

Responses to Consultation: Improving the Response of the Justice
System to Sexual Offences

In Good Faith
FOUNDATION
INSTITUTIONAL ABUSE RECOVERY

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About In Good Faith Foundation

In Good Faith Foundation (IGFF) is a national charity and Redress Support Service working with and on behalf of institutional abuse survivors, their families, carers and communities. Our case management and advocacy services provide wrap around support to individuals, assisting them to voice their concerns and sustaining them as they navigate justice, redress and recovery pathways. We also undertake systemic advocacy focused on prevention of future abuses and promoting methodology for improving the wellbeing and access to justice for survivors.

The work of IGFF is informed by advocacy and support services provided throughout the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and other Non-Government Organisations (2012-2013); the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017); and national support service input to the establishment of the National Redress Scheme (July 2018 ongoing). We also facilitate a community development forum called The Melbourne Victims' Collective (MVC) that has been meeting for 14 years focused on strategic information and education sharing for survivors, their carers and support professionals such as advocates, therapeutic care, and law and justice representatives. Over the last 25 years, IGFF has advocated for hundreds of clients, almost half of whom suffered their abuse within Victoria.

Our Vision

To achieve justice, recovery, and ongoing support; promoting the well-being of survivors, families and communities impacted by institutional abuse.

Our Mission

- To ensure acknowledgement of harms done
- To provide wrap-around care and support to existing survivors, families and communities
- To strive for a world free of institutional abuse

Our Work

The work of IGFF is underpinned by our commitment to no further harm to individuals, families and communities by being a source of help that will resource them to access the health care they need and establish hope in a recovery journey.

Introduction

The criminal justice system is at the centre of an expansive and continuously evolving field of justice and redress pathways for institutional child sexual abuse survivors in Australia that includes, but is not limited to, the National Redress Scheme, out of court settlement processes, victims of crime applications, police reporting, civil litigation and in-house institutional response processes. Understanding, navigating, and making an informed decision about which pathways are suitable for survivors is a highly individualised journey and one dictated by many other competing factors.

IGFF acknowledges that not two survivors have the same experience or definition of justice. Most survivors we provide services to would agree that justice involves being empowered, believed and

having their “voice” heard. Equally, justice can be achieved for individuals through criminal and civil processes, involve monetary compensation and the provision of counselling or engagement in community support groups.

Nonetheless, justice remains linked to the needs of survivors, which are both individual and variable. Further, the “needs of victim/survivors change across different stages of the criminal justice process ... the criminal justice process cannot have a ‘one-size-fits-all’ approach when tending to the needs of victim/survivors.” (Fileborn, 2014). Particularly vulnerable community groups, such as Indigenous people, care-leavers, people with disabilities and those abused in religious contexts have further requirements for justice to be achieved in a supportive and empowering manner.

It is important that no potential avenue for justice be closed to a survivor. It is of equal importance that professionals supporting survivors be aware of the many different options for justice and be able to appropriately advise a survivor of these. Dedicated case assistance is crucial to providing the support survivors need throughout the process of achieving justice.

We recognise and support the position adopted by Justice Cummins in the *Protecting Victoria’s Vulnerable Children Report* where it is stated that:

The investigation and prosecution of crimes is properly a matter for the state (and that) A private system of investigation and compensation, no matter how faithfully conducted, cannot fulfil the responsibility of the state to investigate and prosecute crime. (Cummins, Scott, Dorothy, & Scales, 2012)

This Submission

Section 21 of ‘Improving the Response of the Justice System to Sexual Offences: Guide to Our Issues Papers’ states that organisations without the time to respond to this Inquiry can send any relevant previous submission highlighting which parts remain relevant. In response, our submission draws upon our response to the Consultation Paper on Criminal Justice submitted to the Royal Commission into Institutional Responses to Child Sexual Abuse (‘the Royal Commission’), 16 October 2016 [REDACTED] reviewed and expanded in response to changes that have since been made. We have attached other relevant submissions and documents as appendices.

