducing the pressure and responsibility of victims and witnesses to participate in multiple trials depending on how they are viewed in each matter. It also means that the accused also does not have to participate in multiple trials spanning years.

Chapter 12- Sentencing

It is our belief that 'good character' be removed as an option for a reduced sentence by any offender found guilty of child sexual abuse. It bears little relevance to the charge, other than being part of the manipulation of victims, extended family and the public and is incongruent to be of good character and harm others. It also provides a means to increase potential access to children, maintain access to victims and cause further harm. Jannawi firmly believes that by using good character, it hides or minimises the harm caused and also leads to further public misconception of who does and does not sexually abuse children. It ignores the purposeful and targeted tactics which are used in order to commit the offences and it further perpetuates the already confusing message that good character and sexual offending co-exist. We believe that convicted offenders be sentenced according to standards at the time they are sentenced, not backdated to the time of the offence. The harm caused to victims of child sexual abuse does not diminish over time and as awareness and standards in society change, so too should the consequences of offending be factored into sentencing.





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General

Jannawi advocates for the removal of the adversarial processes currently in place which we believe are not suitable for child sexual abuse in that they mirror the dynamics of abuse by attempting to discredit victims or shift responsibility for harm caused. Jannawi strongly believes that the current approach inappropriately maintains a visibility on victims (and therefore accountability) by virtue of this. Furthermore and disturbingly, it hides the accused behind legal representation and gives a sense of 'letting them off the hook' by not requiring or at all demanding that they give evidence or speak to the charges the way victims are required to. This inherent inequity is clear to the children we work with who are victims, and yet is easily justified by many professionals in the sector. A system which requires vulnerable witnesses to turn up, give evidence and be challenged in a public arena is in itself abusive, ineffective and does not achieve the very outcomes of justice as intended. A non-adversarial process which has victim safety and protection at its core needs to be implemented in Australia.

