

Response to Issues Paper 8
Experiences of Police and
Prosecution Responses

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VICTIM
SUPPORT
SERVICE
INCORPORATED

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Introduction

The vision of Victim Support Service (“VSS”) is that *all* victims of crime (“victims”) in South Australia receive the support *they* need. We do this by providing a bespoke response to each victim, combining therapeutic expertise with knowledge of the criminal justice system to help victims both emotionally and practically. Our approach is augmented by a team of volunteers through the court process.

VSS is a statewide non-government community service organisation which provides free support, counselling and information services for adult crime victims, and advocates for victims’ rights and community safety. We provide nearly 30,000 responses to victims each year, of which nearly 3,000 are new referrals.

The organisation has been working with and for victims in South Australia since 1979. We deliver programs that focus on victim engagement and evidence-based practice in areas such as trauma, crime prevention, homicide, domestic violence and child sexual abuse. To do so, we partner with government, non-government organisations, the wider community, and all agencies of the criminal justice system.

VSS provides a range of services including:

Practical Assistance <ul style="list-style-type: none"> • Assistance with claims for victim compensation • Supporting victims through the court process • Assistance with Victim Impact Statements • Advocating for victims’ rights 	Information <ul style="list-style-type: none"> • Statewide Victim Helpline (1800-VICTIM) • Statewide network of victim service centres • Victimology Resource Centre • Community education and training programs
Therapeutic Interventions <ul style="list-style-type: none"> • Free counselling for victims of crime • Specialist support for co-victims of homicide • Royal Commission Support Services 	Domestic and Family Violence <ul style="list-style-type: none"> • Staying Home, Staying Safe (SHSS) • Statewide administration of Family Safety Framework meetings

VSS is governed by a voluntary Board of Management drawn from a diverse range of professional backgrounds including law, police, counselling, accounting, business, government and human services. The Board also retains a link with crime victims by retaining at least one crime victim/survivor as a Director.

VSS employs a team of staff drawn from the fields of psychology, social work and counselling deployed from one Adelaide office and seven country offices in South Australia. We provide a comprehensive range of practical and therapeutic services to all adult and older adolescents that have experienced crime, including information about a range of issues including victims of crime compensation, court support, training, counselling, brief intervention and assistance with preparation of Victim Impact Statements. This includes services for individual crime victims, their families, friends and the wider community. A victim does not need to have reported a crime to

access VSS services, and victims can contact VSS at any time after the crime – whether it was yesterday, last week or many years ago.

VSS also advocates on behalf of individual clients, and for systemic changes to improve how the criminal justice and the health/welfare systems treat victims of crime.

VSS staff provide consultancy, training and information to other professionals who work with crime victims. Additionally, we deploy a team of trained volunteers to provide:

- court preparation and companionship for victims or prosecution witnesses who attend court;
- community education talks;
- information resources for victims and other professionals.

VSS is primarily funded by the South Australian Attorney-General from the Victims of Crime Fund. In addition, VSS has been funded by:

- The Australian Government's Department of Social Services (DSS) to provide support and counselling services to individuals engaging with, or impacted by, the Royal Commission into Institutional Responses to Child Sexual Abuse;
- The South Australian Office for Women to provide administrative support for the statewide Family Safety Framework initiative;
- The South Australian Department for Communities and Social Inclusion (DCSI) to improve home security and safety for women who are at risk of homelessness as a result of family and domestic violence.

As the specialist victims of crime service in South Australia, and as a DSS funded service to support individuals wishing to engage in the Royal Commission, VSS has supported many survivors of institutional child sexual abuse over many years, as such we have a well-developed and thorough understanding of how the processes and outcomes are experienced by individuals.

VSS appreciates the opportunity to comment on Issues Paper 8, Experiences of Police and Prosecution Responses.

Executive Summary

VSS would like to commend the level of consultation, detail and thought that is clearly evident in the Royal Commission's work so far. We would like to use this opportunity to highlight potential areas for reform that we believe are particularly relevant to the experiences of survivors and their ongoing recovery.

VSS would like to begin by commending the substantial work undertaken in the area of victims' rights in South Australia to date.

We commend South Australian government's proactive approach to vulnerable witnesses, with the Statutes Amendment (Vulnerable Witnesses) Bill 2015 and the Disability Justice Plan as a whole. Further, we applaud the State's Royal Commission into Child Protection Services, and the government's initiative into Transforming Criminal Justice.