As IGFF has extensive experience providing support and advocacy to people who have experienced child sexual abuse in Victoria, we would be interested in meeting with the Victorian Law Reform Commission to provide feedback (as flagged in section 35 of the above guide). We have supported clients through both criminal justice proceedings and other pathways, and would be able to provide more specific feedback in consultation.

Responses to Issues Papers

Issues Paper A: **Working Together to Respond to Sexual Offences: Systems**

- 1 What would make it easier for people who have been sexually harmed to get the supports and services they need, so they can decide whether to report the sexual harm?
- 2 How can collaboration within the sexual assault system be improved, so that the justice system responds effectively to sexual harm?
- 3 How can the relationship between family violence services and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?
- 4 How can the relationship between child protection and the sexual assault system be improved, so that the justice system responds effectively to sexual harm?
- 5 How can we improve how other services and systems work with the sexual assault system, so that people are supported to seek justice?
- 6 Is there a need for a stronger focus on governance or shared outcomes in the response of the justice system to sexual harm? If so, what should this look like?
- 7 What are the opportunities for, and benefits of, improving data, research and evaluation in relation to sexual offending?
- 8 How well does the sexual assault system work? How would you improve it?

Individualised Case Management and Support for Survivors: IGFF's Model

As stated in the Introduction, IGFF believes that justice should be individualised as much as possible to ensure that the process does not involve re-traumatisation and re-victimisation of survivors (Heath, 2005). Swiftly evolving legislative reform within this field (Statute of Limitations, Ellis Defense and amendments to Deeds of Releases etc.) is adding a complex and highly traumatic dynamic that survivors are now seeking to navigate. It is our opinion that a broader cultural change towards understanding sexual assault, particularly of children within institutional contexts, is needed.

IGFF is encouraged by the Inquiry's acknowledgement that supports and services need to be in place for all survivors before they decide whether to report their experiences of sexual harm. At the time of the 2013-2017 Royal Commission, our clients were predominantly Anglo-Saxon men, between the ages of 40 to 70, abused within Catholic religious contexts. There has been a slow but significant shift in demographics observable over the last four years with IGFF's client base increasingly aged under 50 (almost 46% of clients over the last four years have been below the age of 55). In the six months between January to June 2020 almost 53% of clients receiving a service from IGFF were below the age of 55.

A younger client demographic means an increased likelihood that an alleged offender may still be active within the community. This age group has required key advocacy regarding Mandatory Reporting, particularly when these processes mean that disclosing to the National Redress Scheme or other systems automatically triggers a mandatory report, and processes are activated that are outside of the client's control. Our case study provided in the appendices, [REDACTED] is described in more detail below, but highlights the deep and personal impact when systems do not communicate about what is happening to a client, or when they fail to do so in a way that is accurate, timely and sufficient.

Over 80% of IGFF's client base reports living with an associated mental health illness often compounded by one or more physical disabilities or chronic illnesses. A detailed submission was provided to the Productivity Commission and to the Victorian Mental Health Care Royal Commission, provided in our appendices [REDACTED] [REDACTED] [REDACTED]

[REDACTED] During 2019-2020, referrals to IGFF included high needs disability care survivors, family members and carers, and survivors from a range of culturally and linguistically diverse backgrounds (born both overseas and in Australia).

Complex case presentations have increased the diversity of responsible institutions across our client base. Increasingly, clients are naming newer evangelical religious organisations, high control environments (cults such as Children of God and The Family International), and eastern religions associated with Hinduism and Buddhism, including Yoga Ashrams and associated Wellness organisations. We continue to provide support to those naming cross-denominational religious institutional backgrounds (Catholic; Anglican; Baptist; Seventh Day Adventist; Jehovah's Witness) and Government and Non-Government Organisations institutionalised Care Survivors (former State Wards and Care Leavers). We also provide support to institutional abuse survivors from the Scouts, those who have experienced abuse as cadets and in smaller community run organisations such as railway and heritage societies.

