Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings

Who was looking after me? Prioritising the safety of Tasmanian children

Volume 7: The justice system and victim-survivors

August 2023

Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings Report

Volume 7
The justice system and victim-survivors

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Introduction to Volume 7

In this volume—Volume 7—we look specifically at the role the criminal and civil justice systems, including redress schemes, play in responding to child sexual abuse. We examine how these systems might better serve victim-survivors of child sexual abuse in government institutions. The two chapters in this volume discuss the criminal and civil systems in turn. We note that while the former is focused on holding individual perpetrators to account and the latter has a broader focus on institutional accountability, they are not mutually exclusive options for victim-survivors seeking recourse for child sexual abuse.

In Chapter 16, we consider recent reforms to criminal justice responses to child sexual abuse in institutional settings and what further reforms are needed. While the criminal justice system is an important mechanism for holding perpetrators of child sexual abuse to account, it is an adversarial system. It is not always equipped to respond to the complex and sensitive issues that arise for victim-survivors of child sexual abuse. However, there are many ways the system's limitations can be alleviated. For this reason, we make recommendations directed at:

- police specialisation
- training and professional development for the Office of the Director of Public Prosecutions
- improving the law (noting significant and welcome change has already been achieved)
- improving rules of evidence and court procedures
- improved monitoring of the performance of the justice system in relation to child sexual abuse.

In Chapter 17, we assess the effectiveness of the three main pathways available in Tasmania to victim-survivors seeking recompense from the State for the sexual abuse they suffered as children. These pathways are the National Redress Scheme, civil litigation and victims of crime compensation. Relevant to our assessment of these pathways is a consideration of the accessibility of information and records the Government and its institutions hold. In this chapter, we also consider the importance to victim-survivors of receiving a personal apology for the sexual abuse perpetrated against them in government institutions. We make recommendations to ensure:

- redress options are available to victim-survivors into the future
- Government lawyers take a trauma-informed approach to managing settlement processes in child sexual abuse cases

- victim-survivors of child sexual abuse in institutional contexts can access their records
- rights for victim-survivors of child sexual abuse are increased under the *Victims of Crime Assistance Act 1976*
- victim-survivors receive an apology from the Government if they request one.

16 Criminal justice responses

A note on language

In other chapters of our report, we generally use the terms victim-survivor and perpetrator or abuser. However, in this chapter, we also use the terms complainant, accused person, alleged offender and offender because they have particular meanings in the criminal justice system. A reference to victim-survivors is a reference to child and adult victim-survivors, unless otherwise specified.

We use the terms Director of Public Prosecutions ('DPP') and Office of the Director of Public Prosecutions ('ODPP') to distinguish between the individual officeholder and the office.

We also use the terms 'police officer' when referring to a 'sworn' police officer and 'member' or 'members' to capture police officers as well as staff who work for police but are not police officers.

1 Introduction

This chapter focuses on criminal justice responses to child sexual abuse in institutional settings and considers whether reform is needed.

Where child sexual abuse occurs and is reported to police, the criminal justice system may apply. Victim-survivor perceptions of how people in that system respond to complaints can influence whether they disclose the abuse. And the assumptions, practices and structures in the system may affect whether victim-survivors who do make reports to police will have their reports taken seriously and investigated. The criminal justice system provides one of the few ways to hold perpetrators to account and is an important means of disrupting future offending by these abusers.

The National Royal Commission released a standalone report on the criminal justice system in August 2017. The report noted that the criminal justice system is often seen as ineffective in responding to sexual violence, including child sexual abuse.[1] The National Royal Commission made 85 recommendations for criminal justice reform. Tasmanian criminal justice agencies have implemented many of these recommendations, including to introduce a Witness Intermediary Scheme pilot and new provisions in the *Evidence Act 2001* ('Evidence Act') to make it easier for children to give evidence. We commend the Tasmanian Government for making these significant reforms.

During our Inquiry's consultations, sessions with a Commissioner and hearings, we heard from victim-survivors of institutional child sexual abuse about their experiences with the criminal justice system. While some people who spoke to us described sensitive responses, others described practices and behaviour that they felt had exacerbated their trauma. Some of these criticisms came from victim-survivors who had been complainants in child sexual abuse cases prior to recent reforms to the criminal justice system. Other criticisms were made by people with a more recent experience of the criminal justice system, some of whose concerns had not been addressed by the changes.

As part of our Inquiry, we have considered the extent to which legal and procedural reforms made in Tasmania during the past decade or so, including those based on the National Royal Commission's recommendations, have improved the way the criminal justice system deals with child sexual abuse. As we explain in this chapter, the fact that some people continue to describe the criminal justice system as insensitive and traumatic suggests that more needs to be done.

Of course, some principles that underpin the system may render its processes difficult for victim-survivors, irrespective of reform. These include the right of the accused person to remain silent, procedural requirements designed to ensure a fair trial, and the nature of the adversarial system, which requires the evidence of victim-survivors to be tested. A consistent concern that victim-survivors of child sexual abuse express is that, while the accused person has the right to remain silent, the victim-survivor is often subjected to

extensive, vigorous, personal and at times degrading cross-examination. Victim-survivors are often retraumatised by the telling and retelling of their story while preparing for trial and through cross-examination, and by the consequences of an acquittal.[2] Acquittal is often claimed to constitute 'exoneration' of an accused person, whereas it is, in fact, a finding that the offence has not been proved beyond reasonable doubt.

We sympathise with these critiques of the criminal justice system as they relate to child sexual abuse, but—given our terms of reference—we do not address the broader criminal justice system in this chapter. Instead, we focus on reforms that will help victim-survivors in that system. For some victim-survivors, a redress or civil claim may be preferred or may be more appropriate than relying on the criminal justice system. We discuss redress and civil systems in Chapter 17.

We acknowledge that legal and procedural reforms alone will not necessarily improve the criminal justice experience of victim-survivors of child sexual abuse. As long ago as 1998, a Tasmanian task force on sexual assault and rape observed that:

> Law reform is capable of modifying practices and making the process more tolerable for victims. The law can also have an educative effect in terms of attitudinal change in the community. However, it is important to be clear sighted about the impact of changes to legislation without corresponding changes to awareness of the issues within the legal system and in the wider community. Until educational and attitudinal change strategies modify community belief systems, perpetrators will continue to break the law without fear of penalty and victims will continue to lack credibility in the courts and have little confidence in the justice system.[3]

These observations are particularly relevant for crimes involving child sexual abuse in institutions that the community trusts to care for children. Such behaviour was often ignored until the National Royal Commission made its shocking findings about the prevalence of institutional child sexual abuse and the failures of institutions and governments to prevent or respond to such abuse. Our Inquiry has shown that child sexual abuse in institutions is not solely historical.

In this chapter, we explain police and prosecution responses to child sexual abuse cases and highlight areas where we consider more reform is needed. Our recommendations in this chapter consider the fact that Tasmania is a small jurisdiction with limited resources.

Although our Inquiry focuses on child sexual abuse in institutional settings, our recommendations will naturally have an impact on child sexual abuse that occurs in other contexts.

2 Overview of the criminal justice system

This section summarises the key stages in the Tasmanian criminal justice system as they relate to child sexual abuse offence cases. The chapter includes more detail on each stage when it is discussed in relation to a recommendation.

The criminal justice process starts when an offence is reported to, or detected by, police. Police then decide whether to investigate the offence. If they do investigate, they are then responsible for conducting that investigation. In the case of child sexual abuse offences, the investigation typically involves interviewing the accused person, the complainant and any other witnesses. If police gather enough supporting evidence, they may arrest and charge the accused person.

In child sexual abuse offence cases, police typically receive advice from the ODPP about whether an accused person should be charged with an offence. Pre-charging advice that recommends charges not proceed reflects the prosecutor's judgment that there is no reasonable prospect of conviction and not their judgment about whether the alleged behaviour occurred.[4] The willingness or ability of a complainant to give evidence at trial can often be a key consideration when making this recommendation.

Child sexual abuse offence cases are generally heard in the Supreme Court. The ODPP prosecutes these cases. The ODPP also prosecutes some indecent assault matters in the Magistrates Court where the accused person elects to have the matter dealt with summarily (under section 72 of the *Justices Act 1959*). During the hearing of an indecent assault charge in the Magistrates Court, the accused person may be committed to the Supreme Court in certain circumstances, including if a magistrate considers that the charge should be dealt with in the Supreme Court.[5] The ODPP also prosecutes summary child exploitation material offences under the *Classification (Publications, Films and Computer Games) Enforcement Act 1995* ('Classification (Publications, Films and Computer Games) Enforcement Act') in the Magistrates Court.

A victim-survivor may be asked to help prosecute the case, which will normally involve giving evidence about what they experienced. The ODPP provides a Witness Assistance Service to support victim-survivors in giving evidence and understanding the court process.

If an accused person pleads not guilty to a child sexual abuse offence, a trial will be held in the Supreme Court before a judge and jury (or in some cases in the Magistrates Court before a magistrate). Tasmania recently introduced legislation to allow for judge-alone criminal trials, which began on 8 June 2022.[6] At the trial, the Crown (represented by a prosecutor from the ODPP) represents the State and a defence lawyer generally represents the accused person.

When a case is heard before a judge and jury, the judge will decide what evidence the jury can hear. The judge will direct the jury about the legal principles it must apply in deciding whether the accused person is guilty or not guilty. If the jury finds the accused person guilty, the judge decides the sentence. If the jury finds the accused person not guilty, the accused person is acquitted of the offence(s) with which they were charged. Although the Attorney-General can appeal against an acquittal on a question of law in some circumstances, this occurs rarely.[7]

When a person pleads guilty or is found guilty, the court has a sentencing hearing. Again, both the Crown and the defence lawyer will make submissions to the trial judge. Facts that are in dispute may result in another hearing.

A victim-survivor may choose to make a victim impact statement, which they can read out at the sentencing hearing or have read out by the prosecutor. At the end of the sentencing hearing, the judge summarises the facts or makes findings of fact, imposes a sentence and outlines the reasons for the sentence. In Tasmania, the maximum sentence that can be imposed for a child sexual abuse offence is 21 years' imprisonment.[8]

A person who has been sentenced can appeal to the Court of Criminal Appeal (a division of the Supreme Court) against the conviction, against the sentence imposed or against both the conviction and sentence. The Crown can appeal against a 'not guilty' decision on a question of law or fact, or against a verdict (with the Court's permission) in cases tried by a single judge, or against a sentence in all cases.[9]

3 Police responses

Police are often the first point of contact with the criminal justice system for victim-survivors. Sometimes police will be the first to receive a disclosure of child sexual abuse. How police respond is often highly influential in determining how a victim-survivor views the criminal justice system and their willingness to seek a criminal justice response.[10]

Police decisions, including whether and to what extent to investigate a reported crime, are also critical in determining how a matter proceeds. Police failure to prioritise and act on a report of child sexual abuse can have an enormous impact on the quality of evidence they find.

In this section, we outline recent changes Tasmania Police has made to improve the way it deals with child sexual abuse cases. We go on to discuss opportunities for reforms relating to:

- establishing specialist police units
- building trust with particular communities
- improving professional development

- making reporting easier
- conducting effective investigations
- implementing complaints and oversight mechanisms.

Opportunities to improve police coordination and information sharing with other agencies are discussed in Chapter 19 and Chapter 21.

Police can play an important role in disrupting child sexual exploitation and abuse, particularly for vulnerable children such as those in out of home care. We discuss disruptive policing in out of home care in Chapter 9.

3.1 Recent police reforms and initiatives

Tasmania Police told us that it has significantly changed its policies and procedures for investigating child sexual abuse in the past two years. This section outlines those changes.

The National Royal Commission explored issues on how police can:

- encourage reporting
- conduct effective investigations and interviews
- maintain trust and continuity with victim-survivors
- ensure appropriate charging decisions.[11]

The National Royal Commission made several recommendations relating to police, including Tasmania Police.

Tasmania Police has accepted most of these recommendations. Of those it has accepted all are completed or in progress, though some are part of ongoing capacity building and workforce development.[12] Tasmania Police's primary response to the recommendations has been to make extensive changes to the section on sex crimes in the *Tasmania Police Manual*. The manual now offers clearer guidance to police officers on how they should respond to, and investigate, complaints of sexual assault and abuse.[13]

Tasmania Police informed us that it began an internal review on 30 November 2020 to examine police interactions relating to James Griffin.[14] This review found deficiencies, including interagency coordination, information sharing, legislative barriers and investigative shortcomings.[15] We discuss this review in the James Griffin case study (refer to Chapter 14). In summary, the review found that:

- Following a report about Mr Griffin in 2011, there was no record that the police investigator searched the police intelligence system, which would have revealed a report about Mr Griffin from 2009.[16]
- Following a report about Mr Griffin in 2013, there was no record that the police investigator searched the police intelligence system, which would have revealed the previous two reports.[17]
- There were deficiencies in the management of information received by Tasmania Police from the Australian Federal Police in 2015 relating to Mr Griffin's sexual offending and possession of child exploitation material.[18] This matter has been the subject of a Professional Standards investigation, and the police officers involved have been disciplined.[19]

On the public release of the findings of its review on 21 February 2021, Tasmania Police committed to setting up a specialist investigative and policy team to focus on improving police procedures for child sexual abuse cases.[20]

Darren Hine AO APM, former Commissioner, Tasmania Police, told us that the recommendations from the review have led to significant change in the way police respond to child sexual abuse.[21] He stated that Tasmania Police has sought to improve information sharing between agencies by creating the Tasmania Police *Initial Investigation and Notification of Child Sexual Abuse Guidelines*. It has also entered various memorandums of understanding, including the 2021 *Keeping Children Safe Memorandum of Understanding* between the Children Safety Service (in the former Department of Communities) and Tasmania Police (in the Department of Police, Fire and Emergency Management), to ensure prompt and efficient information sharing.[22]

The *Initial Investigation and Notification of Child Sexual Abuse Guidelines*, which came into force on 23 July 2021, guides the response of police officers when they receive a report of child sexual abuse. The guidelines include information about how to manage forensic evidence, notifications and referrals. They also outline the minimum requirements of police officers prior to them filing a report of child sexual abuse, which are to:

- contact the reporting person
- make every effort to establish the victim's identity (if unknown) and to assess and investigate the report
- conduct a thorough examination of Tasmania Police databases
- request cross-agency and interstate checks to see whether intelligence held outside Tasmania may assist the investigation

- provide contact details of the investigating police officer to the victim-survivor and/or parent, guardian or, where appropriate, other support person
- have a supervisor confirm that the above actions have been taken.[23]

On 26 February 2021, the Tasmanian Government launched its Historic Complaints Review Process within Tasmania Police.[24] This review concluded in January 2022. The Child Sexual Abuse Joint Review Team, a multi-agency team, sought to identify potential perpetrators of child sexual abuse where there may be unlinked reports or references across agencies relating to a person.[25]

The Tasmanian Government is also setting up two multidisciplinary centres to co-locate family and sexual violence support services and specialist police investigators.[26] Pilot programs are to start in Launceston and Hobart.[27] Media reports suggested the pilot programs would start in mid-2023.[28] We discuss multidisciplinary ('Arch') centres in Chapter 21. In this chapter—Chapter 16—we focus on the relationship between multidisciplinary centres and police specialisation, which we discuss in Section 3.2.2.

3.2 Opportunities for other police reforms

3.2.1 What we heard about police

The criminal justice system only works if victim-survivors feel comfortable coming forward and making a complaint to police. It is vital that police are seen as a trusted avenue to seek help. They must communicate to victim-survivors with respect and ensure victim-survivors feel supported.

In submissions, consultations, sessions with a Commissioner and hearings, victim-survivors reported varied experiences with police. The experience of a victim-survivor not only affects them (and possibly others affected by the matter they are reporting) but might also influence the decision of others (such as family or friends) to report crimes.

Some victim-survivors described positive experiences with police. One victim-survivor of child sexual abuse told us that the police officer investigating her case had gone 'above and beyond' to make sure the investigation was thorough and timely and that she felt supported.[29] Leah Sallese, a victim-survivor, told us that the police officer investigating her case was 'amazing' and 'treated me with respect, care and kindness'.[30] She said:

> I don't know if everyone has the same experience with Tasmania Police, but I feel lucky to have had the right detectives there to bat for me. My positive experience with the police was a key reason I ended up pursuing criminal justice.[31]

Tiffany Skeggs, a victim-survivor, described the investigating police officer in her case as 'professional and at the same time genuinely caring'.[32] Alex (a pseudonym), another victim-survivor, also told us that the detective on his case had been very supportive.[33]

In contrast, some victim-survivors told us about negative experiences. Mark Southern, a victim-survivor, told us that when he reported sexual abuse to police in 2003, they took his statement and then he 'didn't hear back from them in 10 years'.[34] Mr Southern said police left him 'in the dark' and did not offer him any support while he was waiting for a response.[35]

Faye (a pseudonym) said that when, in about 2006, she spoke to police about the first time she was sexually abused, the person taking the statement said, 'Oh, is that all it was?'[36] She said that this has really stuck with her; she felt judged.[37]

Victim-survivors told us about negative experiences with police when reporting child sexual abuse by James Griffin (refer to Chapter 14 for a detailed discussion of Mr Griffin).[38] Keelie McMahon, a victim-survivor, told us that, while her initial contact with Tasmania Police was 'really good', after Mr Griffin's death 'everything just shut down' and she was told 'that's it, he's dead, there's nothing more we can do'.[39] Angelique Knight, another victim-survivor of Mr Griffin, was also told that there was nothing police could do.[40] She said:

> This made me really angry. I think this hurt the most because I had really built myself up to go in there. It was a big thing for me. I was really struggling to find what direction to go in and this made me feel like my experience wasn't important.[41]

Laurel House reported that victim-survivors it had contact with had mixed experiences with police, noting that some police demonstrated 'exemplary trauma-informed practice' while, in other cases, contact with police 'further traumatises victim-survivors or silences them'.[42]

In stakeholder consultations, we also heard a range of views on the efficacy of police responses to child sexual abuse, with some participants reporting police to be responsive and professional.[43] Some stakeholders noted that attitudes towards child sexual abuse are changing—it is now easier to report and police are more responsive.[44] Some participants reported complexity involved in deciding whether to pursue criminal charges, also noting that police decisions not to proceed with a matter are sometimes made to respect the wishes of victim-survivors and their families, and to avoid retraumatising a victim through the process.[45] Some stakeholders at our Burnie consultation spoke highly of police in North West Tasmania, with one participant describing police as trauma-informed and willing to 'go the extra mile to help victims'.[46]

In contrast, other consultation participants said police have a poor understanding of child sexual abuse and a tendency to believe adults over children.[47] Some participants raised concerns about the timeliness of investigations, particularly where there may be ongoing risks to children.[48]

As noted, Tasmania Police has introduced reforms to improve the experience of victim-survivors, including extensive changes to the *Tasmania Police Manual*. The following sections consider specific opportunities to improve the way police communicate with, and respond to, victim-survivors.

3.2.2 Establishing specialist police units

Investigating allegations of child sexual abuse is a highly complex task requiring specialised knowledge and skills. These investigations are sometimes limited by a scarcity of evidence, often due to the absence of independent witnesses and physical evidence. Therefore, police need a high level of skill in using all opportunities to gather evidence effectively, including the skills to elicit detailed, reliable and relevant accounts from complainants, particularly children.[49]

We heard evidence from Dr Patrick Tidmarsh, a consultant at Whole Story Consulting, who previously worked with Victoria Police as a forensic interview adviser and trainer in the Sexual Offence and Child Abuse Investigation Team.[50] According to Dr Tidmarsh, investigating child sexual abuse offences calls for a specific skill set that most police do not have, regardless of their level of experience.[51] We also heard from Victoria Police that some police officers have attributes that position them better for this work.[52] Dr Tidmarsh told us that specialisation in this area is important to maximise the number of complaints that progress to prosecution and conviction, and to minimise the compounding nature of the trauma adult and child victim-survivors experience as they move through the investigation.[53] Also, police specialisation has the potential to ensure those who investigate child sexual abuse cases take a trauma-informed approach to victim-survivors.

Tasmania Police does not have specialised child sexual abuse investigation teams. Responsibility for responding to a notification or an allegation of suspected child sexual abuse generally lies with the police geographical district where the offending is alleged to have occurred. Tasmania Police consists of nine commands: three geographical police districts (Southern, Northern and Western) and six specialist support commands.[54]

Tasmania Police has a High-Risk Child Exploitation Unit operating in its Crime and Intelligence Command. This unit assesses and acts upon referrals from the Joint Anti Child Exploitation Team or other information Tasmania Police receives, including from the Australian Centre to Counter Child Exploitation.[55]

Commissioner Hine informed us that initial responses to an allegation of child sexual abuse may involve general duties patrols, the Criminal Investigation Branch, Family Violence Units and Forensic Services.[56]

In its submission, Tasmania Police stated that relevant specialist teams are based under different commands, leading to inconsistent operating practices and reduced connectivity.[57] It advised us that, despite efforts to work together, differing priorities mean these organisational units can work in operational silos, which does not always support trauma-informed approaches to prevention, detection, investigation and collaboration, nor ensure police officers have the skills to appropriately support victim-survivors.[58] In June 2022, Commissioner Hine told us that, although all police officers conduct investigations, the Criminal Investigation Branch leads most investigations, including those into sexual abuse.[59]

Commissioner Hine said that Tasmania Police will refer victim-survivors of child sexual abuse to the relevant sexual assault support agency and (where the victim-survivor is a child) to the Child Safety Service.[60] Tasmania Police's *Initial Investigation and Notification of Child Sexual Abuse Guidelines* specify that a single investigator should conduct the whole investigation in child sexual abuse matters wherever possible.[61]

The generalist approach in Tasmania differs from practices in most other jurisdictions of Australia and New Zealand. Elsewhere, child sexual abuse investigations are undertaken by decentralised, specialist child abuse investigation units or by local policing child abuse investigation units with centralised specialist support.[62] In some jurisdictions, such as New South Wales (discussed below), Queensland and Western Australia, specialist units focus on child abuse. Other jurisdictions, such as Victoria (also discussed below), have units or groups within sex crime divisions that include adult sexual offences.[63]

We heard some concerns that the size and geography of Tasmania can be a practical barrier to having specialist units. Commissioner Hine told us that the challenge is to provide coverage across Tasmania, particularly in sparsely populated areas. He noted that some areas, such as Queenstown, Burnie and Devonport, are too small to have a dedicated resource.[64]

Police specialisation would need to consider these challenges. Tasmania Police emphasised that any reforms must ensure it can continue to provide a local response to meet community needs.[65] Tasmania Police further noted that this does not mean there has to be an identical presence in every population centre, but it does require consistency of response in regional areas with a surge capacity to respond effectively and equitably across Tasmania.[66]

We consider there is scope to draw on the key features and experience of specialist police models in other Australian jurisdictions and to adapt these to Tasmania, recognising unique considerations based on the size, scale and demographics of the State.

We heard evidence about the specialist police units in New South Wales and Victoria, where police officers receive extra training and become expert child sexual abuse investigators. Victoria Police's Sexual Offences and Child Abuse Investigation Teams

(referred to as 'SOCITs') provide specialist response and investigation for sexual assault and child abuse matters. In Victoria, 450 investigators are spread across 28 sites.[67] These investigators receive specialised training and are dedicated to investigating sexual assault and child abuse.

Some specialist police work in multidisciplinary centres across Victoria, which co-locate specialist police with child protection expertise, as well as counsellors and advocates from the Centres Against Sexual Assault.[68] In areas that do not have a multidisciplinary centre, other specialist police operate with the same interagency protocols to achieve the same collaborative approach, but each agency works from separate offices. In these areas, police must contact their local Centres Against Sexual Assault office within two hours of a report, to facilitate support.[69]

In Victoria, police receive reports of child sexual abuse through channels including referrals from Centres Against Sexual Assault and schools. The specialist police team receives most reports of child sexual abuse from the Department of Families, Fairness and Housing under its *Protecting Children* protocol.[70] Victoria Police also has a specialist task force (the SANO Taskforce) to investigate historical and new allegations of child sexual abuse in a religious or institutional setting. Police officers in this task force are specially trained to investigate sexual offences.

In New South Wales, a specialist referral team, the Joint Child Protection Response Program, handles most serious child abuse offences. The specialist team is a statewide centre-based response that includes specialist police ('Child Abuse Units') and child protection and health agencies. Cases for the specialist team come through a shared central reporting system. Cases are then assessed and triaged.[71] This differs from the approach in Victoria, where reports of child sexual abuse come through various channels rather than a central unit.

The Child Abuse Units, which work as part of the specialist referral team, are not attached to a region and operate under the Child Abuse and Sexual Crime Squad command. Peter Yeomans, Detective Chief Inspector, New South Wales Police Force, told us that a benefit of this approach is that Child Abuse Units are not 'swallowed up' if a particular region has a homicide or a large-scale investigation that uses up police resources.[72]

Detective Chief Inspector Yeomans told us there were 19 Child Abuse Units operating throughout New South Wales, most of which are located near the Department of Communities and Justice and New South Wales Health but are not co-located with them.[73] If necessary, police officers from the units travel to remote parts of the State.[74] With 19 units throughout the State, the maximum travel time is three hours.[75] Police mostly travel to the victim.[76]

A review conducted for the National Royal Commission on the efficacy of specialist police investigative units in responding to child sexual abuse identified some challenges, including access to resources, the availability of specialised training for investigators and effective interagency collaboration.[77] Having considered this review, as well as the experience in other Australian jurisdictions, we consider the key features that underpin successful specialist child sexual abuse investigative units are:

- specialised training, including training on interviewing child and vulnerable witnesses
- proactive strategies from police to encourage reporting and to build trust and credibility with the community
- partnerships with other agencies and support services commonly involved in the response (closely located but not necessarily co-located)
- a dedicated focus on child sexual abuse investigations (and possibly adult sexual offence investigations)
- that they support the emotional health and wellbeing of police officers
- that they are located in, or have access to, appropriately furnished and equipped facilities for interviewing victim-survivors, separate from accused persons
- that they have sites across the State to provide equitable access to victim-survivors regardless of where they live.

Specialised training, including training on interviewing child and vulnerable witnesses

We heard evidence that the most important aspect of skill specialisation for police in sexual offending cases is interviewing.[78] In child sexual abuse offence cases, the evidence of the victim-survivor is often the only evidence of offending. The police interview is therefore extremely important and will dictate if the investigation should proceed to the stage of interviewing the alleged offender.[79]

Dr Tidmarsh told us that most inconsistencies in interviews are created by interviewers and not the complainant. He stated that continuity of engagement and specialisation in interviewing are therefore key to the investigative process.[80]

The Victoria Police Specialist Development Unit developed the concept of the Whole Story framework for investigating sex offending and the sexual abuse of children. It is based on the concept that although the prosecution must prove that certain events happened in time and place, sex offending and the sexual abuse of children usually arises out of a pre-existing relationship. The relationship would have occurred before and during those events and often helps to contextualise the offending.[81] Dr Tidmarsh stated that when victim-survivors can use a narrative style, the breadth and depth of the information elicited increases dramatically.[82]

Daryl Coates SC, DPP, told us that there is great benefit in having specialist police conducting interviews for complainants and vulnerable witnesses, and in maintaining contact with these witnesses.[83] He noted that, in general, interviewing police officers have become more aware of the need to have complainants identify with as much detail as possible the instances of sexual abuse. There has also been an increase in the use of open-ended questioning and encouraging a 'narrative' from the witness.[84]

Witness intermediaries can assist police in improving the quality of their interviews by offering strategies to elicit the best evidence from the person (particularly children). Refer to Section 5.2.1 for more on Tasmania's Witness Intermediary Scheme pilot.

Partnerships with other agencies and support services, without the need for co-location

Strong partnerships with other agencies and support services are important for an effective specialist investigation unit. But co-location in a purpose-built facility is not necessary to create effective partnerships.[85]

Detective Chief Inspector Yeomans communicated the view of the New South Wales Police Force that it is now best to have the agencies near each other, rather than co-located. He noted that in New South Wales, effective and regular communication between agencies is critical to the success of the specialist referral team, whether a service is co-located or not.[86] He emphasised that working close to health centres and community services is most important.[87] He gave an example of how police work out of an old house in the township of Inverell, with a community service centre and a health centre across the road.[88]

Unfortunately, it is possible for services to be co-located and still operate in a highly siloed way. Conversely, others can be located separately and still work together effectively. What is important is a shared commitment to collaborate and for legislation and related processes to enable that collaboration (for example, through effective information sharing).

It is also important to have clear mechanisms within the response that build and sustain strong working relationships and collaborative practices to foster a multidisciplinary team approach, such as joint case strategy meetings and shared professional development.[89] Where multidisciplinary teams are responding to many cases in an area, there may be efficiency in co-location for undertaking the work and opportunities for incidental contact that strengthen relationships. Crisis and therapeutic supports for victim-survivors may also be more readily accessible. However, where teams are co-located, it is important that the facilities meet the different needs of each profession within the building; for example, police may need an evidence room and space for confidential case discussion.

Although we do not consider co-location is necessary, we do consider it is important to conduct interviews in a space where children feel comfortable. These spaces are better located outside police stations, such as in other services' facilities. Research indicates that conducting interviews in a space where a child is comfortable increases the likelihood of detailed disclosure, which is conducive to prosecution and conviction and reduces the likelihood that the child will be retraumatised.[90]

Tiffany Skeggs, a victim-survivor, told us that when police interviewed her, she was 'utterly terrified someone might see her walk into the police station'.[91] Ms Skeggs noted that being interviewed in a police station could deter some people from coming forward, a view other victim-survivors also expressed.[92]

We also note that for many people who may have a criminal background or who come from a community that does not trust police, attending a police station may feel unsafe or be a barrier to reporting.

The Victoria Police *Code of Practice for the Investigation of Sexual Crime* requires special investigators to respond to reports of recent sexual abuse in plain clothes and an unmarked vehicle.[93]

Detective Chief Inspector Yeomans also informed us that the specialist Child Abuse Units in New South Wales are not housed in police stations with uniformed police officers. He stated that children feel more comfortable engaging with police officers as a result, which appears to have contributed to more disclosures over time.[94]

Tasmania Police expressed support for new and improved 'soft' interview rooms (this is a term police use to describe rooms that are designed to feel safe and welcoming for adult and child complainants and witnesses). Glenn Hindle, Detective Senior Constable, Tasmania Police, told us that some soft interview rooms are in use but that the location of those interview rooms in police stations is contentious.[95] He told us of a soft interview room at Launceston police station where:

> … quite often we're having to separate the mother off from the child and that separation quite often occurs at the front counter of the police station and the child is then marched through the police station as an individual on their own as well, so the journey is not pleasant for everybody.[96]

We note that children may not disclose as much specific detail about their abuse when a parent is in the room because it might distress their parent. Ideally, there should be a private, family-friendly waiting room located adjacent to soft interview rooms, where families (including any siblings waiting to be interviewed) can wait with the support of a counsellor or advocate while a child is being interviewed.

Katrina Munting, a victim-survivor, described her experience of making a report to police: 'I found the police station quite frightening. I went to a small room that I think was usually used to interview suspects. It was small and bleak and not very comforting'.[97]

Detective Senior Constable Hindle said that a better environment to take a statement from a complainant might involve them entering a facility that is not so authoritative.[98] He noted that 'often it is a complainant's first dealing with police, and they walk into a building feeling like they've done something wrong'.[99]

At a consultation in Hobart, some police noted that new systems for recording evidence were being rolled out, and they spoke about intentions to improve soft interview rooms. Many expressed a preference for interviews to be conducted offsite to make victims more comfortable.[100]

Moreover, in a submission to us, Tasmania Police stated that soft interview rooms should be 'specifically designed, separate from police stations, fitted out and located across the State to ensure all victims have the most conducive environment to tell their story'.[101] We support such an approach.

A dedicated focus on child sexual abuse investigations

We consider there is a strong basis for having specialist investigation units focused on child sexual abuse cases, and possibly adult sexual offences, rather than being absorbed into another unit such as a family violence unit. Family and sexual violence often occur together (almost 40 per cent of sexual offences involve family violence).[102] But while there are some overlaps and similarities in family violence and sexual offending, there are also differences, particularly in the context of institutional child sexual abuse.

Where child sexual abuse investigations are absorbed into other units, especially those that are busy with a high number of reports like family violence, there is a risk that the child sexual abuse work (particularly where it may be historical) will be overwhelmed by the immediate pressures of managing high-risk family violence offenders. Victoria Police told us that, under its model, the two units work closely together and that it is important for police officers working in these areas to do so.[103] Specialist family violence teams also undergo specialised sexual offence and child abuse investigation training in Victoria.[104]

There may be scope for rotating police officers through specialised units to broaden skill sets and to help build specialisation over time. However, we consider that there should be a dedicated team of specialised police officers for child sexual abuse, which could include adult sexual assault.

Our consultations with police in Hobart and Launceston highlighted that, under current arrangements, resourcing challenges and competing pressures could slow the pace of work and reduce the ability of police to focus on sexual crimes, noting that these crimes are resource-intensive and complex.[105]

Detective Senior Constable Hindle told us that police investigating child sexual abuse face limitations, including conflicting priorities such as shift work and investigations unrelated to sexual offending.[106] He stated that in his position as an investigator focusing on interpersonal crimes, he is sometimes drawn away from that area to spend time dealing with a wounding or an armed robbery, for example.[107] Dr Tidmarsh also observed that, given its small size, Tasmania Police is set up for service delivery through single stations in different locations; it is normal for police officers to multi-task.[108] Resourcing and rostering demands can take specialist police officers away from their specialist work.

Dr Tidmarsh also gave evidence about the risks of absorbing sexual abuse investigations into another area such as family violence. According to Dr Tidmarsh, because family violence requires a crisis response in a way that sexual offending does not, and sexual offending is harder to prosecute and is fraught with more community myths and misconceptions than family violence, family violence can become the dominant area of work. Child sexual abuse investigations can therefore become engulfed in those processes and the sheer volume of family violence matters.[109] We are convinced by these concerns and have serious reservations about Tasmania's intention to incorporate family and sexual violence responses with child sexual abuse responses.[110]

We consider that establishing specialist child sexual abuse units in Tasmania will provide the best possible service for child and adult victim-survivors. As Detective Chief Inspector Yeomans told us:

> You've got to have a specialist squad that deals with this type of crime. You've got to have specially trained officers that deal with this type of crime, otherwise the risk is too high … to that child and to the community if we do our job poorly, because in the end … it's about the interview, it's about the investigation, because if we don't do that job, you're not talking about thieves here or robbers or whatever else, you're talking about the most vulnerable in our society, so you've got to have dedicated staff to do that …[111]

Establishing multidisciplinary centres provides one approach to foster greater specialisation and improved services to victim-survivors. We welcome Tasmania's commitment to setting up multidisciplinary centres but consider it should prioritise police specialisation to ensure virtual or physical multidisciplinary responses include specialists. We consider that the best approach for Tasmania is to set up specialist investigation units for child sexual abuse for child and adult victim-survivors (and possibly sexual offences against adults), but not include domestic and family violence. These specialist units should work closely with other agencies involved in the response. They may be, but do not have to be, co-located with them.

With cases of recent sexual abuse, best practice is to collect evidence and take statements as soon as possible. When specialist units are centrally located, this can require that children be transported for multiple hours to the specialist team—sometimes

without having bathed and still in the clothes in which they were sexually abused. Minimising the need for victim-survivors to travel long distances and enabling police to respond quickly are important features of a victim-centred response.

To provide a statewide response, specialist investigation units could be located in Hobart, Launceston and the North West. Staff who perform reception duties at these locations should be trained to treat victim-survivors in a trauma-informed way. Tasmania Police could draw on the experience in New South Wales to provide coverage and coordinated support to victim-survivors in remote areas. As previously noted, New South Wales police officers from the specialist units will, if needed, travel to the victim-survivor, who is usually located within a three-hour drive.[112]

The success of specialist units also depends on having enough staff. Tasmania is a small state with a limited number of senior detectives. Victoria Police told us that the specialist model requires shifting from more traditional generalist police structures that allow resources to be diverted when required.[113]

Commissioner Hine said there is no guarantee that specialist investigators in Tasmania's new multidisciplinary centres will not have to perform other duties.[114] This could include being routinely rostered to the Criminal Investigation Branch 'Crime Car'.[115] However, Commissioner Hine noted that Tasmania Police would always do its best to support police officers investigating child sexual abuse to perform their main role.[116]

There needs to be protection of this specialist resource so competing priorities do not overwhelm investigators. They should only be drawn into other policing areas when there are exceptional circumstances, such as natural disasters or public health emergencies.

Tasmania Police should attract people to work in this area by recognising the breadth of skills required, acknowledging the investigative complexity of these matters and properly rewarding this difficult work. Tasmania Police may learn from other jurisdictions, such as Victoria Police, to create incentives that attract well-suited police officers to join such units. In the case of Victoria Police, this includes supporting detective training and ensuring appropriate support for vicarious trauma.[117]

Support for emotional health and wellbeing of police

Police who specialise in child sexual abuse investigations can experience stress, trauma and burnout. The National Royal Commission review into the use and effectiveness of specialist police investigative units reported that staff in all types of specialist units raised concerns about their emotional health.[118] Staff in specialist police units commented on the high emotional toll of working solely on sexual abuse cases, noting that this might lead to burnout and secondary trauma.[119]

We heard evidence about the 'world-leading health and wellbeing strategy' for investigators developed by the Australian Centre to Counter Child Exploitation and Human Exploitation Operations.[120] Hilda Sirec, Commander, Australian Federal Police, who leads the Centre, told us that it is an 'opt in' environment, meaning that police officers must agree to transfer.[121] She also indicated that investigators have access to in-house psychological and wellbeing support, and that the physical work environment has been designed with health and wellbeing in mind.[122]

Detective Chief Inspector Yeomans highlighted the need to offer psychological support to police who specialise in this field.[123] In New South Wales, specialist police officers must take part in mandatory quarterly psychological tests. These are conducted by trained psychologists in the Psychology Unit of the New South Wales Police Force. The specialist investigators are also rotated into other areas of the New South Wales Police Force every three years. This rotation is usually for three months. Detective Chief Inspector Yeomans told us that the rotation policy is strictly adhered to for the development and welfare of police officers.[124] Victoria Police does not mandate rotations outside the specialist unit but is vigilant about vicarious trauma and other psychological impacts of the work, noting that some police officers will decide they need a change or move to a different area.[125]

Similarly, Dr Tidmarsh said that Victoria Police has a specialist Investigator Support Unit with therapeutic professionals who work onsite in the Sexual Offences and Child Abuse Investigation Teams. These professionals run group reflective practice sessions and work with individuals to look after the health and wellbeing of police officers in this field.[126]

Recommendation 16.1

1. The Tasmanian Government should fund and establish specialist units in Tasmania Police, based on the Victorian Sexual Offences and Child Abuse Investigation Teams model, to investigate child sexual abuse and to be based in three locations (Hobart, Launceston and the North West).
2. The specialist police units should:
    a. specialise in the investigation of child sexual abuse, including historical child sexual abuse (and potentially adult sexual assault) but not undertake domestic and family violence work unless it is directly connected to child sexual abuse (or adult sexual assault)
    b. be staffed by police officers who have undertaken specialised professional development (Recommendation 16.3) and members who have trauma-informed training (Recommendation 19.2)

c. partner with other agencies and support services involved in responding to child sexual abuse to create multidisciplinary teams. These teams do not have to be co-located, although this may be appropriate in some areas

d. have access to a 'soft' interview room, ideally offsite from police stations and potentially in multidisciplinary centres

e. be directed to perform other policing duties only in exceptional circumstances and not as part of a unit's usual roster

f. support the wellbeing of police officers and members working in the specialist unit

g. develop and implement strategies to engage and build trust with marginalised communities, particularly Aboriginal people and people with criminal histories (Recommendation 16.2).

3. Tasmania Police should measure and report on victim-survivor satisfaction with the operation of the specialist units within two years of establishment and regularly thereafter.

3.2.3 Making reporting easier

The processes for reporting child sexual abuse to police should be made easier, especially for vulnerable groups.

Online reporting

Not all victim-survivors of child sexual abuse will necessarily know how to make a report to police. In some cases, they may not even recognise what they have experienced as sexual abuse. Victim-survivors may also feel uncomfortable seeking information and support in person. We consider that victim-survivors should have easy access to information on ways to access support services, how to contact police, the process involved in making a complaint and what to expect at each stage of the criminal justice process.

The National Royal Commission recommended a national website and helpline as a 'gateway to accessible advice and information' and to connect people with support services.[127] It envisaged the website as 'a visible, central point of contact' for victim-survivors.[128] The Australian Government's National Redress Scheme website and its website on implementing the National Royal Commission's recommendations respond to this recommendation.[129]

The Victorian Law Reform Commission recommended that the Victorian Government set up a central website (or expand an existing website) with practical information on sexual violence and options for support, reporting and justice.[130] Like the Victorian Law Reform Commission, we consider that such a website could help young people and adult victim-survivors of child sexual abuse understand what is involved in making a report to police and help them access support. The Victorian Law Reform Commission considered that the website should provide information and access to support in a range of languages and formats and be tailored to diverse needs.[131]

The website recommended by the Victorian Law Reform Commission would apply to all forms of sexual violence and sexual abuse. Our Commission of Inquiry focuses on child sexual abuse, but such a website may be useful for victim-survivors of all sexual abuse.

Tasmania Police is examining opportunities to develop its digital capacity to allow online reporting of sexual abuse.[132] The purpose of this initiative is to encourage reporting of allegations of child sexual abuse, with an emphasis on vulnerable victims (including Aboriginal people and people in prison).[133]

Commissioner Hine told us that online reporting provides an opportunity for victims to tell their story (anonymously if they wish), have it recorded and receive information about support services. Commissioner Hine noted that, although computer literacy is not as high as it should be in Tasmania, online reporting would provide an alternative for young people to communicate with Tasmania Police.[134]

Commissioner Hine told us that Project Unify, an initiative to upgrade Tasmania Police's technology, has been allocated $46 million and aims to include online reporting. According to Commissioner Hine, this would offer an enhanced service for victim-survivors who want to remain anonymous. Funding for this project flows through to 2025–26.[135] We welcome this initiative and consider that Tasmania Police would benefit from reviewing online reporting platforms in other Australian jurisdictions.

Building trust with particular communities

Recommendation 16.1 above refers to the need to establish trust with marginalised communities. This section discusses barriers to reporting child sexual abuse that some community groups experience. It recommends that the specialist police units investigating child sexual abuse take steps to address these barriers.

People who have experienced discrimination from authorities or who have been in trouble with the law may be reluctant to report allegations of child sexual abuse to police.

Past inquiries have highlighted systemic racism as a barrier to disclosure for many Aboriginal people who have experienced child sexual abuse.[136] Aboriginal consultation participants told us of a reluctance among Aboriginal people to report allegations of child sexual abuse to police or other institutions because of a lack of trust in those institutions.[137]

The National Royal Commission made recommendations to encourage reporting of allegations of child sexual abuse from Aboriginal victim-survivors, as well as from people in prison and former prisoners.[138] In this section, we discuss these recommendations and consider whether more can be done to encourage reporting of child sexual abuse among particular communities.

To encourage reporting from Aboriginal victim-survivors, the National Royal Commission recommended that policing agencies take the lead in developing good relations with Aboriginal communities and provide channels for reporting outside of the community (such as phone and online reporting forms).[139] We understand that Tasmania Police views developing good relationships with communities as part of its 'business as usual' and is considering offering other reporting channels.[140]

Commissioner Hine gave evidence about the measures that Tasmania Police is taking to engage and build trust with Aboriginal communities, including the *Tasmania Police Aboriginal Strategic Plan 2014–2022*.[141] This plan includes strategies to develop and maintain appropriate and culturally respectful relationships and to deliver equitable and accessible policing services.[142] The plan covers, among other matters, liaison and engagement with Aboriginal communities, recruitment, training and education.[143]

Commissioner Hine also noted that the State Aboriginal Liaison Coordinator functions include contributing to local strategies to reduce the number of Aboriginal people entering the criminal justice system as victims or offenders.[144] We encourage Tasmania Police to continue efforts to build trust with Aboriginal people. More should be done to ensure Aboriginal people who have experienced sexual abuse, including child sexual abuse, can access information and support.

To encourage people in prison and people who have formerly been in prison to report child sexual abuse, including institutional child sexual abuse, the National Royal Commission recommended that policing agencies provide channels for reporting that can be used from prison and that allow reports to be made confidentially, and that former prisoners not be required to report at a police station.[145] The Tasmanian Government has not yet implemented this recommendation. In its *Fifth Annual Progress Report and Action Plan 2023* the Government said that:

> Consultation with the Department of Justice has commenced to identify a short-term solution to allow confidential reporting. A long-term solution to this recommendation will require procedural and technical development … The implementation date is predicted to be December 2024.[146]

In practice, victim reports from people in Risdon Prison are made to police officers from Bellerive Police Station (the nearest police station) or Bellerive Criminal Investigation Branch and facilitated by custodial officers at Risdon Prison (generally in a prepared Department of Justice report) and, as such, are not confidential.[147] Commissioner Hine

told us that reforms to this internal Department of Justice process could increase confidentiality, but he appeared to consider this the responsibility of the Department of Justice.[148] Police investigations and enquiries after Department of Justice reporting are confidential.[149]

Commissioner Hine explained that people formerly in prison can report matters to police via the Police Assistance Line.[150] This means they do not have to attend a police station to make an initial report. It would be the responsibility of police to visit the reporter at their home or another location to take a report. Direct phone contact with local police is also available to avoid the need to visit a station.[151]

We consider that the lack of confidentiality for a report to the Department of Justice is likely to deter reporting. We agree with Commissioner Hine that the process could be improved by increasing confidentiality at this point. We also consider that Tasmania Police should develop strategies to build trust with people in prison (and formerly in prison), which we accept is a significant but not insurmountable challenge. This is particularly important in Tasmania, given the high proportion of abuse claims that arise from (or are connected to) young people in detention at Ashley Youth Detention Centre, many of whom enter the adult prison system (refer to discussion in Chapter 10).

Many young people who were detained or had previously been detained in Ashley Youth Detention Centre told us about their experience of child sexual abuse at the Centre. Few of those we spoke to had reported their abuse. Many spoke of the shame and guilt they felt, the fear of not being believed and a lack of trust in police. One victim-survivor told us:

> What happened to me at Ashley has given me a massive distrust when it comes to the system. This includes the justice system and the police. The ones that are supposed to help are the ones you're trying to escape from.[152]

In its submission, the Tasmanian Aboriginal Legal Service expressed significant concerns for Aboriginal children and young people in contact with the justice system:

> Allegations of historic and current sexual abuse and a lack of trust in authority and institutions and cultural issues re 'dobbing in' remain issues for our Aboriginal clients. A clear and transparent complaints process, coupled with culturally sensitive, trauma-informed awareness and education campaign, would assist our clients to report sexual and other misconduct, particularly where there is a perceived and/or legitimate imbalance of power.[153]

More needs to be done to build trust in police for particularly vulnerable children and adults.

Police also need to address negative attitudes towards some groups of vulnerable young people. A submission from a youth worker cited prejudicial attitudes held by police in the 1990s against young people in out of home care. She said:

> I was told nothing they could do … no-one would believe the stories of 'those types of boys'. At this time police were not interested in actioning any disclosures from our clientele due to, in their words, 'these kids are troublemakers and crims and can't be trusted'. [154]

In Chapter 9, we discuss the need for increased police involvement in disrupting child sexual exploitation, particularly in relation to children in out of home care.

One serving Tasmania Police officer described the young people at Ashley Youth Detention Centre as 'the worst of the worst' and noted 'they are not very nice people, these kids'. Another police officer, also speaking about the young people at Ashley Youth Detention Centre, stated that it was 'too easy for kids to make allegations about these staff' and 'their reward for holding the line against these kids is to be the subject of allegations'.[155]

A former Acting Executive Director, People and Culture, at the former Department of Communities provided evidence of the attitude of one police officer towards young people at Ashley Youth Detention Centre. We were told about a police officer 'laughing' at a young person's claims against a member of staff at Ashley Youth Detention Centre. The police officer showed disbelief when told that the member of staff would be suspended because the young person was 'from a well-known criminal family, had a long criminal past' and 'should not be trusted, especially when there was money involved'.[156]

Jonathan Higgins APM, then Assistant Commissioner of Operations, Tasmania Police, conceded that Tasmania Police needs 'to work on [its] unconscious bias' against detainees or young people with a criminal history wanting to disclose child sexual abuse to police.[157]

It is clear that the following community groups are likely to experience barriers to reporting child sexual abuse to police:

- Aboriginal communities
- people who are or were in prison or youth detention
- people who are or were in out of home care (or youth support services).

