Commissioner for Children and Young People
Western Australia

Comments on the recommendations in the Royal Commission into Institutional Responses to Child Sexual Abuse Criminal Justice Report (2017)

June 2018

Recognising Aboriginal and Torres Strait Islander People

The Commissioner for Children and Young People WA acknowledges the unique contribution of Aboriginal people's culture and heritage to Western Australian society. For the purposes of this report, the term 'Aboriginal' encompasses Western Australia's diverse language groups and also recognises those of Torres Strait Islander descent. The use of the term 'Aboriginal' in this way is not intended to imply equivalence between Aboriginal and Torres Strait Islander cultures, though similarities do exist.

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Introduction

The Royal Commission into Institutional Responses to Child Sexual Abuse released their *Criminal justice* report in August 2017. The report contains 85 recommendations in relation to the criminal justice system's response to child sexual abuse, including institutional child sexual abuse. The Royal Commission recommended reform of the criminal justice system to ensure that the following objectives are met:

- the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused
- criminal justice responses are available for victims and survivors
- victims and survivors are supported in seeking criminal justice responses[1].

The Commissioner for Children and Young People was invited to meet with the Department of Justice in October 2017 to provide feedback and comment on the recommendations. The table that follows summarises the comments made by the Commissioner.

Most of the Royal Commission's recommendations are supported by the Commissioner, acknowledging the rigorous and considered approached undertaken by the Royal Commission.

Many of the comments throughout the table draw attention to the need to consider the rights and needs of children and young people in accepting and implementing specific recommendations, and implications potentially for service provision and responses to children and young people statewide.

Work in progress by the Commissioner related to recommendations of the Royal Commission such as Child Safe Organisations and Harmful Sexual Behaviours in children and young people are also mentioned.

At the end of the table other topics within the *Criminal justice* report that do not have specific recommendations but are of interest to the Commissioner are noted.

The Commissioner looks forward to reviewing the WA State Government's response to the *Criminal justice* and *Final Report* of the Royal Commission in 2018.

[1] https://www.childabuseroyalcommission.gov.au/criminal-justice

Royal Commission report recommendations		Comments
1	In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met: a. the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused b. criminal justice responses are available for victims and survivors c. victims and survivors are supported in seeking criminal justice responses.	Including children and young people who are victims and survivors, and young people who are accused of child sexual offences.
2	Australian governments should refer to the Steering Committee for the Report on Government Services for review the issues of: a. how the reporting framework for police services in the Report on Government Services could be extended to include reporting on child sexual abuse offences b. whether any outcome measures that would be appropriate for police investigations of child sexual abuse offences could be developed and reported on.	Including offences against children and young people, and offences by children and young people.
Principles for initial police responses		
3	Each Australian government should ensure that its policing agency: a. recognises that a victim or survivor's initial contact with police will be important in determining their satisfaction with the entire criminal justice response and in influencing their willingness to proceed with a report and to participate in a prosecution b. ensures that all police who may come into contact with victims or survivors of institutional child sexual abuse are trained to: i. have a basic understanding of complex trauma and how it can affect people who report to police, including those who may have difficulties dealing with institutions or persons in positions of authority (such as the police) ii. treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues c. establishes arrangements to ensure that, on initial contact from a victim or survivor, police refer victims and survivors to appropriate support services.	Including understanding of complex trauma and cultural safety for children and young people, and appropriate services for children and young people to be available statewide.
Encouraging reporting		
4	To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency: a. takes steps to communicate to victims (and their families or support people where the victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the	a. How the right to withdraw is discussed with children and young people.

	process and to decline to proceed further with police and/or any prosecution b. provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors c. makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting d. works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors e. allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence f. is willing to take statements from victims and survivors in circumstances where the alleged perpetrator is dead or is otherwise unlikely to be able to be tried.	b. What information is available for children and young people on reporting options. c. What advocacy or support groups exist statewide for young people as well as young people from vulnerable groups? Also b. and d. d. Are children and young people allowed a support person in interviews? What options are provided for support and to avoid contamination?
5	To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, among Aboriginal and Torres Strait Islander victims and survivors, each Australian government should ensure that its policing agency: a. takes the lead in developing good relationships with Aboriginal and Torres Strait Islander communities b. provides channels for reporting outside of the community (such as telephone numbers and online reporting forms).	Including strategies for children and young people. Including regional and remote areas.
6	To encourage prisoners and former prisoners to report allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency: a. provides channels for reporting that can be used from prison and that allow reports to be made confidentially b. does not require former prisoners to report at a police station.	Including juvenile justice centres and juvenile justice teams.
Police investigations		
7	Each Australian government should ensure that its policing agency conducts investigations of reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles: a. While recognising the complexity of police rosters, staffing and transfers, police should recognise the benefit to victims and their families and survivors of continuity in police staffing and should take steps to facilitate, to the extent possible, continuity in police staffing on an investigation of a complaint.	Including staff who are well trained, skilled and develop expertise in working with children and young people who are victims of abuse and who may have these problems.