VSS commends the Memorandums of Understanding between itself and South Australian Police (SAPOL) and the SA Office of the Director of Public Prosecution (ODPP), and hopes the partnerships continue to grow and flourish in recognition of the needs of victims and the unique position of VSS to assist. We strongly support the ODPP for their continued support and provision of the Witness Assistance Service, despite funding pressures.

We emphasise the consistent need for complex trauma informed service providers, who will be adequately trained to deal with the challenges faced by survivors in an appropriate manner. We draw particular attention to the ongoing nature of complex trauma and sexual abuse recovery, and as such recommend that training for police and prosecution staff is significantly upgraded to include complex trauma training, with particular regard to the unique challenges presented by sexual abuse and institutional abuse.

Survivors' health, safety and access must be a paramount concern in any police or prosecution process, and therefore VSS recommends that barriers to reporting and proceeding with charges are kept to a minimum. In acknowledgement of the significant challenges sexual abuse carries every effort should be made to encompass as many potential claimants as possible to ensure justice.

VSS recommends that continued effort and training is put into understanding not only sexual abuse, but the peculiarities of institutional abuse. The historical attitudes and limitations on victims, though largely removed in law, still linger in the systems that are in place to address them, particularly around historical offences.

VSS notes further that significant barriers continue to exist in the law regarding the evidence of child victims and that reform is required into the manner in which evidence is gathered and scrutinized.

VSS will explore these issues in more detail in our submission.

Recommendations

VSS recommends that:

Recommendation 1

That the recommendations of the Mullighan Inquiry into Children in State Care be implemented in full, with the exception of Recommendation 43 (in accordance with the concerns noted in the Fifth Annual Progress Report).

Recommendation 2

Regular training is provided to all police officers in responding to adult rape and sexual assault, child sexual abuse, adult survivors of child sexual abuse and in institutional life and abuse.

Recommendation 3

Complex trauma, sexual assault and institutional abuse training is introduced for all police, prosecutions staff, the judiciary, court staff and any other workers likely to come into contact with survivors during the process.

Recommendation 4

Each major police station has at least one unsworn qualified social worker, who will be present during any report or interview with a victim, providing support for the victim.

Recommendation 5

Regular training reinforces that all abuse, regardless of the time period when it occurred is to be treated with equal gravity and investigatory vigour.

Recommendation 6

The Witness Assistance Service in the Office of the Director of Public Prosecutions be mandated to exist by law and have greater resources allocated to them.

Recommendation 7

There is early allocation of prosecutors so that a relationship can be formed between the victim and the prosecutor to improve victim experience.

Recommendation 8

That the law is reformed to remove delineation in the weighting of sworn and unsworn matters involving children or cognitively impaired witnesses.

Recommendation 9

That s12A(1)(b) of the Evidence Act 1929 SA is repealed.

Recommendation 10

That there is reform of the procedure for children giving evidence in sexual matters in accordance with the recommendation of Dr Elspeth McInnes AM.

Recommendation 11

That ample time is given to victims to prepare a Victim Impact Statement, with funding allocated for independent services to assist them.

Recommendation 12

That the option to deliver a pre-recorded video Victim impact Statement is implemented in Australian proceedings.

Recommendation 13

That prosecutors consult with victims on sentencing requests, with the legal reasons for the requested sentence, and the opportunity for victim input.

Detailed Response

Background

1. In 2008 Commission of Inquiry Report (Children in State Care) was delivered by the Hon E.P. Mullighan QC (hereafter Mullighan Report). His report details some 54 recommendations for reform.
2. VSS is pleased to note that the vast majority of these recommendations have been carried out by the government.
3. We note that there are outstanding recommendations with regards to the implementation of the Mullighan report, and we recommend that the government completes the implementation of these matters as quickly as possible.
4. We recommend that those recommendations rejected by the government are revisited with a view to implementing the remaining recommendations, with the exception of Recommendation 43. VSS notes the concerns raised in implementing this particular recommendation as raised in the Fifth Annual Progress Report (https://www.sa.gov.au/data/assets/pdf_file/0016/26116/Fifth-annual-progress-report-Mullighan-Inquiry.pdf).