We consider that the specialist police units (refer to Recommendation 16.1) should work with these groups to implement measures that build trust and encourage reporting.

Recommendation 16.2

1. Tasmania Police should establish ways for people to report child sexual abuse online.

2. The Department of Justice and the Department for Education, Children and Young People should review their internal processes to make it easier for people in prison and youth detention to report abuse to the police or other bodies, including online or by phone hotline, and ensure appropriate confidentiality of reports.
3. Specialist police units (Recommendation 16.1) should develop a strategy to engage with 'priority communities', by implementing measures to develop relationships, build trust and encourage reporting of child sexual abuse, and to assist prevention and 'disruptive' policing (Recommendations 9.29 and 9.30).
4. Priority communities include:
    a. Aboriginal communities
    b. people who are or were in prison or youth detention
    c. people who are or were in out of home care (or youth support services).

3.2.4 Improving professional development

Police officers who investigate child sexual abuse need specific professional development in the dynamics of child sexual abuse offending, as well as training in trauma-informed care and specialised techniques for interviewing children and vulnerable witnesses. They would also benefit from training to help create a safer environment and reporting experience for groups who are more likely to be sexually victimised.

Tasmania Police gave evidence to our Inquiry about the training it provides to police officers.[158] Different levels of training are provided to recruits, frontline police officers, investigators and detectives.[159]

Commissioner Hine stated that the training starts as part of the Recruit Training Program and is built on as a police officer moves into investigative phases.[160] He also noted opportunities to 'optimise investigative training', including developing a sexual assault investigating program specialising in trauma-informed practices and interviewing vulnerable witnesses.[161] Learning and Development Services is developing a curriculum for a specialised Sexual Assault Investigation Program that is due to start in 2023. The target audience is experienced detectives looking to further develop their investigative skills, specifically in sex crimes and family violence. It is intended that all detectives should refresh their training to ensure best practice when engaging with victims of sexual violence.[162]

Commissioner Hine also informed us that:

- Ninety-four per cent of all police officers have completed training in the *Initial Investigation and Notification of Child Sexual Abuse Guidelines*. This mandatory online training program is aimed at preventing and disrupting child sexual abuse and prioritising children's safety.[163]
- Tasmania Police is training police officers on the Whole Story framework, discussed in Section 3.2, as part of its Investigative Practice Program.[164]
- In 2017, Tasmania Police introduced a training package for interviewing vulnerable witnesses that includes a Whole Story component.[165] We understand this training is for detectives.

Commissioner Hine told us that Tasmania Police recognises its need for more education on grooming and boundary breaches.[166] We agree.

Dr Tidmarsh told us that the concept of grooming is one of the most important factors for investigators in this field to understand because it reveals the tactics of the abuser and their dynamics with the victim-survivor.[167] Dr Tidmarsh said that, in the training he conducted, inexperienced investigators in this field would (wrongly) start with the act that took place—the act that they were going to charge the abuser with—and they often thought that the relationship context from before that point was not relevant.[168]

We also consider that an understanding of grooming and the dynamics of child sexual abuse is crucial to police efforts to disrupt and prevent abuse. So, too, is challenging the myths of child sexual abuse. Dr Tidmarsh told us that when he started work with Victoria Police in 2007, there were still many myths and misconceptions about victim-survivor behaviours with respect to sexual crime. These included questioning the behaviour of the victim-survivor as contributing to the offending, querying the credibility of the victim-survivor and seeking an independent witness who saw the actual abuse take place.[169] He said that research he conducted shows that, following training, police investigators were better equipped to see through these myths and misconceptions about victim-survivor behaviours.[170] For example, investigators were less likely to blame victims.[171]

As well as specific professional development for police working in specialist police units, we have identified a need for continuous and contemporary training across Tasmania Police in ways to respond effectively to reports of child sexual abuse. Assistant Commissioner Higgins noted that general duties police officers are likely to be first responders in sexual abuse cases. A victim-survivor's initial contact with first responders and investigators affects their ongoing trust in the criminal justice system.[172]

It is also important that police officers receive ongoing professional development. Judith Cashmore AO, Professor of Socio-Legal Research and Policy, Sydney Law School, University of Sydney, told us: 'Interviewing child witnesses is a complex task and requires training, monitoring and feedback on an ongoing basis; it is not a single-shot "inoculation"'.[173]

Dr Tidmarsh also stated that not all gains from training are maintained once 12 months have elapsed—there is a need for a continuous approach to professional development.[174]

In Chapter 19, we recommend a whole of government approach to professional development on responding to trauma (Recommendation 19.2). Police members who have contact with victim-survivors will benefit from this professional development.

Finally, we note that, in addition to formal training, using witness intermediaries can improve police capacity to respond to the needs of child witnesses. We discuss Tasmania's Witness Intermediary Scheme in Section 5.2.1.

Recommendation 16.3

Tasmania Police should review its professional development on child sexual abuse to ensure:

a. all police are trained in
    i. the dynamics of sexual abuse and the concept of grooming, and perpetrators' use of these to facilitate a crime
    ii. myths and misconceptions about child sexual abuse and disclosure
    iii. responding to child and adult victim-survivors sensitively and with an understanding of trauma
b. child sexual abuse specialist detectives are trained in
    i. approaches to interviewing child and adult victim-survivors and vulnerable witnesses, including the Whole Story framework (or similar specialist interviewer training)
    ii. understanding the vulnerability of specific groups of children (such as those in out of home care and youth detention) and common myths about these children
c. all police receive scheduled and regular refresher training and ongoing professional development.

3.2.5 Conducting effective investigations

In this section, we explore factors that support effective police investigations (beyond the interviewing process discussed above).

We look at how processes are working and consider whether there is scope to improve the effectiveness of police investigations through:

- conducting routine audits to ensure minimum standards for investigations are met
- ensuring quality audiovisual equipment is available where witness statements are taken about child sexual abuse
- improving access to forensic examinations in regional and remote areas.

Routine audits to ensure minimum standards are met

Auditing police files would help identify areas for improvement, enhance the quality of investigations and build public confidence in investigative processes.

Auditing also has an important role to play in creating accountability in cases where police decide not to investigate a report of child sexual abuse. Police have considerable discretion in deciding whether to proceed with an investigation. Auditing could provide visibility of, and accountability for, these decisions.

Tasmania Police does not have any organisation-wide performance measures for investigating child sexual abuse.[175] Responses to child sexual abuse are conducted in line with the *Tasmania Police Manual* and the *Initial Investigation and Notification of Child Sexual Abuse Guidelines*. As noted, the guidelines came into force on 23 July 2021 and give police officers direction when they receive a report of child sexual abuse. They specify that a single investigator should lead child sexual abuse cases for the entire investigation wherever possible.[176]

We welcome these minimum standards for conducting police investigations into child sexual abuse. We consider the next step is to put processes in place to ensure these standards are met.

Victoria Police told us that every file run by its specialist unit is reviewed by a superior who checks for compliance against requirements before the file is closed or 'paused' (noting that some victim-survivors decide to return and pursue a process later).[177]

Tasmania Police supports measures to oversee police investigations into child sexual abuse. Commissioner Hine told us that Tasmania Police wants to do random audits on how it is dealing with child exploitation matters as well as family violence matters.[178] He said that these audits could be conducted by its Professional Standards or another management review team and could ensure police are getting feedback, doing the right

thing and identifying what they need to learn.[179] According to Commissioner Hine, the random audits would also enable Tasmania Police to differentiate between districts and identify factors such as response rates, matters that were not pursued and how long investigations took.[180]

In New Zealand, the Independent Police Conduct Authority conducted an inquiry after discovering more than 100 child abuse investigation files in one branch that had seen little or no progress on the original complaint. The Authority then urged New Zealand Police to conduct a nationwide audit of child abuse investigations. Among other things, the Authority recommended establishing a process to audit child abuse investigations that included random file sampling.[181]

New Zealand's *Quality Assurance and Improvement Framework* was introduced nationally in February 2016.[182] It aims to provide consistency in family violence, child protection and sexual assault investigation processes and practice.[183]

Recommendation 16.4

1. Tasmania Police should develop and implement quality audit and assurance processes for investigating child sexual abuse offences, including random file sampling.
2. File sampling should:
    a. capture data on how well police are complying with procedures for investigating child sexual abuse offences, including the requirements set out in the Initial Investigation and Notification of Child Sexual Abuse Guidelines
    b. assess whether
        i. contact was made with the person reporting child sexual abuse
        ii. every effort was made to establish the victim's identity and to assess and investigate the report, where appropriate
        iii. a thorough examination of intelligence on Tasmania Police databases was conducted
        iv. cross-agency and interstate requests for information checks were made to determine whether any intelligence held outside Tasmania might assist the investigation
        v. contact details of the investigating officer were provided to the victim, parent, guardian or other support person
        vi. a supervisor confirmed whether the above actions were taken

c. capture data on the timeliness of investigations

d. go beyond technical adherence to requirements and assess the overall quality of police investigative responses and outcomes for victim-survivors, including identifying any opportunities for improvement.

Quality of audiovisual recordings

Child sexual abuse is typically committed in secrecy and without direct witnesses.[184] Therefore, the complainant's account of what happened is the main evidence and, in many cases, the only evidence against the abuser. The quality of pre-recorded audiovisual interviews is extremely important because the pre-recorded interview is likely to be used as the complainant's evidence-in-chief (that is, it provides the foundation of the prosecution's case). A poor-quality recording, or an ineffective interview, may also mean that a complainant has to retell their experience, something that should be avoided if possible.

Where the complainant in a child sexual abuse matter is still a child, the prosecution is generally allowed to use their pre-recorded police interview in court, as some or all of the complainant's evidence-in-chief. This aims to reduce the stress placed on the complainant by giving evidence in court. It can also improve the quality of the evidence the complainant gives, because the interview can be conducted shortly after the abuse is reported to police, rather than months later when the trial begins. In instances where the complainant is a child, this also helps give the jury a more accurate visual representation of the age and vulnerability of a child closer to the time of the offence. These issues are discussed further in Section 5.

The DPP told us that, while the technical quality of audiovisual recordings has improved over recent years, there are still problems. For example, there have been instances where the camera equipment has failed and the recording has not been available, or the quality of the audio has been poor.[185] At times it is difficult to discern the subtleties of a witness' demeanour due to the positioning of the camera.[186] The DPP recommends reviewing the facilities in all interview rooms to ensure they are appropriate for children and vulnerable witnesses and to ensure visual images include a close-up of the complainant.[187] We support this suggestion.

Commissioner Hine indicated that Tasmania Police uses several methods to record interviews, and the quality of these recordings can fluctuate.[188] Most large police stations have vulnerable persons' interview rooms or 'soft' interview rooms (discussed in Section 3.2.2). These may use a standalone video recorder or another recording system.[189] Police officers have also conducted interviews using their police-issued tablets, and this can be effective.[190]

Commissioner Hine further noted that Tasmania Police is moving to provide new interview cameras to larger police stations, but they are not yet installed in soft interview rooms.[191] Commissioner Hine told us these cameras are of high quality and are designed to be discreet.[192] Commissioner Hine also informed us that better interview rooms are part of the planned design for the multidisciplinary centres.[193] These centres will roll out from 2023.[194]

Recommendation 16.5

Tasmania Police should:

a. review the adequacy and availability of equipment used to record evidence by video or audio, and ensure this equipment is available in all police facilities where victim statements relating to child sexual abuse are taken

b. ensure specialist child sexual abuse police officers receive training on the use of recording equipment and refresher training if they have not used the equipment for six months or more.

Improved access to forensic examinations in regional and remote areas

As part of a police investigation into child sexual abuse, a child may be asked to undergo a forensic medical examination. Forensic medical examinations are conducted by specially trained professionals.

A forensic examination is important in some cases, but often it is of little assistance. For example, it may be of limited use in non-penetrative offences. Even where there is penetration, forensic evidence may not be conclusive. In most cases of historical child sexual abuse, a forensic examination will not be of any use.

The process for conducting forensic examinations is outlined in the *Tasmania Police Manual*. The manual states that examinations of victim-survivors must be undertaken in a coordinated way between the medical examiner, police, crisis support services and/or the Child Safety Service if the victim is a child.[195]

Forensic Science Service Tasmania has developed a Sexual Investigation Kit for collecting evidence in sexual assault cases.[196] These kits are held at each major hospital and can only be used by a trained medical practitioner.[197] An Early Evidence Kit is used in cases where there is a delay in a full examination. These can be used at any location and are designed for the victim-survivor to take samples under the guidance of a second person.[198] Early Evidence Kits are held at rural police stations and at Hobart, Launceston, Burnie and Devonport police stations.[199]

Commissioner Hine explained to us how forensic examination processes work. He told us that whenever Tasmania Police receives a report of child sexual abuse, a notification is made to the relevant support service organisation for the area.[200] According to Commissioner Hine, all regions have strong protocols for the forensic procedures in sexual assault cases.[201] The *Tasmania Police Manual* stipulates that, before conducting a forensic examination of a child, consultation must occur with paediatric specialists:

- in the Southern police district, the on-call paediatrician at Royal Hobart Hospital
- in the Northern district, the on-call Sexual Assault Forensic Examiner Nurse
- in the Western district, the on-call paediatrician at North West Regional Hospital.[202]

Kathrine Morgan-Wicks PSM, Secretary, Department of Health, told us that although sexual assault forensic examinations are available across the State, there may be delays in accessing a forensic medical examiner due to limited availability, particularly out of hours if the on-call staff are busy attending to urgent medical cases.[203] Secretary Morgan-Wicks also informed us that if a victim-survivor is in a rural area, the distance required to attend an examination facility may cause delay. For example, she noted that the only examining facility in the North West is at North West Regional Hospital.[204] Commissioner Hine also said that time delays can occur for children living in remote areas.[205]

Secretary Morgan-Wicks further noted that while the North West does not have a formal acute paediatric sexual assault service, it has two senior paediatric specialists with training and experience in paediatric sexual assault. However, she noted there are times when children requiring assessment in the North West need to travel to Launceston.[206]

Secretary Morgan-Wicks stated that because these occurrences are relatively infrequent, there can be some confusion about the process, with presentations occurring to police, general practitioners, rural hospitals and emergency departments. She noted that the counsellors at the Sexual Assault Support Service and Laurel House can offer extra support and information to victim-survivors.[207]

At a stakeholder consultation in Burnie, participants spoke of a shortage of practitioners who can do forensic examinations in the area, with most children under 13 who require an examination having to travel to Launceston. This contributes to their distress. We were told of a child who presented at 8.00 pm but could not be examined until 1.00 pm the next day, and was unable to shower—noting that using the toilet or eating during that period also risked compromising forensic evidence.[208]

We observed that the Department of Health does not require a standard level of training for forensic examiners across the State. The level of training in different regions ranged from a 'tertiary level qualification in the Medical and Forensic Management of Adult Sexual Assault through the New South Wales Education Centre Against Violence' to an internal course run by the Tasmanian Health Service.[209]

Child sexual assault examinations require specialist skills and, again, we saw variation between the regions in the services available for children. In northern Tasmania, examinations are conducted by medical staff (paediatricians, gynaecologists or general practitioners) who have undergone 'formal training in child sexual assault'.[210] In southern Tasmania they are conducted or supervised by paediatricians with training from Monash University.[211] The North West does not have a 'formal acute paediatric sexual assault service', but Secretary Morgan-Wicks advised that the two senior paediatricians in the region have 'training and experience in paediatric sexual assault'.[212]

Children in all areas of Tasmania should be able to receive a child-friendly, trauma-informed forensic medical examination in a timely manner. While it would be preferable for a paediatrician who is trained in sexual assault to undertake forensic examinations with children, this may not always be possible.

Therefore, increasing the availability of forensic medical examinations for children will likely require increasing the skills of doctors and nurses around the State to undertake paediatric forensic medical examinations. This may involve training existing adult sexual assault forensic examination services to examine child victim-survivors. In other areas, where no sexual assault forensic examination services exist, the Department of Health should ensure suitably qualified local health practitioners are trained and supported in conducting forensic medical examinations for sexual assault.

Recommendation 16.6

1. The Department of Health should increase the availability of forensic medical examination services for child victim-survivors of sexual abuse to ensure all child victim-survivors can access an examination with minimal delay. To achieve this, the Department should:
    a. train existing adult sexual assault forensic medical examination services to examine child victim-survivors
    b. ensure, in areas of Tasmania where no sexual assault forensic medical examination services exist, suitably qualified local health professionals are trained and supported to conduct forensic medical examinations for child sexual abuse.

2. At a minimum, the training should include:
    a. an external, recognised qualification in forensic medical examinations
    b. external recognised training in sexual abuse care for children.

3.2.6 Implementing police complaints and oversight mechanisms

Our Commission of Inquiry mostly focused on government institutions whose primary functions relate to the care and supervision of children. However, during our Inquiry, we also received information about alleged child sexual abusers who were police officers, which caused us concern about how allegations of child sexual abuse against police officers are reported and dealt with.

Due to the relatively limited evidence we received on this topic, as well as time constraints, we have not explored this issue in detail. But based on what we heard, we consider that strong measures are needed to ensure independent oversight and accountability in cases where a police officer is alleged to have committed child sexual abuse. This will assist Tasmania Police to meet its obligations under the Child and Youth Safe Standards and the Reportable Conduct Scheme.

We start by sharing a question raised by Azra Beach, a victim-survivor, who alleged she was abused by several individuals, including a police officer. Ms Beach asked:

> … when someone wishes to proceed with historical sexual abuse charges that involve a member of Tas Police, what guarantee does the survivor have that it will be investigated fully and appropriately? … I feel like there needs to be someone independent investigating, not Tas Police …[213]

Commissioner Hine told us of 22 instances of complaints or information received concerning allegations related to child sexual abuse involving Tasmania Police officers since 2000.[214] We also note the recently reported case of Paul Reynolds, a police officer, who was investigated for child sexual abuse shortly before his death by suicide in September 2018.[215]

The following case example describes what we heard about the police handling of these allegations against Paul Reynolds. As we set out, in September 2018, Paul Reynolds was afforded a full police funeral, with a guard of honour. Yet his death followed significant police investigations and reports about his possible sexual abuse of multiple children, among other concerns.

Case Example: Tasmania Police complaints handling—Paul Reynolds

Paul Reynolds served as a Tasmania Police officer for almost 40 years. Shortly before his death by suicide in September 2018, he was investigated for child sexual abuse offences. The circumstances surrounding his death have been the subject of coronial proceedings and reported in the media, and we do not intend to repeat them here.

We heard that in 2008, police officers from an interstate police force were delivering training to Tasmania Police officers in Tasmania. After the first day of training concluded, at drinks at the Tasmania Police Academy bar, an interstate police officer alleged that a conversation occurred suggesting that then Inspector Reynolds was 'a paedophile'.[216] Two Tasmania Police officers, both with the rank of Inspector, reportedly gave examples of concerning behaviour.[217]

One Inspector reportedly said he had visited Inspector Reynolds' home and saw him with a 15-year-old boy between his legs, giving him a massage. Another Inspector reportedly said that his wife had been approached by people in the community concerned about Inspector Reynolds' behaviour around young boys.[218]

We were told that the interstate police officer who was present during this conversation became concerned 'about the nature of the discussion and potential truth around such serious allegations' and reported it to a Tasmania Police Divisional Inspector.[219] The Divisional Inspector then briefed the Commander of Internal Investigations.[220]

Shortly after, Darren Hine, then Deputy Commissioner, Tasmania Police, wrote to the Inspectors who had reportedly described the concerning behaviours, asking them to respond to the interstate police officer's report.[221] Both Inspectors replied to the Deputy Commissioner suggesting there had been a misinterpretation of comments made and that it had not been said Inspector Reynolds was a paedophile.[222] An Assistant Commissioner who was present when the conversation was alleged to have occurred was also approached to make a statement. Before providing his response, the Assistant Commissioner had been made aware of the responses of the Inspectors to the allegations against Inspector Reynolds. The Assistant Commissioner wrote a response indicating there was no mention of paedophilia in the bar that evening and that he did not believe there was any basis to pursue the matter further.[223] He suggested that the interstate police officer had 'seriously misunderstood' the conversation and said such an allegation had 'potentially very damaging consequences for a person wrongfully accused'.[224]

After receiving this advice, the Commander of Internal Investigations wrote to the Deputy Commissioner that 'the weight of evidence suggests [the interstate police officer] was either mistaken or misinterpreted' the comments.[225] In the absence of anything other than the interstate police officer's account, the Commander wrote that there was 'no other evidence' available.[226]

The two Inspectors were advised that the matter would be closed and filed for future reference.[227] The advice recommended that Inspector Reynolds not be told (given he was apparently unaware of the allegation) to avoid 'dissension between him' and the two Inspectors.[228]

In 2012, Inspector Reynolds reverted to the rank of Senior Sergeant following concerns about his work performance.[229]

In 2018, a senior police officer lodged a complaint using a tool (Blue Teams) for making complaints about colleagues.[230] It was alleged that Senior Sergeant Reynolds had sent and received child exploitation material and had groomed young men (including some involved with a local football club).[231] Shortly after these allegations, police searched his home and Senior Sergeant Reynolds died by suicide.

Senior Sergeant Reynolds received a police funeral following his death, at which now former Commissioner Hine spoke and outlined Senior Sergeant Reynolds' career.[232]

In 2022, Counsel Assisting the Coroner reportedly told an inquest into the deaths of four Tasmania Police officers (including Senior Sergeant Reynolds) that it was supposedly 'widely known in Deloraine that [Paul Reynolds] was a paedophile'.[233] We were told by Tasmania Police that it has 'no evidence that that asserted reputation of Senior Sergeant Reynolds was previously known to any member of Tasmania Police' before Senior Sergeant Reynolds' death.[234]

We acknowledge that, from 2018, Tasmania Police eventually investigated Senior Sergeant Reynolds for child sexual abuse and other offences. However, it is concerning that a decade before Senior Sergeant Reynolds' death there appeared to be credible reports that suggested an awareness (or at least a suspicion) of his engaging in inappropriate behaviour with children.

We consider that the approach to investigating the alleged conversation overheard by the interstate police officer was inadequate. The interstate police officer should have been invited to make a formal statement.

We are further concerned that Senior Sergeant Reynolds was given a police funeral. We received an anonymous submission from a community member who was 'furious' when they learned from a police contact that Senior Sergeant Reynolds had been investigated before his death for child sexual abuse offences.[235] The community member wrote:

> Why is it that Paul Reynolds was given a full police send off when he was under investigation before he killed himself? What impact has this public heroism had and will have on the alleged victims and their families?[236]

We share these questions. We can only imagine how distressing this would have been for those who heard rumours about Senior Sergeant Reynolds' behaviour and believed them to be true. We are concerned by the Commissioner's delivery of the eulogy, given the Commissioner was, at that stage, aware of the concerns about Senior Sergeant Reynolds.[237]

Commissioner Hine described the processes that apply when a police officer is alleged to have been involved in child sexual abuse. He told us that anything of that nature would go to the Professional Standards Command, which would investigate it under the direction of the Deputy Commissioner. The matter would then be reported to the Integrity Commission.[238] We note that this process specifies where known cases are investigated but does not address the concerns of victim-survivors about how they make a complaint or about complaints mechanisms other than attending or phoning a local police station.

Under the *Integrity Commission Act 2009*, the Integrity Commission has the power to audit the way Tasmania Police (a public authority) has dealt with complaints of police misconduct.[239] As well as audits of a class of police complaints, the Integrity Commission can undertake individual audits of police complaints.[240] The Integrity Commission reported in its 2020–21 annual report that it had undertaken an audit of 30 complaints files with varying levels of seriousness, as well as one audit of an individual police complaints file relating to the use of force.[241]

Commissioner Hine said that after a matter has been reported to the Integrity Commission it then goes to the DPP to be dealt with in court.[242]

Commissioner Hine said that specific steps ensure the Professional Standards investigation is done independently from the area where the police officer is based, and that there is oversight from the Integrity Commission.[243] He also pointed out that the issue is dealt with in the *Commissioner's Directions for Conduct and Complaint Management and Compliance Review* (2021), which is a publicly available document.[244] While this document sets out good processes for dealing with police misconduct, it is long (173 pages excluding appendices) and complex. And, while it refers to handling family violence complaints against police, it does not refer specifically to child sexual abuse. Noting that our Inquiry did not have the opportunity to explore this matter further in evidence, in our view this process is not transparent enough in terms of making victim-survivors aware of how to report child sexual abuse by a police officer. We also consider that the police investigation needs to be more independent than being overseen by the Deputy Commissioner.

Commissioner Hine said that, regarding family violence, there were issues relating to perpetrators or witnesses being police officers. Accordingly, Tasmania Police has changed its policy. There is now a review panel chaired by an independent person who looks at the investigation to ensure independence.[245] Commissioner Hine noted that it would be a natural progression for Tasmania Police to convene a similar review panel where a police officer is alleged to have been involved in child sexual abuse.[246]

In Victoria, complaints against police can be made directly to the Independent Broad-based Anti-corruption Commission, but most are referred to Victoria Police for investigation.[247] The Independent Broad-based Anti-corruption Commission oversees these investigations, which includes reviewing and auditing selected investigations.[248]

Victoria Police has established a specialist Sexual Offences and Family Violence Unit, formerly known as Taskforce Salus, in its Professional Standards Command to investigate allegations against Victoria Police employees involving sexual assault (including against children) or family violence.[249] Victoria Police has also published an 'options guide' for victim-survivors of sexual assault or family violence perpetrated by Victoria Police employees.[250] This guide is available online and sets out various options for reporting allegations.[251] It explains the criminal complaints and investigation process and the internal disciplinary process. It indicates that interim action can be taken to suspend or transfer a Victoria Police employee who is under investigation.[252]

We strongly support the need for independent oversight of internal police investigations. More broadly, we emphasise that workplace culture is a key pillar in detecting and preventing most forms of unethical police behaviour.[253] Supervisors and managers have significant influence over the culture of their workplaces and are positive role models of acceptable behaviours.[254] We consider that professional development and strong leadership are required to ensure police uphold the highest standards.

We urge Tasmania Police to continue its path to improving police responses to reports of child sexual abuse, noting that strong accountability measures are required when allegations are made against police members. The cost of failing to rigorously investigate allegations of child sexual abuse is too high.

Tasmania Police has told us that planning is well advanced to establish a Family and Sexual Violence Involving Police Review Committee. An independent person will chair the committee. We are glad to hear of the intention to establish such a body.

Recommendation 16.7

Tasmania Police should:

a. establish a clear, publicly accessible process for reporting and responding to allegations of child sexual abuse against a member of Tasmania Police, including the ability to report to an entity independent of police such as the Integrity Commission

b. expand the domestic violence review panel to cover child sexual abuse and ensure independence in investigations when a member is alleged to have been involved in child sexual abuse.

4 Prosecution responses

The DPP is responsible for prosecuting serious criminal matters, including institutional child sexual abuse cases.

In recent decades across Australia, significant changes have improved how prosecution agencies respond to victim-survivors of child sexual abuse.

In this section, we outline how the ODPP deals with child sexual abuse offence cases, focusing on:

- prosecution specialisation and training
- complaints and oversight mechanisms.

We then consider whether there are opportunities to strengthen and improve responses, and whether the ODPP is adequately funded to meet an increased demand for its services. In Section 9, we consider the ODPP's capacity to collect data and monitor outcomes in child sexual abuse cases.

4.1 Prosecution roles and responsibilities

The ODPP conducts criminal prosecutions in the Supreme Court and some summary criminal matters in the Magistrates Court. Prosecutors have a duty to present the case against an accused person fairly and honestly and to assist the court with submissions that allow the law to be properly applied to the facts.[255] The DPP acts on behalf of the State and is independent of the police and the courts.[256]

The prosecution has the responsibility to make decisions in line with the *Criminal Code Act 1924* ('Criminal Code Act') and the DPP *Prosecution Policy and Guidelines* ('DPP Guidelines') including:

- whether to start a prosecution
- whether to discontinue a prosecution
- the appropriate charge to be laid against an accused person
- whether to accept a plea of guilty to a lesser charge.[257]

These decisions can have a significant impact on victim-survivors.

The National Royal Commission made recommendations in its *Criminal Justice Report* that were directed at each Australian DPP.[258] The recommendations made to prosecuting authorities mostly relate to consultation, providing information to victim-survivors for court and having robust and transparent decision-making processes (particularly for decisions to discontinue or drop charges).[259] Tasmania's ODPP advised us that it has implemented all the National Royal Commission's recommendations for which it is responsible.[260]

The ODPP referred to improvements it had made in dealing with child sexual abuse. In particular, the ODPP referred to:[261]

- creation of the Witness Assistance Service, which began in July 2008[262]
- introduction of a pre-charging advice service for Tasmania Police[263]
- establishment of a victims' right of review to the DPP of decisions made by the ODPP[264]
- implementation of detailed policies about how decisions that affect victims are made.[265]

The DPP told us that the ODPP prioritises sexual offence prosecutions, giving precedence to matters where the victim is still a child, where there are child witnesses and where a pre-recording will be conducted in court under the *Evidence (Children and Special Witnesses) Act 2001* ('Evidence (Children and Special Witnesses) Act').[266] Also, where the victim is still a child, there is a direction from the Chief Justice that the ODPP informs the Supreme Court. Once this occurs, a judge case-manages the matter.[267]

The DPP also advised us that child sexual abuse prosecutions are treated differently from other prosecutions in the following ways:

- The ODPP has generally provided pre-charging advice to Tasmania Police before the accused person is committed for trial. We discuss the pre-charging advice service in Section 4.4.1.
- It is the ODPP's practice to have early and ongoing contact with victims of sexual offences.[268] This contact occurs mainly through the Witness Assistance Service, which we discuss in Section 4.4.2.

4.2 Communicating with and supporting victim-survivors

As with police, victim-survivors told us of mixed experiences with prosecuting authorities. Some victim-survivors were positive about their experiences with prosecutors. Katrina Munting, a victim-survivor, told us that the support staff at the Witness Assistance Service from the ODPP were excellent. She described the woman she worked with as 'the kind conduit between myself and the terrifying Supreme Court and lawyers'.[269] Although Ms Munting did not spend a great deal of time with the Crown Prosecutor, she told us 'was very kind, understanding and patient in all our interactions'.[270]

By contrast, Leah Sallese, a victim-survivor, said that she had a 'terrible time' during the prosecution stage in 2017 and noted that it was retraumatising to have to repeat the same information.[271] In response to Ms Sallese's evidence, the DPP provided our Inquiry with documents indicating how prosecutors handled Ms Sallese's case.[272] While our Inquiry does not suggest that these prosecutors were at fault, it is clear, and the DPP acknowledges, that the criminal justice system can be difficult for victims.[273]

There may be circumstances where complainants need to retell their stories to multiple people on multiple occasions. The issue is particularly acute where disclosures are made bit by bit. This emphasises the need, of which the DPP is conscious, for sensitive and trauma-informed processes in the ODPP. The recommendation made below for professional development for prosecutors and other ODDP staff and the availability of the Witness Assistance Service should help address this issue.

Robert Boost, a victim-survivor, told us that the decision of the ODPP not to proceed with his case after he reported to police in 2020 left him feeling as if the person he alleged abused him still had power over him. Mr Boost said he felt 'that the system is there to protect [the alleged abuser], not me'.[274]

Mr Boost said he felt a 'deep sense of injustice' when the ODPP declined to proceed to trial with his matter because of insufficient evidence:

> There is a real imbalance in these 'historical' cases. I was a little kid when I was abused, faced with a perpetrator in a position of power. That power imbalance must be factored in by the DPP when they consider whether or not to run a case … I was dismissed by the perpetrator as a child, and the system is still dismissing me as an adult now.[275]

Kerri Collins, a victim-survivor, told us that she learned two weeks before the trial was to begin that the ODPP had decided not to proceed with the prosecution. Ms Collins said she wrote to the ODPP expressing her 'utter horror' at what had been decided.[276] She spoke to us about feeling powerless, as a victim, against the system.[277]

Ms Collins' matter was dealt with in 2004. The DPP told us of changes in the law and greater emphasis on supporting victims since then, which means that Ms Collins' case would be dealt with differently today.[278]

The DPP also told us that there is now an expectation in the ODPP of communicating with complainants throughout the prosecution process. The DPP Guidelines (updated in 2022) state:

> Informing the complainant of the proposed discharge or reduction in charges is an important step in the process. It is important that the complainant understands the reasons why a decision is made. It is preferable that the complainant be informed of the reasons in person. However, if this is not possible, it should be done by telephone. When informing a complainant of the decision the prosecutor should advise how decisions are made, provide a brief history of the matter and brief reasons for the decision. The complainant should be given an opportunity to provide his or her views about the decision.[279]

The DPP stated that, in the past, communicating with victim-survivors was, to a large extent, left to the discretion of the counsel in charge of the matter.[280] We are pleased to hear about this change in approach.

The DPP also stated that complainants are now notified of key decisions and have a right to request a review of a decision.[281] Where the complainant is under 18 years of age or has disability, their parent, guardian or spokesperson will be notified.[282] We discuss this in Section 4.3.

4.2.1 Prosecution specialisation

Child sexual abuse prosecutions can be difficult and complex. As noted, in relation to child complainants, these cases typically involve the word of a child against an adult, with no eyewitnesses and often a lack of forensic evidence. Those who prosecute child sexual abuse offences should have specialised skills and training in the law as it pertains to child sexual abuse and the nature and impact of child sexual abuse.

Terese Henning, Adjunct Associate Professor, Faculty of Law, University of Tasmania, recommends specialisation among the police and prosecution in sexual assault matters:

> Expertise and special skills are needed to deal with these cases, in order to know what communication tools are available, and how to get the best evidence out of these kinds of witnesses. These cases need to be managed in particular ways, and you need to have particular expertise to manage them appropriately.[283]

The DPP told us that, since 2016–17, the ODPP has had a specialist Sexual Assault and Family Violence Team covering Hobart and Burnie.[284] The purpose of the team is to streamline sexual assault and family violence prosecutions and to facilitate oversight by a single Principal Crown Counsel to ensure consistency in approach and appropriate prioritisation.[285]

We support the specialist arrangements in the ODPP for child sexual abuse prosecutions. In Section 4.4, we consider the subject of funding to support specialisation.

4.2.2 Prosecutor training

The DPP told us that specific training for prosecuting child sexual abuse matters is mostly done 'on the job'. The DPP stated that the team structure in the ODPP enables mentoring of staff, supervision of work and a knowledge of each practitioner's workload and experience.[286] New prosecutors are given the opportunity to act as the junior in contested matters before conducting a hearing or trial on their own.

The DPP Guidelines set out the duties of prosecutors, including those that apply to children and special witnesses.[287] For this, the DPP Guidelines refer to the Australasian Institute of Judicial Administration's *Bench Book for Children Giving Evidence in Australian Courts*.[288] The Bench Book is primarily for judicial officers who deal with children giving evidence in criminal proceedings as complainants or witnesses, rather than for prosecutors. It covers the nature and impact of child sexual abuse, children's evidence and coping skills, and suggested procedures for children giving evidence. It includes a suggested script to use in special hearings with children or cognitively impaired witnesses.[289] The DPP Guidelines strongly encourage prosecutors with proceedings involving children or cognitively impaired witnesses to review the relevant portions of the Bench Book in preparing for trial.[290]

The DPP gave us examples of training provided to staff at Continuing Legal Education days, including:

- self-care and trauma, delivered by the Sexual Assault Support Service, June 2022
- interviewing complainants and leading evidence—in particular, children in the context of sexual assault—delivered by the Assistant Director (Summary Prosecutions), June 2022
- child sexual abuse and trauma-informed practice, delivered by the Sexual Assault Support Service, December 2021.[291]

The DPP also noted that Senior Crown Counsel are involved in and facilitate training courses. He said there are counsel in the ODPP who have considerable experience in prosecuting sexual abuse offences. The DPP stated that all practitioners are encouraged to, and regularly do, consult with experienced counsel.[292]

The DPP stated that it is always desirable for prosecutors to have ongoing training to help them prosecute child sexual abuse cases, including abuse in institutional contexts. The DPP noted that more training would be beneficial in the following areas:

- trauma-informed responses

- understanding the Evidence (Children and Special Witnesses) Act
- tendency and coincidence evidence
- issues that children may face in giving evidence in general and accommodations that can be made.[293]

We welcome the efforts the ODPP has made to train prosecutors on the nature and impact of child sexual abuse and the laws that apply to child sexual abuse offence prosecutions. We agree with the DPP that there is scope to build on and strengthen training, for example, to include training on the role of witness intermediaries.

It would also be helpful for defence lawyers to receive such training through The Law Society of Tasmania, or possibly Tasmania Legal Aid. Additionally, it might be possible to include prosecution lawyers sharing their experiences as part of the training.

Recommendation 16.8

1. The Office of the Director of Public Prosecutions should provide ongoing professional development to staff on child sexual abuse, including:
    a. specialist training on trauma-informed practice
    b. training on issues that children and adult victim-survivors may face in giving evidence and approaches that can be taken to make the process trauma-informed, including the role of witness intermediaries
    c. training on the laws of evidence and procedure that apply in child sexual abuse cases
    d. training on the nature, causes and methods of child sexual abuse and grooming, including addressing common myths about child sexual abuse.
2. The Office of the Director of Public Prosecutions should also explore opportunities with Tasmania Legal Aid and the Law Society of Tasmania for joint training on the dynamics of child sexual abuse and trauma-informed practice.

4.3 Complaints and oversight mechanisms

The ODPP has the power to decide whether to proceed with charges, what charges to proceed with and whether to discharge an accused person. These are significant decisions for complainants and accused people. Being involved in the criminal justice system is difficult for many complainants and their families, and it is inevitable that some of them will find the system unfair or insensitive. This makes it particularly important that there are internal review processes and clear and effective complaints mechanisms.

The National Royal Commission recommended that each Australian DPP:

- has comprehensive written policies for decision making and consultation with victim-survivors and police
- publishes all policies online
- provides a right for complainants to seek written reasons for key decisions
- offers opportunities to discuss the reasons for decisions in person before written reasons are provided.[294]

The DPP advised us that every decision to prosecute or to discharge a matter is internally reviewed.[295] The DPP explained the process as follows:

- When enough relevant information has been provided, the lead prosecutor must determine whether, in their view:
    - an indictment should be filed
    - the accused person should be discharged
    - alternative summary charges should be laid.[296]
- The prosecutor must prepare a memorandum setting out:
    - facts that are essential to the charges to be considered
    - strengths or difficulties with evidence, including with witnesses
    - possible legal arguments
    - the prosecutor's thoughts on the likely resolution.[297]
- The memorandum must be forwarded to the DPP, or to a committee whose members include the Deputy Director and Principal Crown Counsel.[298] In most cases, the memorandum is forwarded to the committee in the first instance. Generally, memorandums are only forwarded to the DPP in the first instance for charges that require the DPP's authorisation.[299]
- If an indictment on the same or similar charges for which the accused person has been charged and/or committed is sought, one other member must agree with the lead prosecutor. In the case of any committee member making the recommendation, the agreement of another member is required.[300]
- If discharging the accused person is recommended, the agreement of two committee members is required unless the recommendation is that of a committee member, in which case the agreement of another committee member is required.[301]

- If the recommendation is to prosecute the accused person on the same or similar charges but one member of the committee recommends a discharge or a substantial downgrading of charges, then two other committee members must also agree with such a discharge or downgrading of the charges.[302] Where the committee cannot agree in these terms, the matter is forwarded to the DPP for review and determination.[303]
- The DPP can overturn a committee decision.[304]

The DPP informed us that a decision to indict or discharge an accused person in a case involving child sexual abuse is considered in the same way as for any indictable crime. In most cases, it will involve a discussion with the complainant before a final decision is made.[305] If prosecuting an accused person discontinues after charges have been laid, detailed reasons for the discharge must be clearly documented.[306]

The DPP Guidelines state that 'ordinarily' a letter should be provided to the complainant confirming that the charges will not proceed and that the complainant has a right to request the DPP to review that decision.[307] The DPP Guidelines do not require the letter include an explanation for the decision, but complainants may request written reasons for decisions.[308] The ODPP told us that usually staff meet with complainants to explain why a decision not to proceed with a prosecution has been made.[309]

A complainant may apply to have the DPP review a decision to discharge an accused person or substantially downgrade a charge against an accused person (unless the decision was approved by the DPP).[310] Requests for review are generally to be made within seven days of notification of the decision.[311]

The DPP Guidelines state that a final decision to discharge an accused person will only be overturned if it is plainly wrong (that is, it was based on incorrect or irrelevant material or was plainly unreasonable, or unless new evidence becomes available).[312] The DPP told us that he will also overturn a non-final decision if a complainant requests him to review that decision and he disagrees with the decision.[313] The DPP Guidelines do not allow for reviews of DPP decisions, but a complainant may request to meet with the DPP or Deputy Director to have the reasons for the decision explained.[314]

Some people shared their dissatisfaction with us, not only with the decisions made on their matters but also with the way the ODPP handled their complaints or concerns.

One victim-survivor told us of their disappointment at being told in 2014 that there was not enough evidence to charge the person who abused them, only later discovering that there were more victim-survivors abused by the same person:

> I was also advised by the Public Prosecutions Office that any review of the decision not to prosecute [the abuser] would have to be made to Daryl Coates SC [the DPP] as "there was no formal procedure for review".[315]

We are pleased that there have been changes to the process since 2014.

The mother of another victim-survivor described her family's 'heartbreak' when advised in 2006 by a former DPP that her daughter's complaint would not proceed, despite initially being assured they had an extremely good case.[316] Later, they tried again with a subsequent DPP, only to be told that he could not overrule the previous decision. She said: 'DPPs are not God, and therefore decisions … should be able to be overturned by another DPP'.[317] (Refer also to the experience of Kerri Collins, described in Chapter 5).

The National Royal Commission considered whether there should be judicial review of DPP decisions.[318] Judicial review is when a court reviews a decision made by a public authority to ensure the decision is legal and that the decision maker considered everything that was legally relevant. In reviewing a decision, a court considers whether the decision was valid but does not review the merits of the decision itself (that is, a judicial review does not reconsider the facts of the matter or focus on whether the decision was correct). If a court is satisfied that the grounds for judicial review have been established, it can set aside the decision and refer it back to the decision maker for further consideration.

The DPP told us that he does not support judicial review of prosecutorial decisions.[319] In considering whether there should be judicial review of decisions by Directors of Public Prosecutions, the National Royal Commission cited longstanding judicial authority that has held that the integrity of the judicial process, including its independence, would be compromised if the courts were to decide or be in any way concerned with decisions about who is to be prosecuted and for what.[320] In light of strong opposition from Directors of Public Prosecutions and noting the position of the High Court, the National Royal Commission did not consider that judicial review would be likely to provide an effective means for victim-survivors to get a review of prosecutorial decisions.[321] We share the National Royal Commission's reservations about judicial review.

The National Royal Commission noted that in the absence of judicial review it is critical that Directors of Public Prosecutions and Offices of Directors of Public Prosecutions, and relevant governments, ensure complaints mechanisms for internal merit reviews are robust and effective.[322] The National Royal Commission recommended that Directors of Public Prosecutions establish robust and effective internal processes to audit their compliance with policies for decision making and consultation with victim-survivors and police.[323] Like the National Royal Commission, we emphasise the need for robust and effective mechanisms for internal merit reviews. We also note that care and diligence should be applied not only to the decision itself, but also to how it is delivered and explained to victim-survivors and their families.

The DPP informed us that, since 2017–18, the ODPP has conducted annual audits of discharge files for compliance with the DPP Guidelines. The DPP stated that 30 per cent of discharged cases are randomly selected and benchmarked against the DPP

Guidelines in respect of a discharge.[324] The ODPP noted that the audit results are published in its annual reports. The ODPP has also reviewed historical matters, noting that the standard of record keeping has significantly improved in the past 15 years.[325] The DPP stated that, following the annual audit, an email is sent to all staff to remind them of the discharge procedures and to identify any deficiencies in practice.[326] We welcome this change.

4.4 Properly funding and resourcing prosecution services

In this section we outline what we heard about funding and resource challenges for the ODPP and the impact this is having on its ability to meet demand.

We heard evidence that the increasing workload is placing pressure on the ODPP and resulting in:

- delays in providing pre-charging advice to police
- an inability of the ODPP's Witness Assistance Service to provide services to witnesses in cases other than sexual offence matters
- delays in prosecuting criminal cases.

These challenges are discussed in the sub-sections below.

We note that extra funding was provided to the ODPP in the 2022–23 Tasmanian Budget to help it reduce the backlog of cases in the Supreme Court.[327]

4.4.1 Delays in pre-charging advice

The National Royal Commission recognised the importance to victim-survivors of having the correct charges laid against an accused person as early as possible, so charges are not significantly downgraded or withdrawn at (or close to) trial. It made a recommendation to this effect.[328] The National Royal Commission noted that victims and their families are likely to experience significant distress if they believe there will be a criminal trial and are later told that the charges against the accused person will be dropped.[329]

Tasmania Police regularly requests and receives pre-charging advice from the ODPP on various matters, including child sexual abuse.[330] The ODPP provides the pre-charging advice service to police before charging a person with 'any sexual assault crime' in circumstances where there may be a question about the appropriateness of charges or the sufficiency of evidence.[331] Individual detective inspectors receive a file from investigators, via their supervisors, and assess the file. If specific advice is required before charging an accused person, the file is forwarded to the ODPP.[332]

Under section 125A of the Criminal Code Act, the approval of the DPP is required before a charge can be laid for the offence of persistent sexual abuse of a child or young person. Approval is also required under section 105A for the offence of failing to report the abuse of a child. Under protocols between the DPP and Tasmania Police, the DPP must be notified within four working days of charges for other sexual offences.[333]

According to Commissioner Hine, the arrangements 'work well' and Tasmania Police has discretion on whether to charge, based on the evidence at hand. Police can seek advice if in doubt.[334]

Commissioner Hine considers that the ODPP pre-charging advice service is effective at reducing the likelihood of charges being dropped, downgraded or dismissed due to better, more timely advice on the correct charge selection or on possible deficiencies in the evidence necessary to charge an accused person.[335]

Commissioner Hine considers that, while the police should be able to charge based on their discretion, for charges of persistent sexual abuse of a child or young person, DPP authorisation is appropriate because the process ensures the details that form the basis of an indictment are correct.[336]

The DPP stated that the benefits of pre-charging advice are well recognised, and it is an integral part of the work in the ODPP.[337] According to the DPP, the pre-charging advice service ensures:

- correct charges are laid at an early stage
- early advice is given about the prospect of gathering more evidence (where evidence is gathered before charging, there is less likelihood of the case being dropped after proceedings have started)
- matters with no reasonable prospect of conviction do not proceed, avoiding false expectations among complainants.[338]

Although Tasmania Police and the DPP value the pre-charging advice service, the DPP told us that resourcing constraints create delays in providing the advice. The ODPP aims to have advice completed within six weeks of referral.[339] In a consultation with us, and in its most recent annual report, the ODPP conceded that the six-week deadline for providing advice to Tasmania Police was not being met due to volume and resourcing pressures.[340] Between 1 January 2012 and 31 April 2022, the average time an advice file remained in the ODPP was 15.3 weeks.[341] This is a long wait for a complainant to find out whether a prosecution is likely to proceed.

A participant in our stakeholder consultation in Devonport noted the need for the ODPP to be adequately resourced to provide timely advice to police, with wait times of up to nine months in Devonport.[342]

The DPP stated that these files are complex and time-consuming.[343] The DPP also noted that these files are taking longer to review because many contain audiovisual statements, which can be more difficult to follow and longer to listen to and watch than written statements.[344] According to the DPP, they sometimes include irrelevant or inadmissible material and may not describe events in sequence.[345] We note that care needs to be taken with such statements—the Whole Story framework (discussed in Section 3.2) may produce material that appears irrelevant to a lawyer but is an important part of the complainant's story of the abuse.