	b. Police should recognise the importance to victims and their families and survivors of police maintaining regular communication with them to keep them informed of the status of their report and any investigation unless they have asked not to be kept informed. c. Particularly in relation to historical allegations of institutional child sexual abuse, police who assess or provide an investigative response to allegations should be trained to: i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant.	
8	State and territory governments should introduce legislation to implement Recommendation 20-1 of the report of the Australian Law Reform Commission and the New South Wales Law Reform Commission *Family violence: A national legal response* in relation to disclosing or revealing the identity of a mandatory reporter to a law enforcement agency.	
Investigative interviews for use as evidence in chief		
9	Each Australian government should ensure that its policing agency conducts investigative interviewing in relation to reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles: a. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should receive at least basic training in understanding sexual offending, including the nature of child sexual abuse and institutional child sexual abuse offending. b. All police who provide an investigative response (whether specialist or generalist) to child sexual abuse should be trained to interview the complainant in accordance with current research and learning about how memory works in order to obtain the complainant's memory of the events. c. The importance of video recorded interviews for children and other vulnerable witnesses should be recognised, as these interviews usually form all, or most, of the complainant's and other relevant witnesses' evidence in chief in any prosecution. d. Investigative interviewing of children and other vulnerable witnesses should be undertaken by police with specialist training. The specialist training should focus on: i. a specialist understanding of child sexual abuse, including institutional child sexual abuse, and the developmental and communication needs of children and other vulnerable witnesses ii. skill development in planning and conducting interviews, including use of appropriate questioning techniques.	a. Supported. b. Supported. c. Supported. d. Supported.

	e. Specialist police should undergo refresher training on a periodical basis to ensure that their specialist understanding and skills remain up to date and accord with current research. f. From time to time, experts should review a sample of video recorded interviews with children and other vulnerable witnesses conducted by specialist police for quality assurance and training purposes and to reinforce best-practice interviewing techniques. g. State and territory governments should introduce legislation to remove any impediments, including in relation to privacy concerns, to the use of video recorded interviews so that the relevant police officer, his or her supervisor and any persons engaged by police in quality assurance and training can review video recorded interviews for quality assurance and training purposes. This should not authorise the use of video recorded interviews for general training in a manner that would raise privacy concerns. h. Police should continue to work towards improving the technical quality of video recorded interviews so that they are technically as effective as possible in presenting the complainant's and other witnesses' evidence in chief. i. Police should recognise the importance of interpreters, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses. j. Intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses.	e. & f. Concerns about the repeated viewing of recordings of children and young people. Suggest alternative QA mechanisms be considered (e.g. review of interview at time it is occurring). f. Agreed the videos of children and young people should not be used in training settings. Privacy issues for children and young people should not be minimised or overridden when alternative QA or options are possible. g. Children and young people should be informed who will conduct or observe their video, and where video will be used (e.g. court). h. Supported. i. Including for children and young people. j. Supported.
Police charging decisions		
10	Each Australian government should ensure that its policing agency makes decisions in relation to whether to lay charges for child sexual abuse offences in accordance with the following principles: a. Recognising that it is important to complainants that the correct charges be laid as early as possible so that charges are not significantly downgraded at or close to trial, police should ensure that care is taken, and that early prosecution advice is sought, where appropriate, in laying charges. b. In making decisions about whether to charge, police should not: i. expect or require corroboration where the victim or survivor's account does not suggest that there should be any corroboration available ii. rely on the absence of corroboration as a determinative factor in deciding not to charge, where the victim or survivor's account does not suggest that there should be any corroboration available, unless the prosecution service advises otherwise.	Including where victim is a child or young person.
11	The Victorian Government should review the operation of section 401 of the *Criminal Procedure Act 2009* (Vic) and consider amending the provision to restrict the awarding of	

	costs against police if it appears that the risk of costs awards might be affecting police decisions to prosecute. The government of any other state or territory that has similar provisions should conduct a similar review and should consider similar amendments.	
Police responses to reports of historical child sexual abuse		
12	Each Australian government should ensure that, if its policing agency does not provide a specialist response to victims and survivors reporting historical child sexual abuse, its policing agency develops and implements a document in the nature of a 'guarantee of service' which sets out for the benefit of victims and survivors – and as a reminder to the police involved – what victims and survivors are entitled to expect in the police response to their report of child sexual abuse. The document should include information to the effect that victims and survivors are entitled to: a. be treated by police with consideration and respect, taking account of any relevant cultural safety issues b. have their views about whether they wish to participate in the police investigation respected c. be referred to appropriate support services d. contact police through a support person or organisation rather than contacting police directly if they prefer e. have the assistance of a support person of their choice throughout their dealings with police unless this will interfere with the police investigation or risk contaminating evidence f. have their statement taken by police even if the alleged perpetrator is dead g. be provided with the details of a nominated person within the police service for them to contact h. be kept informed of the status of their report and any investigation unless they do not wish to be kept informed i. have the police focus on the credibility of the complaint or allegations rather than focusing only on the credibility of the complainant, recognising that many victims of child sexual abuse will go on to develop substance abuse and mental health problems and some may have a criminal record.	The 'guarantee of service' should also apply to the specialist services including child abuse squads or sexual assault squads for all victims including children and young people, and be in language understood by them. a.-i. supported, support services to be available for children and young people as well, statewide. Suggest the 'guarantee of service' also include Recommendation 13 c. and d. below.
Police responses to reports of child sexual abuse made by people with disability		
13	Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles: a. Police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor's credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability.	Each of these relate to include victims who are children and young people.