Recommendation 1

That the recommendations of the Mullighan Inquiry into Children in State Care be implemented in full, with the exception of Recommendation 43 (in accordance with the concerns noted in the Fifth Annual Progress Report).

Police Response

5. Sexual abuse carries particular trauma, and institutional abuse is another specific trauma again. To this end, police must be skilled in complex trauma.
6. The processes for reporting a crime involve going to a local police station, rather than a specialised sexual crimes unit, which means that victims are often reporting to people ill-trained to deal with the peculiarities of their situation and the traumas associated with it in a sensitive and appropriate manner, while still garnering the necessary information.
7. VSS believes that police officers require training not only in responding to adult rape and sexual assault, but also in responding to child victims of sexual abuse, adult survivors of child sexual abuse and in the impact of institutional life and abuse. It is the recommendation of VSS that all police officers are provided with this training not only those attached to specialised sexual crime units.
8. In addition to the recommendation that more police officers undergo training, a more general training course in complex trauma and issues associated should be undertaken by all police officers, prosecutorial staff, court workers and other workers likely to come into contact with victims.
9. Lack of training and inexperience has been identified in the Royal Commission's Interim Report Volume 1 as a key area that affects outcomes for victims in the police process (178). As such, VSS recommends an increase in the level of training into trauma, sexual abuse and institutional abuse for police officers.
10. VSS notes that often victims have expressed fear regarding making a disclosure of child sexual abuse and whether they will be believed. As reported by one victim in the Interim Report

- Volume 1, the police sergeant screamed at the victim they could not be telling the truth (177).
11. It is a reality of police work that police officers must question elements of a victim's story in order to best assist an investigation. An unfortunate consequence of this is it may exacerbate feelings in a victim of not being believed.
 12. As such, VSS recommends that every police station has on staff an unsworn officer with high level training in complex trauma, be they a social worker, counsellor, psychologist etc. (Hereafter referred to as unsworn social worker).
 13. The unsworn social worker would act as a support person for a victim making a report, guiding the interview in a complex-trauma informed manner and providing the victim with someone to support them, who has no need to question their story.
 14. This move would have wide reaching benefits, beyond victims of sexual and institutional abuse.
 15. VSS notes that many victims have reported that police attitudes to historical abuse is that it is hopeless or irrelevant, recalling the former existence of the statute of limitations.
 16. VSS recommends that regular training reinforces that all abuse, regardless of the time period when it occurred is to be treated with equal gravity and investigatory vigour, encouraging a culture of respect for all victims.

Recommendation 2

Regular training is provided to all police officers in responding to adult rape and sexual assault, child sexual abuse, adult survivors of child sexual abuse and in institutional life and abuse.

Recommendation 3

Complex trauma, sexual assault and institutional abuse training is introduced for all police, prosecutions staff, the judiciary, court staff and any other workers likely to come into contact with survivors during the process.

Recommendation 4

Each major police station has at least one unsworn qualified social worker, who will be present during any report or interview with a victim, providing support for the victim.

Recommendation 5

Regular training reinforces that all abuse, regardless of the time period when it occurred is to be treated with equal gravity and investigatory vigour.

Prosecutorial Response

17. VSS notes and commends the dedication of the South Australian Director of Public Prosecutions, Adam Kimber SC, for his dedication to the Witness Assistance Service (WAS) despite funding pressures.
18. VSS would like to commend the WAS service, which we believe is an integral part of bringing victims into the process and supporting them to be more than a mere witness.
19. We note that WAS is a service provided voluntarily by the ODPP, and not an obligation. However, with the core of justice for victims in mind, VSS recommends that WAS units are mandated to exist by statute, and that greater resources are allocated to allow them more

attention for individual cases.