The DPP stated that pre-charging advice to Tasmania Police is mainly provided by the Sexual Assault and Family Violence Team.[346] However, he noted that, more recently, charging advice has been provided by Crown Counsel outside of the team because the team has not been able to service an increase in workload.[347]

The DPP is of the view that the pre-charging advice targets could be better met if they had specialist prosecutors dedicated to providing this advice, without also having to conduct other criminal prosecutions. This is because urgent criminal work and court deadlines mean that pre-charging advice does not always get the priority it needs.[348]

4.4.2 Witness Assistance Service challenges

The National Royal Commission recommended that the prosecution Witness Assistance Service be funded and staffed to ensure it can perform its tasks of keeping victim-survivors and their families informed and putting them in contact with relevant support services.[349]

The ODPP established the service in 2008 to support witnesses and victims and their families while they go through the criminal justice processes.[350] The DPP informed us that the number of staff employed in the service has increased steadily since 2008.[351] Qualifications of staff include legal, psychology, criminology, social science and social work degrees.[352]

The Witness Assistance Service provides services to complainants and vulnerable witnesses, including:

- helping witnesses to understand court and legal processes
- providing information on court dates and outcomes
- offering support during charge selection, negotiation or discontinuance
- arranging, and supporting witnesses in, meetings with the prosecutor
- showing witnesses court facilities ahead of giving evidence
- supporting witnesses in court or on video link, or while waiting to give evidence

- helping to prepare victim impact statements
- providing a post-court briefing and helping to organise ongoing support.[353]

Sexual assault cases have been automatically allocated a Witness Assistance Service Officer since 2010.[354] The DPP outlined how the service operates:

- Once an accused person is charged with a sexual assault offence, Tasmania Police notifies the ODPP within four working days.
- Within two days of that notification, the Sexual Assault Liaison Clerk writes to the complainant to explain the usual course of proceedings.
- Following notification that charges have been laid, the Sexual Assault Liaison Clerk forwards a copy of the notification to the Witness Assistance Service Manager, who allocates the matter to a Witness Assistance Service Officer. This officer is responsible for contacting the complainant and providing any updates.[355]

The DPP informed us that a Witness Assistance Service Officer generally contacts a complainant in a child sexual abuse case before any application for bail and notifies the complainant of the outcome of any such application.[356]

The DPP noted that, as much as possible, allocated Witness Assistance Service staff continue working on a child sexual abuse matter until it is resolved.[357]

Ms Munting, also quoted above, described how someone from the Witness Assistance Service assisted her:

> The woman I worked with was so kind and understanding of my anxiety surrounding every step of the process … She also arranged for a private session in one of the courtrooms at the Supreme Court. This allowed me to know what to expect when I attended; the 'feel' of the room, who would be positioned where, what I needed to do at each point, to practice sitting in the witness box prior to the hearing, and to practice my victim impact statement in the same setting it would be required.[358]

Another victim-survivor acknowledged the significant support she received from a Witness Assistance Officer, adding:

> Given my experiences, I believe it should be standard practice for victims/survivors of crime involved in criminal cases to be given a package of information up-front explaining the roles and responsibilities of the Witness Assistance Service, the roles and responsibilities of the Witness Assistance Officer, the court process, the availability of support services and the dos and don'ts of being a witness.[359]

According to the DPP, the Witness Assistance Service is funded and staffed to ensure it can perform its tasks of keeping sexual abuse victims informed and connecting these victim-survivors with relevant support services.[360] The DPP advised us that contact with victim-survivors of sexual abuse offences is the service's priority. However, he noted

the growing demand for the service is affecting the assistance it can provide to other complainants and vulnerable witnesses.[361] The DPP told us that, because priority is given to sexual abuse matters and matters involving children, the Witness Assistance Service is funded well enough to meet these priorities.[362] However, the DPP noted that this limits the ability of the service to help other vulnerable complainants and witnesses.[363] The DPP also advised that contract positions make it difficult to keep qualified and suitable staff, stating that it would be much better if the positions were permanent.[364]

4.4.3 Delays in prosecuting criminal cases

The DPP told us that the ODPP struggles with criminal processes, workload increases and increased pressure because of a backlog of cases in the Supreme Court.[365] He stated that the effects of the increased workload and the resulting delays are significant for victim-survivors, accused people, witnesses, ODPP staff and the quality of justice.[366]

Delays can be highly distressing for victim-survivors and compromise their willingness and ability to take part in a criminal justice process.

Ms Munting told us:

> Each time there was another delay, another adjournment, or not meeting the next expected progress point, it tore me apart. I was so determined not to give up; however, the process drove me ever closer to suicide as I could not cope.[367]

The DPP told us of increasing pressures on the ODPP, noting:

- There is a relatively small pool of counsel, Crown and defence with experience in sexual offence cases. The DPP said this causes issues with continuity of counsel and adds to delays.[368]
- There has been an increase in pre-trial directions hearings and special hearings under the Evidence (Children and Special Witnesses) Act.[369] The DPP said that, while the provisions under this Act are well used and of great benefit, they inevitably lead to delays and affect the backlog.[370]
- The ODPP has a limited number of Senior Crown Counsel available to conduct complex prosecutions, including prosecutions for sexual abuse offences. The DPP said that junior practitioners have been employed but it will take time for these practitioners to gain the skills and experience necessary to prosecute sexual abuse offences.[371] The DPP noted this creates more pressure and requires more resources for training, continuity of counsel and delays.[372]

The DPP stated that, overall, the lack of resources is a problem. He noted that the workload of the specialist prosecution unit continues to increase and there are not enough resources to keep up with demand.[373] The DPP further stated that the criminal backlog cannot be properly addressed without a sizeable increase in ongoing funding to the ODPP and corresponding funding for criminal defence services.[374] Since the DPP's statement to us in June 2022, the Tasmanian Government has increased funding for staff in the ODPP to help reduce the backlog of criminal matters in the system.[375]

KPMG conducted an independent review into the ODPP in 2010.[376] The review concluded that, compared with similar jurisdictions, the Tasmanian ODPP was efficient and effective. KPMG suggested that there was little, if any, scope for further efficiency from the then resource base.[377]

The DPP stated that the review resulted in a substantial increase in funding for the ODPP in the 2012–13 Tasmanian Budget, but that the extra funding was taken from the ODPP in the 2013–14 and later budgets.[378] He stated that funding was subsequently given to the ODPP for other work, such as the Child Safety Group and the Unexplained Wealth Unit.[379]

The DPP told us there have been small increases for the criminal section before the past two budgets to account for rises in salaries and rent, and for the Sexual Assault and Family Violence Unit. He said that the 2021–22 Tasmanian Budget provided about $1.4 million to the ODPP for the new high-risk offenders legislation, which imposes significant obligations on the ODPP and the Sexual Assault and Family Violence Unit.[380] He further noted that this included extending funds that were previously given to the ODPP but were not ongoing.[381]

The Tasmanian Government could consider whether to further support the pre-charging advice service and to extend the Sexual Assault and Family Violence Unit to cover Launceston (in addition to Hobart and Burnie).

5 Offences, evidence and procedure

In this section, we consider criminal offences and the laws of evidence and procedure that apply in child sexual abuse cases.

Over the past decade, Tasmania has made many welcome amendments to the law in this area, including changes to the Evidence Act, introducing provisions to make it easier for children to give evidence in sexual offence trials and piloting the Witness Intermediary Scheme.

The Tasmanian Government also introduced the Justice Miscellaneous (Royal Commission Amendments) Bill 2022, which commenced as the *Justice Miscellaneous (Royal Commission Amendments) Act 2023* ('Justice Miscellaneous (Royal Commissions)

Act') on 20 April 2023. The Act made other changes including new child sexual abuse offences and introducing model provisions developed by the Uniform Evidence Law jurisdictions to address barriers to the admissibility of tendency and coincidence evidence.[382]

We also note that the Tasmanian Government is examining bail laws. We encourage the Department of Justice to consider the views and experiences of victim-survivors of institutional child sexual abuse as part of that review.[383] For example, Keelie McMahon, a victim-survivor of child sexual abuse perpetrated by James Griffin (refer to Chapter 14), told us how she felt when Mr Griffin was granted bail:

> Jim lived in the same suburb as me. Prior to him being charged we would go to the same shopping centre and I would frequently run into him there. After Jim was bailed I became really anxious and very rarely left my house because I was fearful of running into him. My mum told me he wasn't at his house anymore but I still had the anxiety of knowing he was out there somewhere.[384]

This section focuses on the areas in which we would like to see more improvements to criminal offences, rules of evidence and court procedures. We then consider whether improvements can be made to ensure:

- criminal offences cover the range of offending behaviour that can occur in child sexual abuse cases and also have a preventive role in condemning and deterring such behaviour
- adult victim-survivors of child sexual abuse offences are extended the same protective measures that exist for children to minimise the traumatic impacts of a trial
- audiovisual recordings of evidence given by witnesses in child sexual abuse offence cases are of high quality
- relevant evidence in child sexual abuse offence cases is admissible
- juries understand the dynamics of child sexual abuse so they can effectively assess evidence in trials
- information is available for judges and the legal profession on the nature of child sexual abuse and trauma-informed court practice
- judges can rule on the admissibility of evidence before a jury is sworn in and before the trial starts to allow trials to progress with minimal procedural disruption.

5.1 Offences

This section describes the offences that may apply to perpetrators who commit child sexual abuse in institutional settings. It also refers to offences applicable to those who do not act to prevent child sexual abuse from occurring and recommends some changes. In the period since our Commission of Inquiry has been operating, there have been several changes to these offences, which are noted below.

In Tasmania, a person who sexually abuses a child, permits the sexual abuse of a child or is in a position of authority and fails to protect a child from sexual abuse can be charged with various indictable offences. These offences are dealt with in the Supreme Court and include:[385]

- rape[386]
- indecent assault[387]
- penetrative sexual abuse of a child or young person[388]
- penetrative sexual abuse of a child or young person by a person in a position of authority[389]
- person permitting penetrative sexual abuse of a child or young person on a premises[390]
- persistent sexual abuse of a child or young person[391]
- doing an indecent act with or directed at a child or young person[392]
- procuring a child or young person to have unlawful sexual intercourse with another person or to commit an indecent act with another person[393]
- communicating with a child or young person to induce them to engage in an unlawful sexual act ('grooming')[394]
- communicating with any person with the intention of exposing a child or young person to indecent material without legitimate reason[395]
- failure by a person in authority to protect a child from a sexual offence.[396]

There are also various indictable offences relating to producing, using, possessing or accessing child exploitation material.[397]

There is no time limit (limitation period) for prosecuting indictable offences. An accused person can be prosecuted, at least in theory, for offences that are alleged to have occurred many years before. However, in practice, the ODPP could advise the police that an alleged perpetrator should not be charged because the available evidence means there is not a reasonable prospect of conviction.[398]

Until recently, there were time limits on prosecuting *summary* offences.[399] A time limit applied to assault with indecent intent, which may involve child sexual abuse, and a person could not be charged with the offence beyond 12 months after it was alleged to have occurred.[400]

The enactment of the Justice Miscellaneous (Royal Commission Amendments) Act removed this limitation period for assault with indecent intent.[401] The amendment is retrospective to enable historical offences to be pursued.[402] The Act also removed the two-year limitation period that applied to the offences of making, reproducing or procuring a child to be involved in making child exploitation material under the Classification (Publications, Films and Computer Games) Enforcement Act.[403] We support these recent reforms.

5.1.1 Persistent sexual abuse offence

An accused person is entitled to a fair trial, which includes knowing the details of the case against them. Normally, when a person is charged with an offence, the prosecution must specify when the offence is alleged to have occurred. This enables the accused person to properly defend themselves against accusations of child sexual offences.

However, it is often difficult for victim-survivors of child sexual abuse to give details of the offending against them because:

- young children may not have a good understanding of dates and times
- delays in reporting may cause memories to fade
- the abuse may have occurred repeatedly and in similar circumstances, so the victim-survivor cannot describe specific occasions.[404]

To overcome this difficulty, Tasmania introduced an offence in 1994 of 'maintaining a sexual relationship with a young person', which applies where the accused person is alleged to have committed at least three separate unlawful acts.[405] It is not necessary to prove the date on which any of the unlawful sexual acts were committed, nor the exact circumstances in which they were committed.[406]

The language of the offence, as originally drafted, misleadingly suggested that the child and abuser had a relationship, rather than indicating that the child had been subjected to continuing abuse. Although the National Royal Commission recognised this problem, it endorsed the language of 'sexual relationship' because it was used in similar Queensland legislation, which had previously operated successfully.[407]

Some states have since renamed the offence 'persistent sexual abuse'.[408] This occurred in Tasmania in 2020.[409] However, while the name of the offence has changed, the language of 'maintaining a sexual relationship' is still used within the section.[410] We consider that the provision should be redrafted to no longer use this terminology.

This change will not alter how the section operates, but it will have the important effect of acknowledging that sexual interaction between children and adults is inherently abusive and non-consensual and should never be condoned. We note the efforts of the Grace Tame Foundation, through its 'Harmony Campaign', to advocate for removing this language, which the Foundation describes as giving licence 'to characterise abuse as romance'.[411] This forms part of a broader campaign to strengthen and harmonise child sexual abuse offences across states and territories.[412] Victim-survivor Leah Sallese also agreed that the language of a 'relationship' is problematic:

> I think this language needs to change because it suggests that the victim-survivor shoulders the blame. We're already shaming and blaming ourselves, we don't need a description such as this adding to our trauma.[413]

The rewording of the provision to remove reference to 'maintaining a sexual relationship' will not change the substance of the law.

Tasmania Police will generally seek advice from the ODPP before charging an accused person with sexual offences in cases where there may be a question about the appropriateness of the charges or the strength of the evidence.[414] As discussed, this aims to ensure the charges laid are the most appropriate and to avoid charges being dropped or changed. Tasmania Police requires authorisation from the DPP to lay charges for the offence of persistent sexual abuse of a child or young person under section 125A of the Criminal Code Act.

5.1.2 Position of authority offence

As we discuss in Chapter 3, children in schools, out of home care, youth detention and hospitals are at risk of abuse from people who are employed by or otherwise associated with the institution. Staff, volunteers or carers in these organisations are often well placed to groom and abuse young people because of their power and close contact with them, as well as the trust others place in them.

The National Royal Commission recommended that all state and territory governments introduce offences that punish people in a 'position of authority' who sexually abuse children.[415] Most states and territories have introduced offences for misusing authority over children and young people to sexually abuse them.[416]

Child sexual abuse offences generally apply to sexual contact with children who are under the age at which they can consent to sexual contact with an adult. One of the purposes of a position of authority offence is to capture circumstances where the child is above the age of consent (17 in Tasmania) and the alleged offender is in a position of authority over them. Position of authority offences aim to cover a gap in existing laws, criminalising sexual conduct between a child over the age of consent and a person in a position of authority or care.[417]

Since our Inquiry began, Tasmania has enacted legislation prohibiting penetrative sexual abuse of a child or young person by a person in a position of authority over them through the enactment of the Justice Miscellaneous (Royal Commission Amendments) Act on 20 April 2023.[418] However, the offence only covers penetrative sexual acts.[419] It does not capture perpetrators in a position of authority who engage in acts of grooming or sexual touching before a child has turned 18. We heard of cases where the abuser deferred penetration until after the child turned 18. In our view, section 124A also needs to cover non-penetrative sexual acts committed by a person in a position of authority, as is the case in several other states.[420] We have recommended this change below.

An important feature of the offence is that it provides a non-exhaustive list of people in a position of authority. This list includes:

- a teacher if the child is a pupil of the teacher or is a pupil where the teacher works
- a parent (which is defined to include a stepparent or a foster parent)
- a person who provides religious, sporting, musical or other instruction to the child
- a religious or spiritual leader in a religious or spiritual group attended by the child
- a health professional or social worker providing professional services to the child
- a person who has the care of a child with a cognitive impairment
- a person employed or providing services in a prison or a youth detention centre
- a person who provides childcare or a childcare service
- an employer of the child or other person in a position of authority over a child in relation to the child's employment (or voluntary work).[421]

We are pleased that this offence has been introduced and welcome its broad application to a range of institutional settings including schools, out of home care, youth detention centres and hospitals.

One question that can arise in applying the position of authority offence is how it applies to a case where a child interacted with the alleged offender while there was a relationship of authority between them, but the sexual acts did not occur until after that relationship of authority ended. For example, a child could be groomed by a teacher in their high school who does not initiate sexual contact until the child transfers to college in Year 11. In some circumstances, this offence could apply where the position of authority has ceased by the time the sexual act occurs if a connection has been maintained between the child and the person in the position of care, supervision or authority. For example, in *Lydgate (a pseudonym) v The Queen* the Victorian Court of Appeal held that evidence of sexualised conversations and messages between the principal of a school and a student were admissible evidence to prove that the principal

was guilty of the similar Victorian offence, even though the sexual acts did not occur until after the school board had suspended the principal and he had resigned from his position.[422]

While we welcome the offence of penetrative sexual abuse of a child or young person by a person in a position of authority in Tasmania, we recommend broadening the offence to cover all forms of sexual contact (not just sexual penetration), as recommended by the National Royal Commission.[423]

5.1.3 'Failure to protect' offence

The National Royal Commission recommended introducing a new offence of failure to protect a child in a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution.[424] As with failure to report offences, it is designed to protect children from abuse in institutional settings.

The National Royal Commission recommended that the offence apply where:

- an adult knows of a substantial risk that another adult associated with the institution will commit a sexual offence against
    - a child under 16
    - a child aged 16 or 17 years if the person associated with the institution is in a position of authority in relation to that child
- the person has the power or responsibility to reduce or remove the risk
- the person negligently fails to remove or reduce the risk.[425]

The National Royal Commission contemplated that relevant institutions would be defined to include institutions that run facilities for or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship services would be included, but individual foster carers and kinship carers would not.[426]

The Australian Capital Territory, South Australia and Victoria have enacted a failure to protect offence in broadly similar terms to the offence recommended by the National Royal Commission.[427] Unlike the National Royal Commission recommendation, the South Australian offence also applies to a provider of out of home care who knows of a substantial risk that another person providing out of home care will abuse the child.

In Tasmania, the Justice Miscellaneous (Royal Commission Amendments) Act introduced into the Criminal Code Act the offence of failure by a person in authority to protect a child from a sexual offence.[428] The offence is broadly consistent with the

recommendation of the National Royal Commission set out above. We consider that this offence could have an important symbolic and educative effect, as well as being a powerful tool for prosecutions. We welcome its introduction.

We note that the offence, as currently drafted, could potentially apply to a person who is under the age of 18. In contrast, the National Royal Commission considered that the offence should only be able to be committed by adults in the institution and not by children who are in leadership positions.[429] Like the National Royal Commission, we do not consider the offence of failure to protect should apply to children.

Recommendation 16.9

The Tasmanian Government should introduce legislation to amend the following provisions in the *Criminal Code Act 1924*:

a. section 125A to remove all language referring to 'maintaining a sexual relationship with a young person' and replace it with words referring to the 'persistent sexual abuse of a child or young person'

b. section 124A (the position of authority offence) to cover indecent acts with or directed at a child or young person under the age of 18 by a person in a position of authority in relation to that child or young person. The offence should

   i. not apply where the person accused of the offending is under the age of 18 at the time of the offence

   ii. qualify as an unlawful sexual act for the purposes of the offence of 'persistent sexual abuse of a child or young person' under section 125A of the *Criminal Code Act 1924*

c. section 125E (the offence of failure by a person in authority to protect a child from a sexual offence) to ensure the offence does not apply to a person who was under the age of 18 at the time of the offence.

5.2 Supporting victim-survivors of child sexual abuse to give evidence

In the past, complainants and other witnesses in sexual offence cases, including children, had to give oral evidence in a courtroom in the presence of the accused person and a judge and jury, or before a magistrate.

During hearings and sessions with a Commissioner, some people who had experienced institutional child sexual abuse told us how stressful it was to be required to give evidence describing traumatic details about what had happened to them, and to be cross-examined about the circumstances in which the alleged offence occurred. Fear of having to give evidence and being cross-examined may discourage victim-survivors from reporting offences and inhibit the capacity of the criminal justice system to hold abusers accountable for their actions.

One anonymous submitter described giving evidence when she was a child, as a witness to the sexual abuse of her friend:

> The cross-examination of me as a witness took half a day. The perpetrator's defence lawyer tried to confuse, intimidate, undermine, frustrate, trap, persuade, humiliate and degrade me. For example, he tried to make me make sexual noises in front of a room full of strangers to prove that I knew what sex sounded like.[430]

Ms Munting described her experience of being cross-examined as an adult:

> That was a harrowing and mortifying experience. I felt victim-blamed by the defence lawyer. [The accused] sat metres away from me, making dismissive noises and gestures while I was being questioned by the Crown and the defence.[431]

Judith Cashmore AO, Professor of Socio-Legal Research and Policy, Sydney Law School, University of Sydney, said that even 'gentle' questioning could be unsettling for a witness giving evidence.[432]

Most Australian jurisdictions have introduced laws to prevent harassing and offensive cross-examination. Under Tasmania's Evidence Act, the court must prevent a question being put in cross-examination in certain circumstances, including if the court believes the question is misleading or confusing, unduly annoying, harassing, intimidating, offensive or repetitive.[433]

Research on the effect of such provisions has shown that judges and magistrates take a variety of approaches in deciding whether counsel should be permitted to put a particular question in cross-examination.[434] Professor Cashmore told us:

> In my experience, effective cross-examination designed to discredit the child's evidence is rarely aggressive and may not be seen by those familiar and comfortable with the court process as oppressive.[435]

We are not aware of any research on the practices of Tasmanian judges and magistrates in deciding whether questions should be disallowed.

We make recommendations to assist courts to best exercise their powers in appropriate circumstances in Section 5.5.

Although controls on cross-examination can assist complainants and other witnesses to give evidence in child sexual abuse cases, adult victim-survivors of child sexual abuse spoke of finding court processes very difficult.[436] For children, court processes can be even more confusing, frightening and traumatic than for adults.

In this section, we discuss laws and processes aimed at making it easier for children (and in some cases adults) to give evidence. These include:

- the recent Witness Intermediary Scheme pilot
- special measures intended to make it easier for child witnesses (and, in some circumstances, adult victim-survivors of child sexual abuse) to give evidence
- improving the quality of audiovisual recordings used in trials.

5.2.1 Witness intermediaries

The Tasmanian Government piloted a statewide Witness Intermediary Scheme to help children give their best evidence as witnesses in the criminal justice system.[437] The scheme started on 1 March 2021, with 21 (now 28) witness intermediaries serving all Tasmanian regions.[438]

The scheme was introduced in response to recommendations of the National Royal Commission and the work of the Tasmanian Law Reform Institute in its 2018 report *Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania?* [439]

The Witness Intermediary Scheme makes witness intermediaries available to all children who are victims or witnesses in court proceedings relating to sexual offence and homicide matters, and to adults in such proceedings who have extra communication needs.[440] Although this is not covered by the legislation, Tasmania Police may also use witness intermediaries when investigating crimes.[441]

The role of intermediaries in court is to assist the judge and any lawyer to communicate with the witness and 'perform any other function that a judge in a specified proceeding considers is in the interests of justice'.[442]

A judge may order that an intermediary prepares an expert assessment report if a child is a witness or if the judge or a lawyer identifies an adult as having extra communication needs.[443] The assessment report provides recommendations to the judge and the lawyers appearing in court on adjustments that should be made to aid the witness' communication with the court.

If the judge orders that a witness intermediary can be used, a ground rules hearing will be held before the trial. At this hearing, the judge can make directions dealing with matters such as how the witness is to be questioned and for how long, when the questions are to be provided to the witness intermediary, and the use of any models, plans, body maps or other aids to help communicate a question or answer.[444]

In this way, the judiciary and legal profession can be educated and informed about the communication needs of an individual child witness and, as intermediaries come to be used more often, the general needs of child witnesses. Professor Cashmore described witness intermediary schemes as having particular 'educative value for lawyers, judges and others involved in the process'.[445]

We note that the Tasmanian Law Reform Institute's report recommended that the scheme be used for police interviews as well as for the pre-trial and trial stages of the criminal justice process.[446] The Department of Justice funds intermediaries to assist police in communicating with vulnerable witnesses. Ginna Webster, Secretary, Department of Justice, advised us that witness intermediaries may not be available to meet every request for assistance from Tasmania Police and that this will be adjudicated by the Department of Justice Intermediary Liaison Team.[447]

Although the Witness Intermediary Scheme pilot has only been running since 1 March 2021, the evidence we heard and the recent evaluation we refer to below suggest it is operating effectively.[448]

Commissioner Hine told us that, from the examples he has seen, the Witness Intermediary Scheme pilot is working well.[449] He noted that the way witness intermediaries assist in interviewing children provides a good opportunity to get the best evidence from a victim-survivor.[450]

The use of witness intermediaries can also help build the skills and understanding of police in interviewing children and vulnerable witnesses.

According to information provided to us by Secretary Webster as of 12 May 2022 and later updated:

- Twenty-seven (now 28) witness intermediaries had received specialist training and been appointed to the intermediaries panel.[451]
- Intermediaries had assisted 501 vulnerable witnesses by identifying their needs and providing advice on special measures to assist police, lawyers and the courts in Tasmania.[452]
- Police made the largest number of referrals to witness intermediaries (22 adults and 412 children). Of these, 343 referrals related to sexual abuse. A small number of intermediaries were used in family violence cases where the witness had a serious communication need.[453]

- In matters going to court, the Magistrates Court referred two adults and 24 children to intermediaries. The Supreme Court referred 12 adults and 26 children.[454]

Secretary Webster stated that the number of referrals had significantly exceeded the Department of Justice's expectations and that the Department had received 'resoundingly positive feedback' from judicial officers, lawyers and police officers.[455]

We did not hear directly from anyone who had been assisted by an intermediary in Tasmania, either when they were interviewed by police, communicated with a prosecutor or gave evidence at trial. However, we note that our own investigator was greatly assisted by witness intermediaries when interviewing some vulnerable victim-survivors.

On 30 May 2023, the Honourable Elise Archer MP, Attorney-General and Minister for Justice, provided an update in Parliament on the Witness Intermediary Scheme pilot. The Attorney-General said that, since the scheme began on 1 March 2021, witness intermediaries had assisted witnesses on more than 800 occasions by facilitating effective communication between children and vulnerable witnesses, police and the courts.[456]

The Attorney-General indicated that the Department of Justice had commissioned an independent process evaluation to 'analyse the data and conduct anonymous surveys and interviews with stakeholders'.[457] She said feedback from the evaluation had been 'overwhelmingly positive, with almost all stakeholders agreeing that the Witness Intermediary Scheme pilot is an important and necessary program promoting the interests of justice in criminal trials'.[458]

The key findings of the process evaluation were:

- There is a high level of support for the purpose of the [Witness Intermediary Scheme Pilot] among evaluation participants and its potential to contribute positively to criminal justice processes in Tasmania.
- Most [Witness Intermediary Scheme Pilot] activity involved child witnesses, with far fewer cases involving adults with communication needs.
- [Witness intermediaries] are generally considered essential for child witnesses. Stakeholders are divided on the need to involve witness intermediaries when interviewing/questioning teenagers with good communication capabilities, however the best way to determine this eligibility is unclear.
- In practice, the role and functions of [witness intermediaries] in the context of the role of other stakeholders (including police, Witness Assistance Officers, lawyers, prosecutors and judicial officers) requires further clarity and adherence.
- Stakeholders were largely satisfied with referral and matching processes.

- The expertise of [witness intermediaries] is valued, however there are some stakeholders who believe that the justice system already adequately caters to meeting the communication needs of vulnerable witnesses.
- Further stakeholder engagement and marketing of [Witness Intermediary Scheme Pilot] among stakeholders is required to clarify the unique role and functions of witness intermediaries and how all stakeholders can collaborate most effectively around vulnerable witnesses.
- The marrying of health and legal expertise in the criminal justice system has resulted in both positive and challenging experiences for stakeholders and requires further refinement in relation to communication assessments, recommendations, reports and court attendance.
- Training of [witness intermediaries] appears to be effective, however additional confidence building for working in court settings may be useful.
- Witness intermediaries are eager for structured peer support, mentoring and professional supervision.
- There are some concerns related to the administration of the [Witness Intermediary Pilot Scheme] covering areas of remuneration and working conditions, time management, opportunities for [witness intermediaries] and feedback mechanisms.
- There is widespread support for considering the use of witness intermediaries for other vulnerable groups.[459]

The use of witness intermediaries has also been evaluated positively in New South Wales.

The Attorney-General said that the findings and recommendations from the process evaluation are being considered and that the Department of Justice would implement them.[460]

The Justice Miscellaneous (Royal Commission Amendments) Act also made procedural amendments to the Witness Intermediary Scheme.[461]

Using intermediaries in child sexual abuse offence cases in Tasmania is an important measure. Although witness assistance officers can help children and vulnerable adult witnesses to some extent, communication difficulties may not be immediately recognisable or may be regarded as insurmountable barriers to prosecution. Prosecutors may decide not to proceed because a child witness has difficulty communicating what happened to them. The Witness Intermediary Scheme may allow some cases to proceed that previously would not have, as well as increasing the possibility of police and prosecutors getting the best evidence from witnesses with communication difficulties. We also consider that the Witness Intermediary Scheme pilot can help build the skills and understanding of police in interviewing children and vulnerable witnesses.

At present, the Witness Intermediary Scheme does not apply to a defendant in a prosecution for a sexual offence.[462] The Tasmania Law Reform Institute recommended that the scheme apply to all people with extra communication needs who are involved in the criminal justice system, whether as witnesses, victims of crime, suspects or accused persons.[463] Tasmania Legal Aid also supported extending the scheme to accused persons who are children or whose difficulties in communication mean they need help in engaging in proceedings.[464] We agree with that view and recommend accordingly. We believe there would also be advantages to amending the legislation to explicitly provide for use of witness intermediaries by police when interviewing children and young people. We also consider there may be benefits to using the scheme for vulnerable adult witnesses, including adult survivors of child sexual abuse, on a routine basis. This should be considered in the review being conducted by the Department of Justice following the evaluation of the pilot scheme.

Recommendation 16.10

1. The Tasmanian Government should extend the Witness Intermediary Scheme to include children who are under investigation for, or who have been charged with, sexual offences, and fund it to do so.
2. The Tasmanian Government should consider whether legislation should be enacted requiring police to use witness intermediaries in police interviews of children and young people and adults with communication needs (including defendants), relating to sexual offences.

5.2.2 Special measures

Children in child sexual abuse cases are a special category of witness. Most Australian jurisdictions have legislation to reduce the stress on child witnesses in child sexual abuse cases by providing special measures for how they give evidence. Some of these measures also apply to adult complainants in sexual offence cases.[465] These measures aim to minimise the potential for distress and retraumatisation in giving evidence.

In 2019, the Tasmanian Government changed the Evidence (Children and Special Witnesses) Act to provide a range of special measures for child witnesses. These provisions can apply to adult witnesses in the circumstances described below. The Act's special support provisions include:

- Use of special hearings to pre-record evidence. A court can make an order for a special hearing after hearing an application from the prosecution.[466] In a special hearing, the child gives evidence before the jury is empanelled and then does not need to attend the trial.

- Provision for giving of evidence by audiovisual link if facilities are available, unless otherwise ordered.[467] This means the child is not in the courtroom and is not exposed to the accused person.
- A prior statement, such as an audiovisual police interview, may be admitted into evidence, provided the judge makes an order.[468]
- A child is entitled to have a support person near them. The judge must approve the choice of support person.[469]
- A child witness' evidence at trial is automatically recorded. If there is a retrial it can be used again if the judge orders that this occurs.[470]

Under the Evidence (Children and Special Witnesses) Act, adult victim-survivors of child sexual abuse who are subject of a witness intermediary order, because they have been assessed as having a communication need, are also entitled to special support.[471] The same special measures that apply to child witnesses in sexual offence proceedings also apply to these adult witnesses. They can have an approved support person present, and a prior statement, such as an audiovisual interview, may be admitted into evidence. Evidence is given by audiovisual link unless otherwise ordered.[472]

There are also some other special measures for adult victim-survivors of child sexual abuse (an 'affected person') who are not the subject of a witness intermediary order.[473] A judge can make an order for a special hearing to pre-record the evidence if the judge considers this is in the interests of justice and the other party consents.[474] A judge can also make such orders after hearing an application for a special hearing, including orders for a support person and giving evidence by audiovisual link at the special hearing (which means the victim-survivor does not need to be in court).[475] Even if there is no special hearing, the evidence of an adult victim-survivor of child sexual abuse will be automatically audiovisually recorded at trial, and this recording may be used as evidence in a future trial.[476]

If any further orders are required to assist a witness, a judge can make an order declaring that person to be a 'special witness' if satisfied that:

a. by reason of intellectual, mental or physical disability, the person is, or is likely to be, unable to give evidence satisfactorily in the ordinary manner; or

b. by reason of age, cultural background, relationship to any party to the proceeding, the nature of the subject matter of the evidence or any other factor the court considers relevant, the person is likely –

   i. to suffer severe emotional trauma; or

   ii. to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily.[477]

The DPP told us that pre-recording the entire evidence of children and other special witnesses (in a special hearing) has resulted in positive outcomes, such as:

- lessening stress on the witness, in that the witness can come at an appointed time and have their evidence heard
- creating a more streamlined process than a trial and providing the ability to edit the evidence played to the jury. This allows children and special witnesses to be 'eased into' the proceedings in a less formal way and may enable them to take more frequent breaks
- increasing the likelihood that judges will intervene and control questioning.[478]

The DPP stated that these special measures are routinely used in child sexual abuse trials.[479]

The DPP also informed us that, on some occasions, this process has resulted in an earlier plea of guilty because several people have entered pleas shortly after the pre-recording.[480]

Professor Cashmore agrees that measures of this kind ease the prosecution process for children. She said these measures:

> … are valuable measures that ease child witnesses' experience of giving evidence in ways that do not impugn the defendant's right to a fair trial. It is also my observation that these measures, and particularly witness intermediaries, may have some educative value for lawyers, judges and others involved in the process. This understanding promotes and improves the adoption of a child-sensitive approach by all stakeholders in the prosecutorial process.[481]

For a witness under 18 years of age or a victim-survivor of an alleged sexual assault, the DPP Guidelines state that the prosecutor must consider whether the special measures in the Evidence (Children and Special Witnesses) Act apply. [482] If they do, the prosecutor should advise the witness of their options and consider, especially with a child witness, having their evidence pre-recorded.[483]

We heard how daunting the court process can be for adult victim-survivors because it may mean reliving traumatic experiences that occurred when they were children. As Ms Sallese told us:

> The lead-up to the court hearing was quite harrowing for me. I had buried it all for 24 years, and then I was suddenly experiencing all of the things that I should probably have experienced at the time, again in my forties.[484]

Professor Cashmore said there should be an opportunity for adult victim-survivors to have allowances when giving evidence:

> … I think there needs to be the opportunity, a window there for those people to be protected in the same way with special measures so that they can give their evidence in a fair way. If you're under immense stress you don't give your best evidence.[485]

We consider that adult victim-survivors of child sexual abuse should have the same protections that are available to child complainants. Often, adult victim-survivors will have suffered significant trauma over many years. Tiffany Skeggs, a victim-survivor of child sexual abuse, told us that the need to recount events each time she spoke with someone different, including the police and lawyers, was exhausting and traumatic.[486]

Making it easier for adult victim-survivors of child sexual abuse to give evidence by using special measures recognises that trauma. The protections available to child witnesses should automatically apply to all complainants in cases involving child sexual abuse, regardless of their age at the time of giving evidence. The DPP told us he thought it would be beneficial to have a presumption in favour of admitting prior audiovisual statements (from police interviews) and having evidence at a special hearing given by audiovisual link for adult victim-survivors of child sexual abuse (not just for child witnesses).[487]

The DPP considered that introducing a non-exhaustive list of special measures that can be made during a trial, such as the use of a screen between the victim-survivor and the accused person when the victim-survivor gives evidence in court, should be included in the Evidence (Children and Special Witnesses) Act.[488] We agree it would be useful for the court to direct the use of a screen in cases where the witness wants to give evidence in court.

The Justice Miscellaneous (Royal Commission Amendments) Act made changes to the special measures provisions in the Evidence (Children and Special Witnesses) Act by extending:

- the ability to admit audiovisual recordings of police interviews as all, or part of, the evidence-in-chief of adult victims or special witnesses in sexual offence or family violence proceedings[489]
- the use of pre-recording of audiovisual evidence to any other witness where it is in the interests of justice to conduct the pre-recording, and the parties agree.[490]

We support these changes.

Finally, in our view, the special measures in the Evidence (Children and Special Witnesses) Act are unnecessarily complex, poorly drafted and extremely difficult to understand. The DPP shares this view, telling us that the Act is:

> … somewhat clunky and difficult to follow. It is particularly confusing that there are definitions for affected child, affected person, prescribed proceedings, prescribed witnesses, special witnesses, specified offence and specified proceeding.[491]

These provisions should be redrafted so the measures that apply to children, adult victim-survivors of child sexual abuse and people who are using a witness intermediary are much clearer. The special measures provisions could be simplified and rationalised as much as possible at the same time as drafting the amendments we recommend to the special measures.

Recommendation 16.11

1. The Tasmanian Government should introduce legislation to amend the *Evidence (Children and Special Witnesses) Act 2001* to simplify the legislation to clarify when special measures are available to adults who are complainants in trials relating to child sexual abuse and allow them to:
    a. have a support person present when they give evidence in court
    b. give their evidence at a special hearing before the trial unless the judge considers that this would be contrary to the interests of justice, regardless of whether the accused consents
    c. be shielded from the view of the accused person by a screen or partition if they choose to give evidence in court.
2. The Tasmanian Government should ensure courts, public defence counsel (such as Tasmania Legal Aid) and the Office of the Director of Public Prosecutions are appropriately funded to carry out this recommendation.

5.2.3 Quality of audiovisual recordings

We have discussed the need for audiovisual recording facilities in all locations where specialist police take statements from victim-survivors of child sexual abuse. We also heard about the need for modern and consistent statewide audiovisual recording facilities in the Supreme and Magistrates courts.[492] These facilities support police interview recordings being used as victim-survivors, evidence at trial. They also support victim-survivor recordings being used as evidence in a special hearing at which the victim-survivor will be cross-examined. These special hearing recordings are played to the jury in the trial, avoiding the need for the victim-survivor to attend the trial to give evidence in person. If there is a retrial, the same recording can be played to the new jury.

The DPP stated that the audiovisual recording facilities in the Supreme and Magistrates courts are poor, and that the quality of recordings is far from desirable.[493] The DPP further stated that:

> The recordings often do not adequately capture the subtle emotions of a witness. We have instances where the recording has not worked and the witness has

> been required to participate in the pre-recording again. In one other matter a pre-recording included a portion where the witness listened to some telephone intercept material. In court it was evident that the material was highly distressing to the witness; however, on the recording the image of the 'recording playing' [audio only] was the predominant image with the image of the witness being in a small box.[494]

The DPP advised us that it is not uncommon for Supreme Court staff to have limited understanding of how the audiovisual facilities work.[495] He noted that, apart from the standard of the system generally, this can further diminish the presentation of the recordings and the way these recordings are played in court.[496]

In our consultations, the ODPP also cited problems with the court's technology and capability, which can result in complainants having to give evidence again. Image quality can be grainy, and it can be difficult for the jury to assess the witness and their credibility.[497] Defence counsel told us that recordings of police interviews are generally of good quality but described video links into court as 'notoriously bad'.[498]

The DPP suggested that issues with audiovisual recordings in court could be overcome by funding and installing new audiovisual recording facilities and training staff to operate these new facilities.[499] We support that approach.

The Solicitor for the State informed us that the 2020–21 Tasmanian Budget allocated $1.8 million to upgrade audiovisual technologies across Tasmanian courts and the Tasmanian Prison Service, and that the project will be finished by the end of 2023.[500] We welcome that assurance and emphasise the urgency of improving the equipment as soon as possible. We also consider that improving the equipment will be of limited use without the equipment operators receiving proper training.

Recommendation 16.12

The Tasmanian Government should:

a. update the audiovisual equipment available to the Supreme and Magistrates Courts

b. discuss with the Supreme and Magistrates Courts ongoing training for relevant staff on using audiovisual equipment.

5.3 Ensuring relevant evidence is admissible

5.3.1 Broadening the test for tendency and coincidence evidence

The unfortunate reality in our criminal justice system is that, in cases of child sexual abuse where the only evidence of the abuse is the victim-survivor's evidence, it can be difficult for the prosecution to prove beyond reasonable doubt that the alleged offence occurred. Tendency and coincidence evidence (in the past often referred to as propensity or similar fact evidence) is evidence that attempts to show that:

- an accused person has a tendency to commit certain acts based on them having done it before, or
- it is likely that an accused person committed multiple offences based on the similarity of multiple allegations against them.

In the context of institutional child sexual abuse, an abuser may have committed offences against more than one child. In such cases, the laws of tendency and coincidence evidence apply to determine whether:

- evidence from other victim-survivors should be admitted in the trial, or
- whether a joint trial could be held to determine charges against an accused person made by multiple complainants.

In the past, the law was restrictive in its approach to allowing tendency or coincidence evidence. This has been distressing for victim-survivors who have felt that a jury was not getting the full picture of an accused person and the potential nature and breadth of their offending.

Professor Cashmore described the way such evidentiary rules can make it difficult for victim-survivors giving evidence:

> But then we have a legal system that tends to split and dice those stories so you don't get a whole narrative, a coherent narrative, about what happens; where you have separated trials and there are issues around tendency and coincidence evidence. All of it makes it very much harder for a complainant to tell a story in terms that is really the whole of the story. You're asked to tell the truth, the whole truth and nothing but the truth, but telling the whole story can be really difficult, particularly if you're not being questioned in a way that actually allows that whole story to emerge.[501]

Restrictions on tendency and coincidence evidence reflected a concern that a jury would give too much weight to the evidence, which may be unfairly prejudicial to the accused person.[502] However, Jury Reasoning Research conducted for the National Royal Commission found no evidence of unfair prejudice to the accused person.[503] The National Royal Commission recommended that the laws for tendency and

coincidence evidence in prosecutions for child sexual abuse offences be reformed to allow for greater admissibility and cross-admissibility of tendency and coincidence evidence and to make it easier to try charges involving multiple complainants in a single trial.[504]

Legislative changes in recent years have broadened the admission of tendency and coincidence evidence.[505] In 2017, Tasmania introduced a presumption for joint trials to take place where there are two or more charges for sexual offences joined in the same indictment.[506]

These legislative changes, together with recent decisions of the High Court of Australia, have considerably relaxed the earlier principles that restricted the admission of such evidence.[507]

The Justice Miscellaneous (Royal Commission Amendments) Act introduced further amendments to the Evidence Act, to broaden the test for the admission of tendency and coincidence evidence in criminal prosecutions involving child sexual offences.[508] The Act introduced the model provisions developed by the Uniform Evidence Law jurisdictions, which have already been introduced in New South Wales.[509] The provisions aim to address barriers to the admissibility of relevant evidence of an accused person's tendency to perpetrate sexual violence against children.[510]

The test for the admission of tendency and coincidence evidence is whether the court thinks it has 'significant probative value'.[511] If the prosecutor seeks the admission of the evidence, its probative value must outweigh 'the danger of unfair prejudice' to the accused person.[512] Section 97A(2) of the Evidence Act now provides that, where the accused is charged with a child sexual offence, it is presumed that certain categories of tendency evidence have a significant probative value. These include:

a. tendency evidence about the sexual interest that the defendant has or had in children (even if the defendant has not acted on the interest)

b. tendency evidence about the defendant acting on a sexual interest that the defendant has or had in children.

This applies whether the sexual interest or act relied upon relates to the complainant in the proceeding, or any other child or children generally.[513]

Under section 97A(4), the court has a discretion to decide that evidence falling within the provisions described above does not have significant probative value if it is satisfied that there are sufficient grounds to do so.

Section 97A(5) allows courts to consider certain matters, that they could not previously take into account, when deciding whether evidence can be admitted to show that the defendant had a tendency to offend sexually against children. For example, the court can now consider that evidence of the defendant having a sexual interest in children

is 'of significant probative value' even if the child to whom the evidence relates is of a different age, gender or sex than the victim.[514] The recent legislative changes have made it easier for the court to allow the jury to hear tendency and coincidence evidence.[515]

We are mindful that the changes made to the tendency and coincidence evidence provisions in the Evidence Act because of enacting the Justice Miscellaneous (Royal Commission Amendment) Act reflect an agreement between the Council of Attorneys-General (now the Standing Council of Attorneys-General).[516] We consider there are advantages in clearly setting out this complex area of law in legislation and do not propose any changes to these provisions.

5.3.2 Admitting evidence from the Magistrates Court

During our Commission of Inquiry, we heard about restrictions in the way evidence from a case in the Magistrates Court can be used in any later case involving the same victim-survivor.

Ms Collins told us about her experience with the criminal justice system.[517] The trial in her case did not proceed, and it appears that the charges were dismissed in the Magistrates Court in 2004, even though no evidence was presented to the Court and the Court did not decide whether sexual abuse had occurred.[518]

The DPP told us that it was not possible to reopen the case, even though there had been changes to the law since 2004 that would make it easier to prosecute the accused person today.[519]

There is no power for a matter to be reopened after charges have been dismissed in the Magistrates Court. The DPP informed us that a similar restriction applies in family violence offences but that this has been overcome by amending the *Family Violence Act 2004* ('Family Violence Act').[520]

The DPP recommends inserting a new provision into the Criminal Code Act like the approach taken in family violence cases.[521] Section 13B of the Family Violence Act provides that if:

> a. a person is charged with a family violence offence (the first charge) in [the Magistrates Court] but is acquitted because the prosecution has informed the court that it will not be offering any evidence in support of the charge; and
>
> b. the person is charged with another family violence offence (the second charge) [in any court]
>
> [the earlier acquittal in the Magistrates Court does not prevent the court from hearing evidence of the first charge as evidence that the accused person had a tendency to commit certain acts based on the assertion that they have done it before].

We consider this a sensible approach that should be adopted for all sexual assault matters, including child sexual abuse matters.

Recommendation 16.13

The Tasmanian Government should introduce legislation to extend the principles of section 13B of the *Family Violence Act 2004* to sexual assault matters, including child sexual abuse. This will ensure that where a person is acquitted in the Magistrates Court because the prosecution has informed the Court it will not be offering any evidence in support of the charge, the acquittal does not prevent admitting evidence of relationship, tendency or coincidence evidence in a later related matter.

5.4 Improving case management

In this section, we recommend a change to a procedure that would allow judges to make rulings on the admissibility of evidence before a jury is sworn in. This will reduce delays and improve case management.

5.4.1 Pre-trial rulings

Before a criminal trial occurs, a judge may make rulings ('pre-trial rulings') on procedural questions and legal arguments put by the prosecution or defence counsel, including arguments about the admissibility of certain evidence. This makes the trial process more efficient by sometimes making it unnecessary to suspend witness testimony during the trial while these legal arguments are considered.

Section 361A(1) of the Criminal Code Act provides that after a person has entered their plea, but before a jury is sworn in, among other things, the court may:

- determine any question of law or procedure that has arisen or is expected to arise in the trial3
- determine any question of fact that may lawfully be determined by a judge alone without a jury
- determine any other question that it considers necessary or convenient to determine to ensure the trial will be conducted fairly and expeditiously
- give such directions as it sees fit to resolve any issue or matter that it considers necessary or convenient to resolve before a jury is sworn.

Any admission, determination or direction made or given under section 361A(1) of the Criminal Code Act has the same status for the purposes of a new trial as if it had been made or given during the new trial.[522]

The DPP told us of limits in how this provision works in practice. Under the provision a judge can only make a ruling if the accused person has entered a plea. When an accused person enters a plea, the trial starts. The DPP stated that sometimes judges refuse to make rulings under the provision if they may not be the ultimate trial judge and that this can cause scheduling difficulties and delays.[523] He pointed out that all judges sit in Hobart, Burnie and, on occasion, Launceston, noting:

> If a pre-trial ruling is required for a matter listed in Burnie, and there is insufficient time for the trial proper to immediately follow the ruling, it may be a matter of months (perhaps over a year) before the judge who made the ruling is sitting in Burnie again. It would be beneficial to amend section 361A to avoid this situation.[524]

We understand there are now two Supreme Court judges who permanently sit in Launceston and Burnie (respectively), and that other judges travel on circuit to these courts. We also note it is up to the DPP to list trials in the Supreme Court. The DPP's concern about section 361A(1) may now be less acute.

