

Issues Paper 8

Experience of Police and Prosecution Responses

Royal Commission into Institutional Responses to
Child Sexual Abuse

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A systemic problem

From time to time the media reports individual instances where survivors of institutional child sex crimes are denied our right to access justice by police, prosecutors or courts.

The public are shocked, but assume these miscarriages of justice are isolated and unrelated examples of a breakdown in the normal functioning of a generally just and effective legal process.

Actually this piecemeal information masks a more systemic problem.

The examples are merely a window into a corrupted, ineffective and biased legal system.

A system so devastatingly damaging to the innocent children who are the victims of these horrific crimes, that only a tiny fraction of these crimes are ever reported.

In the absence of political will to understand or prioritise this problem, there are no authoritative statistics as to just how small this fraction really is. Most experts estimate reporting rates for sexual crimes generally at 10%, and child sex crimes at similar or lower.

It is quite likely reporting rates for the widespread child sex crimes within institutions like the Catholic Church are lower still, possibly considerably so. Their willingness to threaten, bribe, overwhelm or mislead survivors into silence is revealed whenever cases are investigated. Children up against the threats of an all powerful institution are much more likely to stay silent.

Many institutional cases are known to involve offending in the hundreds or thousands of victims. This is based either on known offending patterns, admissions by the perpetrator, or when a class action or redress scheme makes reporting less harmful. Yet in every such case, at most a handful are originally willing or able to engage individually with the legal system. These examples point towards an actual reporting rate more like 1% - 2%.

This is consistent with my own case, a rare example which involves actual statistics. Church officials made a list of 49 known victims at the time they covered up these crimes. It is likely they missed some. However only 1 survivor of this prolific offender ever reported to police.

This would be a serious problem requiring serious action if such a low reporting rate were the only issue. However the abysmally low reporting rate is a symptom of bigger problems resulting from the unsuitability of the current legal system for dealing with this type of crime.

The major problems can be summarised into the following general points:

- The presumption that the accused is innocent until proven guilty and must be protected from abuse of process by authority has been twisted to provide powerful, wealthy serial offenders with a range of loopholes their aggressive lawyers cynically exploit to escape trial or prevent conviction. Their own abuse of process enables them to keep offending, and to misrepresent themselves as falsely accused and therefore safe to be around children, and denies their victims access to justice.
- Child witnesses are considered inherently unreliable, while those who first report as adults are treated as inherently malicious, if not deceitful, and must first convince an often ill informed judge that they are not, before a trial is even permitted. Many of the common and expected impacts of the trauma inflicted on survivors are interpreted as evidence that the survivor is not telling the truth. This equates to a presumption that the victim of crime is guilty until proven innocent.
- Those making decisions about these crimes often demonstrate ignorance of and indifference to the trauma suffered by survivors at the hands of the legal system at best, and appalling beliefs remarkably similar to those usually expressed by perpetrators at worst.
- The treatment of the already severely traumatised survivors is brutally abusive, and is seen by those who undergo it as another rape, and by most survivors as an absolute deterrent to reporting to police. Many are not yet able to face their trauma, far less deal with it while being re-abused by a biased system which is guaranteed to betray them to some extent.
- Some police and DPP staff arbitrarily refuse to investigate, refuse to lay charges, drop charges, or do not proceed to trial in certain cases despite abundant evidence of wrongdoing.
- The laws of evidence and others ensure that while survivors are required to swear to tell the full truth, we are prevented from telling it, under threat of a mistrial. Key aspects of the crimes or the offenders' behavior are strenuously hidden from juries, and often make the difference between conviction or acquittal. The same is true of judges' instructions to juries, which often seriously undermine survivors' evidence. The law of particularity ensures that a dangerously cunning perpetrator of hundreds of crimes is much less likely to face trial than someone guilty of a single opportunistic offence.
- In the rare cases which do make it to trial, arbitrary decisions are made to proceed with a fraction of the known victims, and then with only a fraction of the offences committed against those few. Often this is bargained down further to gain some form of co-operation from the predator, such as pleading guilty to lesser offences in return for dropping more serious charges. A further betrayal occurs in cases where every victim or classes of victims are heard separately, allowing the perpetrator to mislead the jury by pretending not to be a prolific offender, and exponentially increasing the cost to taxpayers and the suffering of victims.
- Wealthy offenders use their expensive lawyers to apply to dismiss or appeal at every step of the process, abusing inequality of access to legal representation, and heaping additional trauma on already damaged

survivors in the hope the survivor will not be able to face additional ordeals.