20. Whilst the primary role of prosecutions may be the ability to secure a conviction, the role of justice for victims should be given more weight – legal proceedings should be an avenue of healing, closure and justice for a victim, regardless of the legal outcome. What absolutely should not happen, but sadly happens all too often, is the victim is retraumatised through the court processes.
21. Dr Caroline S Taylor details in her book *Surviving the Legal System* the ways in which the popular image of a victim's day in court can often be a harrowing, horrifically traumatic experience for a victim, due to the many legal complexities, defence tactics, and minutiae that are part and parcel to the legal system, but not designed with victim's wellbeing in mind.
22. However, it is important to note that many victims report that, regardless of outcome, going to court and following a complaint through has assisted their healing.
23. Prosecutions obviously cannot remedy all issues victims face in the court process, however, the procedures in place can go some way to mitigating and avoiding retraumatisation.
24. Victims have often reported that the first time they meet the prosecutor can be the day before they give evidence for a proofing, or in some cases particularly in regional courts, the day they give evidence.
25. This does not allow a victim to develop a relationship and trust with the prosecutor. A relationship between victim and prosecutor is beneficial to both the victim and the prosecutor, as trust from victim to prosecutor will make them a better witness for the matter, and will also improve victim experience.
26. VSS notes that the current situation is often due to late allocation of prosecutors brought on by lack of available resources. It is therefore our recommendation that greater resources and funding be allocated with the specific aim of early allocation of prosecutors, so the victim can meet the prosecutor handling the matter as early as possible, and develop a rapport and trust between them.

Recommendation 6

That the Witness Assistance Service in the Office of the Director of Public Prosecutions be mandated to exist by law and have greater resources allocated to them.

Recommendation 7

That there is early allocation of prosecutors so that a relationship can be formed between the victim and the prosecutor to improve victim experience.

Law Reform

27. However, it is not merely prosecutorial processes that are inadequate for victims – it is often the law itself that persecutes victims unfairly.
28. VSS commends the strides South Australia has taken legally to protect vulnerable witnesses – with reform regarding vulnerable witnesses, cognitively impaired witnesses and the Disability Justice Action Plan being implemented.
29. However, we note that there are still considerable barriers to victim's voices being heard in the courts.
30. The laws regarding competency of witnesses, particularly child witnesses, mean that children of a certain age are unable to give sworn evidence. Unsworn evidence is treated with greater scrutiny than sworn evidence.
31. VSS strongly recommends that the laws regarding competency are reformed. The current

system entrenches the unfair and damaging stereotype that children and the cognitively impaired are liars and not to be believed.

32. Further, from a practical standpoint, prosecutions go ahead partially on the judgement of the prosecutor as to the prospects of conviction. The competency requirements mean that in practice where there is no compelling physical evidence, such as DNA, victims under a certain age, or with cognitive impairments, are never given the opportunity to have their matters heard in court or give evidence.
33. This denies victims their right to justice and is contrary to the very essence and purpose of the law.
34. To that end, VSS recommends that the delineation in the weighting of sworn and unsworn evidence is removed in matters involving children or cognitively impaired witnesses, and that both forms of evidence be given equal weighting in these matters.
35. VSS also notes that section 12A(1)(b) of the *Evidence Act 1929* (SA) allows a party to request that a warning be given to juries that it is unsafe to convict on uncorroborated evidence of children.
36. Although section 12A(2) requires that this warning not make any intimation that evidence of children is less reliable than that of adults, the practical reality of this warning is that that is its purpose and effect on juries – to intimate that children are not to be believed.
37. In order to achieve justice, the ability of the party to request such a warning should be removed, and the warning only given on the grounds expressed in section 12A(1)(a):
“the warning is warranted because there are, in the circumstances of the particular case, cogent reasons, apart from the fact that the witness is a child, to doubt the reliability of the child's evidence”
As such, VSS recommends that section 12A(1)(b) be repealed.
38. VSS notes that the environment of a courtroom is intimidating and frightening for victims of sexual assault in general, and that this is enhanced when the victim is a child or cognitively impaired.
39. Dr Elspeth McInnes AM of the University of South Australia has advocated for a change in the manner that evidence of children is procured and given in sexual assault trials.
40. Dr McInnes’ proposed model is quoted below:
Accountability for criminal acts is the responsibility of adults, yet children who experience the crime of sexual abuse have a key role in bringing their abuser to justice, often at the cost of their recovery through exposure to having to recall the events in detail, having to withstand aggressive cross-examination and delay in access to therapy. This approach aims to swiftly collect evidence from child victims in the least traumatic manner possible, and discharge them to recovery and therapy and let the court process do its work.
Investigations of child sexual abuse (CSA) ought to be undertaken by a dedicated team of evidence gatherers. These evidence gatherers need to be trained in communicating with children and in forensic identification of CSA. This training should be advanced with a degree in social work, child psychology, and extensive experience working with children. The environment in which evidence is collected should be:
 1. Non-threatening for a child – for example, have toys, colouring equipment etc.
 2. Have audio visual recording capacity.
 3. Have capacity for police officers, lawyers and other parties to view the interview or evidence gathering in a non-threatening manner, such as through a two-way mirror.The child complainant would then be invited to tell everything that has happened to the trained investigator which is audio-visually recorded. Police officers, investigators, and other interested parties such as prosecutors would

be able to put questions forward that the child would be asked by the CSA child interviewers.