However, we consider it would be beneficial to expand the circumstances in which such rulings can be made. In Victoria, section 199 of the *Criminal Procedure Act 2009* (Vic) allows pre-trial rulings to be made before an accused person has entered a plea.

Under section 204 of that Act:

> An order or other decision made at a directions hearing or other pre-trial hearing by a judge who is not the trial judge is binding on the trial judge unless the trial judge considers that it would not be in the interests of justice for the order or other decision to be binding.

Under section 205(1) of the Act:

> If a new trial is held, the court may treat any order or other decision made at a directions hearing or other pre-trial hearing held in connection with the earlier trial as if it had been made at a directions hearing or other pre-trial hearing held in connection with the new trial.[525]

We recommend that Tasmania's Criminal Code Act be amended to provide that a judge can make a ruling before the accused person has entered a plea.

Recommendation 16.14

The Tasmanian Government should, in similar terms to sections 199, 204 and 205 of the *Criminal Procedure Act 2009* (Vic), amend the *Criminal Code Act 1924* (including section 361A) to:

a. allow pre-trial rulings or orders to be made before the accused person has entered a plea

b. provide that such pre-trial rulings or orders are binding on a trial judge, even where a different judge made the order, unless the trial judge considers that would not be in the interests of justice

c. provide that such pre-trial rulings or orders apply at a new trial unless this would be inconsistent with any order or decision made on an appeal or would not be in the interests of justice.

5.5 Assisting juries to assess the evidence of children

In a criminal trial, the jury must listen to all the evidence and decide which parts of the evidence should be accepted. The judge is responsible for directing the jury about the law and for ensuring the proceedings are conducted according to the law.

After witnesses have given their evidence and prosecution and defence counsel have made their closing submissions, the judge directs the jury about the elements of the offence and summarises the evidence. The judge also directs or warns the jury about how to consider certain matters. Various legal principles govern the jury directions that a judge must give.

The National Royal Commission recommended that each state and territory develops jury directions about children and the impact of child sexual abuse.[526] Victoria has introduced legislation about jury directions that is designed to assist juries to assess a child's evidence and to consider other questions relevant to the trial.[527] We discuss the Victorian provisions in more detail below.

In this section, we discuss jury directions in the context of child sexual abuse offence cases and make recommendations for helping juries to assess the evidence of children.

5.5.1 Reliability of children's evidence

Both the prosecution and defence can ask a judge to warn the jury that a witness' evidence may be unreliable. Unless the judge considers there are good reasons for not doing so, the judge must:

- warn the jury that the evidence may be unreliable
- inform the jury of matters that may cause it to be unreliable
- warn the jury of the need for caution in determining whether or not to accept the evidence and the weight to be given to it.[528]

Evidence that could be considered unreliable includes that which may be affected by 'age, ill health, whether physical or mental, injury or the like'.[529]

A warning cannot be based on the child's age alone.[530] But there may be aspects of the evidence of a child that could be thought to cast doubt on what they have said. In these circumstances the judge can, on their own initiative or on an application of the prosecution or defence, give a warning in the terms listed above.[531]

Failure to give such a warning may be a basis for an appeal against conviction. For that reason, judges may warn about the reliability of a child's evidence out of an abundance of caution. Excessive use of warnings, combined with a commonly held (and incorrect) belief that children often lie about sexual matters, could influence some juries to disbelieve a child because of the way they have given their evidence. Adjunct Associate Professor Terese Henning told us:

> Prosecution counsel and complainants are faced with generations of deeply embedded and persistent perceptions about sexual offences and prejudices around children's credibility … so those complainants start off at a considerable disadvantage in addition to the difficulties of withstanding the rigours of the trial process itself.[532]

In Victoria, the *Jury Directions Act 2015* (Vic) ('Jury Directions Act (Vic)') codifies the directions that judges must give in criminal trials. Like Tasmanian legislation, it provides for judicial warnings about matters that may affect the reliability of a child's or other person's evidence and specifies the way in which juries should be warned about factors affecting reliability. Unlike in Tasmania, Victoria also provides for juries to be given directions about the difficulties child witnesses often face in giving evidence in the same way that adults can, which may affect the way juries assess the reliability of a child's evidence. Professor Cashmore described these difficulties in the following way:

> A large body of evidence has established that children's memory is reliable. Often, however, those questioning children do not ask questions in ways that optimise the reliability or accuracy of the child's answer. Further, once a matter is in court, the child witness is potentially exposed to a range of stressors that make it more difficult to process information, answer questions and provide reliable evidence. These include the formality of the court, potentially facing the alleged abuser and cross-examination that is often confusing and developmentally inappropriate, designed to discredit the evidence of the witness.[533]

In Victoria, if a trial judge considers, before any evidence is given and after hearing submissions from the prosecution and defence, that the reliability or credibility of a child witness is likely to be an issue, section 44N of the Jury Directions Act (Vic) requires the judge to tell the jury that:

a. children can accurately remember and report past events; and

b. children are developing language and cognitive skills, and this may affect—

    i. whether children give a detailed, chronological or complete account; and

    ii. how children understand and respond to the questions they are asked; and

c. experience shows that, depending on a child's level of development, they—

i. may have difficulty understanding certain language, whether because that language is complicated for children or complicated generally; and…

ii. may have difficulty understanding certain concepts, whether because those concepts are complicated for children or complicated generally; and…

iii. may not request the clarification of a question they do not understand; and

iv. may not clarify an answer they have given that has been misunderstood.[534]

Judges must give this direction to juries before any evidence is given and after hearing submissions from the prosecution and defence.

The Jury Directions Act (Vic) provides some examples of situations in which children may have problems in answering questions, including the use of 'hypothetical, ambiguous, repetitive, multi-part or yes/no questions', or questions involving the use of 'passive voice, negatives and double negatives'.[535]

While we consider witness intermediaries are likely to play an important role in supporting child witnesses to give their best evidence, a provision like section 44N of the Jury Directions Act (Vic) could help juries to understand the difficulties that children face in giving evidence and the distinctive ways in which they may do so.

5.5.2 Children's reactions to sexual abuse

Research into the reactions of children who have been sexually abused shows that victim-survivors respond in a variety of ways. Not all children who have been abused avoid the perpetrator; indeed, many of the witnesses we heard from continued to have some contact with their abuser after the abuse had stopped.

In our hearings, some victim-survivors told us that they continued to see the person who abused them for a long time after they were first abused because they did not understand they had been abused or had been groomed to believe that the abuser loved them or that they were in a 'relationship'.[536] Some victim-survivors had no choice but to continue seeing the abuser because of a family relationship or because the abuser held a role that they could not avoid (for example, as their teacher).[537]

Research also shows that sexual abuse disclosure typically occurs in stages.[538] If the child's first attempt to tell someone about their experience is not understood or acknowledged they may never go on to describe the extent of the abuse or they may do so many years later, often into adulthood. Michael Salter, Scientia Associate Professor of Criminology, School of Social Sciences, University of New South Wales, told us:

> Disclosure of child sexual abuse should be understood as an ongoing process rather than a discrete event, characterised by diverse behavioural and psychological indicators of trauma, as well as delayed, conflicted and even unconvincing disclosures followed by retraction or recantation. During this process, children are hyper-sensitive to displays of scepticism or disbelief in the conduct and tone of the adults they are trying to connect with. They anticipate not being believed or being blamed for their abuse and are likely to withhold further information or recant their disclosure entirely if they detect blame or scepticism.[539]

The DPP told us he supports jury directions to the effect that it is not uncommon for a complainant to maintain ties with the accused person many years after the sexual abuse occurred.[540]

Because juries may not understand these features of institutional child sexual abuse, we consider it would be useful for them to receive a direction from the judge informing them of these matters.

5.5.3 Corroboration warnings

Previous inquiries have discussed the history of warnings issued by judges in relation to child witnesses and sexual abuse.[541] In summary, historically, children who alleged they had been sexually abused were regarded as suspect witnesses, so the law required that their evidence be corroborated. Similar suspicions applied to adult victim-survivors of child sexual abuse. However, we know that abusers generally conceal their offending and that prosecutions for child sexual abuse offences often rest on word-against-word evidence.

Even after legislation abolished this formal corroboration requirement, judges presiding over sexual offence trials used to be required to warn juries that it could be 'dangerous to convict' based on the complainant's evidence alone and/or that the evidence of complainants in sexual offence cases should be scrutinised with great care. The use of the words 'dangerous to convict' may well have been interpreted by some juries as a direction to find the accused person not guilty.

Judges also had to give jury directions based on myths and assumptions about the typical behaviour of people alleging they had been raped or sexually abused—for example, the false belief that sexual offence victim-survivors usually tell someone about the offence soon after it occurs, although research shows that this is rarely the case. The National Royal Commission recommended changes to jury directions or warnings.[542] These changes were intended to encourage reporting of offences against children and address incorrect assumptions that members of the community (including the judiciary and legal profession) may hold about the behaviour of child victims of sexual abuse.[543]

In 2010, Tasmania enacted provisions that prohibited a trial judge from warning the jury:

- that children are unreliable witnesses
- that the evidence of children is inherently less credible or reliable, or requires more careful scrutiny, than the evidence of adults
- about the unreliability of a particular child's evidence solely because of their age
- in a criminal proceeding, of the danger of convicting on the uncorroborated evidence of a witness who is a child.[544]

The requirement that the evidence of all complainants in sexual offence trials be corroborated has also been removed. Adjunct Associate Professor Henning described these as 'the most significant reforms' in relation to children and sexual offences.[545]

Section 136 of the Criminal Code Act provides that:

- At the trial of a person accused of certain sexual offences, no rule of law or practice requires a judge to give a warning to the jury to the effect that it is unsafe to convict the person on the uncorroborated evidence of a person against whom the crime is alleged to have been committed.
- A judge shall not give a warning of this kind unless satisfied that the warning is justified in the circumstances.[546]

This provision means that the judge is not required to give such a warning, but it does not prohibit such a direction being given.

The DPP told us that some Tasmanian judges in sexual offence trials will give what is often referred to as a 'Murray direction' (derived from the case of *R v Murray*), which directs the jury that where there is only one witness asserting that a crime has been committed, the evidence of the complainant should be scrutinised with great care before a verdict of guilty is delivered.[547] The DPP said that, on occasion, that direction is given even when there are other witnesses who give supporting evidence.[548] He told us that this is done on the basis that if the jury rejected the evidence of other witnesses, the complainant's evidence should be treated as if it were the evidence of only one witness.[549]

The DPP said that giving the Murray direction in these circumstances undermines the effect of section 136 of the Criminal Code Act, which, as explained above, removes the requirement to warn the jury about the dangers of conviction on the uncorroborated evidence of the complainant in sexual offence cases. This practice may make juries reluctant to convict in cases where the prosecution case depends solely on the complainant's evidence.

The practice of issuing a Murray direction may undermine uncorroborated evidence from a victim-survivor. Robert Boost, a victim-survivor, described his experience reporting to Tasmania Police in 2020 as 'fantastic' until the DPP decided not to proceed based on the absence of corroborating evidence:

> My bad experience with the criminal justice system really occurred when Tasmania Police approached the DPP to discuss laying charges on the perpetrator. Unfortunately, I heard from Tasmania Police that the DPP had formed the view that, while I was likely to be a reliable witness, there was insufficient corroborating evidence from other witnesses, and the matter did not meet the DPP's threshold for proceeding to trial.[550]

In *Ewen v R,* the New South Wales Court of Appeal was critical of the practice of giving a Murray direction solely because the evidence of the complainant was uncorroborated. Justice Simpson commented that:

> A 'Murray direction', based only on the absence of corroboration, is, in my opinion, tantamount to a direction that it would be dangerous to convict on the uncorroborated evidence of the complainant.[551]

The DPP supports adopting a provision along the lines of section 294AA of the *Criminal Procedure Act 1986* (NSW), which limits the warnings that can be given in word-against-word cases to a further extent than the Tasmanian provisions.[552] This provision prohibits the Murray direction from being given solely because the complainant's evidence is uncorroborated.[553] Instead, the DPP proposes that, when a Murray direction is given, the judge should have to warn the jury that it is the circumstances of the case generally, and not the complainant, that require the direction; and that it is not unusual in cases of sexual assault that the conduct is not witnessed.[554]

We agree that it is appropriate to limit the use of Murray directions where the complainant is still a child or is an adult who is giving evidence about childhood abuse. Legislation that does so should not prevent counsel from requesting that the judge draws the jury's attention to features of the complainant's evidence, other than the lack of corroboration, that may be relevant in determining whether the accused person can be found guilty beyond reasonable doubt.

5.5.4 The effect of delay

In the past, judges were also required to warn juries about the danger of convicting a person accused of a sexual offence when there was a delay in reporting the offence. We heard from victim-survivors of child sexual abuse who had not told anyone about the offending for many years after it had ceased. Their reasons for not doing so included:

- not recognising the experience(s) as abuse
- shame and embarrassment about having been abused

- not wanting their families to know they had been abused
- fear about what the abuser would do if they reported.

Mr Boost told us how he grappled with shame for many years after he was abused in the early 1990s:

> I kept the perpetrator's abuse to myself until 2014. I felt ashamed of what had happened. I blamed myself for what I saw at the time as a relationship with the perpetrator, not grooming or abuse.[555]

Victim-survivor Rachel (a pseudonym) also told us:

> After bottling the child sexual abuse for almost two years, I broke down and finally came out with details about the sexual abuse I had suffered … It was really difficult for me to talk about what I had been holding back for years.[556]

Victim-survivor Azra Beach, who told us she was abused while in the out of home care system, explained that she had no understanding that what was happening was abuse:

> [A fellow victim-survivor] and I didn't tell anyone about what was going on. We had no-one to tell. For me, I also didn't realise anything abnormal was happening. It was just the way that it was. This is what people do.[557]

Some victim-survivors were also afraid they would not be believed. Ms Skeggs told us: 'When I made my report I was terrified of not being believed by the authorities. [James] Griffin was a well-respected and seemingly powerful member of the community'.[558]

In years gone by, warnings about delay may have made juries reluctant to convict people for offences that occurred many years previously.

The National Royal Commission recommended states and territories legislate that jury directions about delay and credibility were not required. It recommended such legislation provide that no direction or warning that delay affects the complainant's credibility should be given, unless it was requested by the accused person and is warranted on the evidence; and that if a direction or warning is given, the judge should not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care'.[559]

In her witness statement, Professor Cashmore referred to a research report that she and co-authors had prepared for the National Royal Commission titled *The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases*.[560] She summarised data on delayed reporting in New South Wales and South Australia. In these states, most reports were made within three months of the incident, but nearly one in four sexual assaults were reported more than five years after the offence, with some reports being made after 20 years.[561] Men were more likely to delay their reporting, and they delayed reporting for longer than women. The longest delays occurred when the accused perpetrator was a person in a position of authority. In these cases, most reports were made at least 10 years after the incident.[562]

Professor Cashmore commented that this data showed that:

> … there are relatively high instances of delayed reporting of child sexual abuse where that abuse occurs in institutional settings. These reports relate to historical child sexual abuse in some older-style residential institutions, as well as some more recent church-based and sporting organisations. Whether the very delayed reporting evident in these earlier cases will continue for more recent and current sexual abuse is uncertain, given the increased awareness and exposure of both sexual abuse and the associated cover-up to protect the institutions.[563]

Adjunct Associate Professor Henning described the way many of these repealed laws or practices, including warnings about delays, 'played to stereotypes that juries have in relation to who is a "genuine victim"'.[564] However, she noted that reform can only go some way to ameliorate this, with an example:

> … in cases of historical sexual assault, there is obviously an absence of recent complaint. Defence counsel play on that and it doesn't matter that the judge is mandated to instruct the jury that absence of recent complaint does not necessarily indicate the mendacity of the complainant, or fabrication of the offences. It's just one of those misconceptions that are difficult to dislodge.[565]

The Criminal Code Act reflects the National Royal Commission's recommendation to some extent. It provides that where the alleged victim does not make a complaint, or where the complaint comes a long time after the alleged offence, the judge shall:

- warn the jury that absence of complaint or delay in complaining does not necessarily indicate that the allegation that the crime was committed is false
- inform the jury that there may be good reasons why such a person may hesitate in making, or may refrain from making, a complaint.[566]

Victoria's Jury Directions Act goes further than the Tasmanian provision. It provides that if, after hearing the submissions from the prosecution and defence, the trial judge considers that there is likely to be evidence of a delayed complaint, the judge must give the jury certain information before evidence of delay can be given. In these circumstances, the trial judge must inform the jury that:

- people may react differently to sexual offences and there is no typical, proper or normal response to a sexual offence
- some people may complain immediately to the first person they see, while others may not complain for some time, and others may never make a complaint
- delay in making a complaint about a sexual offence is common
- there may be good reasons why a person may not complain, or may delay complaining, about a sexual offence.[567]

The provision applies to trials regardless of whether the victim-survivor is an adult or a child.

We prefer the positive framing of this direction, which focuses on common practices, compared with the Tasmanian direction, which is framed in the negative. The DPP supports introducing a direction about the effects of sexual abuse on a child, including that it is known that children often do not complain for many years.[568] We recommend that a provision similar to that in Victoria be adopted in Tasmania.

5.5.5 Timing of jury directions

Jury directions are usually given near the end of a trial as part of what is known as the judge's charge to the jury.

The National Royal Commission noted considerable merit in allowing the trial judge to give a direction at any time before the close of evidence at the discretion of the judge and requiring some directions to be given at particular times in the trial, generally earlier than might otherwise occur.[569]

In its report *Improving the Justice System Response to Sexual Offences*, the Victorian Law Reform Commission noted that research suggests if jurors hear a jury direction early in the trial, they will have an informed position in their minds before they hear the complainant's evidence and before they form any opinions based on misconceptions.[570]

The Victorian Law Reform Commission recommended jury directions be given before or during the evidence and that judges repeat them at any time in the trial, if either party requests, or if the judge considers there is evidence in the trial that requires the direction to be given.[571] We consider this is sensible and recommend a similar approach be taken in Tasmania.

5.5.6 Non–case specific jury education

Myths and misconceptions about sexual offences, including child sexual abuse, have long affected the criminal justice system's responses to child sexual abuse.[572] As the National Royal Commission noted, these myths and misconceptions have influenced the law and the attitudes that jurors bring to their decision making.[573]

The National Royal Commission identified the following myths and misconceptions as being particularly prominent in child sexual abuse cases:

- women and children make up stories of sexual abuse
- a victim of sexual abuse will cry for help and attempt to escape the abuser
- a victim of sexual abuse will avoid the abuser
- sexual assault, including child sexual abuse, can be detected by a medical examination.[574]

Adjunct Associate Professor Henning told us that prosecutions of sexual offences are uniquely difficult. She indicated this is largely because of deeply held and persistent societal views about 'genuine victims', who they are and their behaviour, and the nature of consent.[575]

We heard evidence from Dr Tidmarsh from Whole Story Consulting that non-specific training for jurors, conducted before a trial starts, could minimise the impact of myths and misconceptions that defence counsel may want to use during trial.[576]

Dr Tidmarsh stated that:

> … given what we know about how strongly juries struggle to move beyond their own psychological schema, their own understanding of sexual relationships, of sexual offending relationships, their own judgment, to leave jury members unprepared to meet the complexity and the nuance of these kinds of stories, I think it does them and the justice system a significant disservice, and that anything we can do, without prejudicing the fairness, the rights of the accused, to inform them of the background of these stories; what grooming is, for example, would be very beneficial and would certainly level the playing field.[577]

Dr Tidmarsh informed us that some models have used non-case specific educational sessions for jurors and potential jurors before trial. These sessions encourage defence counsel to use fewer myths and misconceptions than they otherwise would have.[578]

When we put this idea to Professor Cashmore at hearings, she agreed we should not assume jurors understand the dynamics of child sexual abuse. She added:

> But for jurors coming in, it is a strange environment and these are difficult cases to determine, and the evidence … it's not an equal playing field … So, I think having jurors who have a better understanding of what the dynamics and the context and the consequences, you know, why children behave in certain ways: they may never have had any experience, and hopefully they haven't had any experience, of knowing a child who's been sexually abused and understanding that. So, it makes sense to me to even the playing field a little.[579]

One witness in a child sexual abuse matter (who was herself a child at the time of trial) described her frustration at the fact that most female jurors were excluded through defence challenges, leaving mainly men around the same age or older than the abuser.[580] She added:

> The entire defence hinged on the prevailing attitude of 'children lie about sexual abuse'. But how true is this underlying assumption? The literature shows that children rarely lie about child sexual abuse.
>
> I wonder what these kinds of trials would look like if the jury (and the public) were made aware of this fact. What if decision-making in the justice system was informed by facts and statistics, just like medicine and science are, rather than being informed only by the attitudes of the average juror? Sounds radical, but it shouldn't be.[581]

In New Zealand, the *Sexual Violence Legislation Act 2021* (NZ) introduced a requirement for judges to direct juries as 'necessary or desirable to address any relevant misconception relating to sexual cases' with a non-exhaustive list of possible misconceptions relating to false allegations, victim blaming and rape myths.[582] A New Zealand study on juror use of cultural misconceptions in sexual violence trials noted that such directions rely on sound judicial education and implementation by individual judges.[583] The study noted that, if done poorly, directions may focus jurors on the misconceptions they set out to rectify and could make the situation worse.[584]

The New Zealand study also observed a growing interest in other forms of jury education; for example, information about cultural misconceptions could be sent out with jury summons, provided in writing or by video at the time of jury selection, or left in the jury room.[585] However, as with other forms of juror education about misconceptions, the New Zealand study indicates there is relatively little knowledge about what works and to what extent awareness raising affects reasoning in real cases.[586] We consider that any information given to jurors should be factual and focus on common practices in relation to child sexual abuse, rather than being negatively framed to overcome common myths.

The National Royal Commission reported mixed views about the benefits or otherwise of providing video or other material to juries, particularly about child sexual abuse. It considered that authorising trial judges to give directions about child witnesses and child sexual abuse is better than developing extra educational material to assist juries.[587]

Section 108C of the Tasmanian Evidence Act provides for juries to be educated about child development and child behaviour—for example, why their failure to complain or their failure to respond to sexual abuse in a particular way is normal. The ODPP told us that this provision is not often used but that it is a valuable provision.[588] In our view, the ODPP should consider whether to use this section in child sexual abuse cases. We are aware that section 108C of the *Evidence Act 1995* (NSW) has been used in New South Wales to admit opinion evidence to help understand the behaviours of child sexual abuse victim-survivors and common misconceptions about their behaviours and responses.[589]

Although we consider that providing non-case specific information to juries about common practices relating to child sexual abuse is not enough in itself to dispel myths and change attitudes, we consider such information could play an important role.

Recommendation 16.15

The Tasmanian Government should introduce legislation to:

a. require trial judges to explain to juries the difficulties child witnesses often face in giving evidence in court, and the distinctive ways in which they give evidence, in cases where the reliability or credibility of a child witness is likely to be in issue, in similar terms to section 44N of the *Jury Directions Act 2015* (Vic)

b. provide that in jury trials of a person accused of a child sexual abuse offence, if a party so requests, the judge must, unless the judge considers there are good reasons for not doing so, direct the jury that

    i. children who have been subjected to child sexual abuse respond in a variety of ways and some children who have been abused do not avoid the alleged perpetrator

    ii. disclosure of abuse may occur over time and not all on one occasion

c. prohibit, in similar terms to section 294AA of the *Criminal Procedure Act 1986* (NSW), a judge in a trial of a person indicted for sexual offences against a child from

    i. warning a jury against convicting the accused person solely because the only evidence is the evidence of the complainant

    ii. directing the jury about the danger of conviction in the absence of corroboration

d. amend the *Evidence Act 2001*, in similar terms to section 52 of the *Jury Directions Act 2015* (Vic), to require a trial judge who considers that delay in complaining is likely to be raised in a trial for a child sexual abuse offence to inform the jury that

    i. people react differently to sexual abuse and there is no typical, proper or normal response to a sexual offence

    ii. some people may complain immediately to the first person they see, while others may not complain for some time, and others may never make a complaint

    iii. it is common for a person to delay making a complaint of sexual abuse, particularly if it occurred when they were a child

    iv. there may be good reasons why a person may not complain, or may delay complaining about sexual abuse

e. amend the *Evidence Act 2001* to provide that the warnings and directions can be

   i. given by a judge to the jury at the earliest opportunity, such as before the evidence is called or as soon as practicable after it is presented in the trial

   ii. repeated by the judge at any time during the trial

   iii. given by the judge's own motion, or if requested by either party before the trial or at any time during the trial.

5.6 Improving professional education for judicial officers

As the Victorian Law Reform Commission acknowledged in its work on sexual offences reform in 2003, discussion and education that foster cultural change in the criminal justice system are essential elements for change.[590]

The Victorian Law Reform Commission stated that those who work in the system, including police, lawyers, magistrates and judges, are likely to be more responsive to the needs of victim-survivors, and to perform their role more effectively, if they understand the context in which sexual offences commonly occur and the social and psychological aspects of sexual offences that affect complainants.[591] These reflections on the importance of education remain just as relevant today.

In most states, it has become increasingly common for judicial officers to attend education programs. The Judicial College of Victoria has been offering such programs, including programs on sexual assault, for many years. We consider such programs should be offered in Tasmania and/or that Tasmanian judicial officers could be encouraged to attend interstate programs.

Changes in relation to understanding the myths and misconceptions about child sexual abuse over the past few years, together with legislative changes, make it important for the courts to be supported with information and training.

Adjunct Associate Professor Henning said that in her experience:

> ... there's not a resistance on the part of the [Tasmanian] judiciary to obtaining information to inform themselves in areas of expertise and specialisation where they feel they need to have a great deal more information.[592]

Professional development of judicial officers can be achieved in various ways. Professor Cashmore spoke to us about educating judges, lawyers and jurors via witness intermediaries, which we discuss in Section 5.2.1.[593] She observed that, in New South Wales, the need for witness intermediaries to intervene has diminished as judges have become more alert to the needs of child witnesses.[594]

Tasmania could draw on training and materials developed in other Australian jurisdictions. For example, the Judicial Commission of New South Wales has recently published a new chapter in the *Equality Before the Law Bench Book* to raise judicial awareness about the nature and impact of trauma and its prevalence, and how to apply trauma-informed principles to the task of judicial decision making. The chapter also covers trauma and its impact on victim-survivors of child sexual abuse.[595] In addition, the Australasian Institute of Judicial Administration has published the *Bench Book for Children Giving Evidence in Australian Courts*, which was updated in March 2020.[596] The Supreme Court could consider developing professional development material based on this bench book.

In Victoria, the Chief Justice of the Supreme Court directs the professional development and continuing education and training of judicial officers.[597] In discharging this responsibility, the Chief Justice may direct a judicial officer to take part in specified professional development or continuing education and training activity.[598] We consider that Tasmania should adopt a similar provision.

We encourage the Supreme Court to support members of the Bench to actively seek out and participate in professional development and continuous education programs and activities as a matter of course. Judicial officers could attend programs already developed in other jurisdictions, such as the programs offered by the Judicial College of Victoria.

Recommendation 16.16

The Tasmanian Government should:

a. fund the Supreme Court to support the professional development of judicial officers on the dynamics of child sexual abuse and trauma-informed practice

b. consider introducing legislation dealing with the responsibility of the Chief Justice to direct the professional development and continuing education and training of judicial officers, in similar terms to section 28A of the *Supreme Court Act 1986* (Vic).

6 After a conviction

In this section, we focus on what happens after an accused person pleads guilty or is found guilty of child sexual abuse. We discuss:

- sentencing in child sexual abuse cases and recent sentencing trends
- the availability of perpetrator programs for child sex offenders in the community
- restorative justice as an alternative to traditional criminal justice responses.

We discuss victim support services in Chapter 17.

6.1 Sentencing

After an accused person pleads guilty or is found guilty, a sentencing hearing decides their sentence. At a sentencing hearing, the court may hear submissions from the prosecution and defence about:

- the facts of the case, including any mitigating factors (facts or circumstances that could lessen the severity of a sentence) or aggravating factors (facts or circumstances that could increase the sentence received)[599]
- the offender's circumstances (for example, the prosecution might refer to the offender's criminal history, while the defence might state that the offender has shown remorse)
- relevant sentencing principles (for example, the principle of proportionality, which means that the severity of the sentence must fit the seriousness of the crime)
- the type of sentence that might be appropriate (for example, imprisonment or a community-based order).[600]

A victim impact statement may be read out at a sentencing hearing, either by the victim or by the prosecution on the victim's behalf.[601]

After hearing submissions from the prosecution and defence, a court must consider factors in deciding the appropriate sentence to impose on an offender including:

- sentencing practices for the offence type
- the nature and seriousness of the offence
- the impact of the offence on any victim, including any injury, loss or damage caused by the offence
- the personal circumstances of any victim

- whether the offender pleaded guilty and at what stage of the proceedings this occurred
- any mitigating or aggravating factors.[602]

We heard from victim-survivors about their experience with the sentencing process. Victim-survivor Katrina Munting explained to us that she 'found the experience of the criminal justice system devastating' and that she was not sure she could put herself through it again.[603] However, she said:

> … I felt believed by the court and this helped me. I found his Honour's disputed facts findings and sentencing remarks really helpful because they came from an impartial and authoritative perspective, and they recognised the pain and suffering I had been through.[604]

As noted above, when a court is sentencing an offender for child sexual abuse offences, the victim-survivor may make a written statement to the court that describes how they were affected by the offence and can refer to any injury they have suffered. The victim-survivor can request that they or another person acting on their behalf read the statement to the court before the offender is sentenced.[605] The Witness Assistance Service at the ODPP can help a victim-survivor prepare their statement.[606]

The Victims of Crime Service in the Department of Justice also provides support in preparing victim impact statements.[607] Catherine Edwards, Manager, Victims Support Services, Department of Justice, said that all counsellors at the Victims of Crime Service provide support with writing and submitting victim impact statements based on the victim's capacity and their request.[608] This includes proofreading a victim's draft statement, interviewing the victim and working with them.[609]

Victim-survivors told us of their experiences in making their victim impact statements. Sam Leishman, a victim-survivor, remembers standing up in court and starting to read his statement. He told us:

> … I suddenly felt like the biggest person in the room because I was there standing up in front of everyone, including him, speaking up for the child that I once was when I felt that that had never been done before, and that was 36 years after when it first started, and that's a long time.[610]

By contrast, victim-survivor Leah Sallese described her experience as 'really traumatic'. She said:

> I had help … to prepare my victim impact statement. They also wrote and rewrote what I had to say. Because everything had to be so carefully put, basically, you know, and that was really traumatic because I was actually trying to say—I wanted to say certain things, and I was told I couldn't do that, and this is what you have to do, so I felt like a little bit of my power had been taken away … I didn't really get to say everything I wanted to say, basically.[611]

6.1.1 Sentencing trends

In Tasmania, the maximum penalty that a court can impose on a person for all sexual offences in the Criminal Code Act is 21 years' imprisonment.[612] Courts exercise discretion in sentencing and have established a range of sentences for different offences.[613]

The approach to sentencing child sex offenders, and the length of prison sentences imposed, have changed significantly in recent years.[614]

In Tasmania, the number of offenders who receive custodial sentences and the lengths of sentences for child sexual abuse have both increased. The Sentencing Advisory Council's research paper *Sentencing for Serious Sex Offences Against Children* confirmed a marked upward trend in sentencing in Tasmania for serious child sexual abuse offences when comparing the period 1 January 2015 to 30 September 2018 with the period 1 January 2008 to 31 December 2014.[615]

Also, the DPP can appeal against a sentence if they consider a different sentence should have been given.[616]

The DPP will take the complainant's view into consideration when determining whether to appeal.[617] The ODPP told us that the DPP had undertaken appeals against sentences in child sexual abuse matters, including in the case of *Director of Public Prosecutions v Harington*, which they considered provided strong guidance to courts in sentencing for these matters.[618] In that case, Justice Wood remarked that sentences for maintaining a sexual relationship (now persistent sexual abuse) were increasing, observing that:

> To some extent this is an inevitable consequence and a reflection of the greater community understanding of the long-term effects of child sexual abuse. The hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse have provided the community and the courts with valuable insight with regard to the serious impact of abuse on child victims.[619]

The Sentencing Advisory Council reported that the median sentence for this offence doubled from three to six years in the period from 1 January 2008 to 31 December 2014 to the period from 1 January 2015 to 30 September 2018.[620] The DPP told us that the sentencing range for rape is generally higher than the sentencing range for penetrative sexual abuse of a child.[621] However, he noted that 'the sentencing range for penetrative sexual abuse of a child is becoming higher than it used to be. It used to be quite low compared to rape; it is less so now'.[622]

Prosecutors felt the courts were increasingly recognising the long-term impacts of child sexual abuse and were taking this into account for sentencing, with an upward trend in sentencing for these matters.[623]

Nevertheless, victim-survivors reported feeling that sentences applied to their abusers were inadequate.[624] We discuss data collection for sentencing in child sexual abuse cases in Section 9.

6.2 Perpetrator programs

Perpetrator programs aim to stop offenders committing further offences, working to change their behaviours and attitudes. This aim recognises that almost all child sex offenders (even those who have been imprisoned) will remain in or re-enter the community. For this reason, interventions directed at abusers are a crucial way to prevent them from harming children.

The Tasmanian Prison Service delivers an adult sex offender program (the New Directions Program) to all people in custody for sex-based offending who are assessed as suitable for the program, except those who refuse to engage in treatment.[625]

A sex offender may also have to take part in sex offender treatment as a requirement of a community-based sentencing order. A court can direct an offender to have treatment in the community as a condition of a community-based order.[626] The Parole Board also has the power to order an offender take part in rehabilitation and treatment as a condition for parole.[627] We did not hear any evidence about treatment programs for sex offenders in the community.

In addition, the Tasmanian Government has recently introduced the *Dangerous Criminals and High Risk Offenders Act 2021*. The Act introduces a scheme for detaining dangerous offenders indefinitely and for making high-risk offender orders, the latter providing for extended supervision of high-risk offenders when released from prison.[628] The Act commenced on 13 December 2021.[629]

To reduce the risk of reoffending, the National Royal Commission emphasised the need to offer support services to child sex offenders moving back into the community.[630] However, it did not consider this issue in detail and noted that it did not have the evidence or submissions necessary to make recommendations in relation to it. The National Royal Commission considered that state and territory governments should continually review the adequacy of support services they provide for child sex offenders in the community.[631]

In 2017, the Sentencing Advisory Council released a research paper on mandatory treatment for sex offenders in custody and in the community.[632] The research paper considered the scope and availability of support services for child sex offenders in the community.

The research paper states that there were only limited treatments available for sex offenders in the community at the time of the report.[633] It further indicates that treatment relies on independent counselling services accessed through private providers and that it may be difficult to get treatment in the north and North West because of a lack of providers.[634] The research paper notes there are no government funded community-based treatment programs for sex offenders in Tasmania.[635] It also considers

that it would not be feasible to run group programs in the community in Tasmania because of the small number of offenders involved and the geographic dispersion of these offenders.[636]

The research paper does, however, note that sex offenders in the community are subject to mandatory intervention by Community Corrections under the Community Based Sex Offender Case Management and Interventions program.[637] It notes that all sex offenders under the supervision of Community Corrections are actively managed and that individual treatment is available if this is a requirement of a parole or court order.[638] According to the research paper, this reflects the need for community-based treatment for sex offenders who have been released from prison to be individualised and targeted rather than treatment that is simply a repeat of the group rehabilitation programs in prison.[639] The research paper states that Community Corrections staff working with sex offenders have received extensive training about sexual offending, managing sex offenders and case management.[640]

The Tasmanian Government should ensure community-based preventive programs for child sex offenders who are released from prison are properly funded. Such programs should also comply with best practice for treating abusers. In this regard, James Ogloff AM, Distinguished Professor of Forensic Behavioural Science, Swinburne University of Technology, drew our attention to Association for the Treatment of Sexual Abusers practice guidelines that specify standards for treating adults and young people.[641] Professor Ogloff explained that these practice guidelines focus on three elements—cognitions (including cognitive distortion, where perpetrators convince themselves that what they are doing is not wrong), behaviours (including strategies for controlling specific behaviours) and emotions (including developing insight into emotional states and the triggers that may cause inappropriate behaviours).[642]

The National Royal Commission also recommended a national strategy to prevent child sexual abuse (refer to Chapter 18).[643] It recommended that the national strategy encompass information and help-seeking services to support people who are concerned they may be at risk of sexually abusing children, highlighting the Stop It Now! program as a potential model to adopt.[644]

The Stop It Now! program operates in North America, the Netherlands, the United Kingdom and Ireland. It has also operated on a small scale in Queensland.[645] The program has been positively evaluated in the Netherlands and the United Kingdom.[646]

In Victoria, Jesuit Social Services is piloting Stop It Now! for those who self-identify a sexual interest in children and want to address this.[647] The pilot started in late August 2022 and was to run for a year.[648] The program aims to reduce and eliminate the sexual abuse and exploitation of children, and seeks to achieve this by engaging with adults who may go on to harm children.[649]

The program's key feature is an anonymous helpline for people who are worried about their own sexual thoughts and behaviour in relation to children, as well as professionals and family members who are concerned about the behaviour of others.[650] The service includes a website with advice, self-help materials and guidance to raise awareness of child abuse.[651] While the service can be accessed anonymously and confidentially, it complies with all mandatory reporting guidelines.[652]

The University of Melbourne will evaluate the effectiveness of the program and its potential for national scale-up.[653] We welcome programs such as Stop It Now! that seek to reduce and eliminate child sexual abuse.

Recommendation 16.17

The Tasmanian Government should ensure preventive programs for adults who are at risk of abusing, or have abused, children are available beyond the custodial setting. These programs should be:

a. properly funded

b. align with the practice guidelines issued by the Association for the Treatment and Prevention of Sexual Abusers

c. include a monitoring and evaluation process.

6.3 Restorative justice

Restorative justice involves people affected by a crime, including the victim-survivor and the offender, communicating about the damage caused by the offence and how it can be repaired. It can include methods such as an exchange of letters, engagement with an institution where the harm occurred and supported conferencing processes with professionals.[654]

We heard evidence about restorative justice as an alternative to traditional criminal justice responses to child sexual abuse, given their inherent limitations.

Elena Campbell, Associate Director, Research, Advocacy and Policy at the Centre for Innovative Justice, told us that:

> Restorative justice approaches recognise that, while the adversarial system meets the imperative of the State in prosecuting wrongdoing, it does very little to meet the needs of the people who have experienced this wrongdoing. By contrast, restorative justice approaches give victim-survivors a voice and validation, essentially allowing them to be heard, to ask questions and to feel that somebody who has caused harm to them has taken steps to repair it.[655]

Professor Cashmore gave evidence about the potential for restorative justice to play a role in the criminal justice system's response to child sexual abuse. She told us that there needs to be some serious consideration of other avenues of justice, including certain restorative justice approaches.[656] She also drew our attention to a pre-trial diversion program in New South Wales in which familial child sex offenders had to take responsibility by pleading guilty and complying with strict requirements, including disclosing their conduct to family members and their work managers and colleagues, with breaches resulting in the offender returning to court for sentencing.[657]

The National Royal Commission considered the potential of restorative justice approaches for institutional child sexual abuse. It noted some stakeholder support for restorative justice approaches. However, the National Royal Commission indicated that, based on evidence at the time, it was ultimately not 'satisfied that formal restorative justice approaches should be included as part of the criminal justice response to institutional child sexual abuse, at least in relation to adult offenders'.[658] The National Royal Commission highlighted issues that often make restorative justice approaches unsuitable, including where there is a significant power imbalance, where the victim-survivor does not want to take part or where the passage of time may mean relevant parties are unable or unwilling to participate.[659]

The National Royal Commission did not express a firm view on whether there is a role for restorative justice in the criminal justice system, either as a sentencing option for offenders or as an alternative for victim-survivors to access justice. However, the National Royal Commission considered that such principles could, and should where appropriate, be embedded in institutional responses to child sexual abuse, including in the National Redress Scheme.[660]

In its report *Improving the Justice System Response to Sexual Offences,* the Victorian Law Reform Commission noted strong support for restorative justice for adult sexual offending. It indicated that restorative justice can be an avenue to meet the needs and wishes of a victim-survivor that a criminal justice system cannot provide.[661] The Victorian Law Reform Commission noted the risks associated with using restorative justice processes involving children who have been sexually abused and, while it acknowledged that such processes are unlikely to be suitable in many instances involving young victim-survivors, it recommended that suitability be determined on a case-by-case basis rather than by a blanket exclusion.[662] We note, however, that Victoria has well-established restorative justice processes in place. We are not aware of Tasmania having a similar system.

We have not made any recommendations on applying restorative justice for institutional child sexual abuse as an alternative to criminal justice. We consider that there may be limited circumstances in which restorative justice could be appropriately applied. This may include some cases where the harmful sexual behaviour is by a child, and

for non-sexual offences such as failing to report the abuse of a child.[663] Also, as recommended by the National Royal Commission, we consider that restorative justice may have a role to play in institutional responses to child sexual abuse and note that these principles are embedded in the National Redress Scheme. We discuss the National Redress Scheme in Chapter 17.

7 Changing the language of consent in child sexual abuse cases

In this section, we highlight the need for the judiciary and legal professionals to avoid reinforcing outdated understandings of child sexual abuse in sentencing remarks and in making submissions.

The language the judiciary and legal professionals use during a trial and when sentencing a child sex offender can have a powerful and sometimes devastating effect on victim-survivors. It can also have a broader symbolic effect on the understanding of child sexual abuse. In this section, we also discuss how the language of consent can send inaccurate and damaging messages to victim-survivors of child sexual abuse and the broader community, and consider whether there are ways to address this.

Benjamin Mathews, Research Professor, School of Law, Queensland University of Technology, told us that child sexual abuse:

> … is inflicted in secret, and usually by an adult who is known to the child or a family member. It can be inflicted in circumstances where force or coercion is clearly apparent, but it can also be inflicted where such coercion is not as stark but where the victim is not developmentally capable of understanding the acts and/or where the child is in a position of physical, cognitive, emotional or psychological vulnerability such that consent is not freely given.[664]

The issue of consent is generally not relevant to child sexual abuse offences because, except in the case of similarity of age which we explain below, children under the age of 17 are legally incapable of consenting to sexual contact. Consent is considered relevant in the following two instances:

- when an accused person and victim-survivor are close in age
- when an accused person is charged with rape, rather than with offences specifically related to the abuse of a child.

The closeness (or similarity) in age defence recognises that there might be good reason not to criminalise a young person who is involved in sexual behaviour with another young person of a similar age—for example, where the complainant is 14 and the accused person is 15, and there was genuine consent in the circumstances.[665] In relation to these types of offences, we recognise that discussing consent is entirely appropriate.

If a person is charged with the rape of a child or young person, and does not plead guilty to that offence, the prosecution must prove that the complainant did not consent and that the accused person was aware of the lack of consent. This may result in the child or young person being cross-examined on the issue of consent.[666]

An accused person may argue that they believed the complainant was consenting at the time the sexual penetration occurred.[667] That belief on the part of the accused person must be 'honest and reasonable'. The Criminal Code Act provides that:

> … a mistaken belief by the accused as to the existence of consent is not honest or reasonable if the accused –
>
> a. was in a state of self-induced intoxication and the mistake was not one which the accused would have made if not intoxicated; or
>
> b. was reckless as to whether or not the complainant consented; or
>
> c. did not take reasonable steps, in the circumstances known to him or her at the time of the offence, to ascertain that the complainant was consenting to the act.[668]

However, consent is defined in the Criminal Code Act as meaning 'free agreement'.[669] Section 2A(2) sets out situations in which a person does not 'freely agree'. Two of these situations may be particularly relevant to whether a child or young person has consented. They include where a person 'agrees or submits because he or she is overborne by the nature or position of another person' or where the person is 'unable to understand the nature of the act'.

Under section 335 of the Criminal Code Act, a person can be charged with rape but convicted of penetrative sexual abuse of a child or young person, or penetrative sexual abuse of a child or young person by a person in a position of authority, if the jury is not satisfied beyond reasonable doubt about lack of consent.[670]

As discussed in Section 6.1, the sentencing range for rape is higher than the sentencing range for penetrative sexual abuse of a child.[671] The DPP told us that, depending on the circumstances, the DPP may charge an accused person with the offence of rape and the jury will be directed that if it is not satisfied beyond reasonable doubt that the complainant did not consent, then it can consider the alternative offence of penetrative sexual abuse of a child.[672] Where it is relevant, the jury may also be directed that it can consider the alternative and recently introduced offence of penetrative sexual abuse of a child or young person by a person in a position of authority.

If an accused person is convicted of or pleads guilty to rape, the issue of consent is irrelevant, though physical violence or other factors present at the time of the offence may be relevant to sentencing. Because consent is technically irrelevant, defence counsel should not be able to raise consent in sentencing hearings where a person

pleads guilty or is convicted of rape. If this is done, the prosecutor should object to the issue being raised and the judge should make it clear that consent is irrelevant to sentencing in these circumstances.

When the accused person is convicted of, or charged with, a child sexual abuse offence, or is convicted of that offence as the alternative to rape, consent is also irrelevant unless the defence of similarity of age applies. Evidence we heard suggests the notion of 'consent' in child sexual abuse matters perpetuates outdated ideas about where responsibility sits and reveals a limited understanding of the way in which abusers groom children to submit to sexual abuse. Applying the notion of consent has the potential to reinforce victim-survivors' fears that they are to blame for the abuse, which they are not.

Victim-survivor Leah Sallese told us she believed for decades that, as a child, she had had an 'affair' with her teacher. It was not until she was in her forties, when a psychotherapist told her that what she had experienced was child sexual abuse, that she could question the 'narrative' in her mind and understand that she was a victim of abuse.[673] Ms Sallese referred to the 'offensive' language used by the judge in her case, who described the abuse as 'consensual', and in the offence itself as it was then known: 'maintaining a sexual relationship with a young person'.[674] She emphasised the importance of changing the language, which has now occurred in relation to the title of the offence.[675] We support that change, although we recommend a further change to the language of the provision (refer to Recommendation 16.9). The language prosecutors, defence counsel and judges use can also have a profound effect on the wider community's understanding of child sexual abuse.

Given the effects of applying the notion of consent on victim-survivors and the wider community, we consider that its use is inappropriate in child sexual abuse matters. The DPP concedes that prosecutors could use the unlawful act being alleged rather than the word 'consent' in child sexual abuse matters.[676] He stated that:

> … you'll see many judges comment when passing sentence [for persistent sexual abuse] where they say 'It's not suggested it's consensual'. Now, having thought about it, we don't have to say that, what might be better to say is that what the Crown is alleging is penetrative sexual abuse of a child …[677]

After our hearings, the DPP wrote to us to suggest one way of changing the language used in the criminal justice system would be to amend the *Sentencing Act 1997* ('Sentencing Act'). He suggested, for example, that a statement could be included in section 11A to the effect that, for child sexual abuse offences, consent is not a mitigating factor and that the court is to presume that the sexual abuse will result in long-term and serious physical and psychological harm to the victim-survivor.[678] He considers that such a change would avoid criminal trials and disputed facts hearings requiring the complainant to give evidence on the issue of consent.[679]

We agree that it could be beneficial to amend section 11A of the Sentencing Act to include a provision to the effect that, for child sexual abuse offences, consent is not a mitigating factor. This would also reflect the existing case law as set out in *Director of Public Prosecutions v Harington* and *Clarkson v The Queen; EJA v The Queen*.[680] This would mean that the submission, acquiescence or apparent consent of a child is not relevant in sentencing.

We also consider training for the judiciary and legal profession is needed to help ensure the language used in court does not suggest or imply that a child consented to abuse. We discuss prosecutor training in Section 4.2.2 and improving professional education for judges in Section 5.6. The DPP Guidelines should be amended to make it clear that the language of consent should be avoided when prosecuting child sexual abuse offences.

