



**SHINE**  
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# Contempt of Court: Consultation Paper

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Submission to the Victorian Law Reform Commission

June 2019

## 1. Introduction

Shine Lawyers are pleased to provide this submission in response to the Victorian Law Reform Commission consultation paper Contempt of Court.

This submission primarily addresses Chapter 9 of the consultation paper and issues related to the rights of victims and survivors of sexual and child abuse offences to speak about their experiences.

## 2. About Shine Lawyers

Shine Lawyers is the third largest specialist plaintiff litigation law firm in Australia. The firm has 680 people spread throughout 44 offices in Australia.

We have a dedicated team of abuse lawyers who specialise in providing legal advice and guidance to survivors of abuse, standing as a voice for clients, and helping them access justice and acknowledgement for the wrongdoing they have suffered.

Shine Lawyers has extensive experience representing survivors seeking redress in every institutional redress scheme in Australia. Shine Lawyers represented clients giving evidence before the Royal Commission into Institutional Responses to Child Sexual Abuse (“Royal Commission”). The firm has conducted many individual and group actions in processing and negotiating compensation arrangements for survivors of sexual abuse. Significant litigation that the firm has successfully concluded includes:

### **Neerkol Group Litigation**

The claim involved some 80 former orphans of the St Joseph’s Orphanage Neerkol, operated by the Sisters of Mercy.

### **Nudgee Orphanage Group Litigation**

This claim involved the successful resolution of claims for some 30 victims of sexual abuse, operated by the Sisters of Mercy.

### **Brisbane Grammar Sexual Abuse Litigation**

This action commenced in the Supreme Court of Queensland was on behalf of 75 former students of the Brisbane Grammar School who were subjected to sexual abuse as children.

### **St Paul’s Sexual Abuse Group Litigation**

The claim involved some 25 former students of St Paul’s School in Brisbane who were subjected to sexual abuse during their school years.

### **Scriven v Toowoomba Preparatory School**

This litigation on behalf of a single claimant resulted in the largest award in Australian history for compensation for a victim of sexual abuse, which included the largest award for punitive damages in Australian history.

### **Australian Defence Force**

Shine Lawyers has represented close to 200 current and former members of the Australian Defence Force in relation to abuse they suffered while in the Defence Force, including a large number of former child sailors who were abused at HMAS Leeuwin.

Shine Lawyers worked closely with the legal representatives of the Australian Defence Force to develop a collaborative, cost effective and empathetic process which provides compensation, as well as Direct Personal Responses (apologies and acknowledgement of the harm done). The psychological welfare of the abuse survivor is central to the process.

### **3. Victims and Survivors of sexual crimes**

The proper administration of justice requires a balance be found between the right to a fair trial on the one hand and the rights of victims and witnesses to sexual crimes on the other. We believe that more could be done to protect the rights of victims of sexual crimes including but not limited to a shifting in the balance between these competing interests such that a victim's right to speak about experience of sexual assault is better accommodated whether or not proceedings are under way. Greater clarity is required around the scope of the prohibition against identifying victims in section 4(1A) of the *Judicial Proceedings Reports Act 1958* (Vic) ("JPR Act").

A victim's ability to speak publically about their experience of sexual assault, if they chose to do so, is fundamental. Shine Lawyers has represented hundreds of survivors and victims of sexual abuse in varied circumstances including as children or adults and perpetrated in institutional and other settings. We have been told by our clients that the experience of coming forward to describe abuse can be as impactful on the future direction of their life as the experience of abuse itself. A victim is less likely to disclose abuse if they feel they will not be believed or will receive a negative reaction or consequences.<sup>1</sup>

We have been told that having the opportunity to describe ones experience and its impact has been therapeutic. Participating in public discourse about ones experience of abuse, including on social media may assist to find other like-minded people and build a sense of connectedness with community. A survivor may find comfort in the thought 'they are not alone'.

Section 4(1A) of the JPR Act restricts the publication of material identifying person against whom a sexual offence is alleged to have been committed. The prohibition on publication applies before, during and after judicial proceedings. Defenses available to a charge include that at the time of publication, no complaint had yet been made about the alleged offence to police, the publication was made with the court's approval or the publication was made with the permission of the victim.