For many survivors seeking information and support about justice pathways and their experiences of historical abuse, their initial phone calls are first "disclosures" of historical childhood sexual abuse, requiring expert and individualised support on demand. Our service model ensures that there is wrap-around care for these individuals as they seek to engage in a redress or justice pathway. In response to clients' needs, the varied skills base within IGFF's Casework team intersects across disability, sexual assault, law, social work and community welfare skills and understandings.

These survivors require us to arrange a match between their needs (stemming from the impacts of trauma) and tailored support to meet those needs, through access to appropriate and accessible service providers. Increasingly, these survivors are presenting with complex and associated case matters that require careful, trauma-aware management such as drug and alcohol abuse impacting family relationships; mental health breakdown; unemployment, food insecurity and housing crises.

We observe that survivors coming forward for information proceed to describing complex life issues that require supported access to appropriate services and require sustained support: there are no quick fixes. The multiplicity of complicating and co-morbid factors means that a significant amount of work is provided as advocacy; linking survivors (and often family members) to external support services specialising in Alcohol and Other Drugs support; Gambling; Family Violence; Mental Health Crisis support and intervention; Homelessness; Community Health Organisations; Aged Care and Disability services and LGBTIQ+ support and information, prior to them accessing justice and redress pathways.

In contrast to initial disclosures, survivors who previously engaged with the Royal Commission and other Inquiries may already be linked to a support service such as IGFF, greatly benefitting from professional networks established during these Government initiatives, regular network meetings and

key understandings forged between specialising support services, longer-term staff and clientele's sense of belonging to a survivors' community.

Critically, IGFF works to empower our survivor clients and put in place support structures that will enable them to endure the stressors in whatever redress pathway they choose to embark upon. An IGFF Caseworker advocates for the client and liaises across relevant support networks prior to their commencing on a redress path. That Caseworker continues to support them throughout the course of their redress process (and beyond), to support their wellbeing and psychological safety.

As a priority, the mental and physical health and stability of an individual must be ensured to safeguard against engaging in processes that would not be beneficial to survivors and also to guarantee that an individual has had all of their justice and redress options explained to them (sometimes multiple times) and is able to provide informed consent prior to engaging with those processes. When providing such a comprehensive care model, IGFF focusses on collaborative advocacy ensuring the client's voice remains central to their tailored processes; empowering clients to take an active role in their recovery journey and facilitating a model of support that links a survivor to a connected community. IGFF provides warm referrals, advocacy and liaison across different supports, and once a client decides that they would like to report, we work with justice providers such as Taskforce SANO, local SOCITs, police, Court Support Workers and OPP lawyers. We also liaise with legal advice providers demonstrating experience and integrity for institutional abuse cases.

Barriers to Reporting Sexual Harm

Research indicates that barriers that remain as central factors in discouraging reporting are predominantly fear-based (Heenan & Murray, 2006). In particular, our clients report the fear of not being believed, being dismissed and/or ridiculed by authorities and the shame of admitting to being abused, fear of the impact on family and/or community, fear of retribution. For people confronting these barriers without proper support and trauma informed practitioner support, achieving justice through criminal processes essentially remains a "crime of impunity" (Hermann, 2005). These fear-based barriers may also explain the average reporting lag of 23.6 years researched by Victoria Police and presented to the Victorian Parliamentary Inquiry into the Handling of Child Abuse by Religious and Other Organisations (Ashton, Rae, & Jouning, 2012).