Recommendation 16.18

1. The Tasmanian Government should introduce legislation to amend section 11A of the *Sentencing Act 1997* to provide that, in determining the appropriate sentence for an offender convicted of a child sexual abuse offence, the acquiescence or apparent consent of the victim is not a mitigating circumstance.
2. The Director of Public Prosecutions should amend its *Prosecution Policy and Guidelines* to make it clear that in child sexual abuse matters where consent is not an element of the offence, then the language of consent should not be used by prosecutors.
3. Professional education for judicial officers (Recommendation 16.16) and prosecutors (Recommendation 16.8) should include challenging the myths and misconceptions about consent in relation to child sexual abuse.

8 Responses to children and young people displaying harmful sexual behaviours

Harmful sexual behaviours cover a broad range of behaviours, from those that are developmentally inappropriate and involve only the child displaying the behaviours, to those that involve one child sexually harming another child. In our hearings and in sessions with a Commissioner, we heard from victim-survivors who had been sexually harmed by other children in institutions. Harmful sexual behaviours can have a detrimental and lasting impact on victim-survivors and need to be managed with great care and sensitivity.

While the impact of harmful sexual behaviours is significant, it is generally recognised that punitive responses are often not appropriate because children can display such behaviours for a range of complex reasons, including because of their own sexual victimisation.

In addition, research about children who have displayed harmful sexual behaviours indicates a low rate of recurrence for these behaviours.[681] This means that adopting stigmatising criminal justice interventions is unlikely to be effective. Professor Ogloff informed us that harmful sexual behaviours displayed by young people are usually highly treatable, with treatment based on gaining cognitive and emotional control, and often there is a strong element of remorse and a desire to change.[682]

The National Royal Commission considered that interventions are needed to respond to children who display harmful sexual behaviours, ranging from prevention and early identification to assessment and therapeutic intervention.[683] It found that a public health model should be applied to address and prevent problematic and harmful sexual behaviours displayed by children. The Victorian Law Reform Commission also recommended in 2021 that the Victorian Government strengthens the support available to children and young people who have engaged in harmful sexual behaviours.[684]

The National Royal Commission noted that, for a small group of children, a child protection or criminal justice response may be necessary.[685] It recommended state and territory governments ensure there are clear referral pathways for children who have displayed harmful sexual behaviours to access expert assessment and therapeutic intervention, regardless of whether the child is engaging voluntarily, on the advice of an institution or through their involvement with the child protection or criminal justice system.[686]

We discuss responses to children who have engaged in harmful sexual behaviours in Chapter 21. In that chapter, we recommend funding be increased for specialised therapeutic services for young people in the context of a statewide, whole of government framework for responding to harmful sexual behaviours, so all children and young people can access the appropriate responses for their situation. Here we consider whether there are opportunities in the youth justice framework for courts to direct the small number of young people who have displayed harmful sexual behaviours and are charged with an offence to therapeutic services.

We note that the Tasmanian Government has developed the *Draft Youth Justice Blueprint 2022–2032: Keeping Children and Young People out of the Youth Justice System,* which outlines the strategic direction for Tasmania's youth justice system for the next 10 years.[687] The draft blueprint's aim is to improve the wellbeing of children, young people and their families while addressing the underlying drivers of offending behaviours, reducing offending and improving community safety. We welcome this initiative and consider there is an urgent need for youth justice system reform. We discuss the draft blueprint further in Chapter 12.

There is potential in the existing legislative frameworks for courts to divert young people who have displayed harmful sexual behaviours to specialised therapeutic services. The *Youth Justice Act 1997* ('Youth Justice Act') provides the legislative framework for administering youth justice in Tasmania. The Youth Justice Division of the Magistrates Court deals with most young people charged with criminal offences. But the Supreme Court deals with more serious offences such as aggravated sexual assault, rape and persistent sexual abuse of a child.

Instead of proceeding to sentence a young person, the Magistrates Court can do one of the following:

- Order the young person to attend a community conference.[688] If the Court makes such an order, it can require the young person to enter into an undertaking to do anything else that may be appropriate in the circumstances.[689] The Court can then dismiss a charge after the young person takes part in the community conference.[690]
- Defer sentencing of a young person to allow them to take part in an intervention plan.[691] An intervention plan is a plan that specifies the activities or programs that a young person is expected to undertake while on bail.[692]

In addition, when sentencing a young person under the Youth Justice Act, the Magistrates Court can order that the young person undergoes psychiatric or psychological treatment as a special condition of a probation order or a community service order.[693]

We note that, where a young person is charged with a family violence offence, the court also has the power to order a rehabilitation program assessment and direct the young person submit to that assessment.[694] This power is limited to offences committed by a person against their spouse or partner.[695]

When a young person is sentenced in the Supreme Court, the court has discretion to sentence the person under the Sentencing Act or the Youth Justice Act. In sentencing a young person under the Sentencing Act, the court can:

- order release of the offender if the offender undertakes to comply with specified conditions
- make a community correction order with special conditions if the young person has reached 18 years, which could include a treatment program order.[696]

We consider the courts should have broader powers to refer young people to rehabilitation assessments and supports. In Chapter 21, we recommend that the Magistrates Court be given the power to divert a young person who has engaged in harmful sexual behaviours from the criminal justice system by adjourning the criminal proceedings to enable the young person to take part in therapeutic treatment (Recommendation 21.9). They could then discharge the young person after completing the treatment.

In addition, we consider that courts should use their powers to direct young people who have been charged with criminal offences and who have displayed harmful sexual behaviours to specialist therapeutic services, whenever this is appropriate.

Recommendation 16.19

We encourage the courts to consider using their powers to direct young people engaging in harmful sexual behaviours who are charged with a criminal offence to specialist therapeutic services.

9 Monitoring and evaluation

There is a lack of comprehensive data on child sexual abuse offences in the Tasmanian criminal justice system. In its report *Improving the Justice System Response to Sexual Offences,* the Victorian Law Reform Commission highlighted the challenges of building an evidence base for reform without the benefit of regularly published data.[697]

Of the child sexual abuse matters that are reported to police (and we know that many are not), we heard that only a small proportion result in prosecution and conviction—in New South Wales, about 12 per cent of reported cases (and we heard this is broadly consistent with other studies).[698] Other data from New South Wales shows that, of the cases in which a person pleads guilty or goes to trial, almost half are convicted of at least one child sexual abuse offence.[699] Conviction rates for cases that are prosecuted in Tasmania are higher than in New South Wales.

The DPP's *Annual Report 2021–22* states that:

> … between 2017 and 2021 the Office finalised 231 sexual assault cases involving child complainants, with a conviction rate of 67.33% and a discharge rate of 23.9%. A previous study between 2010 and 2014 showed a similar result. The conviction rate was higher than that for all crimes whereas the discharge rate was significantly lower than that for all crimes.[700]

The report attributed the high conviction rate to the DPP Guidelines ensuring early contact with complainants, the conduct of matters by experienced prosecutors and the pre-charging advice service the ODPP provides to Tasmania Police, which was said to mean that the 'correct charges are laid and additional evidence is obtained at an early stage'.[701]

Figures provided to our Commission of Inquiry on conviction rates for sexual assault crimes (which would have included some adults who reported child sexual abuse) were similarly high.[702] These figures showed a conviction rate of 67.53 per cent and a discharge rate of 23.3 per cent.[703]

Although the ODPP's figures are encouraging, we do not know what proportion of these cases involved institutional child sexual abuse. Moreover, the ODPP figures do not show the attrition rate between cases reported to Tasmania Police and cases that get a conviction. Research has consistently shown that the majority of sexual offences are not reported, preliminary enquiries made to police do not always result in a formal report, and only some cases reported to police proceed to prosecution. If police do not encourage victim-survivors to formally report an offence, or if a charge is never laid because of the ODPP's pre-charging advice, only a low proportion of reports of child sexual abuse proceed through the criminal justice process. For example, a study on the attrition of sexual offence incidents in the Victorian criminal justice system covering the period 2015–16 to 2016–17 shows that only one in seven sexual offence incidents reported to police was ultimately proven in court and that attrition was 'highest during the police investigation stages of the justice system process'.[704] Police formally identified an offender for about half (48 per cent) of the incidents reported and laid charges against about half (52 per cent) of those offenders they identified.[705] We note these figures relate to sexual offence incidents generally and are not confined to sexual offences against children or offences occurring in an institutional context.

For this reason, we consider the Tasmanian Government should ensure data is collected on the proportion of child sexual abuse cases reported to police that result in prosecution and conviction. This information should be compared with statistics from other Australian jurisdictions where such data is collected. The analysis of this data should consider jurisdictional differences in systems (for example, in Tasmania a magistrate cannot refuse to commit a matter).[706] Such a comparison would provide a more objective means of assessing the performance of the Tasmanian criminal justice system in investigating, charging and convicting child sexual abuse offenders than currently exists.

Attrition data—indicating when and why cases stop progressing through the criminal justice system—is also required to help identify factors and barriers that have contributed to decisions by victim-survivors to withdraw from criminal justice processes. This could also inform future policy and reform.

It should be possible to track how many incidents of child sexual abuse offending progress through the criminal justice system to be proven in court and at what points incidents 'exit' the system. We note that the ODPP already collects some of this data, including the reasons for matters being discharged, and reports on it in its annual report.

In respect of the ODPP's pre-charging advice service, the ODPP keeps a record of the number of advice files provided to Tasmania Police in which the ODPP recommended, in respect of child sexual abuse offences, that:

- charges be laid
- charges not be laid
- further police enquiries be made.

The ODPP has provided our Commission of Inquiry with figures for 2016–17 to 2022–23 (up until 5 May 2023). These are shown in Table 16.1.[707] This table indicates that, in some years many matters reported to police did not result in charges being laid, although in recent years the proportion of cases where charges are laid appears to be increasing.

Table 16.1: Office of the Director of Public Prosecutions, Pre-charge advice files relating to child sexual offences provided to police, 2015–2023[708]

Year	Charges laid	Charges not laid	Further police enquiries be made	Total (charges laid or not laid)	Percentage of cases with charges laid, of those with a charge laid or not laid
2015–16	19	54	15	73	26%
2016–17	17	58	19	75	23%
2017–18	59	66	50	125	47%
2018–19	63	89	33	152	34%
2019–20	72	98	26	170	42%
2020–21	44	46	14	90	49%
2021–22	63	59	26	122	51.6%
2022–23	46	59	14	105	43.8%

Source: Office of the Director of Public Prosecutions, *Advice Provided Statistics 2015–2023*, 5 July 2023.

The National Royal Commission recommended that the DPP monitors the number, type and success rate of appeals in child sexual abuse matters to identify any areas of potential reform and to ensure any National Royal Commission recommendations are working as intended.[709] We acknowledge that, in recent years, police and the ODPP have made improvements including:

- developing a specialised unit within the ODPP
- developing and expanding the Witness Assistance Service
- implementing early engagement with victim-survivors
- establishing the ODPP's pre-charging advice service.

Nevertheless, throughout this chapter we have identified areas where it is still difficult to assess the performance of the police and the ODPP without other transparency measures.

Commissioner Hine told us Tasmania Police 'holds a wealth of data across many different systems'.[710] He said that 'currently more than 10 years of offence reporting data is at hand from which we can examine trends across offence types, locations, clearance and other factors over time'.[711] He also said integration and reporting on this data will improve with the upcoming migration of more applications into Atlas, the Tasmania Police data system.[712]

The DPP told us that the ODPP's in-house file management and record keeping methods need to be modernised to better record data and automatically generate reports. He said that the Department of Justice is undertaking a project (called 'Justice Connect') to improve information sharing between stakeholders. The DPP said that it is not clear how this system will benefit the ODPP.[713] We recommend that the Tasmanian Government supports the ODPP to improve its data collection.

We also consider that more work needs to be done to collect data about child sexual abuse across the criminal justice system. We therefore recommend the Tasmanian Government prioritises collecting comprehensive data on the criminal justice system's response to child sexual abuse.

Although data is important, it only tells part of the story. Victoria Police noted its view that not every victim-survivor wants to go through the court process, and prosecution is not always the goal and only measure of 'success'.[714] We agree.

In Section 3.2.2, we recommend that specialist police units measure and periodically report on victim-survivor satisfaction with the specialist police units (refer to Recommendation 16.1).

We also recommend below that periodic qualitative surveys be conducted with victim-survivors of child sexual abuse. These should focus on their experiences and satisfaction with the criminal justice system. Such surveys could measure whether the victim-survivor felt listened to and believed, whether they understood the process and whether they were kept informed of the progress of their case.

Recommendation 16.20

1. The Department of Justice should:
    a. prioritise collecting and publishing key data about institutional child sexual abuse, including
        i. the number of reports of child sexual abuse made to police
        ii. police, prosecution and court outcomes of reports, and reasons for outcomes, including the reasons why cases did not proceed
        iii. the time between reporting, charging or a decision not to progress, and prosecution
        iv. whether the abuse took place in an institutional setting
        v. basic demographics of victim-survivors and alleged perpetrators (for example, age, gender and Aboriginal status)
        vi. trends in relation to particular groups, including Aboriginal people
    b. support the Office of the Director of Public Prosecutions to improve its data collection for child sexual abuse cases so it can effectively monitor
        i. the cases on which police seek advice, that proceed to court and that are discontinued, including the reasons for discontinuance
        ii. the number, type and success rate of appeals in child sexual abuse matters
    c. cause periodic surveys to be conducted and published with victim-survivors of child sexual abuse on their experience and satisfaction with the criminal justice system, including on whether the victim-survivor
        i. felt listened to
        ii. felt believed
        iii. understood the process
        iv. was kept informed of the progress of the case.

2. The Sentencing Advisory Council should periodically review trends in sentencing for child sexual abuse offences in Tasmania and compare them with sentencing outcomes for equivalent offences in other Australian jurisdictions.

10 Conclusion

As recognised by the National Royal Commission, the criminal justice system is unlikely ever to provide an easy or straightforward experience for a victim-survivor of institutional child sexual abuse. The very nature of the crime and the criminal justice system mean that the experience is likely to be distressing and stressful.[715] However, we understand that the criminal justice system represents an important mechanism to condemn child sexual abuse, hold abusers to account and intervene to stop abusers offending.

The criminal justice system should do everything possible to avoid retraumatising victim-survivors, who must be listened to, respected and treated with dignity in all their interactions with the criminal justice system. A victim-survivor's experience of the system can be shaped by how they are spoken to and the support they receive. We heard that, for some people, aspects of the criminal justice process were ultimately affirming and rewarding, particularly when victim-survivors felt heard and believed and the offending was condemned.

While every victim-survivor of child sexual abuse has individual experiences and needs, some common themes emerged from the victim-survivors who shared their experiences with us. They spoke of how difficult it was to recount their experience multiple times and how important it is to be offered support throughout the criminal justice process.

We heard about the importance of victim-survivors having a voice, being believed and not having damaging myths or language wielded against them throughout the criminal justice process. We also heard about how important it is for police and prosecutors to speak to victim-survivors with kindness, care and patience, and to keep them informed about the progress of their case.

We accept that the criminal justice system, as an adversarial system, is not well equipped to respond to the complex and sensitive issues that arise from child sexual abuse. We consider recent reforms, such as introducing a witness intermediary scheme and using special measures to support complainants in giving evidence, can help alleviate some of the system's limitations, but we accept victim-survivors will always find reporting offences and giving evidence a very difficult process.

We welcome recent reforms to the criminal justice system but consider more can be done.

Like the National Royal Commission, our recommendations aim to reduce the extent to which a victim-survivor might feel marginalised, vulnerable, attacked or retraumatised.[716]

Our key recommendations in this chapter include:

- establishing specialist police units for child sexual abuse investigations
- ensuring police and prosecutors are trained on the nature and dynamics of child sexual abuse and trauma-informed care
- implementing independent oversight of investigations of allegations of child sexual abuse involving police officers
- assisting juries to assess the evidence of child witnesses through jury directions
- improving professional development for judicial officers and legal professionals
- changing the language of consent in child sexual abuse offence cases
- improving data collection across the criminal justice system.

Underlying all our recommendations is the need to improve education and training for police, prosecutors and the courts, as well as the wider community, on the nature and dynamics of child sexual assault and trauma-informed practice.

Notes

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 9.

2 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 75.

3 Task Force on Sexual Assault and Rape in Tasmania, *Report of the Task Force on Sexual Assault and Rape in Tasmania* (Report, 1998) 28.

4 Section 310(4) of the *Criminal Code Act 1924* provides that a person cannot be indicted unless there is sufficient evidence to put the accused person on trial or to raise a strong or probable presumption of guilt.

5 Section 72B of the *Justices Act 1959*; *Neasey v Strickland* (1995) 5 Tas R 228.

6 *Criminal Code Act 1924* s 361AA; Elise Archer, 'Legislation Now Passed to Allow Judge Alone Criminal Trials in Tasmania' (Media Release, 10 March 2022). <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/legislation_now_passed_to_allow_judge_alone_criminal_trials_in_tasmania>.

7 *Criminal Code Act 1924*, s 401(2).

8 *Criminal Code Act 1924* s 389.

9 *Criminal Code Act 1924* s 401(2)(bb); *Criminal Code Act 1924* s 401(2)(c).

10 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 20.

11 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 20–37.

12 Department of Justice, *Fourth Annual Progress Report and Action Plan 2022* (Report, December 2021).

13 Tasmania Police, *Tasmania Police Manual* (5 August 2021) 231 [4.4.10].

14 Submission 126 Tasmania Police, 7.

15 Submission 126 Tasmania Police, 7.

16 Statement of Darren Hine, 14 June 2022, 93 [418].

17 Statement of Darren Hine, 14 June 2022, 94 [419].

18 Statement of Darren Hine, 14 June 2022, 94 [420].

19 Statement of Darren Hine, 14 June 2022, 94 [420].

20 Submission 126 Tasmania Police, 7.

21 Statement of Darren Hine, 14 June 2022, 94 [423].

22 Statement of Darren Hine, 14 June 2022, 94 [423].

23 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 5–6. Refer also to Statement of Darren Hine, 14 June 2022, 72 [296].

24 Submission 126 Tasmania Police, 8; Peter Gutwein, 'No Stone Must Be Left Unturned in Protecting Our Most Vulnerable' (Media Release, 26 February 2021) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/no_stone_must_be_left_unturned_in_protecting_our_most_vulnerable>.

25 Submission 126 Tasmania Police, 8.

26 Jacquie Petrusma, 'Multidisciplinary Centres to Provide Victim-Survivors with Immediate, Integrated Support' (Media Release, 1 March 2022) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/multidisciplinary_centres_to_provide_victim-survivors_with_immediate,_integrated_support>.

27 Transcript of Darren Hine, 6 July 2022, 2467 [35–37].

28 Shiarna Barnett, 'Two New Multidisciplinary Sexual Assault Survivor Centres Announced for Opening in Mid-2023', *The Examiner* (online, 3 December 2022) <https://www.examiner.com.au/story/8005502/minister-reveals-plans-to-open-two-new-multidisciplinary-centres/>.

29 Submission 014 Anonymous, 29; Submission 005 Tracie Lucas, 3.

30 Transcript of Leah Sallese, 8 July 2022, 2640 [17–20].

31 Statement of Leah Sallese, 4 July 2022, 3 [17–18].

32 Statement of Tiffany Skeggs, 23 June 2022, 23 [88].

33 The name 'Alex' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023; Transcript of 'Alex', [date redacted], 1686 [40–42].

34 Submission 132 Mark Southern, 2.

35 Submission 132 Mark Southern, 2.

36 The name 'Faye' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 14 June 2022; Transcript of 'Faye', 14 June 2022, 1176 [3–6].

37 Transcript of 'Faye', 14 June 2022, 1176 [6–7].

38 Statement of Keelie McMahon, 9 May 2022; Statement of Angelique Knight, 2 June 2022.

39 Statement of Keelie McMahon, 9 May 2022, 4 [19–22].

40 Statement of Angelique Knight, 2 June 2022, 3 [12].

41 Statement of Angelique Knight, 2 June 2022, 3 [12].

42 Submission 069 Laurel House, 16.

43 Stakeholder consultation, Hobart, 13 August 2021; Stakeholder consultation, Burnie, 24 August 2021.

44 Stakeholder consultation, Devonport, 27 August 2021.

45 Stakeholder consultation, Devonport, 27 August 2021.

46 Stakeholder consultation, Burnie, 24 August 2021.

47 Stakeholder consultation, Hobart, 13 August 2021.

48 Stakeholder consultation, Hobart, 13 August 2021.

49 Nina Westera, Elli Darwinkel and Martine Powell, *A Systemic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 4.

50 Statement of Patrick Tidmarsh, 16 June 2022, 1 [2].

51 Statement of Patrick Tidmarsh, 16 June 2022, 5 [31].

52 Victoria Police, *Procedural Fairness Response*, 14 March 2023, 1.

53 Statement of Patrick Tidmarsh, 16 June 2022, 5 [32].

54 The six specialist support commands are Education and Training, Operations Support Strategy and Support, Professional Standards, Special Response and Counter-Terrorism, and Crime and Intelligence. Refer to Submission 126 Tasmania Police, 10.

55 Submission 126 Tasmania Police, 11.

56 Statement of Darren Hine, 14 June 2022, 69 [276].

57 Submission 126 Tasmania Police, 7.

58 Submission 126 Tasmania Police, 14.

59 Statement of Darren Hine, 14 June 2022, 69 [277].

60 Statement of Darren Hine, 14 June 2022, 83 [354]. Services for Children and Families (previously known as Children and Family Services, and Children, Youth and Family Services) is an area of the Department for Education, Children and Young People that is responsible for child safety and the Strong Families, Safe Kids Advice and Referral Line (refer to Chapter 7).

61 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 5.

62 Submission 126 Tasmania Police, 11.

63 James Herbert and Leah Bromfield, 'National Comparison of Cross-Agency Practice in Investigating and Responding to Severe Child Abuse' (Australian Institute of Family Studies, Child Family Community Australia Paper No. 47, 2017) 6–7.

64 Transcript of Darren Hine, 6 July 2022, 2472 [39–45].

65 Submission 126 Tasmania Police, 14.

66 Submission 126 Tasmania Police, 14.

67 Transcript of Patrick Tidmarsh, 6 July 2022, 2509 [45–47].

68 Victoria Police, *Information Sheet, Multidisciplinary Centres* (16 October 2017) <https://msau-mdvs.org.au/wp-content/uploads/2019/04/MDC_Information_Sheet.pdf.>.

69 James Herbert, Leah Bromfield and Australian Centre for Child Protection, *Multiagency Investigation and Support Team (MIST) Pilot: Evaluation Report* (Report, Australian Centre for Child Protection, July 2017) 27.

70 Victorian Government, *Protecting Children: Protocol between the Secretary of the Department of Families, Fairness and Housing, Aboriginal Children in Aboriginal Care providers and Victoria Police* (January 2023); Royal Commission into Institutional Responses to Child Sexual Abuse, 'Criminal Justice Issues' (Consultation Paper, 5 September 2016) 100.

71 James Herbert, Leah Bromfield and Australian Centre for Child Protection, *Multiagency Investigation and Support Team (MIST) Pilot: Evaluation Report* (Report, Australian Centre for Child Protection, July 2017) 26.

72 Statement of Peter Yeomans, 24 April 2022, 2 [7].

73 Statement of Peter Yeomans, 24 April 2022, 6 [29].

74 Transcript of Peter Yeomans, 6 July 2022, 2509 [17–19].

75 Transcript of Peter Yeomans, 6 July 2022, 2510 [10–12].

76 Transcript of Peter Yeomans, 6 July 2022, 2510 [19].

77 Nina Westera, Elli Darwinkel, and Martine Powell, *A Systemic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 31.

78 Transcript of Patrick Tidmarsh, 6 July 2022, 2499 [4–47]; Transcript of Peter Yeomans, 6 July 2022, 2500 [6–17].

79 Statement of Patrick Tidmarsh, 16 June 2022, 5 [36].

80 Statement of Patrick Tidmarsh, 16 June 2022, 7 [41].

81 Statement of Patrick Tidmarsh, 16 June 2022, 7 [46].

82 Statement of Patrick Tidmarsh, 16 June 2022, 12 [67].

83 Statement of Daryl Coates, 6 June 2022, 55 [198].

84 Statement of Daryl Coates, 6 June 2022, 53 [192].

85 Refer to James Herbert et al, 'Possible Factors Supporting Cross-Agency Collaboration in Child Abuse Cases: A Scoping Review' (2021) 30(2) *Journal of Child Abuse* 167.

86 Statement of Peter Yeomans, 24 April 2022, 6 [30].

87 Transcript of Peter Yeomans, 6 July 2022, 2510 [27–46].

88 Transcript of Peter Yeomans, 6 July 2022, 2509 [40–46].

89 James Herbert et al, 'Possible Factors Supporting Cross-Agency Collaboration in Child Abuse Cases: A Scoping Review' (2021) 30(2) *Journal of Child Sexual Abuse* 167.

90 James Herbert and Leah Bromfield, 'Evidence for the Efficacy of the Child Advocacy Center Model: A Systemic Review' (2015) 17(3) *Trauma, Violence and Abuse* 341–357, 342.

91 Statement of Tiffany Skeggs, 23 June 2022, 22 [85].

92 Statement of Tiffany Skeggs, 23 June 2022, 22 [87]; Statement of Kylee Pearn, 24 June 2022, 5 [17].

93 Victoria Police, *Code of Practice for the Investigation of Sexual Crime* (2016) 2 [7.3.3].

94 Statement of Peter Yeomans, 24 April 2022, 3 [8].

95 Statement of Glenn Hindle, 21 June 2022, 6 [21(d)].

96 Transcript of Glenn Hindle, 6 July 2022, 2445 [42–47].

97 Statement of Katrina Munting, 5 April 2022, 5 [25].

98 Transcript of Glenn Hindle, 6 July 2022, 2445 [11–12].

99 Transcript of Glenn Hindle, 6 July 2022, 2445 [12–14].

100 Targeted consultation, Tasmania Police, Hobart, 25 August 2021.

101 Submission 126 Tasmania Police, 20.

102 In the year ending 31 December 2016, 38.4 per cent of all recorded sexual offences co-occurred with family violence. Victorian Crime Statistics Agency, *Spotlight: Sexual Offences* (Web Page, 2017) <https://www.crimestatistics.vic.gov.au/crime-statistics/download-crime-data/year-ending-31-december-2016/spotlight-sexual-offences>.

103 Victoria Police, *Procedural Fairness Response*, 14 March 2023, 3.

104 Victoria Police, *Procedural Fairness Response*, 14 March 2023, 3.

105 Targeted consultation, Tasmania Police, Hobart, 25 August 2021; Targeted consultation, Tasmania Police, Launceston, 19 August 2021.

106 Statement of Glenn Hindle, 21 June 2022, 7 [23].

107 Transcript of Glenn Hindle, 6 July 2022, 2448 [25–30].

108 Statement of Patrick Tidmarsh, 16 June 2022, 4 [28].

109 Transcript of Patrick Hindmarsh, 6 July 2022, 2513 [37–46].

110 Tasmania Police, *Arch* (Web Page) <https://www.police.tas.gov.au/what-we-do/family-violence/multidisciplinary-centres/>.

111 Transcript of Peter Yeomans, 6 July 2022, 2507 [1–11].

112 Transcript of Peter Yeomans, 6 July 2022, 2509 [10–12].

113 Victoria Police, *Procedural Fairness Response*, 14 March 2023, 5.

114 Transcript of Darren Hine, 6 July 2022, 2485 [8–11].

115 Transcript of Glenn Hindle, 6 July 2022, 2449 [7–15].

116 Transcript of Darren Hine, 6 July 2022, 2485 [14–17].

117 Commission roundtable discussion with Victoria Police, 9 December 2022.

118 Nina Westera, Elli Darwinkel and Martine Powell, *A Systemic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 31.

119 Nina Westera, Elli Darwinkel and Martine Powell, *A Systemic Review of the Efficacy of Specialist Police Investigative Units in Responding to Child Sexual Abuse* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, March 2016) 31.

120 Transcript of Hilda Sirec, 3 May 2022, 129 [23–24].

121 Transcript of Hilda Sirec, 3 May 2022, 129 [22–30].

122 For example, the floor on which operational work is undertaken has been designed without a kitchen to encourage investigators to leave the floor to eat. Transcript of Hilda Sirec, 3 May 2022, 129 [32–43].

123 Transcript of Peter Yeomans, 6 July 2022, 2508 [15–19].

124 Statement of Peter Yeomans, 24 April 2022, 3 [12].

125 Commission roundtable discussion with Victoria Police, 9 December 2022.

126 Transcript of Patrick Tidmarsh, 6 July 2022, 2511 [39–45].

127 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report Recommendations* (Report, December 2017) 31, Recommendation 9.5.

128 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 9, 178.

129 Australian Government, *Annual Progress Report 2020: Implementation of Recommendations from the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, 2020) 138.

130 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, 2021) 150, Recommendation 18.

131 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, 2021) 150 [7.38]. Refer also to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 9, 178.

132 Statement of Darren Hine, 14 June 2022, 61 [240].

133 Statement of Darren Hine, 14 June 2022, 61 [240].

134 Transcript of Darren Hine, 6 July 2022, 2476 [34–40].

135 Statement of Darren Hine, 14 June 2022, 38 [152].

136 Refer to, for example, Patricia Anderson et al, *Aboriginal and Torres Strait Islander Children and Child Sexual Abuse in Institutional Settings* (Report prepared for the Royal Commission into Institutional Child Sexual Abuse, 2017) 29, 31.

137 Stakeholder consultation with Aboriginal Community members, Burnie, 8 April 2022; Stakeholder consultation with Aboriginal Community members, Ulverstone, 24 May 2022.

138 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 22.

139 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 22.

140 Tasmanian Government, 'Response to recommendations of the National Royal Commission', 20 September 2021, 83, produced by the Tasmanian Government in response to a Commission notice to produce.

141 Statement of Darren Hine, 14 June 2022, 38 [153].

142 Statement of Darren Hine, 14 June 2022, 38 [153].

143 Tasmania Police, *Aboriginal Strategic Plan* (Web Page) <https:www.police.tas.gov.au/about-us/corporate-documents/aboriginal-strategic-plan/>.

144 Statement of Darren Hine, 14 June 2022, 39 [155].

145 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 22.

146 Department of Justice, *Tasmanian Government Fifth Annual Progress Report and Action Plan 2023* (Report, December 2022) 22–23.

147 Statement of Darren Hine, 14 June 2022, 40 [157].

148 Statement of Darren Hine, 14 June 2022, 40 [157].

149 Statement of Darren Hine, 14 June 2022, 40 [157].

150 Statement of Darren Hine, 14 June 2022, 38 [158].

151 Statement of Darren Hine, 14 June 2022, 38 [158].

152 Anonymous Statement, 2 June 2022, 6.

153 Submission 150 Tasmanian Aboriginal Legal Service, 11.

154 Submission 062 Anonymous, 3.

155 Targeted consultation, Tasmanian Police, Launceston, 19 August 2021.

156 Statement of Jacqueline Allen, 21 December 2022, 14 [91].

157 Transcript of Jonathan Higgins, 24 August 2022, 3259 [17–19].

158 Submission 126 Tasmania Police; Statement of Darren Hine, 14 June 2022, 45–50 [173–189].

159 Statement of Darren Hine, 14 June 2022, 45–50 [173–189].

160 Statement of Darren Hine, 14 June 2022, 42 [166].

161 Statement of Darren Hine, 14 June 2022, 42 [166].

162 Statement of Darren Hine, 14 June 2022, 42 [166a].

163 Statement of Darren Hine, 14 June 2022, 43 [166b].

164 Statement of Darren Hine, 14 June 2022, 47 [181].

165 Transcript of Darren Hine, 6 July 2022, 2468 [22–24].

166 Statement of Darren Hine, 14 June 2022, 43 [166(d)]; Transcript of Darren Hine, 6 July 2022, 2475 [9–15].

167 Transcript of Patrick Tidmarsh, 6 July 2022, 2505 [42–45].

168 Transcript of Patrick Tidmarsh, 6 July 2022, 2506 [18–22].

169 Statement of Patrick Tidmarsh, 16 June 2022, 2 [14].

170 Statement of Patrick Tidmarsh, 16 June 2022 [77].

171 Patrick Tidmarsh, Gemma Hamilton and Stefanie Sharman, 'Changing Police Officers' Attitudes in Sexual Offence Cases: A 12-Month Follow-Up Study' (2020) 47(9) *Criminal Justice and Behaviour* 1176.

172 Statement of Jonathan Higgins, 7 June 2022, 14 [57].

173 Statement of Judith Cashmore, 3 May 2022, 17 [61].

174 Statement of Patrick Tidmarsh, 16 June 2022, 14 [77].

175 Statement of Darren Hine, 14 June 2022, 68 [274].

176 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 5.

177 Commission roundtable discussion with Victoria Police, 9 December 2022.

178 Transcript of Darren Hine, 6 July 2022, 2464 [9–11].

179 Transcript of Darren Hine, 6 July 2022, 2464 [12–16].

180 Transcript of Darren Hine, 6 July 2022, 2464 [18–24].

181 Independent Police Conduct Authority, 'Improvements to Police Practices in Child Abuse Investigations' (Media Release, 18 May 2010) <https://www.ipca.govt.nz/Site/publications-and-media/2010-Media-Releases/2010-May-18-Child-Abuse.aspx>.

182 United Nations Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of New Zealand Addendum: Information Received from New Zealand on Follow-Up to the Concluding Observations*, UN Doc CAT/C/NZL/CO/6/Add.1 (30 October 2017) 3.

183 United Nations Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of New Zealand Addendum: Information Received from New Zealand on Follow-Up to the Concluding Observations*, UN Doc CAT/C/NZL/CO/6/Add.1 (30 October 2017) 3.

184 Refer to Judy Cashmore, Alan Taylor and Patrick Parkinson, 'The Characteristics of Reports to the Police of Child Sexual Abuse and the Likelihood of Cases Proceeding to Prosecution after Delays in Reporting' (2017) 74 *Child, Abuse and Neglect* 49. Refer also to Judy Cashmore, Rita Shackel and David Hamer, 'Justice for Victims of Child Sexual Abuse: Informing Policy Change and Law Reform, Promoting Education and Breaking Down Wall of Injustice', *The University of Sydney* (Web Page) <https://www.sydney.edu.au/research/research-impact/justice-for-victims-of-child-sexual-abuse.html>.

185 Statement of Daryl Coates, 6 June 2022, 53 [196].

186 Statement of Daryl Coates, 6 June 2022, 53 [196].

187 Statement of Daryl Coates, 6 June 2022, 53 [196].

188 Statement of Darren Hine, 14 June 2022, 84 [362].

189 Statement of Darren Hine, 14 June 2022, 84 [363].

190 Statement of Darren Hine, 14 June 2022, 84 [364].

191 Statement of Darren Hine, 14 June 2022, 84 [365].

192 Statement of Darren Hine, 14 June 2022, 83 [359].

193 Statement of Darren Hine, 14 June 2022, 84 [366].

194 Statement of Darren Hine, 14 June 2022, 84 [366].

195 Tasmania Police, *Tasmania Police Manual* (5 August 2021) 231 [4.4.10.3].

196 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 6.

197 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 6.

198 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 6.

199 Tasmania Police, *Initial Investigation and Notification of Child Sexual Abuse Guidelines* (20 May 2021) 6.

200 Statement of Darren Hine, 14 June 2022, 82 [346].

201 Statement of Darren Hine, 14 June 2022, 82 [347].

202 Tasmania Police, *Tasmania Police Manual* (5 August 2021) 233 [4.4.10.5].

203 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [157].

204 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [160].

205 Statement of Darren Hine, 14 June 2022, 82 [352].

206 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [161].

207 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [162].

208 Stakeholder consultation, Burnie, 24 August 2021.

209 Statement of Kathrine Morgan-Wicks, 24 May 2022, 18 [153–155].

210 Statement of Kathrine Morgan-Wicks, 24 May 2022, 18 [153].

211 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [156].

212 Statement of Kathrine Morgan-Wicks, 24 May 2022, 19 [161].

213 @Azra Beach (Twitter, 22 November 2022, 4:00pm AEST) <https://twitter.com/AzraBeach/status/1594918784980381696>.

214 Statement of Darren Hine, 14 June 2022, 103 [475].

215 Jessica Moran, 'Inquest Hears Tasmania Police Officer Paul Reynolds was Facing Child Exploitation Claims Before Suicide', *ABC News* (online, 22 November 2022) <https://www.abc.net.au/news/2022-11-22/tas-police-inquest-hears-child-sex-abuse-claims-paul-reynolds/101682344>.

216 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

217 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

218 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

219 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

220 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

221 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

222 Internal correspondence, 9 June 2008, produced by Tasmania Police in response to a Commission notice to produce.

223 Letter from Assistant Commissioner of Police to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 1 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

224 Letter from Assistant Commissioner of Police to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 1 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

225 Letter from Commander of Internal Investigations to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 6 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

226 Letter from Commander of Internal Investigations to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 6 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

227 Letter from Commander of Internal Investigations to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 6 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

228 Letter from Commander of Internal Investigations to Deputy Commissioner of Police, 'Allegations Relating to Inspector P J Reynolds', 6 August 2008, produced by the Tasmanian Government in response to a Commission notice to produce.

229 Jessica Moran, 'Inquest Hears Tasmania Police Officer Paul Reynolds was Facing Child Exploitation Claims Before Suicide', *ABC News* (online, 22 November 2022) <https://www.abc.net.au/news/2022-11-22/tas-police-inquest-hears-child-sex-abuse-claims-paul-reynolds/101682344>.

230 Jessica Moran, 'Inquest Hears Tasmania Police Officer Paul Reynolds was Facing Child Exploitation Claims Before Suicide', *ABC News* (online, 22 November 2022) <https://www.abc.net.au/news/2022-11-22/tas-police-inquest-hears-child-sex-abuse-claims-paul-reynolds/101682344>.

231 Jessica Moran, 'Inquest Hears Tasmania Police Officer Paul Reynolds was Facing Child Exploitation Claims Before Suicide', *ABC News* (online, 22 November 2022) <https://www.abc.net.au/news/2022-11-22/tas-police-inquest-hears-child-sex-abuse-claims-paul-reynolds/101682344>.

232 Melissa Mobbs, 'Senior Sergeant Paul Reynolds Remembered as "a Wonderful Father, Husband and Very Fine Police Officer"', *The Examiner* (online, 19 September 2018) <https://www.examiner.com.au/story/5656393/senior-sergeant-was-full-of-love-warmth-and-generosity/>.

233 Jessica Moran, 'Inquest Hears Tasmania Police Officer Paul Reynolds was Facing Child Exploitation Claims Before Suicide', *ABC News* (online, 22 November 2022) <https://www.abc.net.au/news/2022-11-22/tas-police-inquest-hears-child-sex-abuse-claims-paul-reynolds/101682344>.

234 Tasmania Police, *Procedural Fairness Response*, 16 May 2023.

235 Submission 125 Anonymous, 4.

236 Submission 125 Anonymous, 4.

237 Tasmania Police, *Procedural Fairness Response*, 16 May 2023.

238 Transcript of Darren Hine, 6 July 2022, 2487 [8–22].

239 *Integrity Commission Act 2009* s 8(1)(q).

240 Integrity Commission Tasmania, *Annual Report 2020–2021* (Report, 28 October 2021) 21.

241 Integrity Commission Tasmania, *Annual Report 2020–2021* (Report, 28 October 2021) 21.

242 Transcript of Darren Hine, 6 July 2022, 2487 [8–16].

243 Transcript of Darren Hine, 6 July 2022, 2487 [16–20].

244 Tasmania Police, *Abacus: Commissioner's Directions for Conduct and Complaint Management, and Compliance Review* (7 June 2021).

245 Transcript of Darren Hine, 6 July 2022, 2487 [33–38].

246 Transcript of Darren Hine, 6 July 2022, 2487 [9–15].

247 Independent Broad-based Anti-corruption Commission, Victoria, *Annual Report 2021–22* (Report, December 2022) 9, 39.

248 Independent Broad-based Anti-corruption Commission, Victoria, *Annual Report 2021–22* (Report, December 2022) 9.

249 Victoria Police Sexual Offences and Family Violence Unit, *Options Guide for Victim Survivors of Victoria Police Perpetrated Family Violence or Sexual Offences* (November 2021).

250 Victoria Police Sexual Offences and Family Violence Unit, *Options Guide for Victim Survivors of Victoria Police Perpetrated Family Violence or Sexual Offences* (November 2021).

251 Victoria Police Sexual Offences and Family Violence Unit, *Options Guide for Victim Survivors of Victoria Police Perpetrated Family Violence or Sexual Offences* (November 2021) 7–11.

252 Victoria Police Sexual Offences and Family Violence Unit, *Options Guide for Victim Survivors of Victoria Police Perpetrated Family Violence or Sexual Offences* (November 2021) 15–17.

253 Independent Broad-based Anti-Corruption Commission, Victoria, *Predatory Behaviour by Victoria Police Officers against Vulnerable Persons* (Intelligence Report 2, December 2015) 8.

254 Independent Broad-based Anti-Corruption Commission, Victoria, *Predatory Behaviour by Victoria Police Officers against Vulnerable Persons* (Intelligence Report 2, December 2015) 8.

255 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 12.

256 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 1.

257 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 2.

258 Recommendations 37–43, 58 and 81 are directed to Australian Directors of Public Prosecutions. Refer to Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 58, 59.

259 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 58, 59.

260 Statement of Daryl Coates, 6 June 2022, 17 [83].

261 Director of Public Prosecutions, *Annual Report 2021–22* (Report, 29 September 2022) 4.

262 Director of Public Prosecutions, *Annual Report 2010–2011* (Report, 23 September 2011) 4.

263 This was recommended by the National Royal Commission: Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 62, Recommendation 39(a).

264 This was recommended by the National Royal Commission: Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 65, Recommendation 41.

265 This was recommended by the National Royal Commission: Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 65, Recommendation 40.

266 Statement of Daryl Coates, 6 June 2022, 56 [200].

267 Statement of Daryl Coates, 6 June 2022, 56 [200].

268 Statement of Daryl Coates, 6 June 2022, 55 [201].

269 Statement of Katrina Munting, 5 April 2022, 7 [34].

270 Statement of Katrina Munting, 5 April 2022, 7 [35].

271 Transcript of Leah Sallese, 8 July 2022, 2641 [5–11].

272 Office of the Director of Public Prosecutions, Response regarding evidence of Ms Leah Sallese, 26 July 2022; Office of the Director of Public Prosecutions, Attachments to Response regarding evidence of Ms Leah Sallese, 26 July 2022; Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 2, 8–9.

273 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 2.

274 Transcript of Robert Boost, 12 September 2022, 3892 [31–36].

275 Statement of Robert Boost, 2 September 2022, 4 [23].

276 Statement of Kerri Collins, 11 April 2022, 3 [14].

277 Statement of Kerri Collins, 11 April 2022, 6 [28].

278 Transcript of Daryl Coates, 7 July 2022, 2623 [27–42].

279 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 17.

280 Statement of Daryl Coates, 6 June 2022, 16 [79].

281 Statement of Daryl Coates, 6 June 2022, 16 [77].

282 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 17.

283 Statement of Terese Henning, 1 July 2022, 8 [39–40].

284 Statement of Daryl Coates, 6 June 2022, 12 [51].

285 Statement of Daryl Coates, 6 June 2022, 38 [139].

286 Statement of Daryl Coates, 6 June 2022, 38 [139].

287 Director of Public Prosecutions, *Prosecution and Policy Guidelines* (18 October 2022) 52–53.

288 Director of Public Prosecutions, *Prosecution and Policy Guidelines* (18 October 2022) 53.

289 The Australasian Institute of Judicial Administration, *Bench Book for Children Giving Evidence in Australian Courts* (February 2015).

290 Director of Public Prosecutions, *Prosecution and Policy Guidelines* (18 October 2022) 53.

291 Statement of Daryl Coates, 6 June 2022, 38–39 [140].

292 Statement of Daryl Coates, 6 June 2022, 41 [144].

293 Statement of Daryl Coates, 6 June 2022, 43 [153], [155].

294 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 60, Recommendation 40.

295 Statement of Daryl Coates, 6 June 2022, 105 [340].

296 Statement of Daryl Coates, 6 June 2022, 9 [37].

297 Statement of Daryl Coates, 6 June 2022, 9 [38].

298 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 16.

299 Statement of Daryl Coates, 6 June 2022, 10 [39]. Several offences under the *Criminal Code Act 1924* require the DPP's authorisation before a prosecution against an accused person can be commenced. These offences include persistent sexual abuse of a child or young person (s 125A) and failing to report abuse of a child (s 105A).

300 Statement of Daryl Coates, 6 June 2022, 10 [40].

301 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 16.

302 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 16–17.

303 Statement of Daryl Coates, 6 June 2022, 11 [44].

304 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 3.

305 Statement of Daryl Coates, 6 June 2022, 10 [41].

306 Statement of Daryl Coates, 6 June 2022, 10 [43].

307 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 18.

308 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 18.

309 Targeted consultation, Office of the Director of Public Prosecutions, Hobart, 20 August 2021.

310 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 17.

311 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 17–18.

312 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 18.

313 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 3.

314 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 18.

315 Submission 057 Anonymous, 3.

316 Submission 005 Anonymous, 4.

317 Submission 005 Anonymous, 4.

318 Royal Commission into Institutional Responses to Child Sexual Abuse, 'Criminal Justice Report' (Consultation Paper, September 2016) 35.

319 Statement of Daryl Coates, 6 June 2022, 110 [364].

320 *Maxwell v The Queen* [1996] HCA 46; 184 CLR 501; *Magaming v The Queen* [2013] HCA 40; (2013) 87 ALJR 1060.

321 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017*)* 64.

322 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts III – VI* (Report, August 2017) 406.

323 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 42.

324 Statement of Daryl Coates, 6 June 2022, 26 [110].

325 Targeted consultation, Office of the Director of Public Prosecutions, Hobart, 20 August 2021.

326 Statement of Daryl Coates, 6 June 2022, 87 [286].

327 Director of Public Prosecutions, *Annual Report 2020–21* (Report, September 2021) 5, 24.

328 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, December 2017) Recommendation 10.

329 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts III to VI* (Report, August 2017) 338.

330 Statement of Darren Hine, 14 June 2022, 87 [387].

331 Tasmanian Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 28.

332 Statement of Darren Hine, 14 June 2022, 87 [388].

333 Statement of Darren Hine, 14 June 2022, 75 [308].

334 Statement of Darren Hine, 14 June 2022, 75 [310].

335 Statement of Darren Hine, 14 June 2022, 87 [390].

336 Statement of Darren Hine, 14 June 2022, 87 [391].

337 Statement of Daryl Coates, 6 June 2022, 16 [76].

338 Statement of Daryl Coates, 6 June 2022, 46 [166].

339 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 28.

340 Targeted consultation, Office of the Director of Public Prosecutions, Hobart, 20 August 2021; Director of Public Prosecutions, *Annual Report 2021–22* (Report, September 2022) 7.

341 Statement of Daryl Coates, 6 June 2022, 51 [184].

342 Stakeholder consultation, Devonport, 27 August 2021.

343 Statement of Daryl Coates, 6 June 2022, 47 [169].

344 Statement of Daryl Coates, 6 June 2022, 47 [171].

345 Statement of Daryl Coates, 6 June 2022, 48 [177].

346 Statement of Daryl Coates, 6 June 2022, 13 [57].

347 Statement of Daryl Coates, 6 June 2022, 47 [171].

348 Statement of Daryl Coates, 6 June 2022, 51 [188].

349 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 37(d).