	b. Police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor's credibility or reliability because of their disability. c. Police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview. d. Decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.	
Police communication and advice		
14	In order to assist in the investigation of current allegations of institutional child sexual abuse, each Australian government should ensure that its policing agency: a. develops and keeps under review procedures and protocols to guide police and institutions about the information and assistance police can provide to institutions where a current allegation of institutional child sexual abuse is made b. develops and keeps under review procedures and protocols to guide the police, other agencies, institutions and the broader community on the information and assistance police can provide to children and parents and the broader community where a current allegation of institutional child sexual abuse is made.	Information for children and young people in language understood by them.
15	The New South Wales Standard Operating Procedures for Employment Related Child Abuse Allegations and the Joint Investigation Response Team Local Contact Point Protocol should serve as useful precedents for other Australian governments to consider.	
Blind reporting		
16	In relation to blind reporting, institutions and survivor advocacy and support groups should: a. be clear that, where the law requires reporting to police, child protection or another agency, the institution or group or its relevant staff member or official will report as required b. develop and adopt clear guidelines to inform staff and volunteers, victims and their families and survivors, and police, child protection and other agencies as to the approach the institution or group will take in relation to allegations, reports or disclosures it receives that it is not required by law to report to police, child protection or another agency.	Application to children and young people needs to be clear, including mature minors.

17	If a relevant institution or survivor advocacy and support group adopts a policy of reporting survivors' details to police without survivors' consent – that is, if it will not make blind reports – it should seek to provide information about alternative avenues for a survivor to seek support if this aspect of the institution or group's guidelines is not acceptable to the survivor.	Application to children and young people needs to be clear, including mature minors.
18	Institutions and survivor advocacy and support groups that adopt a policy that they will not report the survivor's details without the survivor's consent should make a blind report to police in preference to making no report at all.	Application to children and young people needs to be clear, including mature minors.
19	Regardless of an institution or survivor advocacy and support group's policy in relation to blind reporting, the institution or group should provide survivors with: a. information to inform them about options for reporting to police b. support to report to police if the survivor is willing to do so.	Application to children and young people needs to be clear, including mature minors.
20	Police should ensure that they review any blind reports they receive and that they are available as intelligence in relation to any current or subsequent police investigations. If it appears that talking to the survivor might assist with a police investigation, police should contact the relevant institution or survivor advocacy and support group, and police and the institution or group should cooperate to try to find a way in which the survivor will be sufficiently supported so that they are willing to speak to police.	Application to children and young people needs to be clear, including mature minors.
21	Each state and territory government should introduce legislation to amend its persistent child sexual abuse offence so that: a. the actus reus is the maintaining of an unlawful sexual relationship b. an unlawful sexual relationship is established by more than one unlawful sexual act c. the trier of fact must be satisfied beyond reasonable doubt that the unlawful sexual relationship existed but, where the trier of fact is a jury, jurors need not be satisfied of the same unlawful sexual acts d. the offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed e. on sentencing, regard is to be had to relevant lower statutory maximum penalties if the offence is charged with retrospective application.	
22	The draft provision in Appendix H provides for the recommended reform. Legislation to the effect of the draft provision should be introduced.	
23	State and territory governments (other than Victoria) should consider introducing legislation to establish legislative authority for course of conduct charges in relation to child sexual abuse offences if legislative authority may assist in using course of conduct charges.	

24	State and territory governments should consider providing for any of the two or more unlawful sexual acts that are particularised for the maintaining an unlawful sexual relationship offence to be particularised as courses of conduct.	
25	To the extent they do not already have a broad grooming offence, each state and territory government should introduce legislation to amend its criminal legislation to adopt a broad grooming offence that captures any communication or conduct with a child undertaken with the intention of grooming the child to be involved in a sexual offence.	
26	Each state and territory government (other than Victoria) should introduce legislation to extend its broad grooming offence to the grooming of persons other than the child.	
27	State and territory governments should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age and the offender is in a position of authority (however described) in relation to the victim. If the offences require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), states and territories should introduce legislation to amend the offences so that the existence of the relationship is sufficient.	Supported.
28	State and territory governments should review any provisions allowing consent to be negatived in the event of sexual contact between a victim of 16 or 17 years of age and an offender who is in a position of authority (however described) in relation to the victim. If the provisions require more than the existence of the relationship of authority (for example, that it be 'abused' or 'exercised'), state and territory governments should introduce legislation to amend the provisions so that the existence of the relationship is sufficient.	Supported.
29	If there is a concern that one or more categories of persons in a position of authority (however described) may be too broad and may catch sexual contact which should not be criminalised when it is engaged in by such persons with children above the age of consent, state and territory governments could consider introducing legislation to establish defences such as a similar-age consent defence.	Supported.
30	State and territory governments should introduce legislation to remove any remaining limitation periods, or any remaining immunities, that apply to child sexual abuse offences, including historical child sexual abuse offences, in a manner that does not revive any sexual offences that are no longer in keeping with community standards.	Supported.
31	Without limiting recommendation 30, the New South Wales Government should introduce legislation to give the repeal of the limitation period in section 78 of the *Crimes Act 1900* (NSW) retrospective effect.	