- The system consistently fails to deliver the outcomes it pretends to deliver. This is best illustrated by its inability to convict. With a reporting rate somewhere between 1% - 10%, and a conviction rate for crimes reported to police of 6% (statistics for Victoria from Judy Courtin, based on police figures – this represents all child sexual assaults, not the possibly worse situation for institutional survivors, whose cases are fought more viciously, and can access unlimited funds for loopholes and appeals). Combined, the two figures mean more than 99% of these crimes do not result in a conviction, and more than 99% of survivors are either unable to seek justice, consider the system too harmful or too biased, or are denied justice at some stage of the process .
- The statistics for convictions are bad enough, but when incarceration is taken into account, the picture is even worse. Judy Courtin's research notes that once appeals, suspended sentences, mistrials and instances when survivors are unable to face any more legal abuse are taken into account, half of the pathetically inadequate number actually convicted of serious child sex crimes never face any jail time.

Many working in criminal law never question certain beliefs they are trained to unthinkingly accept. Such as:

- There is no worse failure of justice than sending an innocent man to jail
- Everyone is equal before the law and must be treated equally, justice must be blind
- New laws improve upon existing laws and gradual adjustment will fix any issues
- While it has some faults, overall the legal system is in the business of delivering justice, and the truth, and arguments with greater merit, usually prevail

By not questioning these beliefs, significant bias against survivors is ignored, truth is buried, children are endangered, other survivors are discouraged from seeking justice, and dangerous serial criminals are encouraged by the lack of convictions to think they are above the law. This is in addition to the damage to already fragile survivors, leading to delay or prevention of healing, or even suicide.

Many child protection measures are based on convictions to identify those who are a danger to the community. This is almost completely meaningless since perpetrators escape conviction in more than 99% of cases.

The result of a judicial system which pretends to be a justice system is that the guilty go unpunished and are free to reoffend, while their victims, already condemned since childhood to a life sentence of suffering, are punished for speaking out about the crimes against us, and must now also recover from reabuse and denial of justice.

Worryingly, parents are encouraged to feel confident that those who are of most danger to their children have been dealt with appropriately. Encouraging this feeling of security, while refusing to fix problems in the legal system, which have long been known, makes government inaction a significant part of the problem.

When I first engaged with the criminal system by reporting my perpetrator to the police, I was advised [REDACTED] that while I could possibly achieve some personal development that might help my healing, there was zero possibility of my achieving justice, because the system was incapable of delivering it.

The advice seemed callous, especially while struggling to do one of the hardest things I had ever had to do in my life. Now I realise it was absolutely accurate, and was an attempt to set realistic expectations in order to soften the blow when I finally understood I had been betrayed again.

My personal experience with what I prefer to refer to as the injustice system is contained in a separate submission. This submission is focused on summarising the general experiences of survivors in order to see the big picture.

The failures of police, prosecutors and courts are too common and too complete to draw any other conclusion than that it is a system intended to fail survivors.

Or rather, when the system fails to expose the full truth, fails to hold perpetrators accountable for the full extent of their offending, and harms survivors, as it invariably does, the system is working as intended by those powerful and well connected establishment figures who deliberately perverted and corrupted it.

Like in the child protection field, where children are failed at every turn, despite the best efforts of some intelligent, determined and well intentioned adults, so the justice system is composed almost entirely of holes through which devastated survivors fall, while our abusers gloat about their impunity.

These unique crimes are being forced to fit an unsuitable legal system. Instead the legal system for these crimes should be completely redesigned to suit these crimes and to respect the harm that has been inflicted on innocent child victims.

Police response to reports

It is extraordinarily difficult for survivors to make a first approach to police to report their abuse.

Previously, it was the norm for police to refuse to investigate claims of child sex crimes. Often, particularly for runaways from children's homes, the desperate child was returned to the 'care' of their abuser(s). Of course there were exceptions, but generally child or adult victims could expect to be told some version of "stop lying" or "get over it".

In the case of Catholic abuse, and possibly some other institutions, this was not just culturally encouraged neglect, or protection of a corrupt individual, but organised corruption of sections of the police force to hold church officials or others as above the law.

Today there is at least an appearance of willingness to investigate these crimes. However there has been little effort to ensure making first contact with police is not extremely traumatic or even a barrier to reporting for survivors.

Police investigation

Today, greater scrutiny of police, by media and internal investigations departments, has allowed determined police to uncover the truth and hold wrongdoers responsible.

However some survivors' attempts to find justice are still being thwarted by certain police who refuse to investigate, pretend to investigate or begin an investigation only to have it stopped from above.

Whistleblower police are harassed or attacked by those protecting powerful criminals.

Ritual abuse survivors in particular are still being threatened, followed, harassed and falsely accused or even arrested by corrupt police involved in cult rape, murder and torture.

Some former police officers are also involved in the protection of institutional child rapists, harassment of survivors and whistleblowers, and part of the corrupt networks.

Investigation and Prosecution of Those Covering Up Child Sex Crimes

The enabling and coverup of institutional child sex crimes has occasionally been investigated or an arrest made, but there has never been a trial or conviction, a 100% failure rate.