350 Statement of Daryl Coates, 6 June 2022, 95 [305].

351 Statement of Daryl Coates, 6 June 2022, 15 [71].

352 Statement of Daryl Coates, 6 June 2022, 96 [311].

353 Statement of Daryl Coates, 6 June 2022, 96 [309].

354 Statement of Daryl Coates, 6 June 2022, 53 [71].

355 Statement of Daryl Coates, 6 June 2022, 15 [72].

356 Statement of Daryl Coates, 6 June 2022, 64 [231].

357 Statement of Daryl Coates, 6 June 2022, 98 [316].

358 Statement of Katrina Munting, 5 April 2022, 7 [34].

359 Submission 014 Anonymous, 29.

360 Statement of Daryl Coates, 6 June 2022, 19 [91].

361 Statement of Daryl Coates, 6 June 2022, 19 [91].

362 Statement of Daryl Coates, 6 June 2022, 97 [315].

363 Statement of Daryl Coates, 6 June 2022, 97 [315].

364 Statement of Daryl Coates, 6 June 2022, 97 [314].

365 Statement of Daryl Coates, 6 June 2022, 32 [124].

366 Statement of Daryl Coates, 6 June 2022, 72 [254].

367 Statement of Katrina Munting, 5 April 2022, 6 [32].

368 Statement of Daryl Coates, 6 June 2022, 33 [127].

369 Statement of Daryl Coates, 6 June 2022, 33 [128].

370 Statement of Daryl Coates, 6 June 2022, 33 [128].

371 Statement of Daryl Coates, 6 June 2022, 31 [119].

372 Statement of Daryl Coates, 6 June 2022, 31 [119].

373 Statement of Daryl Coates, 6 June 2022, 45 [163].

374 Statement of Daryl Coates, 6 June 2022, 32 [124].

375 Department of Treasury and Finance, *Government Services* (Budget Paper No 2, Vol 2, 2022–23) 58.

376 Statement of Daryl Coates, 6 June 2022, 31 [121].

377 Statement of Daryl Coates, 6 June 2022, 31 [121].

378 Statement of Daryl Coates, 6 June 2022, 31 [122].

379 Statement of Daryl Coates, 6 June 2022, 31 [122].

380 Statement of Daryl Coates, 6 June 2022, 31 [122].

381 Statement of Daryl Coates, 6 June 2022, 31 [122].

382 *Justice Miscellaneous (Royal Commission Amendments) Act 2023*.

383 Elise Archer, 'Delivering on Bail Reform to Keep Tasmanians Safe' (Media Release, 3 February 2021) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/delivering_on_bail_law_reform_to_keep_tasmanians_safe>.

384 Statement of Keelie McMahon, 9 May 2022, 5 [28].

385 While the offences referenced in this chapter are part of the Schedule to the *Criminal Code Act 1924*, we have followed Tasmanian custom by citing them as if they are sections in the Act.

386 *Criminal Code Act 1924* s 185.

387 *Criminal Code Act 1924* s 127.

388 *Criminal Code Act 1924* s 124.

389 *Criminal Code Act 1924* s 124A.

390 *Criminal Code Act 1924* s 125.

391 *Criminal Code Act 1924* s 125A.

392 *Criminal Code Act 1924* s 125B.

393 *Criminal Code Act 1924* s 125C.

394 *Criminal Code Act 1924* s 125D(1).

395 *Criminal Code Act 1924* s 125D(3).

396 *Criminal Code Act 1924* s 125E.

397 *Criminal Code Act 1924* ss 130–130F.

398 The relevant test to be applied by the ODPP is whether there is 'evidence against the defendant sufficient to put him on his trial or to raise a strong or probable presumption of his guilt'. Refer to *Criminal Code Act 1924* s 310(4).

399 *Justices Act 1959* s 26.

400 *Police Offences Act 1935* s 35(5).

401 *Police Offences Act 1935* s 35(5A) as amended by *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 39.

402 *Police Offences Act 1935* s 35(5B) as amended by *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 39.

403 *Classification (Publications, Film and Computer Games) Enforcement Act* 1995 s 79 as amended by *Justice Miscellaneous (Royal Commission Amendments) Act* 2023 s 6.

404 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 37.

405 *Criminal Code Act 1924* s 125A, later amended to 'persistent sexual abuse of a child or young person' by the *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* s 3 on 6 April 2020.

406 *Criminal Code Act 1924* s 125A(4)(b).

407 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendations 21–24 and Appendix H: Draft provisions in relation to the persistent child sexual abuse offence.

408 *Crimes Act 1958* (Vic) s 49J; *Criminal Code Compilation Act 1913* (WA) s 321A.

409 *Criminal Code Amendment (Sexual Abuse Terminology) Act 2020* s 3.

410 *Criminal Code Act 1924* s 125A.

411 The Grace Tame Foundation, *The Harmony Campaign* (Web Page) <https://www.thegracetamefoundation.org.au/the-harmony-campaign>.

412 The Grace Tame Foundation, The Harmony Campaign (Web Page) <https://www.thegracetamefoundation.org.au/the-harmony-campaign>.

413 Statement of Leah Sallese, 4 July 2022, 4 [35].

414 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 28.

415 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendations 27–29.

416 *Crimes Act 1900* (ACT) s 55A; *Crimes Act 1900* (NSW) ss 61A, 77 and 73A; *Criminal Code Act 1983* (NT) ss 128, 130 and 139A; *Criminal Law Consolidation Act* (SA) ss 49(5) and 57; *Crimes Act 1958* (Vic) ss 49C, 49E, 49G and 49I; *Criminal Code Act Compilation Act 1913* (WA) s 322.

417 Refer to Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts III–VI* (Report, August 2017) 98–99.

418 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 13 inserting *Criminal Code Act 1924* s 124A.

419 *Criminal Code Act 1974* s 124A(2).

420 Refer, for example, to *Crimes Act 1900* (NSW) s 73A(1); *Crimes Act 1958* (Vic) s 49E(1); *Criminal Code Act Compilation Act 1913* (WA) s 322(4); *Crimes Act 1900* (ACT) s 56(1); *Criminal Code Act 1983* (NT) s 128(1).

421 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 13.

422 *Lydgate (a pseudonym) v The Queen* (2014) 46 VR 78.

423 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 28.

424 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 36.

425 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 36.

426 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 36.

427 *Crimes Act 1900* (ACT) s 66A; *Crimes Act 1958* (Vic) s 49O; *Criminal Law Consolidation Act 1935* (SA) s 65.

428 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 13 inserting *Criminal Code Act 1974* s 125E.

429 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 56.

430 Submission 148 Anonymous, 5.

431 Statement of Katrina Munting, 5 April 2022, 7 [36].

432 Statement of Judith Cashmore, 3 May 2022, 18–19 [69].

433 *Evidence Act 2001* s 41.

434 For an overview of the research on the effect of cross-examination of children in sex offence trials, which also includes reference to alternative means of giving evidence, refer to Annie Cossins, 'Cross-Examination in Child Sexual Assault Trials: Evidentiary Safeguard or an Opportunity to Confuse?' (2009) 33(1) *Melbourne University Law Review* 68.

435 Statement of Judith Cashmore, 3 May 2022, 18 [69].

436 Statement of Katrina Munting, 5 April 2022, 7 [36]; Statement of Leah Sallese, 4 July 2022, 4 [26]; Anonymous session, 14 October 2022.

437 *Evidence (Children and Special Witnesses) Act 2001* pt 2A.

438 Tasmania Government, *Fourth Annual Report and Action Plan 2022* (December 2021) 7; Tasmania, *Parliamentary Debates,* House of Assembly, 30 May 2023, 25 (Elise Archer, Attorney-General).

439 Tasmanian Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania*? (Report No 23, January 2018).

440 *Evidence (Children and Special Witnesses) Act 2001* s 7, definitions of 'affected child, 'affected person', 'specified person' and 'specified proceeding'. Refer also to *Evidence (Children and Special Witnesses) Act 2001* s 7I.

441 Tasmania Police, *Tasmania Police Manual* (4 August 2021) 234 [4.4.10.9], 249 [4.6.3].

442 *Evidence (Children and Special Witnesses) Act 2001* s 7H.

443 *Evidence (Children and Special Witnesses) Act 2001* s 7I.

444 *Evidence (Children and Special Witnesses) Act 2001* s 7K. Note that under *Evidence (Children and Special Witnesses) Act 2001* s 7G(2)(b), where a person has unique knowledge of an individual with communication needs, the Court can refer the matter to the Secretary of the Department of Justice for consideration for temporary inclusion on the panel of intermediaries, so that person can be used as an intermediary for the particular individual.

445 Statement of Judith Cashmore, 3 May 2022, 19 [71].

446 Tasmanian Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania*? (Report No 23, January 2018) Recommendation 2.

447 Statement of Darren Hine, 14 June 2022, 89 [398].

448 Statement of Glenn Hindle, 21 June 2022, 8 [30].

449 Transcript of Darren Hine, 6 July 2022, 2483 [45–47].

450 Transcript of Darren Hine, 6 July 2022, 2484 [21–27].

451 Statement of Ginna Webster, 10 June 2022, 56 [352].

452 Statement of Ginna Webster, 10 June 2022, 56 [353].

453 Statement of Ginna Webster, 10 June 2022, 56–57 [354]; State of Tasmania, *Procedural Fairness Response*, 16 March 2023, 8–9.

454 Statement of Ginna Webster, 10 June 2022, 56–57 [354].

455 Statement of Ginna Webster, 10 June 2022, 56–57 [354].

456 Tasmania, *Parliamentary Debates,* House of Assembly, 30 May 2023, 25 (Elise Archer, Attorney-General).

457 Tasmania, *Parliamentary Debates,* House of Assembly, 30 May 2023, 25 (Elise Archer, Attorney-General).

458 Tasmania, *Parliamentary Debates,* House of Assembly, 30 May 2023, 25 (Elise Archer, Attorney-General).

459 Miriam Vandenberg, *Process Evaluation of the Witness Intermediary Scheme Pilot in Tasmania* (Report, December 2022) 35–36.

460 Tasmania, *Parliamentary Debates,* House of Assembly, 30 May 2023, 25 (Elise Archer, Attorney-General).

461 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* ss 15, 30, 32.

462 *Evidence (Children and Special Witnesses) Act 2001* s 7I, 7J.

463 Tasmanian Law Reform Institute, *Facilitating Equal Access to Justice: An Intermediary/Communication Scheme for Tasmania?* (Report No 23, January 2018) Recommendation 3.

464 Targeted consultation, Tasmania Legal Aid, 2 September 2021.

465 Refer to, for example, *Criminal Procedure Act 2009* (Vic) pt 8.2 divs 1, 4–8.

466 *Evidence (Children and Special Witnesses) Act 2001* ss 6, 6A.

467 *Evidence (Children and Special Witnesses) Act 2001* s 7.

468 *Evidence (Children and Special Witnesses) Act 2001* s 5.

469 *Evidence (Children and Special Witnesses) Act 2001* s 4.

470 *Evidence (Children and Special Witnesses) Act 2001* s 7A.

471 *Evidence (Children and Special Witnesses) Act 2001* ss 3, 7J.

472 *Evidence (Children and Special Witnesses) Act 2001* ss 4, 5 6B.

473 *Evidence (Children and Special Witnesses) Act 2001* s 3, definition of 'affected person'.

474 *Evidence (Children and Special Witnesses) Act 2001* ss 6A, 6.

475 *Evidence (Children and Special Witnesses) Act 2001* s 7J.

476 *Evidence (Children and Special Witnesses) Act 2001* ss 7A, 7B.

477 *Evidence (Children and Special Witnesses) Act 2001* s 8(1).

478 Statement of Daryl Coates, 6 June 2022, 58–9 [210].

479 Statement of Daryl Coates, 6 June 2022, 57 [206].

480 Statement of Daryl Coates, 6 June 2022, 59 [210].

481 Statement of Judith Cashmore, 3 May 2022, 19 [71].

482 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 52.

483 Director of Public Prosecutions, *Prosecution Policy and Guidelines* (18 October 2022) 52.

484 Statement of Leah Sallese, 4 July 2022, 3 [23].

485 Transcript of Judith Cashmore, 6 May 2022, 512 [9–14].

486 Statement of Tiffany Skeggs, 23 June 2022, 45 [192].

487 Statement of Daryl Coates, 6 June 2022, 82 [271].

488 Statement of Daryl Coates, 6 June 2022, 82 [274].

489 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 28.

490 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* s 29.

491 Daryl Coates, Director of Public Prosecutions, 'Response to NTP-DPP-001', 20 September 2021, 26 produced in response to a Commission notice to produce, 26.

492 Statement of Daryl Coates, 6 June 2022, 80 [266].

493 Daryl Coates, Director of Public Prosecutions, 'Response to NTP-DPP-001', 20 September 2021, 24, produced in response to a Commission notice to produce.

494 Daryl Coates, Director of Public Prosecutions, 'Response to NTP-DPP-001', 20 September 2021, 24, produced in response to a Commission notice to produce, 1 September 2021.

495 Daryl Coates, Director of Public Prosecutions, 'Response to NTP-DPP-001', 20 September 2021, 25, produced in response to a Commission notice to produce, 1 September 2021.

496 Daryl Coates, Director of Public Prosecutions, 'Response to NTP-DPP-001', 20 September 2021, 25, produced in response to a Commission notice to produce, 1 September 2021.

497 Targeted consultation, Office of the Director of Public Prosecutions, 20 August 2021.

498 Targeted consultation, defence lawyers, 9 September 2021.

499 Daryl Coates, Director of Public Prosecutions, Statement produced in response to a Commission notice to produce, 1 September 2021, 25.

500 State of Tasmania, *Procedural Fairness Response*, 16 March 2023, 10.

501 Transcript of Judith Cashmore, 6 May 2022, 505 [25–35].

502 For a general discussion on tendency and coincidence evidence in Australian jurisdictions refer to Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts III–VI* (Report, August 2017) 417–454.

503 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts III–VI* (Report, August 2017) 262.

504 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice – Executive Summary and Parts I and II* (Report, August 2017) Recommendations 44–51.

505 *Evidence Act 2001* s 101(5); *Criminal Code Act 1924* s 326A.

506 *Criminal Code Act 1924* s 326A.

507 *R v Bauer* [2018] HCA 40; *IMM v R* [2016] HCA 14; *Hughes v R* [2017] HCA 20.

508 *Justice Miscellaneous (Royal Commission Amendments) Act 2023* ss 22, 23.

509 *Evidence Act 1995* (NSW) s 97A.

510 Tasmania, *Parliamentary Debates*, House of Assembly, 24 November 2022, 55 (Elise Archer, Attorney-General).

511 *Evidence Act 2001* s 97 (tendency evidence) and s 98 (coincidence evidence).

512 *Evidence Act 2001* s 101(2).

513 *Evidence Act 2001* s 97A(3).

514 *Evidence Act 2001* s 97A(5)(c). To some extent these provisions reflect recent court decisions that have broadened the principles of admissibility of tendency evidence.

515 There are also changes designed to make it easier to admit coincidence evidence, refer to *Evidence Act 2001* s 98(1A).

516 Council of Attorneys-General, *Council of Attorneys-General (CAG) Communiqué* (Web Page, 29 November 2019) <https://parlinfo.aph.gov.au/parlInfo/download/media/pressrel/7363430/upload_binary/7363430.pdf;fileType=application%2Fpdf#search=%22media/pressrel/7363430%22>; Council of Attorneys-General, *Model Uniform Evidence Bill* (Web Page, 29 November 2019) <https://pcc.gov.au/uniform/2019/Evidence_Model_Bill_Nov-2019.pdf>.

517 Statement of Kerri Collins, 11 April 2022, 3 [13–14].

518 Transcript of Daryl Coates, 7 July 2022, 2624 [37–45].

519 Transcript of Daryl Coates, 7 July 2022, 2624 [5–21]; Statement of Daryl Coates, 6 June 2022, 122 [402]–124 [405].

520 Statement of Daryl Coates, 6 June 2022, 78 [265(d)].

521 Statement of Daryl Coates, 6 June 2022, 78 [265(d)].

522 *Criminal Code Act 1924* s 361A(2).

523 Statement of Daryl Coates, 6 June 2022, 78 [265(d)].

524 Statement of Daryl Coates, 6 June 2022, 77–8 [265].

525 Section 205 does not apply to a new trial if the order would be inconsistent with any order, decision made or direction given on an appeal or would otherwise not be in the interests of justice: *Criminal Procedure Act 2009* (Vic) s 205(2).

526 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts VII to X and Appendices* (Report, August 2017) Recommendation 70.

527 *Jury Directions Act 2015* (Vic).

528 *Evidence Act 2001* s 165(2).

529 *Evidence Act 2001* s 165(1)(c).

530 *Evidence Act 2001* s 165(6).

531 *Evidence Act 2001* s 165A(2).

532 Statement of Terese Henning, 1 July 2022, 7–8 [37].

533 Statement of Judith Cashmore, 3 May 2022, 13–14 [47].

534 If the trial judge considers that the reliability or credibility of a child witness is likely to be in issue during the trial, the trial judge must direct the jury as set out above as soon as is practicable, unless there are good reasons for not doing so: *Jury Directions Act 2015* (Vic) s 44N.

535 *Jury Directions Act 2015* (Vic) s 44N(4).

536 Transcript of Tiffany Skeggs, 30 June 2022, 2027 [44]–2028 [3].

537 Statement of Katrina Munting, 5 April 2022, 4 [17].

538 Catherine Esposito, *Child Sexual Abuse and Disclosure: What Does the Research Tell Us?* (Research Paper prepared for the Department of Family and Community Services, New South Wales Government, 2014) 12.

539 Statement of Michael Salter, 7 April 2022, 18 [67].

540 Statement of Daryl Coates, 6 June 2022, 80 [265].

541 Refer to, for example, Victorian Law Reform Commission, *Sexual Offences: Interim Report* (2003) [5.98]–[5.124]; Victorian Law Reform Commission, *Sexual Offences: Final Report* (2004) 84–85. Refer also to *Ewen v R* [2015] NSWCCA, 117 [10].

542 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendations 64–65.

543 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendations 64–65.

544 *Evidence Act 2001* s 165A(1) inserted by the *Evidence Amendment Act 2010* s 46.

545 Statement of Terese Henning, 1 July 2022, 9 [42].

546 This provision was inserted by the *Criminal Code Amendment (Sexual Offences) Act 1987* s 17.

547 *R v Murray* (1987) 11 NSWLR 12.

548 Statement of Daryl Coates, 6 June 2022, 79 [265].

549 Statement of Daryl Coates, 6 June 2022, 79 [265].

550 Statement of Robert Boost, 2 September 2022, 4 [22].

551 [2015] NSWCCA 117 [140].

552 Statement of Daryl Coates, 6 June 2022, 79 [265(f)].

553 *Ewen v R* [2015] NSWCCA 117.

554 Statement of Daryl Coates, 6 June 2022, 79 [265(f)].

555 Statement of Robert Boost, 2 September 2022, 3 [16].

556 The name 'Rachel' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 11 May 2022; Statement of 'Rachel', 14 April 2022, 3–4 [16].

557 Statement of Azra Beach, undated, 3 [19].

558 Statement of Tiffany Skeggs, 23 June 2022, 22 [84].

559 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) Recommendation 65(a).

560 Judy Cashmore et al, *The Impact of Delayed Reporting on the Prosecution and Outcomes of Child Sexual Abuse Cases* (Report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, August 2016).

561 Statement of Judith Cashmore, 3 May 2022, 9–10 [32(b)].

562 Statement of Judith Cashmore, 3 May 2022, 10 [32(b)].

563 Statement of Judith Cashmore, 3 May 2022, 10 [33].

564 Statement of Terese Henning, 1 July 2022, 7 [36].

565 Statement of Terese Henning, 1 July 2022, 7 [36].

566 *Criminal Code Act 1924* s 371A.

567 *Jury Directions Act 2015* (Vic) s 52(4).

568 Statement of Daryl Coates, 6 June 2022, 80 [265].

569 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 93.

570 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 442 [20.54].

571 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) Recommendation 79.

572 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 11.

573 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 11.

574 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 11.

575 Statement of Teresa Henning, 1 July 2022, 6 [34].

576 Statement of Patrick Tidmarsh, 16 June 2022, 15 [83].

577 Transcript of Patrick Tidmarsh, 6 July 2022, 2495 [20–30].

578 Statement of Patrick Tidmarsh, 16 June 2022, 15–16 [86].

579 Transcript of Judith Cashmore, 6 May 2022, 510 [7–29].

580 Submission 148 Anonymous, 5.

581 Submission 148 Anonymous, 5.

582 *Sexual Violence Legislation Act 2019* (NZ) s 21.

583 Yvette Tinsley et al, 'I Think She's Learnt Her Lesson: Juror Use of Cultural Misconceptions in Sexual Violence Trials' (2021) 52 *Victoria University of Wellington Law Review* 483.

584 Yvette Tinsley et al, 'I Think She's Learnt Her Lesson: Juror Use of Cultural Misconceptions in Sexual Violence Trials' (2021) 52 *Victoria University of Wellington Law Review* 483.

585 Yvette Tinsley et al, 'I Think She's Learnt Her Lesson: Juror Use of Cultural Misconceptions in Sexual Violence Trials' (2021) 52 *Victoria University of Wellington Law Review* 483.

586 Yvette Tinsley et al, 'I Think She's Learnt Her Lesson: Juror Use of Cultural Misconceptions in Sexual Violence Trials' (2021) 52 *Victoria University of Wellington Law Review* 484.

587 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 94.

588 Targeted consultation, Office of the Director of Public Prosecutions, 20 August 2021.

589 Transcript of Judith Cashmore, 6 May 2022, 508–509 [44–30]; *R v Aziz* [2022] NSWCCA 76.

590 Victorian Law Reform Commission, *Sexual Offences Interim Report* (Report, 2003) 5.

591 Victorian Law Reform Commission, *Sexual Offences Interim Report* (Report, 2003) 5.

592 Transcript of Terese Henning, 7 July 2022, 2539 [6–9].

593 Transcript of Judith Cashmore, 6 May 2022 [2–11].

594 Transcript of Judith Cashmore, 6 May 2022 [13–14].

595 Judicial Commission of New South Wales, *Equality Before the Law Bench Book Update 21 Published* (Web Page, 22 June 2022) <https://www.judcom.nsw.gov.au/equality-before-the-law-bench-book-update-21-published/>.

596 The Australasian Institute of Judicial Administration Incorporated, *Bench Book for Children Giving Evidence in Australian Courts* (March 2020).

597 *Supreme Court Act 1986* (Vic) s 28A(2).

598 *Supreme Court Act 1986* (Vic) s 28A(3).

599 Sentencing Advisory Council, *A Guide to Sentencing in Tasmania* (Report, 2020) 34.

600 Sentencing Advisory Council, *A Guide to Sentencing in Tasmania* (Report, 2020) 14.

601 Sentencing Advisory Council, *A Guide to Sentencing in Tasmania* (Report, 2020) 14.

602 Sentencing Advisory Council, *A Guide to Sentencing in Tasmania* (Report, 2020) 31–32.

603 Statement of Katrina Munting, 5 April 2022, 8 [37].

604 Statement of Katrina Munting, 5 April 2022, 8 [38].

605 *Sentencing Act 1997* s 81A.

606 Statement of Daryl Coates, 6 June 2022, 103 [337].

607 Department of Justice, 'Victims of Crime Service', *Victims Support Services* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

608 Statement of Catherine Edwards, 4 July 2022, 10 [71].

609 Statement of Catherine Edwards, 4 July 2022, 10 [71].

610 Transcript of Sam Leishman, 13 May 2022, 1057 [38–43].

611 Transcript of Leah Sallese, 8 July 2022, 2642 [28–41].

612 *Criminal Code Act 1924* s 389(3).

613 Sentencing Advisory Council, *A Guide to Sentencing in Tasmania* (Report, 2020) 39.

614 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 97.

615 Sentencing Advisory Council, 'Sentencing for Serious Sex Offences Against Children' (Research Paper No 3, November 2018) v.

616 *DPP v Harington* [2017] TASCCA 4 [95].

617 Statement of Daryl Coates, 6 June 2022, 89 [297].

618 *DPP v Harington* [2017] TASCCA 4.

619 *DPP v Harington* [2017] TASCCA 4 [23].

620 Sentencing Advisory Council, 'Sentencing for Serious Sex Offences Against Children' (Research Paper 3, November 2018) v, vi.

621 Transcript of Daryl Coates, 7 July 2022, 2613 [32–35].

622 Transcript of Daryl Coates, 7 July 2022, 2613 [32–35].

623 Targeted consultation, Office of the Director of Public Prosecutions, 20 August 2021. This is confirmed in Sentencing Advisory Council, 'Sentencing for Serious Sex Offences Against Children' (Research Paper 3, November 2018).

624 Transcript of Leah Sallese, 8 July 2022, 2644 [7–13].

625 Statement of Ginna Webster, 10 June 2022, 58 [365].

626 *Sentencing Act 1997* ss 7(d), 24(2), 28, 37(2), 42AN.

627 *Corrections Act 1997* s 72(5).

628 Statement of Ginna Webster, 10 June 2022, 60 [385].

629 *Dangerous Criminals and High Risk Offenders Act 2021* s 2; *Proclamation under the Dangerous Criminal and High Risk Offenders Act 2021*; Statement of Ginna Webster, 10 June 2022, 60 [384].

630 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts VII–X and Appendices* (Report, August 2017) 369.

631 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts VII–X and Appendices* (Report, August 2017) 369.

632 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016).

633 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 19.

634 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 19.

635 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 19.

636 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1. November 2016) 19, 38.

637 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 19.

638 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 38.

639 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 38.

640 Sentencing Advisory Council, 'Mandatory Treatment for Sex Offenders' (Research Paper No 1, November 2016) 19.

641 Statement of James Ogloff, 22 August 2022, 11 [50].

642 Statement of James Ogloff, 22 August 2022, 12 [51]–13 [55].

643 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, Recommendation 6.2.

644 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 6, Recommendation 6.2(g).

645 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 4.

646 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 4.

647 Jesuit Social Services, 'Who We Are', *Stop It Now! Australia* (Web Page, 2023) <https://www.stopitnow.org.au/>.

648 Statement of Gemma McKibbin, 6 May 2022, 20 [79]; Matilda Marozzi, 'New Confidential Helpline "Stop It Now! Australia" Aims to Prevent Child Sexual Abuse', *ABC News* (online, 11 June 2022) <https://www.abc.net.au/news/2022-06-11/helpline-stop-it-now-australia-prevent-child-sexual-abuse/101137794>.

649 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 34.

650 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 4.

651 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 4.

652 Jesuit Social Services, *Stop It Now! A Scoping Study on Implementation in Australia* (Report, January 2019) 4.

653 Stop It Now! Australia, *How Stop it Now! Works* (Web Page, 2023) <https://www.stopitnow.org.au/how-stop-it-now-works>.

654 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 187 [9.7].

655 Statement of Elena Campbell, 4 July 2022, 15 [75].

656 Statement of Judith Cashmore, 3 May 2022, 19–20 [74].

657 Statement of Judith Cashmore, 3 May 2022, 20 [74].

658 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 13.

659 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 13.

660 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation* (Report, August 2015) Recommendations 5, 6, 7 and 8.

661 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 192 [9.35]–193 [9.38].

662 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) 200 [9.89]–[9.95].

663 *Criminal Code Act 1924* s 105A.

664 Statement of Benjamin Mathews, 10 June 2022, 4 [12].

665 Transcript of Terese Henning, 7 July 2022, 2549 [30–45].

666 *Criminal Code Act 1924* Schedule 1, s 2A(2)(d), (i).

667 The onus is on the prosecution to prove that the accused person had the required state of mind.

668 *Criminal Code Act* s 14A(1). Refer also to s 14B, which relates to mistake as to the age of the child.

669 *Criminal Code Act 1924* s 2A(1).

670 *Criminal Code Act 1924* s 335(a) and (ab).

671 Transcript of Daryl Coates, 7 July 2022, 2613 [32–35].

672 Transcript of Daryl Coates, 7 July 2022, 2614 [3–10].

673 Transcript of Leah Sallese, 8 July 2022, 2638 [5–37].

674 Transcript of Leah Sallese, 8 July 2022, 2642 [12–14].

675 Transcript of Leah Sallese, 8 July 2022, 2645 [16–17].

676 Transcript of Daryl Coates, 7 July 2022, 2615 [11–13].

677 Transcript of Daryl Coates, 7 July 2022, 2610 [27–32].

678 Letter from Daryl Coates, Director of Public Prosecutions, to Commission of Inquiry, 1 September 2022, 7.

679 Letter from Daryl Coates, Director of Public Prosecutions, to Commission of Inquiry, 1 September 2022, 7.

680 *DPP v Harington* [2017] TASCCA 4; *Clarkson v The Queen; EJA v The Queen* (2011) 32 VR 361.

681 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 10, 11.

682 Transcript of James Ogloff, 22 August 2022, 17 [70].

683 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 10, 9.

684 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, September 2021) Recommendation 32.

685 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 10, 9.

686 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 10, Recommendation 10.4.

687 Department for Education, Children and Young People, *Draft Youth Justice Blueprint 2022–2032: Keeping Children and Young People out of the Youth Justice System* (Draft Report, 3 February 2023).

688 *Youth Justice Act 1997* s 37.

689 *Youth Justice Act 1997* ss 16, 39.

690 *Youth Justice Act 1997* s 41.

691 *Youth Justice Act 1997* s 56A.

692 *Youth Justice Act 1997* s 56A(4).

693 *Youth Justice Act 1997* ss 65(4), 69(4).

694 *Youth Justice Act 1997* s 33A.

695 *Youth Justice Act 1997* s 33A; *Family Violence Act 2004* s 7.

696 *Sentencing Act 1997* ss 7(d), 7(f), 42AN, 42AP.

697 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* (Report, December 2021) 128 [6.71].

698 Statement of Judith Cashmore, 3 May 2022, 13 [44].

699 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 18.

700 Director of Public Prosecutions, *Annual Report 2021–22* (Report, September 2022) 5.

701 Director of Public Prosecutions, *Annual Report 2021–22* (Report, September 2022) 7.

702 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 13.

703 Office of the Director of Public Prosecutions, *Procedural Fairness Response*, 20 March 2023, 13.

704 Crime Statistics Agency, *Attrition of Sexual Offence Incidents through the Victorian Criminal Justice System: 2021 Update* (Report, September 2021).

705 Crime Statistics Agency, *Attrition of Sexual Offence Incidents through the Victorian Criminal Justice System: 2021 Update* (Report, September 2021).

706 *Justices Act* 1959 s 60.

707 Office of the Director of Public Prosecution, *Advice Provided Statistics 2015–2023*, 5 July 2023, 2.

708 Office of the Director of Public Prosecutions, *Advice Provided Statistics 2015–2023*, 5 July 2023.

709 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Parts VII–X and Appendices* (Report, August 2017) 355, Recommendation 82.

710 Statement of Darren Hine, 14 June 2022, 69 [275].

711 Statement of Darren Hine, 14 June 2022, 69 [275].

712 Statement of Darren Hine, 14 June 2022, 69 [275].

713 Statement of Daryl Coates, 6 June 2022, 32 [125].

714 Commission roundtable discussion with Victoria Police, 9 December 2022.

715 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 12, 13.

716 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report – Executive Summary and Parts I and II* (Report, August 2017) 12.

17 Redress, civil litigation and support

A note on language

In other chapters of our report, we generally use the terms victim-survivor and perpetrator or abuser. However, in this chapter, we also use the terms claimant and offender because they have particular meanings in redress and civil systems. A reference to victim-survivors is a reference to child and adult victim-survivors, unless otherwise specified.

1 Introduction

Victim-survivors of child sexual abuse often suffer serious harms, including difficulty in forming and maintaining relationships, a continuing sense of shame and loss of trust in others.[1] Victim-survivors often experience depression, anxiety, flashbacks and other physical and mental health impacts of trauma, which can make it difficult to complete education, work and maintain a career.[2] The impacts of child sexual abuse can lead to substance misuse, poverty, homelessness and difficulty in parenting. Victim-survivors of child sexual abuse in institutional settings also experience the additional impacts of betrayal and loss of trust in public institutions. Some victim-survivors who might objectively be 'okay' still live with the memory of the abuse and mourn the life and opportunities they could have had if they had not been sexually abused.[3]

Many victim-survivors who shared their experiences with our Commission of Inquiry wanted an apology or recognition of the harm they suffered.[4] They also wanted the Government to acknowledge its responsibility for their harm, and to take steps to ensure children were better protected in the future.[5]

Victim-survivors of child sexual abuse often need psychological support and an individual response to their experience. Some wish to seek financial compensation. The terms of reference for our Commission of Inquiry required us to consider:

> what the Tasmanian Government should do to address, or alleviate the impact of, past and future child sexual abuse in institutional contexts, including, in particular, ensuring justice for victims through … support services.[6]

The National Royal Commission published several interim reports during its five-year inquiry, including a 2015 report on redress and civil litigation, which dealt with these issues.[7] In its final report, the National Royal Commission recommended introducing a redress scheme for victim-survivors of child sexual abuse that would include:

- monetary payments
- counselling and psychological support
- a direct personal response
- changes to the approaches of state and territory governments to civil litigation claims by victim-survivors.[8]

Many of the National Royal Commission's recommendations have been adopted in Tasmania, which has also joined the National Redress Scheme.[9] The Government provides some psychological support and limited compensation to victims of crime through a Victims of Crime Assistance Scheme.

What we heard suggests there is a need for significant additional reform to improve the operation of existing mechanisms that support and compensate victim-survivors. The mechanisms discussed in this chapter include the National Redress Scheme, civil litigation, apologies, support (including financial assistance) for victims of crime, and access to information and records.

The important reforms we recommend in this chapter include measures to:

- ensure victim-survivors of child sexual abuse in Tasmanian Government institutions continue to have access to a redress scheme, including in relation to child sexual abuse experienced on or after 1 July 2018 (which falls outside the scope of the present National Redress Scheme)

- review the Government's litigation practices and how civil claims arising from allegations of child sexual abuse are managed, and clarify the roles of the Solicitor-General, departmental secretaries and other Heads of Agencies in the conduct and settlement of civil litigation arising from allegations of child sexual abuse in institutional settings
- ensure government institutions adopt a consistent and appropriate approach to apologies to individual victim-survivors of child sexual abuse
- ensure the Victims of Crime Assistance Scheme is administered in a way that minimises delays and handles applications in a sensitive and trauma-informed manner
- enable victim-survivors of child sexual abuse who have applied for an award under the *Victims of Crime Assistance Act 1976* ('Victims of Crime Assistance Act') to seek merits review of decisions of Criminal Injuries Compensation Commissioners by the Tasmanian Civil and Administrative Tribunal
- review the operation of the *Right to Information Act 2009* ('Right to Information Act') and the *Personal Information Protection Act 2004* ('Personal Information Protection Act') to ensure victim-survivors of child sexual abuse in institutional contexts can get access to information relating to that abuse.

In Chapter 3, we recognise that non-sexual forms of abuse can contribute to an institutionalised culture that treats violence, bullying and harassment as normal, and that sexual abuse can co-occur with other types of abuse and neglect. This was the case in Ashley Youth Detention Centre. Responses for victim-survivors of child sexual abuse should take into account their whole experience of abuse.

2 The National Redress Scheme

The National Royal Commission recommended establishing a single national redress scheme for victim-survivors of institutional child sexual abuse. The scheme would apply in all states and territories. The National Royal Commission saw a national scheme as the most effective structure.[10] It recommended the elements of redress schemes should include:

- the offer of an apology and a direct personal response from institutions to victim-survivors
- counselling and psychological care
- monetary compensation as tangible recognition of the seriousness of the hurt and injury suffered.[11]

The Australian Parliament enacted the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) ('National Redress Scheme Act') to establish the National Redress Scheme. The National Redress Scheme began operating on 1 July 2018.[12]

To create the National Redress Scheme, state and territory governments needed to refer legislative power to enact it to the Australian Parliament. All states and territories have now joined the National Redress Scheme. Tasmania adopted the National Redress Scheme from 1 November 2018.[13]

In this chapter, we consider the National Redress Scheme at a high level, including eligibility requirements, the life of the Scheme, direct personal responses and advice and support. In Volume 5, we discuss the amount of claims the State has been receiving about current staff and the challenges of initiating disciplinary action based on claims under the Scheme. We recommend, in Chapter 12, that the Government improve its information sharing processes in relation to the National Redress Scheme to protect the safety of children and to advocate at a national level for a review of the information sharing framework under the Scheme.

2.1 Entitlement requirements

The entitlement requirements for the National Redress Scheme are set out in the National Redress Scheme Act.[14] Broadly, the National Redress Scheme applies to any Australian citizen or permanent resident born before 30 June 2010, who was subjected to child sexual abuse in a government institution or participating institution before 1 July 2018. To apply for redress, the applicant must be 18 years of age or turn 18 before 30 June 2028. This date is known as the 'sunset date'—the date when the National Redress Scheme ends.[15] The closing date for applications is 30 June 2027 (12 months before the sunset date).[16]

We heard from some victim-survivors who do not qualify for redress under the National Redress Scheme, in some cases because the abuse occurred more recently. There are likely to be others who did not contact us.

The sunset date for the end of the National Redress Scheme was also identified as a barrier to people accessing redress. In his evidence, Warren Strange, Chief Executive Officer, knowmore Legal Service ('knowmore'), emphasised the difficulties the application deadline for redress will create for many people. He said:

> So, we know it takes a long time, and at least 22 years on average for survivors to make a disclosure about their experience of child sexual abuse, often longer. There will be people who are eligible to apply for the National Redress Scheme, and it won't be the right time for them or they won't have the supports or the safety to apply during its life. … I feel very much that these people need to have justice options available into the future that are appropriate for them and suit their timing rather than the timing of what we or what governments might impose.[17]

Some people are not eligible for redress under the National Redress Scheme, even if they were abused in an institution during the period required and make a claim prior to the sunset date. A person who is in gaol at the time the application is made is not eligible for redress unless the National Redress Scheme Operator ('Operator') determines the circumstances are exceptional.[18]

A person who has been sentenced to imprisonment for five years or longer for a state, territory, federal or foreign country offence cannot receive redress unless the Operator determines the person is eligible.[19] The Operator may determine a person is entitled to redress as long as this would not:

- 'bring the scheme into disrepute'
- 'adversely affect public confidence in, or support for, the scheme'.[20]

In determining eligibility, the Operator must consider any advice from a 'specified advisor'. Where the abuse occurred in a Tasmanian Government institution or the offence was against a Tasmanian law, the Tasmanian Attorney-General is the specified advisor.[21]

The Operator must also consider:

- the nature of the offence
- the length of sentence of imprisonment
- the length of time since the person committed the offence
- any rehabilitation of the person
- any other relevant matters.[22]

The National Redress Scheme requires the Operator give greater weight to advice received from the Tasmanian Attorney-General than to any other matter.[23]

In June 2021, a review of the National Redress Scheme expressed 'significant and immediate concern' about the eligibility of prisoners under the Scheme 'given the representation of child abuse survivors in the prison population'.[24] The review noted the restrictions on the eligibility of prisoners:

- 'potentially deny individuals the subject of institutional child sexual abuse the opportunity to apply for redress'
- 'appear to be deterring eligible applicants from applying'
- have an 'adverse impact on Aboriginal and Torres Strait Islander survivors'.[25]

The review recommended the eligibility criteria be changed to enable a single application process for prisoners and those with serious criminal convictions, as well as non-citizens and non-permanent residents who experienced child sexual abuse in Australia.[26]

The Australian and state and territory governments released their final response to the review in May 2023. In this response, they committed to changing the National Redress Scheme, including its eligibility criteria.[27] All governments agreed to:

- remove the restriction on people in prison applying to the Scheme
- refine the special assessment process for determining eligibility for applicants with serious criminal convictions
- enable child migrants who are not Australian citizens or permanent residents to be eligible for redress.[28]

However, the Australian Government also considered the current special assessment process for people with serious criminal convictions 'should be adjusted rather than removed entirely, to ensure that public confidence in the Scheme is maintained'.[29] The Australian Government stated that once these changes are implemented, 'only people with certain types of particularly serious offences (such as homicide and sexual offences) or where there may be a risk to the integrity of the Scheme in allowing access to redress will go through the special assessment process'.[30] These adjustments have not yet been made. We discuss this review below in more detail.

2.2 What does the Scheme provide?

The National Redress Scheme has three components.

The first component is a maximum payment of $150,000.[31] To receive financial redress, the victim-survivor must relinquish any claim for damages against the institution. In the case of government institutions, this would be the relevant state government.[32]

The second is a counselling and psychological component. This component comprises access to counselling and psychological services provided under the Scheme or a payment (of up to $5,000) to enable the person to access counselling and psychological services provided outside the Scheme.[33]

The third is a 'direct personal response' from the relevant institution. This can include one or more components of an:

- apology or a statement of acknowledgement or regret
- acknowledgement of the impact of the abuse on the person
- assurance about the steps the institution has taken, or will take, to prevent abuse from occurring again.

The legislation also allows the response to include an opportunity for the person to meet with a senior official of the institution.[34]

Victim-survivors who spoke to the National Royal Commission emphasised the importance of receiving an explanation of why the abuse occurred and why they did not receive an appropriate response.[35] Many of them wanted reassurance that other children would not suffer in the same way in the future.[36] Our Commission of Inquiry received similar evidence from victim-survivors.[37] The National Redress Scheme, through a direct personal response (if a victim-survivor chooses to receive one), may enable victim-survivors to access such information.

2.3 The operation of the National Redress Scheme in Tasmania

The Operator of the National Redress Scheme, and not the Tasmanian Government, determines entitlement for redress. The Operator is the Australian Government Secretary of the Department of Social Services.[38]

The Child Abuse Royal Commission Response Unit ('Royal Commission Response Unit') in the Department of Justice coordinates the Tasmanian Government's response to redress claims.[39] Ginna Webster, Secretary, Department of Justice, described the Tasmanian Government's role in the administration of the National Redress Scheme as summarised below.[40]

When the Operator identifies the Tasmanian Government as potentially responsible for a case of abuse, the Operator notifies the Tasmanian Government of the application and gives limited time to provide necessary information.[41] The Royal Commission Response Unit summarises the application and sends it to the relevant body (in the case of Tasmanian Government institutions, this will be a department or agency). The relevant body must then retrieve relevant records.[42] The department or agency is given six weeks to provide records for a non-priority application and three weeks for a priority application (where the applicant is elderly or ill).[43]

Information the Royal Commission Response Unit obtains through this process is then forwarded to the Operator, who determines eligibility to apply under the National Redress Scheme.[44] If the Tasmanian Government department or agency needs extra details to satisfy the request for information, the Royal Commission Response Unit approaches the Operator who may contact the applicant.[45]

The Royal Commission Response Unit makes the request for relevant government records so the applicant does not need to apply for information under the Right to Information Act. As discussed below, the need to apply for information under the Right to Information Act often creates difficulties for victim-survivors who want to seek damages from the Tasmanian Government, rather than make a claim under the National Redress Scheme.

Secretary Webster told us the Tasmanian Government offers counselling and psychological care to any applicant who accepts the monetary payment and contracts with organisations to provide this care.[46] The Tasmanian Government manages and facilitates requests for counselling and psychological care and a direct personal response through the Royal Commission Response Unit.[47]

Based on the information Secretary Webster provided on 8 April 2022, as modified by subsequent information provided by the Solicitor-General of Tasmania:[48]

- 689 claims have been made in relation to Tasmanian Government institutions since the National Redress Scheme started[49]
- the Operator had finalised 494 applications by offering a monetary payment, counselling and a direct personal response[50]
- the Tasmanian Government's total monetary compensation amounted to $31,204,169.66[51]
- 48 claims were not approved by the Operator or were withdrawn by the applicant, while 147 claims had not been determined when our Commission of Inquiry received this information[52]
- 275 applicants were eligible for counselling and psychological care, but when Secretary Webster gave her evidence, only 53 applicants had requested those services[53]
- 10 applicants had requested face-to-face direct personal responses, with four of those applicants also choosing to receive a written direct personal response, and an additional nine applicants choosing to receive only a written response.[54]

The Royal Commission Response Unit normally responds to requests for information within the specified time. Fourteen two-week extensions had been granted for providing information.[55] Secretary Webster confirmed these were all completed within the permitted two-week extension time.[56]

2.3.1 A direct personal response

A key part of the Tasmanian Government's responsibilities under the National Redress Scheme is managing individual requests for a direct personal response from government institutions or the Tasmanian Government.

The Tasmanian Government cannot contact applicants to the National Redress Scheme and is not given the contact details of individuals. The Royal Commission Response Unit must wait for an individual to make contact.[57]

2.3.2 Redress advice and support services

In Tasmania, several organisations advise and support victim-survivors regarding applications under the National Redress Scheme. They include knowmore, the Sexual Assault Support Service, Relationships Australia Tasmania and the South East Tasmanian Aboriginal Corporation.[58]

In particular, victim-survivors need to be carefully advised about how and whether to make a National Redress Scheme claim, because accepting redress will prevent them from seeking damages from the relevant institution or government.[59]

Mr Strange explained to us the advice and support knowmore provides.[60] Established in 2013, this organisation is a national community legal service that helps victim-survivors of institutional child sexual abuse. The Australian Government funds knowmore to provide various services to victim-survivors of institutional child sexual abuse.[61] It does not have an office in Tasmania, but visits Tasmania regularly and provides advice remotely. When comparing the state's population with the rest of Australia, Tasmania is disproportionately represented among knowmore's clients, amounting to 4 to 5 per cent of its clients.[62]

Mr Strange told us that where a National Redress Scheme claim:

> … appears to be straightforward and the client does not have complex support needs and/or has existing relationships with support workers, such as social workers and psychologists, knowmore may refer the client to a local Redress Support Service to progress their … application. [63]

Mr Strange said knowmore advises and supports victim-survivors to help them decide whether to make a claim under the National Redress Scheme or to pursue a civil claim for damages. It also gives clients initial advice on the pros and cons of this choice.[64] Mr Strange emphasised the difficulty of gaining a client's trust because of the complex trauma they have suffered and the fact they had often told their stories to police or other officials with no outcome.[65] He commented on the importance of building trust with local communities and respecting 'the scepticism, and often difficulty of engaging, that many victims and survivors of child sexual abuse understandably have'.[66]

If a person is considering suing for damages, knowmore does not advise them about their prospects of success, but will refer the client to a member of a panel of private law firms that have entered into a memorandum of understanding with knowmore. This memorandum is intended to ensure the firm responds sensitively and appropriately to victim-survivors.[67] If the person decides to apply under the National Redress Scheme, they will be referred back to knowmore who will help them apply, free of charge, or will refer them to a local redress support service.[68]

Mr Strange said knowmore handles complex redress claims such as those:

- that need to be resolved quickly because the client has a terminal illness

- where cultural support is needed from knowmore's Aboriginal and Torres Strait Islander Engagement Team
- where the client has received a sentence of five or more years of imprisonment and must demonstrate exceptional circumstances to qualify for redress.[69]

Mr Strange said knowmore had seen examples where the Tasmanian Attorney-General had opposed claims on the basis of a client's imprisonment, in situations where at least some other state Attorneys-General would not have done so on the same facts. While we acknowledge Mr Strange's view, we note that some applicants under the National Redress Scheme have been convicted of serious crimes, including child sexual abuse. The Tasmanian Government told us that of the 21 requests for advice received through the National Redress Scheme, the Tasmanian Attorney-General has provided advice supportive of redress in 13 of those cases.[70] While the Operator must consider advice from the Tasmanian Attorney-General on such matters, the final decision rests with the Operator. Mr Strange also stated there had been 'lengthy delays' in such cases.[71]

As well as giving initial advice to victim-survivors, knowmore provides training and information to local support services and helps them by reviewing draft National Redress Scheme applications, where necessary.[72] It also provides information to clients about speaking to police about their abuse and has helped clients to engage directly with specialist units or taskforces.[73]

2.4 Criticism of the National Redress Scheme

We heard evidence that the handling of enquiries by the National Redress Scheme had not taken sufficient account of the trauma that victim-survivors had experienced. For example, Kylee Pearn, who was abused by James Griffin, telephoned the National Redress Scheme in 2020 to ask some general questions about eligibility for redress. Ms Pearn was referred to a lawyer.[74] Ms Pearn told us that the following occurred at a subsequent phone appointment with this lawyer:

> Before determining eligibility, they went through a series of questions about what abuse had actually occurred to me, and I certainly wasn't anticipating that, I felt they didn't ask those questions in a very trauma-informed way. One particular question I remember is, they asked if his 'penis, tongue or finger had penetrated any of my orifices'. [75]

Ms Pearn, a social worker, said, in that role, she would never have asked the question in that way.[76] Presumably, the question was asked because the amount of compensation paid under the National Redress Scheme depends on the nature of the abuse, including whether the offence was penetrative or non-penetrative.[77] Still, we agree with Ms Pearn's concern that questions about the details of her abuse were raised during a phone appointment with a lawyer in the context of a general enquiry about eligibility.