Moral or ethical duty to report to police		
32	Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).	CCYP Child Safe Organisations guidelines encourage all adults, staff, volunteers in organisations who know or suspect a child is being harmed in any way reports the abuse. Not just restricted to sexual abuse. Consideration needed regarding mature minors.
Failure to report offence		
33	Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows: a. The failure to report offence should apply to any adult person who: i. is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions ii. otherwise requires a Working with Children Check clearance for the purposes of their role in the institution but it should not apply to individual foster carers or kinship carers. b. The failure to report offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child. c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster and kinship care services should be included (but not individual foster carers or kinship carers). Facilities and services provided by religious institutions, and any services or functions performed by persons in religious ministry, should be included. d. If the knowledge is gained or the suspicion is or should have been formed after the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply: i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years). ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either: still associated with the institution known or believed to be associated with another relevant institution.	CCYP Child Safe Organisations guidelines encourage all adults, staff, volunteers in organisations who know or suspect a child is being harmed in any way reports the abuse. Not restricted to sexual abuse. Not restricted to adult associated with the institution – reporting concerns about adult outside of an institution where it comes to the notice of staff in an institution. Also reporting of harm where the alleged offender is another young person. Know, suspect, or should have suspected (on the basis that a reasonable person in their circumstance would have suspected) is an important standard. Consideration needed regarding mature minors.

	iii. The knowledge gained or the suspicion that is or should have been formed relates to abuse that may have occurred within the previous 10 years. e. If the knowledge is gained or the suspicion is or should have been formed before the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply: i. A child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years) and is still associated with the institution (that is, they are still in the care, supervision or control of the institution). ii. The person who is known to have abused a child or is or should have been suspected of abusing a child is either: still associated with the institution known or believed to be associated with another relevant institution.	
Interaction with regulatory reporting		
34	State and territory governments should: a. ensure that they have systems in place in relation to their mandatory reporting scheme and any reportable conduct scheme to ensure that any reports made under those schemes that may involve child sexual abuse offences are brought to the attention of police b. include appropriate defences in the failure to report offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.	Supported.
Treatment of religious confessions		
35	Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows: a. The criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession. b. The legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective. Religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned.	Supported.
36	State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows: a. The offence should apply where:	Supported, as in 33.

	i. an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against: a child under 16 a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child ii. the person has the power or responsibility to reduce or remove the risk iii. the person negligently fails to reduce or remove the risk. b. The offence should not be able to be committed by individual foster carers or kinship carers. c. Relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included. d. State and territory governments should consider the Victorian offence in section 49C of the Crimes Act 1958 (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child. *Report states: A failure to protect offence focuses on preventing child sexual abuse rather than reporting abuse that has occurred to police.* *We consider that the offence should only be able to be committed by adults in the institution and not by children who are in leadership positions. Pg. 56*	
Principles for prosecution responses		
37	All Australian Directors of Public Prosecutions, with assistance from the relevant government in relation to funding, should ensure that prosecution responses to child sexual abuse are guided by the following principles: a. All prosecution staff who may have professional contact with victims of institutional child sexual abuse should be trained to have a basic understanding of the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and how it can affect people who are involved in a prosecution process, including those who may have difficulties dealing with institutions or person in positions of authority. b. While recognising the complexity of prosecution staffing and court timetables, prosecution agencies should recognise the benefit to victims and their families and survivors of continuity in prosecution team staffing and should take steps to facilitate, to the extent possible, continuity in staffing of the prosecution team involved in a prosecution.	a. Training to include understanding of children and young people and vulnerable people who are victims. b. Including child victims.

