

Additional Material Provided to Royal Commission for Institutional Sexual Abuse

Provided by Glenn Davies – Director IGFF.

In addition to the submission made by IGFF, I wish to offer this information.

My observations and experience was that when victims went to the Church they were often dissuaded from going to the police. There were many instances where barriers were placed before victims including suggestions.

- Police would go against their wishes regarding the course of the investigation.
- Investigations would be protracted
- Investigations would be intrusive
- Their privacy would not be respected
- Police would force them to give evidence
- Police would not be interested in prosecuting for a variety of reasons.

Whilst in the past some of these concerns may have had some validity, since the Law reform commission's recommendations and the Victoria Police Code of Practice for investigation of sexual assault being developed and the establishment of the SOCITS, new police responses, policy and practices are providing a higher level of victim care and consideration.

Whilst there are still weaknesses in individual policing responses the system has significantly improved and would be further strengthened by compelling police to interact with trained advocates at the earliest possible time and ongoing through the investigation. Victims who are better supported are more likely to remain as willing participants in a legal process. (Heenan and Murray 2006)

Nevertheless this raises a number of issues more broadly in regard to organisations making judgements on the worthiness or otherwise of reporting to police. Clearly those representing organisations are conflicted when offering this advice or recommendation regarding police reporting and investigation.

It is recommended, in the absence of police reporting being encouraged appropriately, an independent agency be allocated the role of explaining informed consent. This includes what police can do, the realistic timelines, what they can do with regard to the offender, what protection can be provided to them, what possible avenues there are for redress both in the state system, in the civil system and through organisations systems.

In the area of reporting sexual crime, Victoria Police have included in their systems a routine referral to an expert CASA counsellor who are independent. These counsellors are contacted at the first available opportunity and will consult before any further police action is taken. There is no reason why these counsellors could not be referred by organisations and I would recommend this become part of practice.

Another options is to introduce another level of reporting that involves deidentified reports with offender details only and a code that may enable one way contact back through CASA to enquire if a victim would like to engage further. Often victims become more empowered and can gain strength to participate in a prosecution at a later time. This type of process is already in progress and rape victims can now have a rape examination prepared by a doctor and have this filed to a time when they can report. Similarly, police can “park” an investigation until the victim/survivor feels they are ready.

Victim/survivors are of course in the best position to assess their own situation and if they have adequate supports in place they are better equipped to endure what may be in front of them. Expert counsellors/advocates are well placed to empower victims, providing all necessary information to assist victims to decide which pathway they may take for their own wellbeing and wishes.

However, this does not mean police responses are operating at a best practice levels. Police are trained and structured to respond predominately to reported crime. A victim reports their victimisation, nominates a suspect or provides information to locate the offender or where evidence may be located. When these conditions are not presented on occasions police responses, discretionary effort and the willingness of the organisation to allocate resources is reduced. Marylin Corsianos (2003) discusses this issue with Detective’s decision making.

Corsianos speaks to the number of factors involved in how officers make decisions regarding the allocation of resources.

This includes the likelihood of praise or condemnation of the

- Superiors, Hierarchy and the public.
- The organisations rules and regulations.
- The media
- Police officers own background, cultural influences, beliefs, social norms.
- The organisations police culture and the informal rules about acceptability or non-acceptability.

It is these areas where police need to apply remediating strategies including policy and training.

Since the Royal Commission and the Victorian Inquiry, Victoria police do have more of an appreciation of the systemic nature of organisational protection and colluding with perpetrators. My recommendation is that police need to be compelled to develop ongoing systems and processes to address the issues and complications associated with systemic organisational protection. Police should be alert to the likelihood that there will be criminal complicity where perpetrators had operated in an organisational environment.

Police now have routine practices that collect intelligence and the ability link offenders, victims, times and places of alleged offending. If an investigation does not meet the standards for an investigation, the collection of intelligence is vital. This collection of information and intelligence is vital to enable future investigations to be undertaken and to identify those who may be involved in criminal conspiracies or covering up for perpetrators alive or dead. It should be noted that no investigations in the past were undertaken where the perpetrator was deceased.

One of the most vexing issues facing police is the issue of the disposition of an investigation. Police should be able to meet victim/survivors where they are and tailor their responses to balance those needs with their responsibility to hold perpetrators to account upholding the application of the law.

It was certainly my position that a victim/survivor should never be forced to participate in an investigation. Police should be skilled to work with trained and independent counsellors to navigate informed consent collect the relevant information and to meet their core functions that involves holding perpetrators to account and protecting the community.

What has become increasingly apparent is that police need to have systems and processes that can routinely flag sexual crimes as being protected by organisational structures and systems. prosecution of sexual crimes in Victoria Police, there was not any circumstances where an investigation or prosecution would proceed against the will of the victim.

Police, of course have the power to subpoena witnesses but existing systems and processes in modern policing would not initiate a prosecution and participate or even investigate an incident without informed consent of the victim. If this is not the case in other states, it should be part of a best practice response from police. Informed consent and a focus on the rights of the victim in all cases should be paramount.

It is my view that whilst victims should not be compelled to report, they need to receive independent advise from an agency without affiliation with the organisation. It was my view when I was reviewing the Melbourne response that on every occasion the police should be able to have access to information provided by a victim.