The lawyer responding to her enquiry could have explained how the National Redress Scheme operated in a general way, without asking her for details about her abuse.

We accept the Tasmanian Government may often be unaware of victim-survivors' concerns or complaints about their interactions with the National Redress Scheme, given the Australian Government administers the Scheme and there is often no direct contact between the Tasmanian Government and victim-survivors seeking redress. However, where the Tasmanian Government is aware of insensitive interactions with victim-survivors in responding to enquiries or managing applications under the National Redress Scheme, it should bring these issues to the attention of the Australian Government.

The Australian Government should ensure that staff, including contractors who assess entitlement for redress, are appropriately trained to do this in a sensitive and trauma-informed manner.

There was also criticism of delays in the assessment process. Secretary Webster told us that the time limits are usually met for the Tasmanian Government to provide relevant information.[78] This suggests that overcoming perceived delays in assessment will require changes in the Australian Government's administration of the National Redress Scheme. The Australian Government (and all other participating jurisdictions) should examine what measures are needed to reduce application processing delays under the Scheme.

2.5 The Second Year Review of the National Redress Scheme

Between July 2020 and March 2021, Robyn Kruk AO undertook an independent review of the National Redress Scheme.[79] As noted above, the final report on the *Second Year Review of the National Redress Scheme* ('Second Year Review') was delivered at the end of March 2021.[80]

The Second Year Review concluded 'there remains a strong commitment to the original objectives that led to the set-up of the Scheme'.[81] However, it also noted consensus among victim-survivors and stakeholders in several areas relating to:

> ... the need to improve survivor experience; hold institutions accountable; strengthen the levers being utilised to facilitate non-government institutions signing on; support Scheme integrity; increase transparency; drive ongoing improvement of Scheme operation and performance; and address unintended or negative survivor consequences identified in the Scheme's early conduct linked to legislation, policy and practice.[82]

As the National Redress Scheme was approaching its third year of operation and the timeframe for improving the National Redress Scheme was 'extremely limited', the Second Year Review focused on issues that had the greatest potential to

improve participation and experience for victim-survivors and sustain the viability of the Scheme.[83] Among other things, it examined the following topics:

- improving survivor experience
- access and applying for redress
- assessing abuse
- eligibility
- redress payments
- counselling and apologies (direct personal responses)
- staffing capability and support
- Scheme information management systems
- funding arrangements.[84]

The Second Year Review made 38 recommendations relating to improving survivor experience, delivering better outcomes, enhancing fairness integrity, staff capability and support and improving communications. Some of these recommendations included:

- amending the National Redress Scheme Inter-governmental Agreement, so survivors and non-government institutions have formal input into the Scheme's operation (Recommendation 1.1)
- developing a co-designed Survivors' Service Improvement Charter by the end of 2021 (Recommendation 2.1)
- amending the eligibility criteria to include a single application process for all applicants, including non-citizens, non-permanent residents, prisoners, people with serious criminal convictions and care leavers (Recommendation 3.2)
- exploring alternative mechanisms to enable access to the Scheme for vulnerable individuals, Aboriginal and Torres Strait Islander, culturally and linguistically diverse and applicants with disability (Recommendation 3.8)
- making assessment and policy guidelines publicly available by removing legislative protections to achieve greater transparency in decision making and consistency with contemporary practices of other government schemes (Recommendation 3.13)
- co-developing and implementing a clinically designed recruitment and selection process for all new staff to ensure they are trauma aware and possess the capability and capacity to provide a trauma-informed redress service to survivors (Recommendation 6.4)

- mandating the auditing and reporting on staff participation in clinically designed and delivered training programs that include modules on:
    - trauma-informed and culturally safe practices
    - work health
    - safety and wellbeing
    - privacy
    - protected information
- monitoring the efficacy of the training programs through survivor feedback mechanisms (Recommendation 6.5)
- assessing whether the redress Information and Communications Technology system is fit for purpose (Recommendation 6.8)
- committing to continue improvements in complaint management and reflecting these in the Survivor's Service Improvement Charter (Recommendation 6.11).

The Second Year Review noted that because of the 'extremely limited' time available to implement changes, 'unprecedented cooperation by all governments that enabled the Scheme's establishment' would be required.[85]

In May 2023, the Australian Government released its full response to the Second Year Review, in which it outlined the Government's actions and ongoing commitment to improving the National Redress Scheme for victim-survivors. It noted that state and territory governments had collaborated closely on the agreed responses to the Second Year Review's recommendations.[86] In summary, the Australian Government:

- supported 30 of the 38 recommendations in full
- supported four recommendations in part or with amendment (including recommendation 3.2 referred to above)
- did not support four recommendations (including Recommendation 3.13 referred to above).

In response to Recommendation 3.2 (also referred to above), the Australian Government advised that a Service Charter had been co-developed with victim-survivors, redress support services and advocacy groups. The Charter began in September 2022 and is publicly available on the National Redress Scheme's website.[87] It sets out 'standards to be maintained in ensuring the Scheme operates in a safe, transparent and responsive way for survivors, and also outlines what survivors who apply to the Scheme can expect from the redress process'.[88]

We are pleased the Australian, state and territory governments support many of the Review's recommendations. Implementing these recommendations may help improve the operation of the Scheme and overcome concerns we heard about how enquiries and applications for redress are managed. We encourage the Australian Government to further extend the Scheme to people who have committed serious crimes.

2.6 Our observations

As we have explained, victim-survivors of child sexual abuse in Tasmanian Government institutions are entitled to redress under the National Redress Scheme only where the abuse occurred before 1 July 2018. Victim-survivors must apply for redress on or before 30 June 2027, 12 months before the end of the Scheme.[89] At the time of the application, victim-survivors must be 18 years of age or be turning 18 before 30 June 2028.[90]

The limited life of the National Redress Scheme diverges from the recommendations of the National Royal Commission, which recommended that redress schemes, when established, should have no fixed closing date. The National Royal Commission contemplated that when applications had declined to such a level it would be reasonable to consider closing the Scheme, a closing date might be specified at least 12 months into the future.[91]

Counsel Assisting our Commission of Inquiry asked Secretary Webster about planning for alternative or replacement schemes to meet the compensation and counselling needs of victim-survivors when the National Redress Scheme does not apply. She accepted that any replacement scheme should consider what had been learned from experience of the limitations of the National Redress Scheme, including the need to minimise delays in responding and provide trauma-informed case management of applicants.[92]

We are heartened by Secretary Webster's recognition that a redress scheme is needed to assist victim-survivors who were abused after 1 July 2018 and who have never been covered by the National Redress Scheme. We understand the Tasmanian Attorney-General has indicated the Tasmanian Government is open to taking action to ensure compensation and counselling is available for these victim-survivors.[93]

Our Inquiry has shown the Tasmanian Government has failed to protect some children in Tasmanian Government institutions from child sexual abuse and related conduct, in historical and contemporary contexts. In our view, the Tasmanian Government should have a responsibility to continue to provide an avenue for victim-survivors to obtain appropriate redress for past abuse, other than by pursuing a civil claim against the Tasmanian Government.

We are not convinced that applications to the National Redress Scheme have declined to such a degree that the National Redress Scheme should close, as provided for under the National Redress Scheme Act. The findings of our Commission of Inquiry make it clear that child sexual abuse remains a contemporary issue, in and beyond Tasmanian Government institutions.

Some barriers to taking civil action for damages relating to child sexual abuse have been removed, notably where institutions responsible for children have failed to exercise a duty of care to take reasonable precautions to prevent child sexual abuse. However, victim-survivors seeking damages will still meet obstacles of cost, delay and cross-examination if the matter goes to trial. This is in addition to the traumatic effect of having to constantly recount their experience of child sexual abuse. In contrast, well-designed redress schemes allow victim-survivors to obtain a measure of justice without facing these problems.

The Australian Government should consider extending the scope of the National Redress Scheme to allow all people who have experienced child sexual abuse to access the Scheme, irrespective of when they were born or when the abuse occurred. This would cover child sexual abuse that occurred on or after 1 July 2018, in addition to abuse that occurred before 1 July 2018. The time for making applications for redress under the existing Scheme would also have to be extended beyond 30 June 2027. We also note the National Redress Scheme currently requires that the victim-survivor turns 18 before the Scheme's sunset date, which would also need to be removed. If the Australian Government does extend the Scheme, it should consider the Second Year Review in full, noting that the review focused on changes achievable within the life of the Scheme at the time.

If the Australian Government does not extend the National Redress Scheme to cover child sexual abuse that occurred on or after 1 July 2018, we recommend the Tasmanian Government step in to establish a redress scheme covering child sexual abuse in Tasmanian Government institutions that falls outside the scope of the current National Redress Scheme.

Any Tasmanian redress scheme should also consider the recommendations of the Second Year Review (discussed in Section 2.5) and ensure redress is available to victim-survivors of institutional child sexual abuse, regardless of when that abuse occurred. The scheme should also minimise the kinds of problems that have arisen with the National Redress Scheme. In particular, the scheme should reduce delays, and manage applications for redress in a sensitive and trauma-informed manner.

We consider that any redress scheme—a national or a Tasmanian one—should be available to people with serious criminal convictions in the same way it is to other victim-survivors. We are conscious that many children and young people who were abused at Ashley Youth Detention Centre are now in the adult justice system, some for serious offences. This approach is in line with the recommendation of the Second Year Review.

The scheme should also be structured to allow information to be shared to reduce current risk to children, wherever possible, and to facilitate disciplinary action and reporting to Tasmania Police, Child Safety Services, the Registrar of the Registration to Work with Vulnerable People Scheme and the Independent Regulator under the *Child and Youth Safe Organisations Act 2023* (refer to Recommendation 12.5).

Our findings in relation to Ashley Youth Detention Centre demonstrate that physical, sexual and psychological abuse of children can co-occur in institutions. While we have not inquired into this matter in detail, the Government might explore the benefits of extending any redress scheme to any serious abuse of a child in an institutional context, particularly as it would provide an alternative to civil litigation.

Recommendation 17.1

1. The Tasmanian Government should ensure victim-survivors of child sexual abuse in Tasmanian Government institutions have access to a redress scheme irrespective of when the abuse occurred, when they were born or whether they have committed a serious offence.
2. To achieve this outcome, the Tasmanian Government should advocate at a national level for:
    a. the National Redress Scheme to apply to child sexual abuse in institutions experienced on or after 1 July 2018, with no specified closing date for applications
    b. changes to the National Redress Scheme that will allow access to redress for people sentenced to imprisonment for five years or longer for a state, territory, federal or foreign country offence.
3. If the National Redress Scheme is not extended, the Tasmanian Government should itself establish a redress scheme for victim-survivors of child sexual abuse in Tasmanian Government institutions, with no specified closing date for applications to be made.
4. The design and operation of any Tasmanian redress scheme should:
    a. ensure delays are minimised and that applications for redress are handled in a sensitive and trauma-informed manner
    b. incorporate relevant recommendations made in the *Second Year Review of the National Redress Scheme*

c. make it available to people sentenced to imprisonment for five years or longer for a state, territory, federal or foreign country offence

d. allow information to be shared to reduce current risk to children wherever possible, and to facilitate disciplinary action and reporting to Tasmania Police, Child Safety Services, the Registrar of the Registration to Work with Vulnerable People Scheme and the Independent Regulator under the *Child and Youth Safe Organisations Act 2023* (Recommendation 12.5).

3 Civil litigation

A person injured by the wrongful act or negligence of another person may seek damages from the person who injured them and, in some situations, from the institution or organisation where that person worked. In some situations, they may be able to sue the employer for damages for the acts of an employee.

In theory, a person injured by the perpetrator of child sexual abuse may be able to recover damages from that perpetrator.[94] However, this is of little practical use if the perpetrator has no financial resources and is not covered by insurance.

In these situations, the victim-survivor may wish to seek damages against the body that failed to protect them from abuse. In the context of our Commission of Inquiry, this would require a civil claim against the State of Tasmania. If a claim is initiated, the Tasmanian Government may admit liability and enter negotiations with the claimant to settle the claim and pay damages, or contest the claim in court proceedings. The following discussion relates to civil damages claims against the Tasmanian Government in relation to child sexual abuse in government institutions. We do not discuss civil claims against perpetrators.

The National Royal Commission acknowledged there are many difficulties victim-survivors may face in pursuing civil litigation other than those addressed in its final report. These include legal costs, difficulties in bringing class or group actions, and the burden of giving evidence and being subject to cross-examination.[95] These difficulties may be shared by many other people who pursue civil litigation relating to personal injury or other claims.

Academic commentators have expressed concerns about access to compensation through the torts system (the civil law system) for at least the past 20 years.[96] Apart from the problems of cost and delay faced by all those who seek to recover damages for harm they have suffered, the system is particularly difficult for victim-survivors of child sexual abuse in institutional settings. They may have to repeat their account of abuse several times. They will be subjected to cross-examination that seeks to cast doubt on the accuracy of their recollections.

There have also been many inquiries into access to justice in the civil system. In 2014, the Productivity Commission concluded that, while court processes in all jurisdictions have undergone reforms to reduce the cost and length of litigation, 'progress has been uneven and more needs to be done to avoid unnecessary expense'.[97]

More resources may be needed to better meet the legal needs of disadvantaged Australians. The Law Council of Australia's Justice Project states Australians who experience disadvantage can find it more difficult to get access to justice for a multitude of reasons, including:

- education and literacy levels
- language barriers
- financial constraints
- lack of accessibility
- access to information and digital technology
- past traumas and hesitation to engage in legal processes
- lack of knowledge around rights and where to go for advice or help.[98]

3.1 Reforms based on National Royal Commission recommendations

The National Royal Commission identified other barriers that prevented victim-survivors of child sexual abuse from obtaining damages from institutions. They recommended various law reforms to address these barriers.[99] The Tasmanian Government enacted legislative reforms to implement these recommendations, though some of these changes do not apply to past (or 'historical') abuse. The most important of these legislative changes, for our purposes, were removing time limits and expanding the liability of institutions.

On 1 July 2018, time limits were removed from civil actions started by victim-survivors of child sexual or serious physical abuse. The change was retrospective, so it applies to historical abuse claims.[100]

Legal principles were reformed that made it difficult to hold institutions, including government agencies, liable for child sexual abuse.[101] Under amendments made to the *Civil Liability Act 2002* ('Civil Liability Act'), which came into operation on 1 May 2020, institutions responsible for children now have a duty of care to take reasonable precautions to prevent relevant individuals associated with the organisation from abusing those children.[102] The onus is on the institution to prove it took reasonable precautions to prevent the abuse.[103] Institutions are also vicariously liable for the actions of employees (or people similar to employees) who abuse a child.[104] These provisions only apply to child abuse perpetrated after 1 May 2020.[105]

This means most of the settlement negotiations in which the Tasmanian Government is currently engaged will be conducted under the previous law.

The National Royal Commission also noted that some states had adopted model litigant policies and principles to guide their approach to civil litigation arising out of child sexual abuse.

In this context, the Solicitor-General released *Model Litigant Guidelines* in 2019.[106] These guidelines require the Tasmanian Government and its agencies to:

- settle legitimate claims promptly and without resort to litigation
- not contest liability where the only issue is the amount of damages, or the application of a remedy
- not require a party to prove a matter that the Tasmanian Government knows to be true
- not rely on technical issues where the Tasmanian Government will not suffer prejudice, unless it is necessary to do so in the public interest, or to protect the Tasmanian Government's interests.

In 2019, the Solicitor-General also released *Guidelines for the Conduct of Civil Claims*, which contain guidance relevant specifically to litigation involving victim-survivors of child sexual abuse.[107] These guidelines state the Tasmanian Government and its agencies must:

- acknowledge the potential for litigation to retraumatise claimants, and act to minimise this potential
- avoid unnecessarily adversarial conduct and communications
- facilitate access to records relating to the claimant and the alleged abuse, subject to other privacy and legal restrictions
- offer alternative forms of acknowledgement or redress, in addition to monetary claims.

As discussed in more detail below, we consider that further practice changes should be made to ensure the spirit of these guidelines is reflected in practice.

3.2 Criticism of State conduct of civil litigation

Paul Turner SC, the then Assistant Solicitor-General, who oversaw the conduct of litigation on behalf of the Tasmanian Government, said in evidence that the *Model Litigant Guidelines* were taken seriously. He said:

> From time to time the contention will be made that the state is not acting as a model litigant or hasn't complied with the guidelines which the Cabinet have directed apply to abuse in care claims. We, by and large, don't think that those have substance, those complaints—they're rare, I hasten to say, but we're just acutely conscious of these and how they are to apply and how the state is to conduct litigation.[108]

However, our Commission of Inquiry heard evidence about the considerable difficulties faced by people who seek damages from the Tasmanian Government. A submission from Laurel House, a sexual assault support service, observed that:

> … there remains significant challenges for victim-survivors of child sexual abuse to bring about civil claims against any organisation, especially the Tasmanian Government. In particular, the process for bringing civil claims against the Tasmanian Government is not sufficiently transparent, and many victim-survivors can find it difficult to pursue legal action due to significant functional challenges related to trauma. Further, for many victim-survivors concerns about the potential cost of legal action and fear about how they will be treated through … civil proceeding acts as a barrier.[109]

We heard from lawyers who have acted for claimants that, at least until recently, the Tasmanian Government response did not consider claimants' trauma and the delays and other obstacles they may encounter in resolving their claim. These factors may worsen the harm caused by child sexual abuse and may cause some people to give up a damages claim that might otherwise have succeeded.

Angela Sdrinis, Director, Angela Sdrinis Legal, a plaintiff law firm that specialises in sexual and institutional abuse and has acted for more than 1,700 victim-survivors across Australia, gave evidence about the responses faced by claimants. She said:

> Whilst the Solicitor-General's Office lawyers are good lawyers, their approach to responding to child sexual abuse matters has been noticeably different to that of government lawyers we deal with in other Australian jurisdictions. It is evident that there has either been a lack of understanding amongst the Tasmanian Solicitor-General's Office lawyers that such matters must be conducted in a more trauma-informed way or their approach has been based on instructions from the Government.[110]

Ms Sdrinis said there had been some improvements in approach over the more than six years she had been involved in the process, but at least until recently, there was

- a reluctance to discuss settling a claim before filing proceedings
- a technical and legalistic approach to claims
- an insensitive approach to claimants.[111]

Ms Sdrinis also stated that following the record award of $5.3 million to a sexual abuse survivor, the settlement offers being made in Tasmania were now more consistent with settlements and awards made in the mainland states.[112]

Similarly, Mr Strange referred to feedback from their panel of independent lawyers that the Tasmanian Government was less willing than some religious institutions to take part in genuine settlement conferences and, sometimes, adopted an overly adversarial approach.[113]

We note that knowmore supported providing appropriate training to all government lawyers and departmental staff involved in responding to child sexual abuse claims, so they could better understand child sexual abuse and its impacts. In knowmore's view, lawyers involved in child sexual abuse matters would benefit from understanding the impacts of abuse and how delays and failures to negotiate can compound a person's trauma.[114]

In the following sections, we briefly describe specific problems raised by these witnesses and others who spoke to us about the difficulties of pursuing civil litigation in relation to child sexual abuse. Specific issues raised with us included:

- the reliance by the Solicitor-General's Office on the 'consent' of the victim-survivor of child sexual abuse to deny civil liability
- the approach of Tasmanian Government institutions and the Solicitor-General's Office in settlement negotiations, including in relation to access to medical reports and making apologies
- delays by Tasmanian Government institutions in providing information and settling claims.

We also acknowledge the changes that have been made during our Commission of Inquiry in response to some of these concerns, including the Tasmanian Attorney-General's statement in March 2023 about managing civil claims in a sensitive and not unnecessarily adversarial manner through the establishment of a new State Litigation Office.[115]

3.2.1 Reliance on consent

Ms Sdrinis told us that:

> … in some matters the Tasmanian Government has argued that limitation periods still apply where the claimant allegedly 'consented' to a sexual relationship even though the claimant was a minor and the sexual conduct might be a criminal offence under s124 of the *Criminal Code*.[116]

Ms Sdrinis said she was unaware of any other jurisdiction that had relied on 'consent' in this way where the victim was a minor and the perpetrator was an older person. She also stated that, to her knowledge, the 'consent' argument had only been made in relation to female young people and not male young people.[117]

As far as we understand it, such an argument would rely on an interpretation of the meaning of the term 'sexual abuse' in the *Limitation Act 1974* which, in our view, is legally dubious. It also appears to be inconsistent with a legislative and policy intention to remove the limitation period for child abuse.

The Tasmanian Government has told us the issue has only arisen in two cases (both of which involved a female young person).[118] We have undertaken no consideration or analysis of those cases, including whether or not there was discrimination or bias.

Following media publicity about one of these cases, the Attorney-General directed that no reliance should be placed on consent, to avoid the reform of limitation periods.[119] We are glad that is now the case, but consider it would be useful for the Solicitor-General to provide guidance to lawyers working in that Office to ensure they do not take this position in the future.

We also encourage the Tasmanian Government to actively monitor whether the notion of 'consent' is being used in responding to civil claims relating to child sexual abuse and whether the legislative and policy intention to remove the limitation period for child abuse is being honoured.

3.2.2 Approach in settlement negotiations

Ms Sdrinis also told us that despite the adoption of the Solicitor-General's *Model Litigant Guidelines* (referred to in Section 3.1), the Tasmanian Government originally showed little interest in non-litigious settlements of child sexual abuse claims.[120] One client had settled against Ms Sdrinis's legal advice because of the Tasmanian Government's resistance to the claim.[121]

Ms Sdrinis said that, initially, the Solicitor-General's Office had shown no interest in agreeing to an informal protocol to govern the settling of claims, as is the process in Victoria. She had first written to the Tasmanian Government in 2015 proposing such a protocol.[122] She was told, in late 2017, the Tasmanian Government would no longer require the filing of proceedings before settling child sexual abuse claims, but it took another couple of years for further progress.[123] The Tasmanian Government now no longer requires statements of claim to be drafted before settlement negotiations can occur, which reduces the cost of making a claim.[124]

Ms Sdrinis also criticised the requirement that claimants attend the opening session of an informal settlement conference between their solicitor and lawyers representing the Tasmanian Government.[125] She said this requirement did not apply elsewhere and considered its purpose had been to demonstrate the Tasmanian Government's 'hard-line approach' to settling claims.[126] Clients who had been abused in out of home care were particularly vulnerable. She said:

> People who are abused as children often develop self-destructive behaviours post the abuse. In ward of state claims we have situations where children probably experienced trauma or at least neglect, because that's why they've gone into care, so to sit there and hear government lawyers analyse those life experiences in a way which is designed to support an argument that compensation should be reduced or minimised because of non-related trauma, can obviously be very hurtful to a claimant.[127]

It appears the Solicitor-General's Office no longer insists claimants attend opening sessions, and even if there is a legitimate reason for raising these issues, the Tasmanian Government 'seems to be more aware of the trauma that can be caused to claimants if participation in a mediation or informal settlement conference is not well managed'.[128]

We also received a submission from Shine Lawyers, the third-largest specialist plaintiff litigation law firm in Australia. Shine Lawyers has represented numerous victim-survivors of institutional sexual abuse in civil litigation and other legal proceedings.[129]

Shine Lawyers criticised the Tasmanian Government's response to damages claims, pointing out that statutory reforms 'did not mean survivors had an unobstructed path towards justice'.[130] Criticisms of inadequate responses to civil claims causing further roadblocks for victim-survivors included:

- an unnecessarily adversarial approach to civil claims
- an implication that victim-survivors ought to pursue redress under the National Redress Scheme rather than through a civil claim
- the lack of a collaborative framework to respond to civil claims against the Tasmanian Government.[131]

In their submission, Shine Lawyers gave many examples of the Tasmanian Government's obstructive and uncompassionate behaviour, including a case where the Tasmanian Government suggested that the victim-survivor should make a claim against the individual perpetrator, rather than the institution.[132] In another case, a victim-survivor, who had entered into a deed settling her claim for an inadequate amount, was pressured by the Tasmanian Government not to seek further compensation.[133] Months later, the Tasmanian Government agreed to set aside the deed rather than pursue a contested application in court.[134] Regarding those two matters, the Tasmanian Government told us its view was that one or both matters did not involve the State of Tasmania.[135]

3.2.3 Medical reports

Ms Sdrinis also acknowledged some positive changes, including how the Tasmanian Government is now more prepared to consider joint medical examinations, the cost of which the Tasmanian Government will cover.

The Solicitor-General's *Guidelines for the Conduct of Civil Claims* provide that the Tasmanian Government must, in appropriate matters, suggest a range of potential experts to claimants that:

- are acceptable to the Tasmanian Government
- provide genuine choice to claimants
- where appropriate, help both parties agree to use a single expert.[136]

Using a single expert ensures both parties have access to medical reports or other expert evidence.

However, as we discuss below, the Tasmanian Government has previously also claimed privilege over independent medical examination reports.[137]

Victim-survivors will usually produce a medical report or a report from a psychologist to support their claim for damages. The Tasmanian Government, sometimes, will require them to attend another health practitioner (or practitioners), so an independent medico-legal report can be prepared about the nature and cause of the harm on which the claimant relies.

Ms Sdrinis was critical that the Tasmanian Government is able to claim, and has claimed, legal professional privilege over such reports because such an approach is not trauma-informed.[138] Further, Ms Sdrinis said the Tasmanian Government sometimes relies, in negotiations, on aspects of the medical report that have not been made available to the claimant or their lawyer.[139] Ms Sdrinis said, in Victoria, if the Victorian Government were to arrange a medical assessment, the contents of the report would be made available to the claimant.[140]

In his evidence, Mr Turner attributed to the previous Solicitor-General the practice of claiming privilege over medical reports. He said the position is 'generally that, in circumstances where a report has been obtained [that] attracts that privilege it won't be waived unless an advertent decision is made that it is favourable to the interests of the state, in which case it will be'.[141] As we understand it, that meant medical evidence that supported the claim for damages was not necessarily revealed to the victim-survivor. The Tasmanian Government has now informed us this position changed in July 2022 after instructions were sought and received from the Attorney-General to waive privilege in relation to medical reports as a matter of general policy.[142] We are pleased this change has been made.

3.2.4 Reinforcing the Litigation Guidelines

The *Model Litigant Guidelines* and the *Guidelines for the Conduct of Civil Claims* were released in 2019, and while there have been some improvements in negotiating settlements, these guidelines appear to have had limited impact. In its *Fifth Annual Progress Report and Action Plan 2023*, the Tasmanian Government refers to a statement by the Honourable Elise Archer MP, Attorney-General and Minister for Justice, to the effect that:

> … the management of civil claims is to be conducted with the utmost sensitivity to victim-survivors and in a manner that is not unnecessarily adversarial. This included that all state lawyers apply a trauma-informed lens to all decisions relating to the management of child sexual abuse civil litigation matters against the State.[143]

We welcome this statement and other changes in practice that may have occurred recently. However, to ensure civil claims are handled appropriately, Tasmanian Government lawyers need to understand the effect of child sexual abuse on victim-survivors and the problems they may face during the litigation process. Secretary Webster told us it was the responsibility of the Solicitor-General to ensure that lawyers in her office were aware of these issues.[144] She said, in 2021, members of the Litigation Division of the Office of the Solicitor-General had taken part in training on trauma awareness and providing a trauma-informed direct personal response.[145]

3.2.5 Delays in providing information and settling claims

Mr Strange, Ms Sdrinis and Shine Lawyers told us victim-survivors often experienced long and stressful delays in obtaining information they had requested to support their claims.[146] Both Ms Sdrinis and Mr Strange said the situation in Tasmania was worse than in other states, which was retraumatising for clients.[147] Shine Lawyers said that even when the Tasmanian Government was notified of a likely claim, it might take months to be given details of the person handling the matter.[148] Further, when the Tasmanian Government was initially notified of some claims, 'the notice bounced around between different officers and departments who responded variously with comments such as "we don't know who looks after these claims"'.[149]

Lengthy delays in responding to lawyers' requests for information may also be caused by inadequate record keeping or insufficient numbers of state servants who can recover and provide the information. In her evidence, Secretary Webster said:

> Yes, so in terms of what we have found since certainly the matters that came to the attention of the Commission … but also through the civil and criminal litigation areas, that we do need some additional resourcing in the civil litigation, the Abuse in State Care area. It's clear that that includes legal practitioners, administrative support, and I think, depending on the final model, the management of those matters could probably also benefit from some clinical advice on how they're managed as well; and by that I mean trauma-informed practice.[150]

Shine Lawyers told us delays make it harder for a claimant to recover from the harm they have suffered and adds to their stress.[151] While the Tasmanian Government has made some changes, improvements have been patchy. As we explain below, some but not all delays appear to relate to the operation of the Right to Information Act. We discuss this issue in Section 6.2.

3.3 The Solicitor-General's role

The Solicitor-General acts as a lawyer for the Tasmanian Government, including in relation to legal issues relevant to institutional child sexual abuse. In this section, we discuss the role of the Solicitor-General and their Office in advising whether claims for damages against the Tasmanian Government by victim-survivors should be settled,

and in conducting litigation where the Tasmanian Government denies liability. We also, briefly, discuss the role of the Solicitor-General more broadly.

The *Solicitor-General Act 1983* ('Solicitor-General Act') establishes the Solicitor-General as an independent statutory office that is accountable to the Tasmanian Parliament. Under section 7 of the Solicitor-General Act, the Solicitor-General's functions are to:

- act as counsel for the Crown in right of Tasmania or for any other person for whom the Attorney-General directs or requests them to act
- perform such other duties ordinarily performed by legal practitioners as the Attorney-General directs or requests them to perform
- perform such duties (if any) as are imposed on them by or under any other Act.

A direction from the Attorney-General, dated 13 January 2022, made under section 7(b) of the Solicitor-General Act, requires the Solicitor-General to act for the Tasmanian Government in civil proceedings.[152]

Under section 8 of the Solicitor-General Act, the Attorney-General can delegate responsibility for powers and functions that can be performed by the Attorney-General, to the Solicitor-General. At present, there has been no delegation under section 8 to the Solicitor-General.[153]

Section 51(1) of the *Financial Management Act 2016* ('Financial Management Act') allows the Treasurer of the Tasmanian Government to issue instructions relating to the principles, practices and procedures all agencies must observe in their financial management. 'Agencies' covers specified Tasmanian Government departments, authorities, bodies, organisations and offices.[154] Accountable authorities and officers within these agencies have a duty to comply with the Treasurer's instructions.[155] Section 55 of the Financial Management Act allows the Treasurer to authorise payment to a person if the Treasurer is satisfied it is appropriate to do so because of special circumstances, even though the payment would not otherwise be authorised by law or be required to meet a legal liability (also known as an 'ex gratia payment').

Under a Treasurer's instruction made under section 51 of the Financial Management Act, all agencies and instrumentalities of the Crown must get legal advice only from Law Officers of the Crown. They must follow that legal advice in relation to 'the legal functions, powers or responsibilities of the Crown; or the lawfulness of any action, or proposed course of action, by the Crown'.[156] The effect of that Treasurer's Instruction is that all departments must seek advice only from the Solicitor-General's Office unless Crown Law—the administrative entity responsible for providing legal services to the Tasmanian Government—agrees in writing that the agency can get external advice.[157]

The accountable authority (in most cases, the Head of the relevant Agency) 'must not directly engage external counsel or commercial legal services without the written agreement of Crown Law'.[158]

During our hearings, we sought to clarify the roles of the Solicitor-General, departmental secretaries and other Heads of Agencies in settling civil claims arising from child sexual abuse in government institutions.

We heard evidence on this issue from Sarah Kay SC, Solicitor-General, and Mr Turner. At the time of our hearings, Mr Turner was the head of the section of the Solicitor-General's Office that deals with civil litigation.

The Solicitor-General referred to the Treasurer's Instruction under the Financial Management Act, which requires the Solicitor-General to act as Counsel for the Crown, and the Attorney-General's direction that the Solicitor-General conducts all civil litigation on behalf of the Tasmanian Government.[159]

The Solicitor-General said these instructions were based on 'a constitutional convention'.[160] The Treasurer's Instruction, which prevents agencies from getting external legal advice, states the Instruction reflects the following constitutional principles:

- the Crown must ascertain and obey the law
- unless otherwise lawfully permitted, the Crown must get its legal advice from Law Officers of the Crown.[161]

The Treasurer's Instruction, including the Instruction that prevents getting external legal advice without an exemption, applies to the Ombudsman and the Chief Executive Officer of the Integrity Commission.[162] Arguably, the application of the Instruction to these specified Agencies and Accountable Authorities is inconsistent with the intention these bodies be independent from the Executive.

In response to questions from Counsel Assisting, the Solicitor-General differentiated between advising on the legal rules which regulate how agencies can act, and instructing agencies about the decision they should make, stating 'we might assist [agencies] to form their decision within correct legal parameters in order to protect that ultimate decision from challenge, but we do not dictate what sort of decision that might be made'.[163] The Solicitor-General did not elaborate on how that distinction operated in the case of advice about settlement of civil claims.

In addition, the Treasurer's Instruction does not clearly cover Solicitor-General advice about the precise amount of a settlement, which requires using discretion rather than a determination on whether a settlement is lawful.

According to their evidence, the Heads of Agencies generally consider the Solicitor-General makes the final decision on whether a claim should be settled. However, there was a lack of clarity about the role of a Head of Agency regarding payment amounts when a secretary considers the proposed settlement amount is too low.[164]

A Head of Agency or department may take the view the settlement amount the Office of the Solicitor-General proposes is too low because the:

- abuse was longstanding
- department responded inadequately to reports of risk of harm
- claimant suffered extreme harm
- department's reputation would be negatively affected by offering meagre damages in the situation that led to the claim.

Although a secretary can raise these concerns with the Solicitor-General's Office, the general view seems to be the Treasurer's Instruction relates to decisions about liability and amount of damages.[165]

Mr Turner said if there was a disagreement between the Solicitor-General's Office and a Head of Agency or department on this issue, they would discuss it, but if they could not resolve the matter, the Solicitor-General's Office would be the decision maker 'because we are part of the Crown'.[166] He based this interpretation of the Treasurer's Instruction on the approach taken by the Solicitor-General's predecessor and on the Solicitor-General Act.[167]

The usual duty of a lawyer is to advise their client, who can then accept or reject that advice. By contrast, it appears the Solicitor-General's role goes beyond advising a client to making decisions on behalf of Tasmanian Government agencies. We do not doubt the dedication of the lawyers who work in the Solicitor-General's Office. We also realise that Tasmanian public funding is stretched and the rationale for the Solicitor-General's virtual monopoly on providing legal advice may be to limit public spending.

We are concerned that restricting the ability of departmental secretaries and other Heads of Agencies to seek alternative advice in relation to settlements and litigation in all child sexual abuse cases could lead to complacency and reinforce practices that cannot be justified.

Restricting access to external sources of legal advice may also have negative consequences in other contexts relating to child sexual abuse in Tasmanian Government institutions. These contexts include when agencies seek advice about access to information applications, laws around information sharing, or in employment law disputes. Across our report, we have identified times when legal advice has affected whether agencies have taken action to protect the safety of children. We understand most other states do not prevent Heads of Agencies from obtaining external legal advice in situations where they consider it appropriate.

3.4 Our observations

Some barriers to recovering damages from the Tasmanian Government for child sexual abuse occurring in Tasmanian government institutions have been removed by legislative reforms following the final report of the National Royal Commission. However, in our view, other improvements can be made to help victim-survivors seek compensation through the civil litigation system without trauma.

Lawyers representing the Tasmanian Government have a duty to serve their client to the best of their ability. That duty may require a lawyer involved in settlement discussions to raise legal issues that may be obstacles to a successful claim by a victim-survivor. However, as the *Model Litigant Guidelines* recognise, and the Attorney-General has acknowledged, this duty should not prevent lawyers managing claims sensitively, for example, by considering a claimant's difficulties in having to talk about their abuse, sometimes on multiple occasions, and to submit to medical examinations.[168]

Secretary Webster's evidence suggests the Tasmanian Government is reconsidering its civil litigation practices. She noted:

> Work has been undertaken to review the structure and processes with respect to civil litigation and the management of child sexual abuse claims and information has been provided to the Attorney-General regarding potential changes that comply with her announced expectations with respect to the management of civil litigation.[169]

Nevertheless, we consider that staff who deal with civil claims relating to child sexual abuse need more detailed guidance. We recommend regular staff training on the nature and effects of child sexual abuse on victim-survivors and how to consider these effects when victim-survivors are involved in civil litigation processes.

We recommend the Tasmanian Government review its litigation practices and how it manages claims arising from allegations of child sexual abuse.

In this context, we note the Attorney-General's recent instruction that claims should not be made by the Tasmanian Government's representatives for legal professional privilege in relation to medical reports or other expert evidence relevant to child sexual abuse.

As noted above, in March 2023, the Attorney-General announced the Tasmanian Government would 'establish a new separate State Litigation Office to take over the management of the Tasmanian Government's civil litigation'. The Attorney-General stated: 'this is an opportunity to contemporise the management of civil litigation and ensure an understanding of the impact of trauma and harm is embedded in all areas of the State's legal system'.[170]

The new State Litigation Office would provide the Attorney-General with 'advice regarding specific guidelines and directions on the handling of civil claims, including any changes to ensure that processes are more victim-centric and trauma-informed'.[171]

In performing its functions, the new Office should consider our conclusions and recommendations concerning Tasmanian Government litigation practices and the management of claims arising from allegations of child sexual abuse in Tasmanian Government institutions.

In addition, we consider that the respective roles of departmental secretaries and the Solicitor-General need to be clarified, particularly in relation to determining the amount of damages that should be offered in civil litigation matters. We also consider that departmental secretaries and other Heads of Agencies should be authorised to seek external legal advice when they consider it appropriate. The Tasmanian Government should consider whether external advice should be available more broadly in other contexts where agencies wish to seek legal advice relating to child sexual abuse in government institutions.

Recommendation 17.2

1. The Tasmanian Government should ensure all lawyers who act for the Tasmanian Government in civil claims relating to child sexual abuse receive regular professional development on:
    a. the nature and effects of child sexual abuse, including institutional child sexual abuse, perpetrator tactics and impacts on victim-survivors
    b. how to consider these effects when victim-survivors are involved in civil litigation processes.
2. The Solicitor-General or the new State Litigation Office should issue and ensure compliance with guidelines relating to:
    a. trauma-informed management of settlement processes and conferences in child sexual abuse cases
    b. whether and when legal professional privilege should be claimed by the Tasmanian Government in relation to medical reports or expert evidence, adopting the principle that generally legal professional privilege should be waived
    c. making apologies before reaching a final settlement.

Recommendation 17.3

1. The Attorney-General should issue guidelines to clarify the respective roles of the Solicitor-General and the new State Litigation Office, departmental secretaries and other agency heads where Tasmanian government agencies are engaged in the conduct and settlement of civil litigation arising from allegations of child sexual abuse.
2. The Treasurer's Instruction relating to obtaining external legal advice should be amended to:
    a. make it consistent with the Attorney-General's guidelines on civil litigation arising from allegations of child sexual abuse
    b. specify the circumstances in which departmental secretaries and other agency heads should be able to seek external legal advice on matters related to child sexual abuse.

4 Apologies

4.1 The importance of apologies to victim-survivors

Victim-survivors, who gave evidence at our hearings, made submissions or took part in a session with a Commissioner, spoke about the importance of receiving a direct personal response to their experiences. Alex (a pseudonym), for example, stated:

> I would have loved to have got an apology. I went [to the health service] wholly and solely to find out the outcome of that incident and if that perpetrator is still working amongst children … if I'd received the help when I asked for it [at the time] and when I asked for it [4 years later], I don't think I would be this broken person.[172]

Katrina Munting, who in 2018 disclosed alleged abuse by a teacher, also spoke about the Department of Education's failure to acknowledge what had happened to her, even after the teacher had been charged with offences. She wrote to the Minister for Education 16 times in 2020 requesting to meet, and received 'two, maybe three, replies' signed by the Minister declining her request.[173] After many attempts to arrange meetings, she was referred to meet with the Deputy Secretary of the Department of Education.[174] Ms Munting said that although the Deputy Secretary listened well to her story and apologised to her, she would have 'preferred a proper, personalised apology from the Department of Education itself and a proper discussion with them so that they could hear me personally'.[175] At our hearings, Ms Munting indicated she needed more than just a 'generic' or 'sweeping' apology.[176] In her own words:

> … they need to be sorry that I was abused in their institution and they chose to ignore it, and they chose not to follow it up, and they chose to ignore me, and, you know, they need to name up exactly what it is that they're sorry for, because I don't want a hollow 'I'm sorry'. What are you sorry for? Because, not only have I been devastated by the abuse, the fallout that I've had to deal with since has made it so much worse.[177]

Azra Beach also gave evidence about the absence of any apology from the Tasmanian Government about the abuse she experienced in out of home care. She said a politician with whom she had raised this issue had assured her she would receive an apology, but this had not happened.[178] She told us:

> … no-one should have to chase up their own apology at all, and I think what makes this even worse is that the people that I have spoken with already knew that this was happening long before this Commission even came about; I raised it so many times, but I suppose because of who I am and, you know, sometimes how I talk and how I communicate it was complete—I felt, again, completely dismissed.[179]

In her evidence, Ms Sdrinis spoke about how an apology can help victim-survivors recover from the abuse. She said:

> In my experience, it's not always about the money for survivors. The money's important because that's the tangible acknowledgment of wrongdoing, but when survivors go on a journey where they're listened to, where they're believed, where the right amount of compensation is offered—and that's not always more money—it's about an amount of money that the survivor feels is adequate recognition—where there's an apology, a proper apology at the end of that process, and I'll say it again, most importantly, where the survivor feels listened to and believed, then that is trauma-informed practice and I've seen it change survivors' lives; like, completely change their lives.[180]

4.2 Apologies by the Tasmanian Government

The Tasmanian Government has made apologies relating to child sexual abuse in Tasmanian Government institutions.

On 26 February 2021, the Honourable Peter Gutwein MP, the then Premier of Tasmania, and the Tasmanian Police Commissioner issued an apology about police failings in the investigation of allegations against James Griffin.[181] The then Premier also referred to this apology in the Tasmanian Parliament on 2 March 2021.[182]

On 11 November 2021, Premier Gutwein also apologised on behalf of the Tasmanian Government and previous governments to victim-survivors of historical abuse in schools and other education facilities.[183]

During our Commission of Inquiry, the secretaries of the then Department of Education, the Department of Justice, the Department of Health and the then Department of Communities also acknowledged the failure to prevent, investigate and respond adequately to institutional child sexual abuse and its devastating effect on victim-survivors.[184]

On 8 November 2022, the Tasmanian Parliament delivered an apology to all victim-survivors of child sexual abuse in Tasmanian Government institutions.[185] As part of this apology, the current Premier, the Honourable Jeremy Rockliff MP, expressed deep regret for the institutional failures that led to a profound violation of trust, and for the harm caused to victim-survivors, some of whom had died and would not hear the apology. The Premier also acknowledged the bravery of people who had shared their experience with our Inquiry. He thanked those who had spoken up to protect children whose voices had previously been ignored. The Premier made an undertaking to all Tasmanians 'to never allow a repeat of this abuse, of the secrecy and the suppression' and 'to never allow a repeat of the failures that allowed such abuse to occur'.[186] He undertook to implement the recommendations of our Commission of Inquiry: 'Our Government is acutely aware of the enormous responsibility to act swiftly and to act decisively to implement the Commission's recommendations'.[187]

4.3 Apologies and civil litigation

Despite, or in addition to, these general apologies, some victim-survivors are likely to want a direct personal response from a senior state servant in the department that oversaw the institution where the abuse occurred. Ms Sdrinis told us the Tasmanian Government has not formally agreed to apologise to victim-survivors who are involved in civil litigation until their claim has been resolved. This contrasts with the approach of some organisations that apologise as soon as a claim has been served on them.[188]

Ms Sdrinis said apologies that recognise the suffering of the victim-survivor could also be offered before settlement in some civil damages claims.[189]

Where a victim-survivor is seeking damages from the Tasmanian Government, the Tasmanian Government may be reluctant to apologise because an apology could be treated as an admission of liability.

Under section 7 of the Civil Liability Act, an apology made by or on behalf of a person is not:

- an admission of fault or liability
- relevant to the determination of fault or liability
- admissible for that purpose in any civil proceedings.[190]

However, this provision does not apply to cases involving intentional acts of child sexual abuse.[191] This provision may also inhibit government agencies' ability to offer an apology when they first receive an allegation or complaint about child sexual abuse.

Some victim-survivors will not consider apologies as any consolation, unless the Tasmanian Government is prepared to settle the claim for damages.[192] However, an appropriately delivered apology that acknowledges an individual's suffering would provide solace to some. In her statement, Secretary Webster recognised this approach could be useful and said:

> The Office of the Solicitor-General has recently sought to improve their provision of trauma-informed redress to civil litigants. The Child Abuse Royal Commission Response Unit will engage with civil litigants to access redress by preparing personal apologies using … trauma-informed principles and support other forms of redress as requested.[193]

4.4 Our observations

We welcome the apologies the secretaries of Tasmanian Government departments gave during our Commission of Inquiry. We hope they will be of some comfort to victim-survivors. We recognise the symbolic significance of the public apology to victim-survivors by the Premier and the Tasmanian Parliament on 8 November 2022. We also welcome the Premier's commitment to implementing our recommendations.

In relation to a direct personal response, we recognise the risk of future harm to victim-survivors where apologies are given in relation to allegations of child sexual abuse and institutional failings that the Tasmanian Government later contests. Vacuous or meaningless apologies are of little help to victim-survivors. Institutions should adopt an approach that allows agency staff to give a human and compassionate response when interacting with victim-survivors.

We consider an apology should acknowledge what happened to the victim-survivors, answer any questions they might have about their time in the institution and the institution's response, and be prepared to answer questions about what steps have been taken to prevent child sexual abuse happening again.

Some of the difficulties victim-survivors have experienced in obtaining adequate responses, including apologies, may have been based on legal advice or concerns that an apology would be used by people to support a damages claim against the Tasmanian Government. In our view, the Tasmanian Government should be allowed to apologise for institutional child sexual abuse, without this affecting the liability of the Tasmanian Government.

In relation to civil litigation matters, we consider that, at least in some cases, it would be appropriate for the Tasmanian Government to apologise before the resolution of a claim. Similarly, when institutions receive allegations or complaints about child sexual abuse, they should feel able to make an immediate and genuine apology.

We recommend the Civil Liability Act be amended to ensure the Tasmanian Government and government institutions can apologise in relation to child sexual abuse without compromising any defence the Tasmanian Government may have, for example, based on all reasonable steps having been taken to protect a child from abuse.[194] There should be no legal disincentive to apologising.

Recommendation 17.4

The Tasmanian Government should ensure individual victim-survivors of child sexual abuse who request an apology receive one. Proactive steps should also be taken to offer an apology to victim-survivors who make contact in relation to their abuse. The apology should include:

a. the opportunity to meet with a senior institutional representative (preferably the Secretary) and receive an acknowledgment of the abuse and its impact

b. information about the victim-survivor's time in the institution

c. information about what steps the institution has taken or will take to protect against further sexual abuse of children, if asked.

Recommendation 17.5

The Tasmanian Government should introduce legislation to amend the *Civil Liability Act 2002* to ensure that an apology in relation to child sexual abuse can be made without amounting to an admission of liability.