The current focus of legislation reform in the criminal justice system appears to be most focused on increasing the rates of conviction, tougher punishments for those convicted and enforcing law and order responses. IGFF acknowledges that the Victorian government has been proactive about ensuring that Royal Commission reforms become law, from introducing grooming, failure to disclose and failure to protect offences, enabling tendency evidence and implementing child safe standards to abolishing confessional privilege. IGFF clients have experienced a breakdown of the tendency evidence allowance that has demonstrably and unfairly impacted survivor access to justice, which is a critical issue for our community. Overall, however, these changes have supplemented other ongoing reforms that aim to make the system more survivor-centric, and we appreciate the Attorney General's swift response to the campaign around the Judicial Proceedings Reports Act or the "Sexual Assault Gag Law" as it has been described. IGFF fundamentally disagrees with legislation that puts barriers in place to prevent survivors from sharing their stories, and we have attached in the appendices our letter to all Australian Attorneys-General calling for them to address the current loophole in civil

litigation legislation that enables survivors to be cross-examined by self-representing defendants across jurisdictions, including in Victoria [REDACTED]

While IGFF acknowledges this work, and that a focus on conviction is an important aspect of the criminal justice system, this focus does not do enough to address the individual needs of survivors for safety; neither does it adequately provide support (in the form of advocates or other such professionals) to victim/survivors. Law and order responses have been reported as perpetuating the sense of isolation produced by the initial sexual assaults thus systemically re-traumatising victims (Ptacek, 2010). Our experience has shown that survivors require wrap-around supports in place that can continue after the conclusion of a criminal process, no matter the outcome.

IGFF provides the following suggestions:

- More supportive services be available to people prior to engagement with the criminal justice process to assist in alleviating fear-based barriers
- Trauma informed practitioners be available throughout and after the criminal justice process, with a particular focus on the impact of child abuse and institutional abuse
- Further education and training be available to institutions to encourage people wishing to report matters to police
- Additional support should also be made available to survivors if prosecution is not successful or in the event of the offender passing away mid-way through a criminal justice process
- Should an offender pass away in the course of a criminal justice process our clients have indicated that connection to other survivors of the alleged offender would be helpful

While we support and apply restorative justice principles and values, IGFF also recognises that survivors may not wish to participate in restorative justice processes. Criminal justice processes must be individualised as much as possible to avoid survivors feeling “incidental” to the process. The nature of an adversarial system of justice, its focus on a theoretical contest between prosecution and defense counsel and its minimisation of the role of the victim/survivor presents a number of issues for our clients. As such, we see limitations to adversarial justice process currently used as clients have reported feeling as though they are on trial and not the person accused, with a feeling of being a side note in a case that represents a major traumatic occurrence in their life.

Issues Paper B: **Sexual Offences: Key Issues in the Criminal Justice System**

- 1 Is there a need to improve attitudes towards victim survivors or the understanding of sexual harm within the criminal justice system? If so, how?
- 2 Do you support introducing a specialist court for sexual offences? Why or why not?
- 3 If you support introducing a specialist court for sexual offences, what features should it have?
- 4 Do you support changing the role or nature of the jury in trials for sexual offences? Why or why not?
- 5 How well are reforms working to avoid delays in the criminal justice process, and what other reforms could address delay?
- 6 How well are support programs for people who have experienced sexual harm working? How can they be improved?
- 7 What other issues affect the criminal justice process as a whole, and what should be done to address them?

As described above, IGFF believes there is a need to improve attitudes towards survivors and the understanding of sexual harm within the criminal justice system, particularly around institutional child abuse. Our clients have found that the system is still subject to extreme delays, which can be experienced as re-traumatising.

A draft advocacy letter [REDACTED] is provided with the consent of a primary survivor outlining a recent interaction with the justice system and the resulting mental health consequences, providing a case study of key issues within the criminal justice system. [REDACTED]

Issues Paper C: **Defining Sexual Offences**

- 1 Is there a need to change any of Victoria's sexual offences, or their application? If so, what changes?
- 2 How well is Victoria's model of communicative consent working? Should there be any changes?
- 3 Is there a need to change any of Victoria's technology-facilitated sexual offences, or their application? If so, what changes?
- 4 Are new offences or changes to offences needed to address existing or emerging forms of sexual harm? If so, what new offences or changes?