What we know now is that every piece of information relating to suspects and victims was valuable. What is apparent now is that piecing together the patterns of offending, the locations of these offences were very valuable to investigations.

From a policing perspective, even intelligence gained from interviewing a victim can be helpful to further police investigations and perhaps be linked into other crimes at a later time. I was advocating that this information flow process was established with religious organisations and the police. It was certainly my view that at a later time, investigations may be able to be reinvigorated in the event of uncovering further victims or more evidence.

My own observations and experience is that the offences of historical sexual crimes on children where there is a known assailant are not prioritised by police. Part of the reason for this is that swift responses are not necessarily required given that most evidence will be discoverable through investigation and not preservation. Contrastingly an offence where a reported crime is recent, forensic evidence discoverable and witnesses more accessible is an investigation that will take priority.

There is also the issue that these historical investigations can be protracted, painstaking and costly with offenders and witnesses moving away from the area often interstate. From a resourcing perspective they are also costly which may add to the reticence of some senior police in authorising further investigations.

Another issue is the one where the offender may be dead. Police have been in the past very reticent to investigating these crimes which has been unfortunate as often, as we well know from the royal commission, crimes were covered up by senior clergy and others.

If the police don't adjust their processes these possible concealers and co-conspirators escape justice. Police need to broaden their view to see the offending as part of an organisationally enabled offence. We risk replicating the same issues arising unless police can evaluate the governance, reporting standards and who was responsible for receiving reports and acting on these reports. If the police were more alert to these issues not only would they possibly charge more of these offenders but they could collect vital intelligence to detect and prosecute offenders for appropriate offences.

The Victorian Government have launched child safe standards, which in my view provide a comprehensive guide for education, processes and practices for organisations. Noting however the standards don't articulate which class of person the processes need to be made available to.

IGFF has been consulted by government in the development of a Reportable Conduct Scheme. We see this body as playing a critical oversight role to provide an independent avenue to appeal and to monitor the implementation and ongoing management of any investigations into child abuse in an institutional setting.

We would be supportive of the oversight body having the power to direct investigations, redirect investigations and sanction institutions whose systems and processes fail to come up to a required standard. We would recommend that high risk organisations would be flagged for special oversight. The essence of this process is that organisations need to be accountable to a state run entity and not some so called "Independent" body whose employees are paid for by the organisation itself.

References

- Ashton, G., Rae, D., & Jouning, R. (2012, October 19). *Family and Community Development Committee*.
Retrieved from Parliament Of Victoria:
http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Transcripts/Victoria_Police_19-Oct-12.pdf
- Crimes Amendment*. (2016, October 28). Retrieved from Victorian Numbered Acts:
http://www.austlii.edu.au/au/legis/vic/num_act/caoaoma201474o2014515/s13.html
- Corsianos, M. (2003) Discretion in detectives' decision making and 'high profile' cases
www.tandfonline.com/doi/pdf/10.1080/1561426032000113893
- Cummins, P., Scott, Dorothy, & Scales, B. (2012). *Report of the Protecting Victoria's Vulnerable Children Inquiry*. Melbourne: Department of Premier and Cabinet.
- Fileborn, N. B.-B. (2014). *Victim/survivor-focused justice responses and reforms to criminal court practice: Implementation, current practice and future directions*. Melbourne, Victoria: Australian Institute of Family Studies. Retrieved from
<https://aifs.gov.au/publications/victim-survivor-focused-justice-responses-and-reforms-cri/executive-summary>
- Heath, M. A. (2005). The law and sexual offences against adults in Australia . *Australian Centre for the Study of Sexual Assault*.
- Heenan, M., & McKelvie, H. (1997). *The Crimes (Rape) Act 1991: An evaluation report*. Melbourne: Attorney-General's Legislation and Policy Branch, Department of Justice.
- Heenan, M., & Murray, S. (2006). *Study of reported rapes in Victoria 2000–2003: Summary research report*. Melbourne: Statewide Steering Committee to Reduce Sexual Assault.
- Hermann, J. (2005). Justice from the victim's perspective. *Violence Against Women*, 571-602.
- Justice and Regulation, D. o. (2016, October 28). *Victorian State Government*. Retrieved from Criminal Law:
<http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/criminal+law/> Police, V. (2016). *Code of Practice for the Investigation of Sexual Assault*. Melbourne: Finsbury Green.
- Police, V. (2016). *Reporting Sexual Assault to Police*. Melbourne: Finsbury Green.
- Ptacek, J. (2010). *Restorative justice and violence against women*. Oxford: University Press.
- Queensland Consolidated Acts*. (2016, October 28). Retrieved from
http://www.austlii.edu.au/au/legis/qld/consol_act/cc189994/s229b.html
- Rush, P. (1997). On being legal: the laws of sexual offences in Victoria. *Australian Feminist Law Journal*, 76-89.
- Sano, T. (2016). Sano Task Force: Child Exploitation Taskforce. Victoria.
- Shaw QC, J. (1998). *Parliamentary Debates. Legislative Council*, . New South Wales.
- (2015). *The Prosecution Policy of the Australian Capital Territory*. Canberra: Office of the Director of Public Prosecutions.
- Victims' Charter Act. (2006 (amended 2010)).
- Victoria Police. (2013). *Parliamentary Inquiry On The Handling Of Child Abuse By Religious And Other Non-Government Organisations - Victoria Police Submission* . Melbourne.