### **4. Question 40 – How should the law accommodate a victim's ability to speak?**

We have heard mixed views about whether the current prohibition on publishing identifying material ought to be amended. This reflects the complex considerations at play and the deeply individual way a person responds to and experiences the aftermath of a sexual crime. In any amendment, maintaining a survivor's autonomy to control the way their story and name is shared in the course of any criminal proceedings is important. We have been told that identifying an abuser by name publically, in compensation claims and to police is a meaningful part of feeling a survivor is contributing towards the prevention of abuse in future. This may be in the context of ensuring a particular perpetrator is held to account or contributing in a general

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, Volume 4, *Identifying and disclosing child sexual abuse*.

sense towards a greater public awareness of the extent of abuse and hideous results of abuse, particularly where victims are not believed.

Some say that forcing a complainant to be anonymous through a pseudonym, for example, removes a victim's sense of agency and perpetuates the stigma that sexual assault somehow reflects poorly on the victim. We have been told that the prohibition on publications identifying victims by name and face can be dehumanising and contributes to the criminal justice process re-exposing the survivor to trauma.

Others take the view that notwithstanding any understanding that sexual crime was not the fault of the victim that being named publically would itself be traumatizing. Understanding they would be publically identified we feel is likely to counteract willingness of some victims to report sexual crimes. Particularly where naming the victim would also expose other personal information.

The 2015 Criminal Justice Report of the Royal Commission provides relevant research and recommendations about options to better support victims and witnesses in child sexual abuse matters in their interactions with the criminal justice system. The first recommendation was for reform in the criminal justice system ensuring:

- a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused;
- b. the criminal justice responses are available for victims and survivors; and
- c. that victims and survivors are supported in seeking criminal justice responses.<sup>2</sup>

Recommendations of the Royal Commission should be considered by the VLRC in considering the best approach to accommodate a victim's ability to speak and finding a balance between the rights of a victim to speak about their experience and an accused to a fair trial and other matters.

## **5. Question 41 – When should a victim be able to consent to publication of identifying material?**

We suggest consideration be given to consent being given or waived in circumstances the material is published by the victim themselves. Preventing an adult survivor of a sexual crime from describing their experience, using the extent of personal identifying information the person chooses adds to the harm experienced.

The mandatory statutory prohibition in section 4(1A) of the JPR Act sits uncomfortably with victims and survivors self-identifying in online forums for example. We are not aware of any prosecution of individuals self-identifying in these circumstances. Several of our clients have indicated they participate in such social media groups which are ostensibly 'closed' however posting information online, even within a closed social media group may be considered publication.

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<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*

**6. Question 41 (a) – Should the court’s supervision and permission also be required?**

An adult survivor of a sexual crime ought not to require the permission of a court to self-identify publically or consent to the publication of identifying information. An adult is capable of seeking information about the positive and negative consequences of self-identifying including but not limited to advice from medical and allied health providers, a lawyer or a journalist. Requiring an individual to contain the permission of a court would be costly in terms of expense, time and emotional distress for a survivor who ought not to have to justify their choice to someone else’s satisfaction. An exception should apply to ensure identifying information about other victims is protected.

**7. Question 41 (b) – What, if any, special provision should be made for child victims?**

Whether special provision should be made for child victims is difficult question to answer. In answering this question we acknowledge that the vast majority of our work involves assisting survivors of child sexual abuse after the person has reached adulthood. Our perspective therefore is based on our experience assisting adult clients who experienced sexual abuse as children.

Children require additional protections in many aspects of life by virtue of their age. However it is not necessarily the case that a child is incapable of appreciating the ramifications of choosing to consent to being identified as a victim of a sexual crime. Returning a child victim of sexual crime to a sense of safety may involve empowering them with agency to influence how their abuse is publically known. In this respect, a child victim of sexual crime may be no different to an adult.

Our view is that children should be permitted to consent to identifying information being published however this decision ought to be supervised by the relevant court. Appropriately funded legal assistance at no cost to the child ought to be available and a prohibition on a parent consenting on behalf of a child maintained.

**8. Conclusion**

The most striking theme in our consideration of these issues is the lack of certainty about when a survivor is permitted to speak publically about their experience of abuse. The comment frequented discussions with clients, and our legal and media teams and is layered with additional complexity due to the national footprint of our abuse law practice.

Our experience is that sexual abuse and sexual crime has a profound and lasting impact on a victim or survivor’s life. On balance our view is that there should be greater clarity around the scope of the prohibition on publishing identifying information about victims of sexual crimes and thereafter greater autonomy affirmed to victims who should not be stripped of control over whether and how their story is told.

We are grateful for the opportunity to provide our views in this submission. In the event you have any questions regarding this submission, please contact Lisa Flynn, Head of Specialist Personal Injury