Persistent Child Sexual Abuse Offences

IGFF supports reforms that have been made to the Victorian justice system described above, including the introduction of a persistent child sexual abuse offence, introduced on 1 July 2017 (*Crimes Act 1958* (Vic) s 49J). A number of IGFF clients have experienced serious serial sexual assault as children that has been both sustained and injurious. The nature of such abuse and the associated trauma very often

means that very often our clients are unable to distinguish individual/isolated instances of abuse and provide a single timeline of abuses. In such circumstances, the requirement of proof of a minimum number of unlawful sexual acts – in Victoria, three – is often prohibitive to prosecution. Instead, IGFF believes that the Queensland offence that focuses on maintenance of an unlawful sexual relationship is a fairer assessment as it acknowledges the existence of persistent and sustained child sexual abuse (Shaw QC, 1998; *Criminal Code 1899* (Qld) s 229B).

It is believed that such legislation may assist survivors coming forward to report childhood sexual assaults, particularly when they are unable to identify specific incidences. This offence also recognises the reality that many of IGFF's clients have confronted – that of typifying or generalising the abuse that routinely occurred rather than distinguishing one act from another (Justice and Regulation, 2016).

IGFF would also suggest:

- that the Course of Conduct charge be applicable over multiple complainants regarding the same offender with similar patterns of offending
- these laws should apply retrospectively as is the case in South Australia and Tasmania.

Grooming Offences

IGFF believes that the Victorian offence of Grooming, covering both actions grooming both child and any person with care of, supervision of and/or authority over the child are comprehensive, particularly given the inclusion of both communication and conduct.

IGFF is aware of circumstances where grooming has occurred in an institutional environment but the sexual assault was not committed until after the survivor was 18 years of age. It is proposed that a broad definition of grooming should cover such incidences.

A recent example of this issue has been the abandoned prosecution of Thomas Knowles.¹ The Director of Public Prosecutions made the decision in July to discontinue prosecution against Knowles, who had been a provincial leader of the Order of the Blessed Sacrament. He had been charged with two counts of rape in May, a year after his alleged victim contacted Victoria Police about the historical events. Psychological reports found that the woman had been groomed as a teenager, and assaulted when she was 22. Because of her age at the time of the alleged offence, her experiences fell outside the scope of the Royal Commission, but reveal deep flaws in the way the justice system responds to grooming. Commonly IGFF clients relay their feeling that the system feels they must have consented if they were over the age of 18. This perceived barrier is one that reflects a deeply problematic and broader community attitudinal issue around 'consent'. IGFF has also observed that many clients who experience childhood abuse are more likely to also have abusive experiences later in life. This attitude is problematic largely because it downplays the seriousness of grooming as an offense IGFF has assisted clients to approach the Royal Commission who relayed clear examples of grooming (of both the survivor and their families) and reported a considerable length of time until sexual assault.

¹ See Richard Baker, *The Age*, 'Prosecutor drops rape charges against defrocked Catholic priest' (13 December 2020), <https://www.theage.com.au/national/victoria/prosecutor-drops-rape-charges-against-defrocked-catholic-priest-20201203-p56k7z.html>

The Director of Public Prosecutions is reported as citing the woman's 35-year delay in reporting matters to police, and the amount of time she had spent with Knowles after the alleged sexual assaults as factors informing her decision to drop the case. This decision highlights the disparity between the challenges facing survivors coming forwards to report, perceptions around 'normal' Survivor behaviours after a sexual assault, and the accessibility of the justice system as it currently interacts with survivors. Reporting is a deeply individual choice, and many survivors do not disclose what happened to them for many years: the Royal Commission's final report found that sex abuse victims often need more than 20 years to report matters to the police, while Victoria Police (2013) research indicates an average of 23.6 years between the incident of sexual assault and the point of first disclosure (not always to police). As Ryan Carlisle Thomas head of abuse law Penny Savidis is quoted in the above article, these common time lapses "should not deter the DPP from at least attempting to pursue the matter through the justice system".

