

Criminal justice consultation paper

Key issues for survivors and advocacy and support groups

Criminal justice consultation paper -The importance of a criminal justice response

This paper has been prepared by the Ballarat Centre Against Sexual Assault (CASA) through consultation with the men in the Ballarat CASA men's support group.

Particular issues in criminal justice responses

☐ Should all police who may come into contact with victims or survivors be trained to have a basic understanding of complex trauma?

The response from the group is that it is very important that police should receive trauma informed awareness training. Ballarat CASA has developed trauma informed training, for community welfare services which assists participants to understand the impacts of trauma and understand the presentations of people who have experienced childhood trauma. Similar training would provide the police the understanding of issues that impact on people coming into contact with the police. A suggestion is for an information tool kit to be provided to police which would provide basic information about trauma, this could also be informed by the survivors themselves and/or support services, as part of developing this tool kit. It would also assist police to make appropriate referrals for supports. Group members also suggest that trauma awareness training should be part of the police initial trainings with more intensive training through their careers.

☐ Should police do more to encourage victims and survivors to report their abuse?

The common experience for the group members is that reporting to the police is a process that can take some time. Many outline that they initially spoke to the police, but did not make a statement straight away and if they were pressured to do that, they probably would have been frightened away. An initial understanding response from the police assists people to feel ok about going further and making a statement. Therefore encouragement is best achieved through positive initial responses and understanding rather than hurrying people to complete. The ability to have support people such as counsellors as part of the reporting process also encourages people to continue.

Should police provide more information to make clear that victims and survivors can withdraw at any stage in the process?

This information is very important and can assist people to feel more positive about reporting to police. It provides the victim/survivor a sense of control in the process.

Should police provide more options for reporting, including by telephone and online?

These options would assist, especially in the initial stages. Another option that has occurred at Ballarat CASA is that SANO and SOCIT members have come to the CASA office to take the statements, as the police station itself can be very overwhelming.

What options might work best for Aboriginal and Torres Strait Islander victims and survivors?

It was suggested by group members that police be provided a tool kit, that assists them to understand diversity, and specific cultural issues. Aboriginal and Torres Strait Islander people have historical mistrust of authority and government, including police, so statements and contacts away from the police station are especially important.

What options might work best for prisoners or survivors with criminal records?

Many male survivors have a mistrust of police and of authority. Illicit drug use through late childhood and early teens, also leaves them feeling anxious around police. Criminal behaviours can also merge into this fear. It is important though, that all people have the opportunity to report to authorities what was done to them, and that they are treated respectfully as victims of crime.

☐ Is it important to victims and survivors that police maintain regular communication with them to keep them informed of the status of their report and any investigation?

Group members were unanimous in response to this question. It is so important that they are kept informed throughout the process.

It is one of the biggest complaints from people who have made a statement to police and are going through the criminal justice system. They often complain about the lack of consistent contact from police, it can be months sometimes before they receive any communication. The result is that survivors are left feeling more disempowered and worthless, feeling like they don't matter. Survivors are aware that this is a resource issue as they are aware that the police are so busy that they don't have the time to keep in regular contact.

Is it important to victims and survivors that, as much as possible, the same police investigate their report so that they can talk to the same police over time?

This is very important. Every time a survivor retells their story, they are re-traumatised in some way. The police process is for them to provide details of the offences as best as they can remember. Most survivors spend their lives actively trying to avoid thinking about the traumatic experiences, so retelling the story can be very confronting. The relationship developed with the police member is an important part of the trusting relationship.

Chapter 4: Police responses and institutions

☐ If you reported abuse to the institution or to a support service, would you want them to pass your report onto police?

Survivors would not want the institution or support service to pass on the report to police. Group members said that they would want the service to provide information about the reporting process, but would not want to have the choice taken out of their hands.

Would you want them to ask for your consent before they gave police your name and contact details?

Definitely yes, as adults they feel that they have the right to consent or not to their information being given out.

If the institution or support service was going to give police your name and contact details even if you did not consent, would you still report to the institution or support service?

Group members said that if this occurred they would no longer feel as if they could trust the institution or service and would not continue with it, and if they knew that this would occur, they would not access the service at all.

If you were willing to have your report of abuse passed onto police, why would you not make the report yourself directly to police?

Group members all spoke about wanting support from services to make a report but only with their consent. Many spoke of feeling quite scared of speaking to police, as they feel police can't be trusted, due to the difficulties most survivors of child sexual assault have with authority.

Chapter 5: Child sexual abuse offences

☐ Should the offence of persistent child sexual abuse be reformed to recognise that victims and survivors who were abused repeatedly and extensively over a period of time may not be able to identify individual occasions of abuse?

Group members all agreed that this would be an important change to the reporting process. It is almost impossible for survivors to remember all occasions of abuse, as part of coping is to block a lot of the memories away, and trauma responses impede people trying to recall every detail without becoming overwhelmed. An example would be a primary school teacher sexually assaulting a child on a number of occasions during the school year. Survivors generally are aware that it happened many times and can sometimes recall the time of year – i.e. it was summer as they were wearing shorts but don't have recall of each incident – often because it happened so many times. It is unreasonable to expect that trauma survivors can accurately recall specifics of such overwhelming experiences, especially if they occur during childhood. It is problematic that the reporting process currently requires these details.