Most institutional child sex abuse cases involve a coverup, and many survivors possess documentary evidence that could convict, so this indicates considerable reluctance to investigate and prosecute these crimes.

A number of survivors are currently attempting to convince police to investigate cases with clear evidence of coverup, and are being strenuously resisted. Some of these are the subject of individual submissions.

Police media policies

Police media policies requiring secrecy about cases being investigated or prosecuted have negative side effects. They put internal police procedures above the rights of survivors including:

- Those who have not yet come forward and wish to add their evidence to support those already involved;
- Those who wish to access the justice system in a less traumatic manner than being the first to report a particular offender;
- Those who wish to access healing services such as counselling without having to deal with issues about not being believed;
- Those still children who cannot report independently but would be helped by their parents being aware they had been exposed to a child sex offender, so that the parents could protect the child's rights and ensure they receive help to recover.

By keeping a community in the dark that an offender is being investigated, the extent of the offending is hidden, witnesses who would come forward to an existing investigation are not heard, and most importantly survivors who need access to healing services are abandoned to cope alone with an increasing load of unresolved trauma.

Obviously secrecy is important before the offender or those covering up the crimes are aware of the investigation so that they do not destroy evidence, but once they are aware, it is hard to understand policies which refuse to inform parents of possible survivors so that those survivors can receive help, or do not inform a community which may contain both survivors and witnesses.

Dealing with multiple victims of one offender

Survivors also report that when police have enough victims of a particular offender they then refuse to deal with any additional victims because they are too busy.

This is a dreadful approach, which ignores the fact that every instance of these very serious crimes deserves to be dealt with, not ignored. By not even interviewing additional victims, police are also ignoring evidence which may have a far greater chance of achieving a conviction.

The laws relating to these offences are also part of this problem. Laws and penalties need to reflect the reality that offenders often have huge numbers of victims and each victim may undergo huge numbers of offences. Such prolific offending should be fully acknowledged in investigations, in charges, in trials and in penalties and should be considered a particularly aggravated form of this type of offence.

Interacting with Prosecutors

Most problems with senior prosecutors stem from misusing the "public interest" excuse to refuse to prosecute or to drop charges in cases with obvious merit.

The biased and inappropriate legal structure within which more junior prosecutors work also makes it almost impossible for them to help survivors.

Some prosecutors seem to have taken the callousness of the legal system to heart, treat survivors dreadfully, and resent us as a problem to be managed and preferably suppressed or bullied into compliance.

Preparation for Court, Trial, Sentencing and Appeal

The treatment survivors receive from the court system is brutally harmful. We are treated by the system with suspicion and disrespect, while the significant trauma we have suffered since childhood is exploited as an opportunity to portray us as dishonest and unreliable.

There is little or no effort to understand or prevent the huge additional trauma inflicted by the court process itself. This is treated as a price we just have to pay, and those unable to suck it up should go home. Nor is there any recognition that we are the innocent party and undeserving of the suffering so callously inflicted on us.

By comparison, the system bends over backwards to provide every possible assistance or advantage to the wrongdoer. Their rights are exhaustively protected, ours are trampled underfoot again and again. Every effort is made to prevent them suffering. Our suffering is ignored, or exponentially increased.

An example is the fact that as a result of inappropriate statutes of limitations survivors are automatically required to be treated as having done something wrong, possibly with malicious intent, by not reporting the crimes against us sooner. We are refused access to a trial unless we disprove this assumption, despite it being well known that such delay is not just a common, but an expected feature of these crimes.

Meanwhile many offenders have directly caused this delay themselves by threats and intimidation from a powerful authority figure towards a frightened child. It is common for child victims to experience death threats to themselves and their families.

In one of the worst examples that has come before Australian courts, not only was the child threatened with death with a gun pressed to his temple repeatedly over a number of years, but the police detective investigating the case was similarly threatened.

While the victim is officially demonised for delay in reporting, our courts' extreme bias is such that the vicious behaviour that terrifies a child into decades of fearful silence attracts no attention or censure.

The current court system is biased, harmful, unsuited to these crimes, hides the truth, focuses on convictions for the DPP rather than justice for survivors, strangled by rules of evidence that make it almost impossible to convict, adversarial, intimidating, and exposes survivors to graphic and repeated reliving of their trauma.

The system demands from survivors superhuman courage and honesty, disempowers us, disrespects us, betrays us, then shrugs its shoulders at the additional harm dumped upon us, wipes its hands of us and all we have lost, and dives back into its world of privilege.

Survivors should not have to put up with this treatment, but we would, happily, if only the system uncovered the truth, held offenders accountable, and prevented them from harming other children.

But it does none of those things.