	c. Prosecution agencies should continue to recognise the importance to victims and their families and survivors of the prosecution agency maintaining regular communication with them to keep them informed of the status of the prosecution unless they have asked not to be kept informed. d. Witness Assistance Services should be funded and staffed to ensure that they can perform their task of keeping victims and their families and survivors informed and ensuring that they are put in contact with relevant support services, including staff trained to provide a culturally appropriate service for Aboriginal and Torres Strait Islander victims and survivors. Specialist services for children should also be considered. e. Particularly in relation to historical allegations of institutional child sexual abuse, prosecution staff who are involved in giving early charge advice or in prosecuting child sexual abuse matters should be trained to: i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant. f. Prosecution agencies should recognise that children with disability are at a significantly increased risk of abuse, including child sexual abuse. Prosecutors should take this increased risk into account in any decisions they make in relation to prosecuting child sexual abuse offences.	c. Including child victims. d. Regional and remote considerations for children and young people. e. Including children and young people with problems. f. Supported.
38	Each state and territory government should facilitate the development of standard material to provide to complainants or other witnesses in child sexual abuse trials to better inform them about giving evidence. The development of the standard material should be led by Directors of Public Prosecutions in consultation with Witness Assistance Services, public defenders (where available), legal aid services and representatives of the courts to ensure that it: a. is likely to be of adequate assistance for complainants who are not familiar with criminal trials and giving evidence b. is fair to the accused as well as to the prosecution c. does not risk rehearsing or coaching the witness.	Including materials for children and young people.
Charging and plea decisions		
39	All Australian Directors of Public Prosecutions should ensure that prosecution charging and plea decisions in prosecutions for child sexual abuse offences are guided by the following principles: a. Prosecutors should recognise the importance to complainants of the correct charges being laid as early as possible so that charges are not significantly downgraded or withdrawn at or close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought.	Supported, particularly d.

	b. Regardless of whether such advice has been sought, prosecutors should confirm the appropriateness of the charges as early as possible once they are allocated the prosecution to ensure that the correct charges have been laid and to minimise the risk that charges will have to be downgraded or withdrawn closer to the trial date. c. While recognising the benefit of securing guilty pleas, prosecution agencies should also recognise that it is important to complainants – and to the criminal justice system – that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse they suffered. d. Prosecutors must endeavour to ensure that they allow adequate time to consult the complainant and the police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance from relevant witness assistance officers or other advocacy and support services before they give their opinion on the proposal. If the complainant is a child, prosecutors must endeavour to ensure that they give the child the opportunity to consult their carer or parents unless the child does not wish to do so.	
40	Each Australian Director of Public Prosecutions should: a. have comprehensive written policies for decision-making and consultation with victims and police b. publish all policies online and ensure that they are publicly available c. provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.	Policies to be inclusive of children and young people.
41	Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.	Complaints to be child friendly and inclusive of their advocates.
42	Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.	Supported.
43	Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports.	Supported.
44	In order to ensure justice for complainants and the community, the laws governing the admissibility of tendency and coincidence evidence in prosecutions for child sexual abuse offences should be reformed to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials.	Supported.

45	Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible: a. if the court thinks that the evidence will, either by itself or having regard to the other evidence, be 'relevant to an important evidentiary issue' in the proceeding, with each of the following kinds of evidence defined to be 'relevant to an important evidentiary issue' in a child sexual offence proceeding: i. evidence that shows a propensity of the defendant to commit particular kinds of offences if the commission of an offence of the same or a similar kind is in issue in the proceeding ii. evidence that is relevant to any matter in issue in the proceeding if the matter concerns an act or state of mind of the defendant and is important in the context of the proceeding as a whole b. unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both: i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant ii. if there is a jury, the giving of appropriate directions to the jury about the relevance and use of the evidence will not remove the risk.	
46	Common law principles or rules that restrict the admission of propensity or similar fact evidence should be explicitly abolished or excluded in relation to the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution.	
47	Issues of concoction, collusion or contamination should not affect the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution. The court should determine admissibility on the assumption that the evidence will be accepted as credible and reliable, and the impact of any evidence of concoction, collusion or contamination should be left to the jury or other fact-finder.	
48	Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.	
49	Evidence of: a. the defendant's prior convictions b. acts for which the defendant has been charged but not convicted (other than acts for which the defendant has been acquitted) c. should be admissible as tendency or coincidence evidence if it otherwise satisfies the test for admissibility of tendency or coincidence evidence about a defendant in a child sexual offence prosecution.	

50	Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.	
51	The draft provisions in Appendix N provide for the recommended reforms for Uniform Evidence Act jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non–Uniform Evidence Act jurisdictions.	

Evidence of victims and survivors

Special measures, prerecording

52	State and territory governments should ensure that the necessary legislative provisions and physical resources are in place to allow for the prerecording of the entirety of a witness's evidence in child sexual abuse prosecutions. This should include both: a. in summary and indictable matters, the use of a prerecorded investigative interview as some or all of the witness's evidence in chief b. in matters tried on indictment, the availability of pre-trial hearings to record all of a witness's evidence, including cross-examination and re-examination, so that the evidence is taken in the absence of the jury and the witness need not participate in the trial itself.	For children and young people statewide.
53	Full prerecording should be made available for: a. all complainants in child sexual abuse prosecutions b. any other witnesses who are children or vulnerable adults c. any other prosecution witness that the prosecution considers necessary.	For children and young people statewide.
54	Where the prerecording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.	For children and young people statewide.
55	State and territory governments should work with courts to improve the technical quality of closed circuit television and audiovisual links and the equipment used and staff training in taking and replaying prerecorded and remote evidence.	For children and young people statewide.