☐ Should any remaining limitation periods that prevent charges being brought for child sexual abuse offences be removed?

Group members agreed that there should be no limitations for child sexual abuse offences, due to the length of time that people take to feel strong enough to speak about their experiences.

Chapter 6: Third party offences

☐ Should there be offences for failing to report child sexual abuse?

Yes in relation to offences against children, in particular if an adult is aware of a child being sexually assaulted, and did nothing to report it they should be accountable for not reporting this to police and assisting to keep the child safe. However it is CASA's view that it needs to be recognised in the case of a family violence situation a mother may not be able to report due to power and control dynamics.

Should there be offences where senior people in an institution fail to intervene to protect a child from sexual abuse?

If responsible people in institutions are aware of abuse and fail to report or intervene to protect a child from abuse they should be held accountable due to the nature and responsibility of their positions. These failures have been clearly highlighted in the many Royal Commission case studies, particularly in the Ballarat Case Study as there were key figures in the Catholic hierarchy that were aware of the child abuse occurring but moved personnel around, rather than report to police.

Should there be offences where the institution itself (rather than its management or other staff) are prosecuted for failing to protect children from sexual abuse?

This question is difficult to answer as the group members felt that although the institution has responsibility to keep children safe and intervene to prevent further child abuse, there was an understanding that it would be difficult to prosecute an actual institution.

Chapter 7: Issues in prosecution responses

☐ Should all prosecution staff who may come into contact with victims or survivors be trained to have a basic understanding of complex trauma?

Similar to police, they should definitely be trained to have trauma understanding and awareness.

☐ Is it important to victims and survivors that, as much as possible, the same prosecution staff stay involved in the prosecution so that they can deal with the same people over time?

Yes as it is difficult and re-traumatising for trauma survivors to have to keep repeating their story, or even to develop trust, so it is really important that they have one person support them through the process.

☐ Are witness assistance services important in keeping victims and families informed and putting them in contact with support services?

Yes very important as they have the direct connection with the court system, and can keep people up to date, whereas support services find it difficult to obtain that information. Another option is for the WAS to keep the support service worker up to date and provide information through the process.

Should there be more specialist services, including for Aboriginal and Torres Strait Islander victims and survivors, and for victims who are still children?

Yes, and services not always to be office based.

☒ Should there be a right to complain or seek a review of the prosecutor's decision to discontinue a prosecution or to withdraw charges? What about for accepting a guilty plea to lesser charges?

Yes, and it is very important that victims are involved in those decisions.

Chapter 9: Evidence of victims and survivors

☒ Would it help victims and survivors to give evidence if their evidence could be pre-recorded earlier, even before the trial starts, so that they do not have to attend the trial? Would this help survivors who are adults at the time of the trial?

Yes, it would take the pressure off survivors as it would provide an option if they felt they could not cope with giving evidence at a given time.

☒ Should there be intermediaries available, particularly for children and people with a disability that affects communication, to help communication between the victim or survivor (on the one hand) and the court and lawyers (on the other hand)?

Yes, definitely as trauma impacts on the brain and the ability to take in information, in particular when stressed or anxious. Having an intermediary would help with enabling people to understand, and would help reduce the power imbalance and associated anxiety.

☒ Would it help to set 'ground rules' for how a victim or survivor should be questioned before they are cross-examined to try to ensure that questions are asked in a way that is not confusing, so that they can give their best evidence?

Yes it would assist people to feel safe in the witness box, giving the sense that people have some understanding or expectations of what is going to occur. Trauma awareness from lawyers would assist to prevent defence lawyers from intentionally destabilising and confusing the witness. Group members felt this to be very important, in that the courts should have in place rules / expectations/ guidelines about not re-traumatising victims/witnesses. The tool kit spoken of earlier could also inform this.

Chapter 10: Tendency and coincidence evidence and joint trials

☒ Should it be easier to have joint trials so that all allegations against a particular accused can be heard and determined in the one trial?

Yes, it should be the choice of the victims and should not be so hard to argue for.

Chapter 12: Sentencing

☒ Should convicted offenders be prevented from raising their 'good character' to seek a reduced sentence if their good character helped them to commit the offences? For example, their reputation might have helped them to keep their job working with children, or might have helped parents to trust them to look after their children.

There should be no space for this defence, particularly as stated if used to get access to children. Sexually assaulting a child, should never be excused if the perpetrator appears to be of good character, as it is being used as a cover up.

☒ Should convicted offenders be sentenced according to sentencing standards at the time they are sentenced, rather than the standards that applied at the time they committed the offence?

Very complex question – while the group members feel they prefer whichever sentencing is more severe should apply, it is acknowledged this would be impossible to impose. More importantly sentencing should take into account the long term impacts on the victims.

Chapter 13: Appeals

☒ Should a victim or survivor's evidence in a trial be recorded so that they do not have to give evidence again if there needs to be a retrial?

Yes as they should not have to repeat the stressful experience

General

☒ Are there other improvements you would like to see in the criminal justice response to institutional child sexual abuse – including police, prosecutions and trials?

The time frames should be sped up, as it extends the anxiety when it goes on for a long period of time, between making a statement and commencing the criminal process. People are often not able to function well over that time due to the ongoing anxiety and sense of powerlessness. Police should keep in contact every month even by email, just to let victims know where things are at with the case as many people feel they don't matter and it links into the feeling of not being believed or of being worthless.