Recommendations

Initial reports to police

While many survivors report as adults, in many ways recounting our experiences forces us to become temporarily a terrified child, and we deserve the same consideration of our trauma and specialised needs as a child witness. These include:

- Specialised squad of trauma trained and experienced detectives to receive reports from survivors
- Interview rooms specially decorated to be less traumatic, less official, more relaxed and comfortable
- Ability to make a report in a manner least traumatic to the survivor, e.g. phone, in own home, email, via a representative or support person, appointment with suitable detective (specify male, female, language or other need)
- Support person to be present at every interview, and to accompany survivor to and from home (trauma can make it unsafe to travel alone)
- Bill of Rights specific to child sex abuse victims, which must be shown to the survivor at the start of their first interview
- Each report, even if just a phone call, must be logged and be subject to independent review to ensure proper follow up

Police investigation process

Bias and corruption can be fought with transparency of process, proper training, independent scrutiny, and clear and well communicated best practice standards, developed with assistance from independent experts.

Detectives working with these crimes must be trained in understanding and dealing with trauma, and in investigating these most difficult crimes. Training in canon law, and internal laws relevant to other institutions, and the language and deceptions commonly used to withhold evidence while pretending to co-operate, is vital.

Stronger laws to compel evidence are needed, as is an acceptance of the consistent international evidence that institutions protect their reputation and

the reputation of the perpetrator in preference to protecting children, assisting victims to recover or assisting police investigations.

An independent review body, preferably not consisting of current or former local police officers, specific to this type of crime, or a specialised unit within a larger independent body, is needed to randomly review cases to ensure those with sufficient evidence are pursued, and respond to any complaints from survivors of misuse of process.

This unit could also possibly review internal procedures to identify changes that may result in improvement of outcomes for survivors.

Policies suppressing details of a case need to be reviewed. Institutional cases in particular normally involve multiple victims, often large numbers of victims, all of whom could contribute valuable evidence.

But even apart from their ability to support an existing case, survivors deserve access to justice on their own behalf, not only if police need more evidence. Policies should reflect the right of each survivor to have their evidence collected, assessed and acted upon. If necessary a taskforce should be created large enough to deal with the scale of offending.

Interacting with Prosecutors

There need to be clear guidelines for decisions whether or not to prosecute child sex offences. All of these decisions need to be independently reviewed for appropriateness, and reversed if necessary.

Appearing in court and communicating with survivors are two very different jobs requiring very different skills and training. Some prosecutors should never have any interaction with survivors beyond an introduction, as the traits that make them effective in court can also make them harmful to survivors. Those dealing with survivors must receive trauma training.

Preparation for Court, Trial, Sentencing and Appeal

Politicians and law reform bodies have had decades in which to massage the court system into an effective one. In the area of child sex crimes, they have not just failed, but failed spectacularly.

If you were to design a legal system to appear functional but to deliver results the opposite of its stated objectives, that system would look pretty much like ours. Has our legal system been poisoned by powerful, well connected perpetrators and their supporters to ensure laws and the court system protect offenders against facing responsibility for their crimes?

If that were the case, those who undermined the court system would naturally ensure no one collects meaningful statistics or properly measures the effectiveness of its efforts. Just like ours.

The time for modifications is over. We need to design a new legal system from the ground up for this type of crime. These problems have been identified and discussed many times. But it is time the lawyers seek input from the experts in helping survivors, and design a survivor focused system.

Key points include:

- A separate child sexual violence court is needed. This proposal has been put forward in the past and cannot be considered controversial. It should be firmly centred on the needs of survivors, and the need to protect the community from dangerous predators.
- The entire legal framework for these crimes needs to be rewritten from the ground up, with a focus on respecting the human rights of survivors to truth, justice and healing, delivering transparency and accountability, and protecting children.
- An adversarial system where survivors can be viciously cross examined by defence lawyers is completely inappropriate for traumatised child or adult victims of these crimes. A search for the truth is what is needed, not a legal boxing match, where the powerful further oppress and abuse the powerless. An inquisitorial system with a panel of judges, not a jury, will deliver better results.
- Only trauma trained judges with a background in child sexual abuse should hear these cases. There should be at least 50% female judges.
- Less intimidating premises will help survivors feel less like we are the ones on trial. Powerful perpetrators accustomed to abuse of power who believe they are above the law are not intimidated by a traditional court room.
- Cases need to represent the full extent of the offending, with all victims and all offences acknowledged. Some victims may choose not to give evidence in person, especially in cases of ill health, but could give written or video evidence. A criminal class action structure may be needed.
- The evidence required for a conviction should reflect the unique nature of these crimes, so evidence from trauma experts should become more important, and inability to identify specific dates within serial offending should not be an insurmountable problem. Statutes of limitations should be completely removed.
- Once convicted, decades long serial offenders, and those with dozens of victims or more, should be permanently prevented from accessing children for the rest of their life, which will mean they be permanently removed from the normal community. Removal from society does not necessarily have to involve being incarcerated or brutalised.