Recording

56	State and territory governments should introduce legislation to require the audiovisual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness's evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a prerecorded hearing.	For children and young people statewide.

57	State and territory governments should ensure that the courts are adequately resourced to provide this facility, in terms of both the initial recording and its use in any subsequent trial or retrial	For children and young people statewide.
58	If it is not practical to record evidence given live in court in a way that is suitable for use in any subsequent trial or retrial, prosecution guidelines should require that the fact that a witness may be required to give evidence again in the event of a retrial be discussed with witnesses when they make any choice as to whether to give evidence via prerecording, closed circuit television or in person.	For children and young people statewide.
Intermediaries		
59	State and territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution. Governments should ensure that the scheme: a. requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses b. provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial c. makes intermediaries available at both the police interview stage and trial stage d. enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.	For children and young people statewide.
60	State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a prerecorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.	For children and young people statewide.
Other special measures		
61	The following special measures should be available in child sexual abuse prosecutions for complainants, vulnerable witnesses and other prosecution witnesses where the prosecution considers it necessary: a. giving evidence via closed circuit television or audiovisual link so that the witness is able to give evidence from a room away from the courtroom b. allowing the witness to be supported when giving evidence, whether in the courtroom or remotely, including, for example, through the presence of a support person or a	For children and young people statewide.

	support animal or by otherwise creating a more child-friendly environment c. if the witness is giving evidence in court, using screens, partitions or one-way glass so that the witness cannot see the accused while giving evidence d. clearing the public gallery of a courtroom during the witness's evidence e. the judge and counsel removing their wigs and gowns.	
Courtroom issues		
62	State and territory governments should introduce legislation to allow a child's competency to give evidence in child sexual abuse prosecutions to be tested as follows: a. Where there is any doubt about a child's competence to give evidence, a judge should establish the child's ability to understand basic questions asked of them by asking simple, non-theoretical questions – for example, about their age, school, family et cetera. b. Where it does not appear that the child can give sworn evidence, the judge should simply ask the witness for a promise to tell the truth and allow the examination of the witness to proceed.	For children and young people statewide.
Use of interpreters		
63	State and territory governments should provide adequate interpreting services such that any witness in a child sexual abuse prosecution who needs an interpreter is entitled to an interpreter who has sufficient expertise in their primary language, including sign language, to provide an accurate and impartial translation.	For children and young people statewide.
Judicial directions and informing juries		
Reforming judicial directions		
64	State and territory governments should consider or reconsider the desirability of partial codification of judicial directions now that Victoria has established a precedent from which other jurisdictions could develop their own reforms.	Supported.
65	Each state and territory government should review its legislation and introduce any amending legislation necessary to ensure that it has the following provisions in relation to judicial directions and warnings: a. **Delay and credibility**: Legislation should provide that: i. there is no requirement for a direction or warning that delay affects the complainant's credibility ii. the judge must not direct, warn or suggest to the jury that delay affects the complainant's credibility unless the direction, warning or suggestion is requested by the accused and is warranted on the evidence in the particular circumstances of the trial	Supported particularly d.

	iii. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'. b. **Delay and forensic disadvantage**: Legislation should provide that: i. there is no requirement for a direction or warning as to forensic disadvantage to the accused ii. the judge must not direct, warn or suggest to the jury that delay has caused forensic disadvantage to the accused unless the direction, warning or suggestion is requested by the accused and there is evidence that the accused has suffered significant forensic disadvantage iii. the mere fact of delay is not sufficient to establish forensic disadvantage iv. in giving any direction, warning or comment, the judge should inform the jury of the nature of the forensic disadvantage suffered by the accused v. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'. c. **Uncorroborated evidence**: Legislation should provide that the judge must not direct, warn or suggest to the jury that it is 'dangerous or unsafe to convict' on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be 'scrutinised with great care'. d. **Children's evidence**: Legislation should provide that: i. the judge must not direct, warn or suggest to the jury that children as a class are unreliable witnesses ii. the judge must not direct, warn or suggest to the jury that it would be 'dangerous or unsafe to convict' on the uncorroborated evidence of a child or that the uncorroborated evidence of a child should be 'scrutinised with great care' iii. the judge must not give a direction or warning about, or comment on, the reliability of a child's evidence solely on account of the age of the child.	
66	The New South Wales Government, the Queensland Government and the government of any other state or territory in which Markuleski directions are required should consider introducing legislation to abolish any requirement for such directions.	
Improving information for judges and legal professionals		
67	State and territory governments should support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.	Including children and young people as victims.
68	Relevant Australian governments should ensure that bodies such as:	