Such responses compound historic abuse survivors' reluctance to report, and add to the very real barriers survivors confront to disclosure including: shame, betrayal, prior knowledge of abuser. An individual's trauma often inhibits their ability to process information and coherently describe historical childhood abuse experiences. In particular, male survivors of all forms of severe childhood psychological, emotional, or physical abuse resist disclosure of physical and psychological symptoms. In addition, men are more reluctant to report sexual abuse than are female survivors (Sherman NE, 2012). A contributing factor to nondisclosure may be that men knew the abuser before the abuse, as suggested by literature reporting that the child usually knows the abuser a priori. (Gartner, 1999) In these cases, the abuser is a parent, sibling, other family member, family friend, coach, teacher, clergy, or other familiar person (Gartner, 1999). This increases feelings of shame and betrayal.

IGFF suggests:

- Further assisting institutions to educate staff and volunteers about indicators of grooming behaviour is key to the prevention of future childhood sexual assaults
 - This should further be extended to the parent/caregiver communities associated with such institutions
 - There should be a standardized education and accreditation program accessible for institutions, expanding on the modules currently available for schools
- Formal recognition of the ways in which grooming can commence while survivors are still children, without a sexual crime being perpetrated until they turn 18

Protections for Whistleblowers

Additionally, IGFF would wholly support the development of a criminal offence designed to protect whistleblowers who disclose institutional child sexual abuse from detrimental action. This would encourage reporting, but also would have assisted a number of teachers who attempted to report suspected child sexual abuse, many of whom have lost their teaching careers as a result. Such legislation would protect whistleblowers from reprisals, and hold those responsible for past reprisals to account.

Issues Paper D: **Sexual Offences: Report to Charge**

- 1 How well are Sexual Offence and Child Abuse Investigation Teams (SOCITs) and Multidisciplinary Centres (MDCs) working? How can they be improved?
- 2 What other issues need to be addressed to improve the experience of the police investigation process for adults who have been sexually harmed? How can they be addressed?
- 3 What other issues need to be addressed to improve the experience of the police investigation process for children who have been sexually harmed? How can they be addressed?
- 4 What other issues need to be addressed during the investigation process to support successful criminal prosecutions in sexual offence cases? How can they be addressed?
- 5 Do you support access to alternative ways of reporting sexual harm? Why or why not?
- 6 If you support alternative ways of reporting sexual harm, what features should they have?

IGFF firmly believes that professionals engaging with survivors of childhood sexual assault in institutional contexts, particularly within the police force, should have at least a basic knowledge of and training in understanding the intricacies of complex trauma associated with childhood sexual assault. This is vital to the success and ongoing mental health of victims throughout a criminal process. Such an understanding must be present from the survivors first point of contact with the police force as it fosters an ability to trust within the survivor. It is also crucial to completing statements as experience and research both demonstrate that victim survivors will more readily disclose the full nature of their abuse if they feel they are in a secure environment with a professional who they are able to trust and rely upon.

Historically, survivors have reported being treated with suspicion and distrust by police when reporting (Heenan & McKelvie, 1997). This is particularly true for many of our clients who are reporting childhood sexual assaults as adult men. The doubt and suspicion with which these reports have been treated, recognised by the Royal Commission and other inquiries, have previously influenced the proceeding of cases and police conduct.

However, IGFF is aware that a number of changes have been made in recent times to modify the more traditional police cultures and understandings of sexual assault reporting nation-wide. These changes are particularly evident within the Victoria where a Code of Practice for the Investigation of Sexual Crimes was first introduced in 1992 (Heenan & Murray, 2006) and has been updated regularly (Police, 2016). The emphasis on the care for an individual survivor approaching the police to make a complaint has led to an increased understanding of the trauma associated both with the initial assault and then latterly with the reporting and potential criminal justice processes.