If the child names a perpetrator, an identification process would take place whereby the child is exposed to images which include a likeness of the perpetrator. The child identifies the alleged perpetrator.

Follow up interviews may be conducted with the child with the same parameters.

At the point of going to court, the prosecutor and defence counsel would conduct the examination in chief and cross examination in a similar manner.

A judge, the prosecutor and the defence counsel observing the interview conducted by the child interviewer, where the prosecution would be able to put their questions to the child through the interviewer, then the defence counsel would be able to do the same.

The video recording of this evidence would then be played in court for the jury. This allows for all the regular legal conventions – the ability of a judge to intervene on a line of questioning, objections etc – but confines these to the law, removing the child from the court situation which can be stressful, traumatic and hamper the child’s recovery.

All CSA cases ought to be given priority in the courts, in order to decrease the length of time children are subjected to the legal process to the shortest possible amount.

41. It is the recommendation of VSS that Dr McInnes’ model be implemented in cases involving child victims.

Recommendation 8

That the law is reformed to remove delineation in the weighting of sworn and unsworn matters involving children or cognitively impaired witnesses

Recommendation 9

That s12A(1)(b) of the Evidence Act 1929 SA is repealed.

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Sentencing

42. VSS is proud to note that South Australia was the first Australian state to introduce Victim Impact Statements (VIS) in 1988.
43. VIS are a core part of healing for many victims, and for institutional abuse victims – for whom the average length of time between the crime and disclosure is 22 years (Interim Report Volume 1, 158). As such, the VIS represents a hugely cathartic and healing document for many institutional victims, being able to tell not only what happened to them, but the impact the crime/s have had in their lives.
44. VSS notes, however, that the preparation of a VIS can be incredibly stressful and difficult. To sum up the effects of child sexual abuse is not easy to do in a simple document, particularly with the barriers to what can be included.
45. VSS understands that there must be some legal barriers to what can and cannot be included in

- a VIS, but recommends that more information about why certain things may not be included is provided to victims in plain English.
46. Further, VSS would like to emphasise the time and support that it takes to prepare a VIS, and the need for funding for specific independent services, such as VSS, to assist and support a victim through the process.
 47. VSS notes that a courtroom is a stressful environment for many victims, but the presentation of a VIS is vital for many of them to feel as though their voice is heard. Currently, VIS may be read by the victim themselves, or they may have a nominated party read them in court.
 48. VSS recommends that this is amended to allow for the opportunity for a victim to read their VIS in a pre-recorded video statement that is then presented to the court, where the victim has the right to be present or not. This would afford victims the right to tell their story in their own voice, even if they find themselves unable to read it in court.
 49. VSS would like to emphasise that throughout the entire process a victim should be treated as more than a mere witness – justice for them is the reason any of these proceedings are carried out.
 50. To that end, VSS recommends that prosecutors consult with victims about the sentence the prosecutor will seek. Prosecutors ought to explain to the victim why they are seeking that specific sentence, with reasoning given in plain English, and the opportunity for the victim to present their views on what the requested sentence ought to be to the prosecutor.
 51. VSS emphasises that the entire process of legal justice from first disclosure to post sentencing needs to be done not only with legal technicality in mind, but with the rights of the victim, and their experiences at the forefront of everyone’s mind, from the police officer at the front counter, to the courtroom bailiff.

Recommendation 12

That ample time is given to victims to prepare a Victim Impact Statement, with funding allocated for independent services to assist them.

Recommendation 13

That the option to deliver a pre-recorded video Victim Impact Statement is implemented in Australian proceedings.

Recommendation 14

That prosecutors consult with victims on sentencing requests, with the legal reasons for the requested sentence, and the opportunity for victim input.