	a. the Australasian Institute of Judicial Administration b. the National Judicial College of Australia c. the Judicial Commission of New South Wales d. the Judicial College of Victoria are adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.	
Improving information for jurors		
69	In any state or territory where provisions such as those in sections 79(2) and 108C of the Uniform Evidence Act or their equivalent are not available, the relevant government should introduce legislation to allow for expert evidence in relation to the development and behaviour of children generally and the development and behaviour of children who have been victims of child sexual abuse offences.	Supported.
70	Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given. The National Child Sexual Assault Reform Committee's (2010) recommended mandatory judicial directions and the Victorian Government's proposed directions on inconsistencies in the complainant's account should be the starting point for the consultation process, subject to the removal of the limitation in the third direction recommended by the National Child Sexual Assault Reform Committee in relation to children's responses to sexual abuse so that it can apply regardless of the complainant's age at trial.	Supported. What has happened in WA since 2010 recommendations?
71	In advance of any more general codification of judicial directions, each state and territory government should work with the judiciary to identify whether any legislation is required to permit trial judges to assist juries by giving relevant directions earlier in the trial or to otherwise assist juries by providing them with more information about the issues in the trial. If legislation is required, state and territory governments should introduce the necessary legislation.	Supported.
Delays and case management		
72	Each state and territory government should work with its courts, prosecution, legal aid and policing agencies to ensure that delays are reduced and kept to a minimum in prosecutions for child sexual abuse offences, including through measures to encourage: a. the early allocation of prosecutors and defence counsel b. the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions	Including for children and young people statewide.

	c. appropriate early guilty pleas d. case management and the determination of preliminary issues before trial.	
73	In those states and territories that have a qualified privilege in relation to sexual assault communications, the relevant state or territory government should work with its courts, prosecution and legal aid agencies to implement any necessary procedural or case management reforms to ensure that complainants are effectively able to claim the privilege without risking delaying the trial.	Including for children and young people statewide.

Sentencing

Excluding good character as a mitigating factor

74	All state and territory governments (other than New South Wales and South Australia) should introduce legislation to provide that good character be excluded as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending, similar to that applying in New South Wales and South Australia.	Supported.

Cumulative and concurrent sentencing

75	State and territory governments should introduce legislation to require sentencing courts, when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or where there are multiple victims, to indicate the sentence that would have been imposed for each offence had separate sentences been imposed.	Supported.

Sentencing standards in historical cases

76	State and territory governments should introduce legislation to provide that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, but the sentence must be limited to the maximum sentence available for the offence at the date when the offence was committed.	Supported.

Victim impact statements

77	State and territory governments, in consultation with their respective Directors of Public Prosecutions, should improve the information provided to victims and survivors of child sexual abuse offences to: a. give them a better understanding of the role of the victim impact statement in the sentencing process b. better prepare them for making a victim impact statement, including in relation to understanding the sort of content that may result in objection being taken to the statement or parts of it.	Information and preparation for children and young people in language they can understand.

78	State and territory governments should ensure that, as far as reasonably practicable, special measures to assist victims of child sexual abuse offences to give evidence in prosecutions are available for victims when they give a victim impact statement, if they wish to use them.	Including children and young people statewide.
Appeals		
79	State and territory governments should introduce legislation, where necessary, to expand the Director of Public Prosecution's right to bring an interlocutory appeal in prosecutions involving child sexual abuse offences so that the appeal right: a. applies to pre-trial judgments or orders and decisions or rulings on the admissibility of evidence, but only if the decision or ruling eliminates or substantially weakens the prosecution's case b. is not subject to a requirement for leave c. extends to 'no case' rulings at trial.	
80	State and territory governments should work with their appellate court and the Director of Public Prosecutions to ensure that the court is sufficiently well resourced to hear and determine interlocutory appeals in prosecutions involving child sexual abuse offences in a timely manner.	
81	Directors of Public Prosecutions should amend their prosecution guidelines, where necessary, in relation to the decision as to whether there should be a retrial following a successful conviction appeal in child sexual abuse prosecutions. The guidelines should require that the prosecution consult the complainant and relevant police officer before the Director of Public Prosecutions decides whether to retry a matter.	Including children and young people statewide.
82	State and territory governments should ensure that a relevant government agency, such as the Office of the Director of Public Prosecutions, is monitoring the number, type and success rate of appeals in child sexual abuse prosecutions and the issues raised to: a. identify areas of the law in need of reform b. ensure any reforms – including reforms arising from the Royal Commission's recommendations in relation to criminal justice, if implemented – are working as intended.	Supported. Consistent with current WA process.
83	State and territory governments (other than the Northern Territory) should give further consideration to whether the abolition of the presumption that a male under the age of 14 years is incapable of having sexual intercourse should be given retrospective effect and whether any immunity which has arisen as a result of the operation of the presumption should be abolished. State and territory governments (other than the Northern Territory) should introduce any legislation they consider necessary as a result of this consideration.	Supported. Consistent with WA current position.
84	State and territory governments should review their legislation – and if necessary introduce amending legislation – to ensure	Supported.