Additionally, IGFF is aware that specialist Sexual Offences and Child Abuse Units (SOCAUs) first emerged in the 1980s and are now the Sexual Offences and Child Abuse Investigation Teams (SOCITs) divided across the four regions of Victoria (SANO Task Force, 2016). This specialisation has been created with a focus on prioritising the needs of survivors and to offer them a range of supports (SANO Task Force, 2016). Of particular interest has been the introduction of multidisciplinary services whereby SOCIT teams and counselling services are located within the same building a readily

accessible if a survivor wishes to make contact. IGFF clients have had mixed experiences in their dealings with both SOCAUs and SOCITs with some client's experiences being very positive whilst others have reported a very negative reception to their complaints. An example of a negative experience is provided in an attached confidential case study [REDACTED]

Since the establishment of specialist Task Force SANO to coincide with the work of the Victorian Parliamentary Inquiry, IGFF has established a working relationship with SANO referring many clients to them. Their specialist focus on childhood sexual assault within religious contexts and communication has fostered a positive attitude towards reporting within many of our clients. Task Force Sano has also engaged strongly with community groups and support services including Centres Against Sexual Assault and our own MVC, providing both information and speakers to address the MVC when requested.

The diversity in means of reporting and the consistency of staff within Task Force SANO means that IGFF clients have reported positive experiences. SANO provides both online and by phone reporting methods with established protocols for services making referrals and ongoing contact and liaison with survivors and professional support staff throughout a reporting process.

Our view is that task forces such as SANO should be established across jurisdictions, and collaboration between these Task Forces should be established by way of Memorandum of Understanding. IGFF is aware of a significant number of clerical, religious or lay offenders who have moved between states and offended in each placement, and the current state-based systems are incapable of recognising this complexity.

Issues Paper E: **Sexual Offences: The Trial Process**

- 1 How well are charging and prosecution decisions for sexual offence cases working? How can they be improved?
- 2 How well are ground rules hearings for sexual offence cases working? How can they be improved?
- 3 How well are special procedures and alternative arrangements for giving evidence in sexual offence cases working? How can they be improved?
- 4 How well are jury directions for sexual offence trials working? How can they be improved?
- 5 Is there a need to change any laws on evidence or procedure for sexual offences? If so, what should be changed?
- 6 What are some of the challenges with the appeals process for sexual offence cases? How can these be addressed?
- 7 How well does the Children's Court of Victoria deal with sexual offence cases? What should be improved?
- 8 What are other issues with the trial process for sexual offences, and how should they be addressed?

Prosecution Responses

Our above discussion raises some critical issues around prosecution responses to historical abuse cases. In addition, historically our clients have indicated further traumatisation has occurred when their offender has been allowed to accept a plea bargain (often resulting in good behaviour bonds and non-custodial sentences). Amongst IGFF clients this has resulted in strong feelings of injustice between the sentence handed down and the, lifelong and often overwhelming, impacts that childhood sexual assault has. Similarly, we note that prosecution responses require complex trauma understanding, staffing consistency and non-judgmental attitudes in order to foster a sense of safety.

IGFF also notes the current emphasis on applying the rule and definition of the law as they are represented in legislation rather than the traditional reliance on Torts (Rush, 1997). This is particularly evident in the sentencing of offenders in Victoria from 2016 on.²

IGFF recognizes the importance of reducing delays in prosecutions. Reducing delays in prosecution is a particularly important factor in limiting the re-traumatisation experienced by survivors. A reduction in the delay of prosecution is also important when the alleged offender is older or infirm.