	that complainants in child sexual abuse prosecutions do not have to give evidence on any additional occasion in circumstances where the accused, or one of two or more co-accused, is a juvenile at the time of prosecution or was a juvenile at the time of the offence.	Consistent with current WA current practice statewide.
Criminal justice and regulatory responses		
85	State and territory governments should keep the interaction of: a. their legislation relevant to regulatory responses to institutional child sexual abuse b. their crimes legislation and the crimes legislation of all other Australian jurisdictions, particularly in relation to child sexual abuse offences and sex offender registration under regular review to ensure that their regulatory responses work together effectively with their relevant crimes legislation and the relevant crimes legislation of all other Australian jurisdictions in the interests of responding effectively to institutional child sexual abuse	Supported.
Other report issues with no specific recommendations but of interest to CCYP		
	Offences by institutions (No specific recommendation made – report states pg. 57) "In the course of this Royal Commission, we have identified many shortcomings in the policies and procedures of institutions and in their implementation. Some of these shortcomings have continued for years, and some have either facilitated or contributed to the failure to prevent the sexual abuse of children. In spite of this, we are satisfied that we should not recommend the introduction of criminal offences targeted at institutions. We consider that the primary effort of governments and institutions at this time should be to develop and improve regulatory standards and practices and oversight mechanisms. We are not satisfied that the introduction at this stage of one or more criminal offences targeting institutions will assist governments, regulatory and oversight agencies or institutions to implement these significant changes. We are also not satisfied that the regulatory expertise currently exists, at least in respect of some types of institutions, to identify systemic failures, exercise appropriate discretion in relation to prosecutions, or design and oversee the implementation of appropriate sanctions. We will address these issues in detail in our final report"	CCYP has developed Child Safe Organisations Guidelines and are interested in WA government considerations to develop and improve regulatory standards and practices and oversight mechanisms.
	Post sentencing issues (No specific recommendation) pg. 106, 107 We held a public roundtable on adult sex offender treatment programs. Based on what we have heard, including the views of experts canvassed at our public roundtable, we are satisfied that there is not sufficient evidence to demonstrate that the completion of a sex offender treatment program should entitle	CCYP interested in how WA Government plans to review these schemes.

	an offender to be eligible to apply for a role working with children. Extended supervision and detention orders are used in relatively few cases to manage those sex offenders who continue to pose a risk beyond the term of their sentence. Given the limited use of such orders, we do not consider that there is sufficient evidence to justify making a recommendation on their broader adoption. We encourage all state and territory governments to consider their regimes for managing serious sex offenders beyond their imprisonment, including the use of the most accurate risk prediction methodologies available. We encourage state and territory governments to continue to review their sex offender registration and WWCC schemes to ensure that all registered sex offenders are prohibited from working or applying to work in child-related employment.	
	Juvenile offenders pg. 108 The criminal justice system will only respond to child-to-child sexual abuse if the child perpetrating the abuse is old enough to be held criminally responsible for their actions. Children under 10 cannot be charged or prosecuted. For children from the age of 10 until they turn 14, the prosecution bears the burden of proving that they should be held criminally responsible for their actions. The issue of what should be the minimum age for criminal responsibility has been the subject of debate over a number of years within the legal profession, and it has been considered by various law reform commissions. The issue arises generally across all categories of crime and extends considerably beyond our Terms of Reference. We have not heard evidence or received submissions to the effect that children aged under 12 are being inappropriately caught in the criminal justice system in relation to conduct involving institutional child sexual abuse. We do not see that raising the age of criminal responsibility would contribute to the prevention of child sexual abuse in an institutional context.	CCYP interested in any issues in WA with regard to this.
	Harmful sexual behaviours pg. 108 Noted in Chapter 37 the Royal Commission has a separate project re harmful sexual behaviours of children and young people and considerations will be contained in the final report including treatment for these children and young people.	CCYP currently leading a project in WA on children and young people with harmful sexual behaviours.
	Juvenile offenders pg. 111 Report also notes (but no specific recommendations) 'State and territory governments may wish to keep under consideration from time to time the adequacy and appropriateness of the coverage of their child sex offender registration schemes in relation to juveniles.'	CCYP interested in how WA Government plans to review adequacy of this coverage.
	Regulatory responses pg. 112 Report notes "It is unrealistic to expect that all true allegations of institutional child sexual abuse will result in a criminal conviction of the accused, even if the criminal justice system is	CCYP interested in how WA Government plans to review regulatory responses post final Royal Commission report recommendations.

	reformed to achieve the objectives we identified in recommendation 1." "Where the criminal justice response does not result in a conviction, regulators cannot afford to assume that no regulatory response is required. Equally, institutions cannot assume that the absence of a conviction means that there is no risk for the institution to address." There is no inherent inconsistency in a person who has been acquitted of a crime nevertheless facing a regulatory response if the available evidence supports a regulatory response. We will discuss and make recommendations in relation to regulatory and institutional responses to institutional child sexual abuse in our final report. pg. 113.	