Evidence of Victims and Survivors

IGFF is aware of the associated trauma caused by providing evidence and subsequently through any potential cross examination process. The clear power imbalance between a defense counsel who are often described as bullying and the victim in any cross examination are also key contributing factors to re-traumatisation and the sense of injustice experienced by many victims. In particular, as mentioned earlier, the element of not being believed is a key barrier to be reporting and one that is often reinforced during cross examination. A case study demonstrating our concerns was our response to the appeals process during the trial of George Pell, which can be found in our appendices [REDACTED]. However, it is important to acknowledge the number of options available to victims and survivors who are providing evidence.

IGFF would suggest the following options also be considered for all survivors of childhood sexual assault, including those disclosing as adults:

- Video Audio Recording of Evidence (VARE)
 - Currently this is accessible in Victoria only to minors and individuals with a mental health issue or acquired brain injury
- The statement and/or evidence of the survivors first point of disclosure be included

² Robert Claffey was sentenced to 18 years and four months' jail with a minimum of 13 years and four months to be served. Victims have described this as fair and just. (See *The Guardian*, 'Priest jailed for 18 years for sexually abusing 12 Victorian Children', <https://www.theguardian.com/australia-news/2016/oct/04/priest-jailed-for-18-years-for-sexually-abusing-12-victorian-children>)

Issues Paper F: **People Who Have Committed Sexual Offences**

- 1 Do responses to sexual offending sufficiently address the diverse needs of different people who have committed sexual offences? If not, what more is needed?
- 2 How well are rehabilitation or reintegration measures for people who have committed sexual offences working? How can they be improved?
- 3 How well are post-sentence detention and supervision, and sex offender registration working? How can they be improved?
- 4 Is there a role for early intervention or diversion programs for adults responsible for sexual harm? Why or why not?
- 5 If you support early intervention or diversion programs for adults responsible for sexual harm, what should be the features of the program?
- 6 What is working well in responding to harmful sexual behaviour in children? What improvements can be made?
- 7 What other issues need to be addressed to improve Victoria's approach to sexual offending?

As IGFF provides support to survivors, victims, families and communities impacted by institutional abuse, we have limited feedback on how the system should respond to perpetrators of sexual offending. We specifically do not work with offenders.

Issues Paper G: **Sexual Offences: Restorative and Alternative Justice Models**

- 1 Do you support adopting a restorative justice model for sexual offences? Why or why not?
- 2 If a restorative justice model is adopted, what should its features be?
- 3 Is there a role for an inquisitorial model or features for sexual offences? If so, what should this look like?
- 4 Is there a role for new initiatives to enable people who have experienced sexual harm to tell their stories and have them acknowledged? Why or why not?
- 5 Are there Aboriginal justice models that you think should be considered for sexual offences? If so, what are their strengths and weaknesses?
- 6 Do you support another alternative justice model for sexual offences? How should it work?

IGFF has provided extensive consultation on restorative and alternative justice models. We have provided Restorative Justice training through a community workshop in partnership with the Victorian Association for Restorative Justice, and continue to provide consultation and support on survivor-centric memorial projects.

In our submissions to the Royal Commission, we promoted a restorative justice model that centres survivors. Our recommendations for best-practice responses can be found in the appendices [REDACTED] We also recommend the

Centre for Innovative Justice RMIT's 2014 findings in their report 'Innovative Justice Responses to Sexual Offending Pathways to Better Outcomes for Victims, Offenders and the Community'.

Issues Paper H: **Sexual Offences: Civil Law and Other Non-Criminal Responses**

- 1 What aspects of other justice processes provide best practice examples for supporting people who have experienced sexual harm?
- 2 How can the interaction between other justice processes and the criminal justice system be improved?

As mentioned above, our recommendations for the civil law system to the Royal Commission into Institutional Responses to Child Sexual Abuse can be found in appendix [REDACTED]

More recently, we have also written to the Victorian Attorney-General about current practices that enable offenders to cross-examine survivors in civil proceedings. We believe that this is a key issue that affects survivors' access to justice, and have attached our correspondence on the issue [REDACTED]

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