5 Support for victims of crime

Victims Support Services in the Department of Justice provides various services to victims of crime, including child sexual abuse victim-survivors. These services are described below.[195] In addition, under the *Victims of Crime Assistance Act 1976* ('Victims of Crime Assistance Act'), eligible child sexual abuse victim-survivors can be financially compensated up to a prescribed maximum.[196] At present, this maximum is $30,918 in the case of the primary victim who suffers a single offence, and up to $51,531 for a victim of more than one offence. Compensation for the cost of medical, dental, psychological or counselling services, which a Criminal Injuries Compensation Commissioner is satisfied the primary victim will require in the future, can be awarded in addition to the prescribed maximum.[197]

5.1 Victims Support Services

Police or the Office of the Director of Public Prosecutions often refer victims of crime to Victims Support Services. Psychologists, counsellors or health practitioners sometimes make referrals. There is also a Victims Support Services website, which was reviewed and redesigned in 2021.[198]

Victim-survivors can also contact the service directly and often do. Victims Support Services includes a Victims of Crime Service, which provides access to counselling and other forms of support.[199] We discuss the Victims of Crime Service in more detail in Chapter 21 and make a recommendation to increase these services across the State (refer to Recommendation 21.5). In summary, the Victims of Crime Service can:

- refer a victim-survivor to other service providers
- provide information about the criminal justice system
- help victim-survivors prepare a victim impact statement.[200]

An estimated 85 per cent of all Victims Support Services clients accessing the Victims of Crime Service are supported to complete a victim impact statement.[201] These can be used for sentencing in criminal courts or for the Parole Board.[202] Statements also frequently form the basis of Victims of Crime Assistance applications.

Victims Support Services also keeps an Eligible Persons Register.[203] The Register allows victims to be given information about offenders.[204] This information is available to anyone who is registered as the victim of a violent crime, committed in Tasmania, where the offender has received a custodial sentence.[205] A victim-survivor of violent crime who is on the Register is entitled to receive certain information about the offender, including 'their location, security classification, parole hearing dates and possible release dates'.[206]

The Victims Support Services could not provide any figures on the number of victim-survivors who had sought counselling for child sexual abuse. Data on the Eligible Persons Register has similar limitations. Catherine Edwards, Manager, Victims Support Services, Department of Justice, told us a new case management system will enable this data to be obtained. The system is expected to be rolled out by December 2023.[207] In our view, it would be helpful if that database could differentiate between child sexual abuse in government institutions and in other contexts.

5.2 Victims of Crime Assistance Scheme

Victims of crime may be able to access financial assistance under the Victims of Crime Assistance Scheme. The Victims Assistance Unit in Victims Support Services provides administrative support for the Criminal Injuries Compensation Commissioners, who decide whether a victim of crime is eligible to receive financial support (or compensation) and the amount that should be awarded.[208] Ms Edwards said the Unit actively manages applications, liaises with victims of crime and their solicitors, and advises victims on its processes.[209]

Applications for compensation are initially reviewed by an assessment officer and then by a Commissioner, whose decision can be based on the papers alone, a telephone hearing or an in-person hearing.[210] Victims are supposed to be able to choose whether to attend a hearing, although one victim-survivor told us she was not given this choice.[211]

The victim may be asked to provide certain information, for example, medical records. Ms Edwards said if the person makes a direct claim, rather than being represented by a solicitor, Victims Support Services collects police and court records, rather than requiring the victim to do so.[212]

There are seven Criminal Injuries Compensation Commissioners. Ms Edwards told us a full-time fixed-term Commissioner was appointed in September 2018, and has been acting in this role since this time. There are six sessional Commissioners—two in Burnie, one in Launceston and three in Hobart.[213] Ms Edwards also told us the number of Criminal Injuries Compensation Commissioners was not fully funded and, as a result, the budget for Victims Support Services was in structural deficit, making it difficult to plan and recruit suitable Commissioners.[214] The Department of Justice told us, in March 2023, that it has now met this deficit to enable the full-time Commissioner position to be funded on an ongoing basis.[215]

Compensation can be awarded where the victim (or, in some situations, a family member) suffers injury or death as the result of an act that was a criminal offence or would have been an offence if the person committing the act were not too young to be criminally liable or was insane.[216] This would include victim-survivors of child sexual abuse. To award compensation, the Commissioner who hears the application must be satisfied, on the balance of probabilities, that the death or injury resulted from criminal conduct.[217]

The payments made under the scheme are modest. The amount of the award may cover:

- expenses reasonably incurred because of the injury
- the cost of future medical, dental, psychological or counselling services
- loss of wages or salary caused by the victim's total or partial incapacity for work
- compensation for the pain and suffering arising from the injury
- expenses reasonably incurred by the primary victim in claiming compensation.[218]

The following sections discuss factors potentially relevant to the success or otherwise of applications for compensation made by victim-survivors for institutional child sexual abuse.

5.2.1 Time limits

An application for an award under the Victims of Crime Assistance Act must generally be made within three years of the date of the relevant offence, unless the applicant was a child at the time of the offence, in which case they will have three years from the date they turn 18 years of age to apply.[219]

There is provision for a victim-survivor to apply for an extension of time if the Criminal Injuries Compensation Commissioner is satisfied there are special circumstances that justify the extension.[220] Victim-survivors and others expressed concern about the time limit for making applications for compensation. As one victim-survivor told us:

> Even with the best policies, processes and practices in the world, most victim/survivors of child sexual abuse, because of the very nature of the abuse, are going to take years to disclose. Is it fair for the time limit to apply to victims/survivors of child sexual abuse relative to other victims of crime?[221]

Ms Edwards told us that, since 2017, there had been two applications relating to child sexual abuse where an extension of time had been refused.[222]

We are pleased to note the recent commencement of the *Justice Miscellaneous (Royal Commission Amendments) Act 2023* on 20 April 2023 removed the time limits for applicants seeking compensation for child sexual abuse under the Victims of Crime Assistance Act.[223]

5.2.2 Behaviour of the victim

When deciding whether to make an award or the amount of the award, the Victims of Crime Assistance Act requires a Criminal Injuries Compensation Commissioner to: 'have regard to any behaviour, condition, attitude, or disposition of the victim that appears to him to have directly or indirectly contributed to the injury or death in relation to which the award is sought'.[224]

We would be concerned if a Criminal Injuries Compensation Commissioner used this provision to disqualify or reduce the compensation payable to children or young people who were groomed to believe their sexual abuse occurred in the context of a relationship with a perpetrator. We have already referred to civil litigation where a victim-survivor was told limitation periods still apply (and, therefore, damages were not payable) because they had 'consented' to the abuse. However, the Attorney-General intervened to change that practice (refer to Section 3.2). Similarly, issues about a child or young person's consent should never be raised in response to an application for compensation under the Victims of Crime Assistance Act.

5.2.3 Compensation and assisting prosecution

Although compensation can be awarded to a victim-survivor of child sexual abuse even if the perpetrator was not convicted of the offence or offences, under the Victims of Crime Assistance Act:

> The Commissioner shall not make an award to a person if that person has failed to do any act or thing which, in the opinion of the Commissioner, that person should reasonably have done to assist in the identification, apprehension, or prosecution of any person alleged to have committed the criminal conduct or alleged criminal conduct for which compensation is claimed. [225]

This could result in a denial of compensation if it would have been reasonable for a report to have been made. Ms Edwards told us if the victim had told a person in authority about the abuse or had suffered a psychological injury that made it difficult for them to tell anyone about it, these factors could be considered in deciding whether it was reasonable for the applicant not to report the offence.[226]

5.2.4 Compensation and civil proceedings

A Criminal Injuries Compensation Commissioner can refuse to make an award of compensation if satisfied the person has or had an adequate remedy in civil proceedings. They can consider any amount that was or was likely to be recovered in civil proceedings.[227] Potentially, this could place inappropriate pressure on a victim-survivor to become involved in civil litigation, even if they do not want to do so.

5.2.5 Review of decisions under the Victims of Crime Assistance Act

A decision by a Criminal Injuries Compensation Commissioner that compensation should not be awarded is not subject to merits review by the Tasmanian Civil and Administrative Tribunal. The decision cannot generally be appealed in the courts.[228]

In Victoria, a person affected by a decision of the Victims of Crime Assistance Tribunal, including refusing to make an award or determining the amount of assistance, may apply to the Victorian Civil and Administrative Tribunal for review of the decision.[229] This position is to be maintained under Victoria's new Financial Assistance Scheme, which is expected to open in 2024, and will replace the Victims of Crime Assistance Tribunal in Victoria.[230]

In New South Wales, some decisions of the Commissioner of Victims Rights are reviewable by the New South Wales Civil and Administrative Tribunal. This includes decisions about 'recognition payments' that are made in recognition of the trauma suffered by a victim of an act of violence.[231]

5.3 Criticisms of the operation of the Victims of Crime Assistance Scheme

5.3.1 Management of claims

Some victim-survivors criticised the management of applications for compensation under the Victims of Crime Assistance Scheme. We received an anonymous submission from a victim-survivor who told us she was abused by a teacher, employed by the Department of Education, for four years between the ages of 14 and 18.

This victim-survivor queried whether applications were actively managed and called for a mechanism for complaints about how Criminal Injuries Compensation Commissioners deal with applications.[232] She also commented on Commissioners' lack of training and accountability.[233]

More generally, she said that questions put to her by a Criminal Injuries Compensation Commissioner were 'unnecessary, intrusive, inappropriate, re-traumatising, contrary to Item 1 of the Victims Support Services Charter of Rights for Victims of Crime'.[234] She told us the questions were 'not in line with the findings and recommendations of [the National Royal Commission] or the Tasmanian Government's response to those recommendations'.[235] Among other things, the Criminal Injuries Compensation Commissioner asked her 'how I as an intelligent, well-educated and accomplished person was in a relationship with [the perpetrator] for so long (if not those exact words, words to that effect)'.[236]

5.3.2 Training

Ms Edwards said budget constraints limited her ability to implement comprehensive annual training for Victims Support Services staff.[237] In April 2016, counselling staff attended Blue Knot Foundation's two-day professional development training 'Working Therapeutically with People who have Complex Trauma Histories'.[238] She had also allowed staff to attend some professional development training, although the topics covered did not appear to relate specifically to trauma-informed practice or sexual abuse of children.[239] She said there was no budget for training Criminal Injuries Compensation Commissioners and she was 'limited' in her ability to direct Commissioners to take part in training, 'even in response to complaints'.[240]

Secretary Webster acknowledged the need to fund training for staff and Commissioners to ensure services and decisions were appropriately trauma-informed. She said:

> … I think the work [we're] doing around the Child Safe organisations and rolling training out around trauma-informed practice and a range of other things through that will be training that will be provided to the Victim Support Service of course, but I would expect that those statutory officers, I would also make that training available to those statutory officers.[241]

5.3.3 Delays

Significant delays may occur in operating the Victims of Crime Assistance Scheme because departments and other agencies fail to provide timely access to relevant records. This problem is discussed in more detail below, in relation to access to information and records.

5.4 Our observations

It is essential that staff of the Victims Support Services receive regular professional development on how to respond, in a trauma-informed and sensitive manner, to those who seek support or compensation for child sexual abuse. In Chapter 19, we recommend the Tasmanian Government develop a whole of government approach to professional development in responding to trauma within government and government funded services that provide services to children and young people or adult victim-survivors of

child sexual abuse (refer to Recommendation 19.2). The Victims Support Services staff should also receive targeted professional development on child sexual abuse.

People being considered for appointment as full-time or sessional Criminal Injuries Compensation Commissioners should have professional development about the issues faced by victim-survivors of institutional child sexual abuse, before their appointment and regularly afterwards. The Tasmanian Government should fund this training. It may be useful for Victims Support Services staff and Commissioners to attend such training alongside others who regularly deal with sexual abuse matters.

We also consider there should be a right to appeal on the merits of a decision of a Criminal Injuries Compensation Commissioner to the Tasmanian Civil and Administrative Tribunal.

In Tasmania, while the maximum amount of compensation that can be awarded to victim-survivors of child sexual abuse may seem modest, awards of compensation also constitute important recognition of victim-survivors and their suffering. The interests of victim-survivors of child sexual abuse which are affected by an administrative decision about criminal injuries compensation seem sufficiently important to justify access to merits review by the Tasmanian Civil and Administrative Tribunal.[242]

While merits review should extend to decisions on the amount of compensation, to avoid disputes over small amounts, the legislation could specify the amount of an award in relation to which merits review is available. Alternatively, merits review could require the Tribunal's leave (permission) to apply for review.

Recommendation 17.6

The Department of Justice should ensure that:

a. in relation to claims for financial assistance under the Victims of Crime Assistance Scheme, delays are minimised and applications for compensation are handled in a sensitive and trauma-informed manner

b. staff in Victims Support Services receive regular professional development on the effects of child sexual abuse and how to respond to victim-survivors in a trauma-informed manner

c. people being considered for appointment as Criminal Injuries Compensation Commissioners are required to take part in professional development on the effects of child sexual abuse and how to respond to victim-survivors in a trauma-informed manner before their appointment and regularly thereafter.

Recommendation 17.7

The Tasmanian Government should introduce legislation to amend the *Victims of Crime Assistance Act 1976* to create a right of review on the merits by the Tasmanian Civil and Administrative Tribunal in relation to a decision of the Criminal Injuries Compensation Commissioners:

a. to refuse financial assistance to a victim-survivor of child sexual abuse

b. about the amount of financial assistance to which a victim-survivor of child sexual abuse is entitled.

6 Record keeping and access to information

To support a claim of civil liability or application for redress, victim-survivors of institutional child sexual abuse often need access to information held by government. This information can also be critical helping victim-survivors understand the context in which the abuse occurred and the response at the time (if any). It may also provide a sense of recognition and acknowledgment of the abuse and harm it caused. For some victim-survivors, access to this information can help to fill gaps in their personal story. This role is particularly important for victim-survivors who have been in state care. These victim-survivors often have limited personal records of their childhood and may lack a network of family and friends from that time, who can help them tell or make sense of their experiences.[243]

Individuals have a legislative right to access government information, unless an exemption applies.[244] Despite this right, in hearings, consultations and statements to our Commission of Inquiry, victim-survivors and their representatives described systemic barriers to exercising this right, including costs, poor record keeping, lengthy delays, refusals and extensive redactions, with many resorting to slow and non-binding review processes.

This evidence highlighted an administrative culture that was not pro-disclosure and which, combined with a complex legislative scheme and insufficient resourcing, limits the release of information in practice.

In this section, we consider access to government information in Tasmania and its implementation in relation to victim-survivors of child sexual abuse in institutional contexts. First, we review record creation and record-keeping practices in Tasmania. We then focus on the operation of the legislative scheme established by the Right to Information Act and the Personal Information Protection Act.[245]

While on the surface, the legislative scheme may appear to be an administrative or bureaucratic process, in practice, victim-survivors' experiences of delays, redirections, refusals, redactions and additional costs can subject them to more trauma. One victim-survivor said:

> I felt completely stymied by the process. I felt like I was up against a wall, and I just didn't understand the implications of it. … [I]t just didn't sit well at all. I thought, I just—this is a rabbit hole I'm not gonna go down, I can't do it.[246]

Ultimately, the experience can leave victim-survivors with a sense that the interests of others are being protected at their expense. Urgent reform of the access to information scheme and its operation is needed to ensure it is as accessible, efficient, transparent and trauma-informed as possible.

6.1 Records and record keeping

For an access to information scheme to support the principles of open and transparent government, good records of government activities need to be created in the first place, and subsequently managed, retained and disposed of in a systematic way.247

6.1.1 National Royal Commission

The final report of the National Royal Commission highlighted the importance of good records and record-keeping practices, stating:

> The creation of accurate records and the exercise of good recordkeeping practices play a critical role in identifying, preventing and responding to child sexual abuse. Records are also important in alleviating the impact of child sexual abuse for survivors. Inadequate records and recordkeeping have contributed to delays in or failures to identify and respond to risks and incidents of child sexual abuse and have exacerbated distress and trauma for many survivors.[248]

The National Royal Commission recommended all institutions that engage in child-related work implement five principles for records and record keeping to a level that responds to the risk of child sexual abuse occurring within the institution.[249] The Principles state:

1. Creating and keeping full and accurate records relevant to child safety and wellbeing, including child sexual abuse, is in the best interests of children and should be an integral part of institutional leadership, governance and culture.
2. Full and accurate records should be created about all incidents, responses and decisions affecting child safety and wellbeing, including child sexual abuse.
3. Records relevant to child safety and wellbeing, including child sexual abuse, should be maintained appropriately.
4. Records relevant to child safety and wellbeing, including child sexual abuse, should only be disposed of in accordance with law or policy.
5. Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent.[250]

The National Royal Commission stated that: 'State and territory governments should require all institutions that care for or provide services to children to comply with the five principles for records and recordkeeping'.[251]

Besides the five principles, the National Royal Commission recommended minimum retention periods for records relevant to child sexual abuse.[252] Specifically, it recommended: 'institutions that engage in child-related work should retain, for at least 45 years, records relating to child sexual abuse that has occurred or is alleged to have occurred'.[253] It made further recommendations that the National Archives of Australia and state and territory public records authorities develop records disposal schedules accordingly, and provide guidance to help institutions to identify relevant records.[254]

6.1.2 Tasmanian records and record keeping

In August 2018, the Tasmanian Government started implementing the National Royal Commission's five record and record-keeping principles and has adopted measures related to retention and document maintenance.

In December 2019, the Office of the State Archivist issued a new *Disposal Schedule for Records Relating to Child Abuse*.[255] The new Disposal Schedule applies to all organisations (including Tasmanian Government agencies) as defined in the *Archives Act 1983* ('Archives Act').[256] The Office of the State Archivist also imposed a document disposal freeze that applies until 2029 to retain 'all records that contain the best information about children, services provided to them, and employees that provide the service'.[257] It aims to prevent the destruction of documents held by institutions that provide services to children that may be relevant to claims for compensation concerning child sexual abuse and applications for redress under the National Redress Scheme.

In October 2020, the Office of the State Archivist released a new Information and Records Management Standard, which 'aligns to the Royal Commission's records and recordkeeping principles'.[258] All government organisations subject to the Archives Act must comply with these principles.[259] The Tasmanian Government further noted the Office of the State Archivist offers:

> … an Information Management Foundations training course specifically for government employees modelled on the standard, which includes relevant content about the Royal Commission, child abuse records and good recordkeeping practices. Non-government employees can attend.[260]

In its latest report on implementing the National Royal Commission recommendations, the Government indicated that work is ongoing.[261]

Evidence before our Inquiry raised two key areas of concern regarding record keeping. First, we heard evidence of poor document maintenance, which affected searchability and accessibility. Second, we heard evidence of inadequate document retention and disposal practices, leading to a loss or destruction of relevant records. Sometimes it can be difficult to know whether a record has been lost, not well maintained, or never created.

Document maintenance: searchability and accessibility

During our Commission of Inquiry, we heard evidence of records kept across multiple systems in various locations in a mix of digital and hard copy formats, which impedes identifying and accessing relevant documents. For example, in response to Commission notice to produce concerning incident reports from Ashley Youth Detention Centre, we were informed that a manual document review would be required to identify relevant documents, suggesting the incident reporting system was not easily searchable.[262] During our Inquiry, the problems of record keeping at Ashley Youth Detention Centre became more apparent (refer to Chapter 12). Mr Strange described knowmore's experience of communicating with the former Department of Communities in relation to right to information requests. He said knowmore was aware of records and information (both physical and electronic) existing across multiple bodies and areas, sometimes at up to five or six different locations.[263]

The Department of Communities confirmed difficulties in retrieving records about out of home care and youth justice. Michael Pervan, former Secretary, Department of Communities, reported that in response to the initiation of our Commission of Inquiry: 'The biggest initial issue was the retrieval of documentation in the Department's possession or control, given the physical nature and location [of] files throughout the State and the breadth of the Out of Home Care model over time'.[264] Secretary Pervan gave examples of 'records [which] have not been consistently catalogued and boxes [that] are often labelled incorrectly', noting 'many high-priority hard and soft copy files within the Children, Youth and Families Division require remediation, such as through comprehensive cataloguing of handwritten content'.[265]

Other departments described similar challenges. For example, Kathrine Morgan-Wicks, Secretary, Department of Health, described at least 10 different record-keeping systems that contained documents of potential relevance to child sexual abuse.[266] Secretary Morgan-Wicks acknowledged that: 'the standard of record keeping across the Department of Health requires significant improvement to achieve statewide consistency'.[267] Similarly, Timothy Bullard, Secretary, Department for Education, Children and Young People described the mixed approach to record keeping in schools, stating:

> There was no central system to collect student information until 2014, when [the Student Support System] was introduced. Before 2014, schools used a mixture of practices, with some using a paper-based method of recording files and notes, and some using a system built by a teacher within the respective school.[268]

Recognising the need to improve searchability and accessibility of records, several departments reported establishing remediation projects. For example, the former Department of Communities had started a project to digitise approximately 110,000 hard copy files concerning out of home care and youth justice (refer to Chapter 11, Case study 7, and Chapter 12).[269] The Department of Health stated that improvement of the standard of record keeping 'is a key priority within Health's Digital Strategy and Record Audit', noting the commencement of 'an Information Remediation Project for the roll out of the Content Management system across the Department'.[270]

The Department for Education, Children and Young People has been taking part in discussions with the Department of Health about the Department of Health's complaints management system project.[271] If the Department of Health system meets its needs, the Department for Education, Children and Young People may move across to that system in the future.[272] The Department for Education, Children and Young People's Strategic Systems Development team has been asked to reserve time in 2023 to deliver an alternative solution should the Department of Health's complaints management system be deemed not fit for purpose.[273]

According to the Tasmanian Government, the Case Management Platform 'will deliver a streamlined approach to the way information is recorded, accessed, managed and interpreted'.[274]

Document retention and disposal

In evidence, we heard examples of victim-survivors frustrated by the apparent loss or destruction of documents they believed did or should exist. Victim-survivor, Rachel (a pseudonym), spoke of her mother receiving a letter in response to a request for information that essentially stated: 'the [Teachers Registration Board] have no record of any investigation in 2007'.[275] In evidence, Rachel expressed her distress at this response, stating:

> That was hard to read because I was like, "What the heck? What do you mean there was no investigation? I have a statement that I signed in 2008 from the [Teachers Registration Board]". I just don't get it. I just don't understand.[276]

When the Tasmanian Government responded to this evidence, it suggested the letter may not have come from the Teachers Registration Board, which does hold documents relating to Rachel's complaint, but from the Department of Education. It is possible that Rachel was mistaken regarding the source of the letter to her mother, but it is troubling that she received no help to get this information.[277]

Rachel's experience was shared by representatives of other victim-survivors. For example, Ms Sdrinis noted instances of clients insisting they had made a complaint to the police of which the police had no record.[278] She further stated: 'it is not uncommon in Department of Education matters for clients to instruct me that they made a complaint to a teacher or even the Principal and no record has been kept'.[279]

We are informed that the Department for Education, Children and Young People is reviewing and improving its complaints management system, and has a new policy for handling complaints that should help to address these problems.[280]

6.1.3 Our observations

It is critical that remediation of historical records is prioritised and adequately resourced across Tasmanian Government institutions, extending to non-government institutions that are funded to provide government services. It is also critical that searchable and accessible document management systems are introduced and maintained in line with the National Royal Commission's records and record-keeping principles.

We discuss the preservation of Ashley Youth Detention Centre and out of home care records in more detail in Chapter 12. We recommend in that chapter that the Department for Education, Children and Young People work with the Office of the State Archivist to establish an approach to preserve historical records relevant to children and young people and staff at Ashley Youth Detention Centre and in state care. We consider preserving these records a matter of priority.

We welcome the Tasmanian Government's response to the National Royal Commission's recommendations concerning document maintenance and retention. To ensure successful implementation of the recommendations, it is critical that staff within relevant government and government funded institutions engage in ongoing training about their record and record-keeping obligations, and that regular compliance audits are conducted. We consider the Office of the State Archivist may be best placed to provide the necessary ongoing training and to regularly measure and assess the quality of record-keeping capability and practice across institutions. We welcome their Information Management Foundations training course.

6.2 Access to information

Multiple people may be seeking information in relation to an institution's response to child sexual abuse, including, for example, victim-survivors seeking 'personal information' or journalists seeking information about an institution's response to child sexual abuse.

Tasmania, like most Australian jurisdictions, has separate pieces of legislation regulating access to information and protecting personal information.[281] An individual's right to access, amend or annotate personal information is generally contained as a principle in privacy or personal information protection legislation. This is compared to the broader right of access to government information in right to information legislation (sometimes referred to as 'freedom of information' legislation). Access to information the Tasmanian Government holds is regulated by a legislative scheme established by the Right to Information Act and the Personal Information Protection Act.

Government information is provided to the public through a range of channels such as:

- annual reporting obligations
- selective publication of policies, procedures and other reports
- in response to requests such as letters from the public.[282]

If information is not disclosed through these channels, as a 'last resort', individuals can apply under the Right to Information Act for an 'assessed disclosure', otherwise called a right to information application.[283] Individuals have a right to the information requested, unless an exemption applies.[284] There are 18 types of exempt information, including information disclosing personal information of a person other than the person making the application, information affecting national or state security, defence or international relations, information relating to enforcement of the law, legally privileged information and other information that is contrary to the public interest to disclose.[285] A person can apply to the Ombudsman for a review of an agency's decision about a right to information request.[286]

The Personal Information Protection Act regulates the 'collection, maintenance, use, correction and disclosure of personal information relating to individuals'.[287] It contains 10 Personal Information Protection Principles, including Principle 6, which regulates access to and correction of personal information.[288] It states that if a 'personal information custodian' holds personal information about an individual, the custodian 'may' provide that individual with access to their personal information upon receipt of a written request.[289]

On its face, the legislative scheme appears to set clear parameters for releasing or protecting Tasmanian Government information through established processes in line with fixed timeframes. However, in practice, victim-survivors and their representatives described a frustratingly slow, complex, and obstructive system. Their experiences align with evidence the National Royal Commission reported about the operation of freedom of information and privacy legislation across Australia: 'we have been told by many survivors and their advocates and by records holders that many people still find navigating the current systems complex, costly, adversarial and traumatising'.[290]

As outlined above, the National Royal Commission sought to address these difficulties by implementing records and record-keeping principles. Specifically, Principle 5 requires: 'Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent'.[291] Detailing what is required in practice under Principle 5, the National Royal Commission stated:

> Individuals whose childhoods are documented in institutional records should have a right to access records made about them. Full access should be given unless contrary to law. Specific, not generic, explanations should be provided in any case where a record, or part of a record, is withheld or redacted.

> Individuals should be made aware of, and assisted to assert, their existing rights to request that records containing their personal information be amended or annotated, and to seek review or appeal of decisions refusing access, amendment or annotation.[292]

According to the Tasmanian Government, the new *Information and Records Management Standard* introduced in 2020 aligns with the National Royal Commission's records and record-keeping principles.[293] However, evidence before us suggests, in practice, individuals' rights to access information are still not being 'recognised to the fullest extent'.[294]

The concerns expressed to us about the operation of the access to information scheme in Tasmania fall within the following themes:

- an administrative culture that limits the release of government information
- legislative and procedural complexity, particularly where the Right to Information Act and the Personal Information Protection Act overlap, hampering access to personal information
- lengthy delays in responding to applications
- inadequate and unenforceable review processes when the release of information is delayed, refused or extensively redacted
- under-resourced and decentralised assessment processes contributing to delays and inconsistent outcomes
- inconsistent approaches to fees and waivers for right to information requests.

Ultimately, these issues cause significant distress and frustration for victim-survivors of institutional child sexual abuse, who can be retraumatised by the process. Consequently, urgent reform of the legislative scheme, together with additional resources and improved implementation in practice, is required.

6.2.1 Administrative culture

Evidence to our Commission of Inquiry indicates that when responding to requests for information related to child sexual abuse, public authorities frequently adopt an approach that is not 'pro-disclosure'. The following example outlines the Department of Health's reluctance to provide access to information it held about James Griffin.

Review of a journalist's request for information about James Griffin

Journalist Camille Bianchi requested information from the Department of Health in relation to paediatric nurse James Griffin on 1 April 2020.[295] The Department of Health had not released its decision to Ms Bianchi by 29 June 2020. At this point, the Ombudsman accepted her request for external review because the Department's failure to respond to the request in this time constituted a refusal to provide the requested information.[296] The Department indicated to the Ombudsman that the delay was because of the diversion of resources to the COVID-19 pandemic response.[297]

On 22 July 2020, the Department released its decision to Ms Bianchi, identifying 104 pages of relevant information.[298] However, it refused to release any of these pages, claiming exemptions under four separate sections of the Right to Information Act.[299]

Following a comprehensive review, released on 4 November 2021, the Ombudsman concluded that all claimed exemptions were not made out or should be varied.[300] Ultimately, the Ombudsman directed the release of 74 pages, subject to the redaction of some personal information.[301] Of the remaining 30 pages, 10 were already publicly available and 20 pages were out of scope of the original request.[302]

In his decision, the Ombudsman stated that: 'Public servants have a public role and duties, which brings with it the potential to be publicly identified. Service to the public is not intended to be shrouded in secrecy…'.[303] He noted: 'There is a fine line between protecting public servants from distressingly intense scrutiny and limiting their accountability to the people of Tasmania which comes from transparency of administrative action'.[304]

The Ombudsman expressed concern about the weight the Department of Health placed on the interests of its staff, without sufficient consideration of the interests of the victims of Mr Griffin's alleged offending, or the public interest in holding the Government and its administration to account. He stated:

> While the Department's consideration of the interests of its staff and Mr Griffin's associates is understandable, I am concerned that it does not appear to have considered the interests of the victims of Mr Griffin's alleged offending while he was in its employ and the concerns of [Launceston General Hospital] patients and the general public about the adequacy of management of concerns by the Department as highly. … I consider that the public interest in protecting the interests of alleged sexual abusers of children is lower than that of the victims of such abuse. In contrast, the Department does not once mention or appear to consider the victims of Mr Griffin's alleged offending or the valid community concern and desire for accountability from the Department, given that abuse is alleged to have occurred against vulnerable child patients receiving care in a public hospital over an extended period. [305]

The Ombudsman also identified several relevant documents that had been omitted from the Department of Health's response. In his decision, he commented:

> The failure to produce this information or properly respond to my office's requests for an explanation as to why the information is not in the possession of the Department is inexplicable and disappointing. I am concerned with the sufficiency of the search conducted by the Department for all information responsive to Ms Bianchi's request due to failure to properly respond to requests regarding these documents.[306]

Despite the Ombudsman's direction to the Department to release 74 pages of documents (as detailed above), the Department did not immediately do so.[307] Following media reports in December 2021 about the Ombudsman's decision, the Department finally released the documents to Ms Bianchi, approximately 22 months after her original request was submitted.[308]

This administrative culture towards non-disclosure is reflected in concerns expressed in the Ombudsman Tasmania's *Annual Report 2021–22*. Richard Connock, Ombudsman Tasmania, found that 95 per cent of the external reviews of right to information requests conducted in 2021–22 'identified issues with the manner in which the public authority had responded to a request for assessed disclosure…'.[309] While some progress has been made compared to previous years, the Ombudsman stated:

> The express object of the [Right to Information] Act is clear in relation to its pro-disclosure focus, seeking to increase government accountability and acknowledging that the public has a right to the information held by public authorities who are acting on behalf of the people of Tasmania. Too often, sadly, adherence to this object is not evident in practice and a closed, and at times obstructive, approach is taken when responding to requests for assessed disclosure which come before my office.[310]

For completeness, we note the Right to Information Act and the Ombudsman's comments apply to 'public authorities', which includes bodies such as councils and statutory authorities, not only government departments and agencies.

In 2020, the Ombudsman reported that, for the year 2018–19, the rate at which Tasmanian public authorities refused access to *any* information in response to Right to Information requests was 7.5 times the rate of Australia's most open jurisdictions (Victoria and the Northern Territory).[311]

Legal representatives of victim-survivors expressed concerns about the reluctance of Tasmanian public authorities to release information. For example, Ms Sdrinis stated:

> It has been my experience that the Department of Education has a general reluctance to provide information responsive to [right to information] requests in a timely way. The Department appears to me to take a broad view of the various exemptions that it can apply. … I have found the provision of documents in Tasmania to be generally less forthcoming than in other jurisdictions.[312]

Ms Sdrinis stated she was not satisfied the records the Department of Education provide in response to requests 'contain everything they could or should give us, and they appear to be heavily redacted'.[313] Similarly, Mr Strange of knowmore described the Tasmanian Government's response to requests for records as 'often less than desirable'.[314] He highlighted frequent delays and extensive redactions in released material as being 'particularly pronounced in Tasmania'.[315]

A comparative analysis of the public use of information access rights across Australia for the period 2020–21 indicated Tasmania had:

- the second-lowest number of formal applications per capita at 2.6 applications per 1,000 population (the lowest was the Commonwealth at 1.4 applications per 1,000 population), compared to Western Australia with the highest number of applications per capita of 7.6 per 1,000 population. This may reflect a view that it is not worth making an application which has a limited chance of succeeding
- the lowest percentage of all decisions made on formal applications nationally where access was granted in full or in part (75 per cent), compared to the next lowest percentages from Queensland (82 per cent) and the Commonwealth (82 per cent)
- the highest percentage of decisions where access was refused in full (25 per cent), compared to the next highest percentages from Queensland (18 per cent) and the Commonwealth (18 per cent)
- the second-lowest percentage of decisions made within the statutory timeframe (73 per cent) above South Australia (67 per cent), based on the data available (noting that no data is available from Queensland in relation to this metric) and compared to the next lowest percentage from the Commonwealth (77 per cent)
- the highest percentage of applications reviewed by the Information Commissioner or Ombudsman (6.1 per cent) compared to the next lowest percentages from the Northern Territory (3.9 per cent) and Queensland (3.7 per cent).[316]

Broadly, similar percentage differences between state approaches to the release of information appear in 2017–18 and 2018–19.

This analysis reflects the published statistics regarding access to information nationally. However, the Ombudsman informed us of a recently identified difference in how Tasmania records this data compared to other states and territories. Tasmania's figures include applications that are withdrawn or transferred and where the release of information is deferred in full. We understand such applications are not included in the published statistics of other jurisdictions. The Ombudsman told us this difference is 'somewhat distorting the accuracy' of these statistics. The Ombudsman said 'efforts are being made to correct this misalignment as soon as possible', and once it is corrected, 'it is expected that Tasmania will no longer be an outlier in these statistics'.[317]

Some of these differences may be attributed to differing legislative schemes. For example, the Right to Information Act does not include an explicit principle in favour of the release of information. Instead, it includes a statement that: 'It is the intention of Parliament … that discretions conferred by this Act be exercised so as to facilitate and promote, promptly and at the lowest reasonable cost, the provision of the maximum amount of official information'.[318] In comparison, the freedom of information schemes in New South Wales, Queensland and the Australian Capital Territory all include an explicit 'pro-disclosure bias' or overarching principle in favour of disclosure to guide assessment decisions.[319] The lack of an explicit statement to this effect may contribute to a tendency to restrict access rather than release information, although building a pro-release culture is also important.

Another difference in access to information schemes across Australia is the approach to exemptions subject to an assessment of whether release of that information would be contrary to the 'public interest'. For example, in Victoria, the 'public interest test' is embedded in the exemptions themselves, which specify the public interest considerations relevant to each exemption.[320] In contrast, public interest considerations in the Tasmanian Right to Information Act are contained separately in a lengthy Schedule to the Act.[321] Differences in legislative approaches between states and territories make it difficult to determine how this affects the decision not to release documents.[322] However, some exemptions may contribute to a decision refusing the release of information, particularly in the absence of a pro-release culture.

Ultimately, the impact of these legislative differences on decision making in practice is unclear. However, considering the comparative metrics summarised above, combined with the Ombudsman's comments and evidence before us about individuals' experiences seeking access to information, we are concerned the administrative culture may, at times, frustrate the intended pro-disclosure intent of the Right to Information scheme in Tasmania and limit the release of government information.[323]

6.2.2 Protection of personal information

The process to request access to personal information relies on a connection between the right to information and personal information protection schemes, as is the case in most Australian jurisdictions. The Personal Information Protection Act establishes a process for an individual to make a written request to the organisation holding their personal information.[324] If the request is refused or there is no response within 20 working days, the individual may submit a second written request. This second request is to be assessed as if it were a right to information application under the Right to Information Act.[325]

On its face, the initial written request process under the Personal Information Protection Act provides a more informal, cost-free channel to access personal information. However, in practice, victim-survivors of child sexual abuse have experienced additional

delays because this process defaulted to a two-step process when their initial request was refused or they received no response. Consequently, their second request was treated as a formal right to information application. In consultation, the Ombudsman stated he had encouraged people to use the Right to Information Act process rather than the Personal Information Protection Act process.[326]

The reasons for the refusal or lack of response to the first written request under the Personal Information Protection Act may be because of the nature of the discretion granted to the 'personal information custodian'. The Personal Information Protection Act provides that the personal information custodian 'may' provide access to the personal information.[327] In contrast, other jurisdictions state the holder of the information 'must' provide access, subject to exemptions.[328]

Another reason for refusal or delay under both the Personal Information Protection Act and Right to Information Act is the approach to protection of personal information concerning another person. Under the Right to Information Act, information is exempt if it would involve disclosing personal information of a person other than the applicant.[329] Other jurisdictions include similar exemptions.[330] Some jurisdictions include a 'reasonableness' test in the assessment. For example, in Victoria, information is exempt if 'providing access would have an unreasonable impact on the privacy of other individuals'.[331]

Under the Right to Information Act, if disclosing the information about another person is likely to be of concern to that person, the public authority must seek that person's views on whether the information should be released.[332] If, following this process, the public authority decides to release the information, they must notify the other person and they can apply for a review of that decision.[333] Set timeframes regulate providing notices and applications for review, which must elapse before the information can be released.[334]

In child sexual abuse matters, information requested by a victim-survivor or their representative frequently includes other people's personal information. For example, records of investigations are likely to include statements by other witnesses or the alleged perpetrator. In such cases, the public authority must seek the other person's views before making a final determination on whether to release the information.

In evidence, legal representatives of victim-survivors highlighted their experiences of extensive delays and redactions associated with requests to access information that captures information about other people. For example, Mr Strange noted documents the Tasmanian Government provided were often heavily redacted, particularly when the information related to third parties.[335] He commented the Tasmanian Government used the third party provisions 'in a very black and white way to make those redactions'.[336]

At our hearings, Sam Leishman described his attempts to access information from the Department of Education and the way it made him feel.[337]

Case example: Barriers to accessing personal information

Sam Leishman is a victim-survivor of child sexual abuse perpetrated by teacher Darrel Harington, which occurred when Mr Leishman was a school student. We discuss Mr Leishman's experience in detail in Chapter 5. Here, we focus on his experience of seeking information from the then Department of Education.

In 2015, Mr Harington was convicted of offences against Mr Leishman and sentenced to gaol. Following the conviction, Mr Leishman requested information related to the offending from the Department of Education. The Department told Mr Leishman to make a formal right to information application. In response to the application, Mr Leishman recalls being told that because most of the information concerned Mr Harington, Mr Harington's permission would be needed to release it.[338] At that point, Mr Leishman described feeling 'completely stymied by the process' and unwilling to go down a 'rabbit hole' of asking permission from the man who had committed offences against him.[339]

At our hearings, Mr Leishman described the Department's lack of support or action throughout the process, which ultimately spanned a period of two years. He said:

> … I was given no answers to anything. I felt that … I was just going to be made to jump through hoops and things were just going to be made more and more difficult for me. … I thought, what is it, what is it? There must be something that they do have to tell me and they don't want to tell me: I don't know.[340]

The process set out in the Right to Information Act requires the public authority to seek the views of the other party before releasing information concerning them, which occurred in this case. Secretary Bullard recognised that: 'Mr Leishman felt uncomfortable with that, and who wouldn't?'[341] He stated the perpetrator refused release of the information, 'but in the public interest the decision maker agreed that some of the information should proceed'.[342] He concluded that: 'to me, [for] a third party like Mr Leishman sitting there thinking he has a right to know [it] looks like a lack of accountability and transparency, albeit it is operating within a legislative framework, whether or not that be right or fit for purpose for these kinds of situations'.[343] While some information was ultimately released, Mr Leishman concluded: 'I still don't feel that everything's been laid on the table'.[344]

It is clearly necessary to balance the competing right of access to information with other parties' right to privacy, while ensuring a procedurally fair process. However, in practice, this process can be traumatic for victim-survivors. Victim-survivors may feel a perpetrator has control over what information they can access, or government employees are protecting their own or their colleagues' personal interests over the interests of victim-survivors. The additional steps required can also lead to significant delays.

6.2.3 Lengthy delays

The Right to Information Act and Personal Information Protection Act set timeframes for responses to requests for information. Under the Right to Information Act, the applicant must be notified of a decision on a right to information application as soon as practicable, and no later than 20 working days after the application has been accepted.[345] This timeframe can be extended for a further 20 working days if the information request includes personal information about another person or relates to the business affairs of another party who should be consulted before releasing information.[346] The timeframe can also be extended by agreement with the applicant or by the Ombudsman.[347] Under the Personal Information Protection Act, if a request to access personal information is refused or no response is received within 20 days, the applicant can make a further written request, which is treated as a right to information application, as outlined previously.[348]

Despite these statutory timeframes, we heard evidence of responses to requests for information being delayed and subject to multiple extensions. For example, Ms Sdrinis noted that the right to information process had deteriorated since 2018. She commented:

> Initially, unlike the Department of Human Services and Corrections, the Department of Education dealt with [Right to Information] requests relatively promptly. More recently time lines have blown out … to about 12 months and I anticipate that the time lines will blow out further as we are regularly receiving requests for extensions of time…[349]

Similarly, Mr Strange commented while delays were an issue nationwide, they are 'particularly pronounced in Tasmania. Record requests in Tasmania have taken as long as two years, and generally can take up to 18 months'.[350] Ms Sdrinis agreed the situation was worse in Tasmania compared to other states.[351]

We also heard examples of extreme delays for some individuals seeking access to records. For example, the submission from Care Leavers Australasia Network ('CLAN') noted one CLAN member waited four years to receive his state ward records from the Tasmanian Government, with many of the records redacted and labelled out of scope.[352]

Rachel provided information relating to repeated delays and requests for extensions from the Teachers Registration Board in response to her right to information application.[353] Rachel submitted a right to information application to the Teachers Registration Board in October 2021. Over the next 12 months, Rachel repeatedly contacted the Board seeking a response.

When questioned about Rachel's experience, Ann Moxham, Registrar, Teachers Registration Board, pointed to a lack of staffing (exacerbated by the absence of a key staff member on extended leave) impeding the Board's capacity to process requests in a timely way.[354]

Ms Bianchi's right to information request in relation to Mr Griffin, outlined previously, was also subject to significant delays. Emily Baker, a journalist, also indicated Ms Bianchi's experience was consistent with her experience of submitting right to information applications, stating: 'Oh, it's completely consistent. It seems, frankly, a waste of time, and it doesn't mean we don't still file them, we do, but it is absolutely an issue of last resort—you're gearing up for a fight'.[355] She described being 'fobbed around, rebuffed, it goes away'.[356] However, Ms Baker noted she thought this approach was changing.[357]

The systemic nature of individuals' experiences of delays is confirmed by the comparative analysis of access to information schemes across Australia for the period 2020–21, noted above. It found more than a quarter of decisions on requests for information in Tasmania did not meet the statutory timeframe.[358] Of the jurisdictions surveyed, only South Australia had a lower rate of response to requests completed on time.[359]

Ombudsman Tasmania's *Annual Report 2021–22* also expresses concern regarding delays in Tasmanian Government responses to access to information applications, particularly by the Department of Health and the former Department of Communities. Between them, right to information applications to these departments accounted for 26 per cent of all external review requests in 2021–22.[360] The Ombudsman stated:

> While I acknowledge that both departments have advised of a significant increase in the volume of assessed disclosure applications, there are improvements that could be achieved by both departments in relation to issuing of decisions within the statutory timeframe, improving communication with applicants regarding delays and ensuring decisions are of high quality. Such improvements might reduce the volume of external review requests relating to these departments.[361]

6.2.4 Under-resourced and mixed assessment processes

Currently, requests for information (either for personal information under the Personal Information Protection Act or right to information applications under the Right to Information Act) are sent to and processed by the public authority holding the relevant information. Representatives of Tasmanian Government departments and agencies described different processes and levels of resourcing dedicated to managing these requests.[362]

Generally, the relevant business unit within the department manages requests for personal information under the Personal Information Protection Act. There is no centralised register recording requests and responses. In contrast, right to information applications are managed by designated staff within each department, such as the legal services area or Office of the Secretary, and centralised departmental records are maintained. For example, in the Department of Education, seven legally trained staff were responsible for assessing right to information requests (in addition to other responsibilities).[363] Several senior executives in the Department (separate to the legal services area), have delegated responsibility to conduct internal reviews. In the words of Secretary Bullard, he remains at 'arms-length' from the process.[364] In contrast,

the Office of the Secretary in the Department of Justice manages responses to right to information applications.[365] Similarly, the Legal Services Unit in the Office of the Secretary of the Department of Health manages right to information applications.[366]

Departmental secretaries and other Tasmanian Government Heads of Agencies reported increases in the number of right to information requests over recent years.[367] For most, the increase had an adverse impact on their capacity to respond within the statutory timeframes. For example, the average number of days taken by the Department of Health to respond to a right to information application had increased significantly: from 23 days in 2019–20 to 59 days in 2021–22.[368] Similarly, the Department of Education confirmed the increase in right to information applications relating to historical sexual abuse has 'impacted the substantive response timeframes and the Department's ability to consistently meet the statutory timeframe of 20 business days'.[369] Commenting on the Teachers Registration Board's delayed response to Rachel's right to information application outlined above, Ms Moxham stated:

> … we find it extremely difficult to meet the timelines that are in the Act because we have such a small workforce … with the huge volume of historical matters that have now descended upon us that makes it even more problematic to sort out those sorts of issues for our office.[370]

In contrast, Secretary Webster gave evidence that while the number of right to information applications from 'plaintiff law firms' had increased in recent years, the average number of days to respond to an application from either a 'plaintiff law firm' or relating to a person's correctional records potentially relating to child sexual abuse had decreased from 21 days in 2018–19 to 13 days in 2020–21.[371]

In addition to delays, victim-survivors and their representatives expressed concerns about inconsistent approaches and inadequate search practices, potentially resulting in information not being identified or incorrectly assessed. As noted above, Ms Sdrinis was not satisfied that responses to right to information applications provided all relevant documents. She said it was sometimes possible to compare documents provided through the right to information process with records provided at a later date through discovery processes.[372]

Similarly, in the Ombudsman's review of Ms Bianchi's right to information application, he identified several relevant documents that had been omitted from the Department of Health's response.

The evidence before us suggests that, for most government departments and agencies our Commission of Inquiry examined, current resourcing levels and procedures to process right to information applications are not adequate to meet statutory timeframes, particularly in the face of increasing demand. Nor do they ensure full disclosure of all relevant documents as required by the legislative scheme.

6.2.5 Fees and waivers

In Tasmania, the fee for a right to information application under the Right to Information Act is currently $44.50.[373] There is no fee for requests for personal information under the Personal Information Protection Act. For information concerning child sexual abuse, some Tasmanian Government authorities exercise their discretion to waive the fee under the Right to Information Act. To do so requires the applicant to seek a waiver on one of the grounds set out in the Act, which include if the applicant is 'impecunious' (that is, does not have any or much money) or if it is sought for 'a purpose of general public interest or benefit'.[374] Requests concerning child sexual abuse may fall into one of these categories. The approach to fees is similar to that in other jurisdictions.[375]

Neither the Right to Information Act nor the Ombudsman's guidelines on fee waivers specifically refer to matters concerning child sexual abuse. Further, the decision to waive fees is discretionary.[376] Consequently, the approach of government authorities and agencies to fee waivers for victim-survivors of child sexual abuse varies. For example, the Department of Education's practice was to waive the fee for applicants who identify they are seeking records relating to child sexual abuse. The fee is waived based on public interest.[377] In contrast, representatives of victim-survivors spoke of the cost burden of these fees. They noted civil litigation may result in multiple requests from government authorities for revised right to information applications, which incur a fee each time.[378] Imposing a fee, even if it can be waived, can be an added barrier to victim-survivors seeking compensation and redress, which can reinforce their sense of being obstructed and not supported. If fee waivers are not granted in these situations, they should be.

6.2.6 Limited review and enforcement mechanisms

We heard about two issues of concern regarding the external review process for right to information requests. First, the process is lengthy because of the:

- level of scrutiny required
- resources involved in processing external review applications
- high number of applications for external review.

Delays in reviews add to the delay in an applicant receiving the information they request, or having a final decision about their right to the information. The Ombudsman's *Annual Report 2021–22* highlighted the backlog of external review applications they have been trying to clear since 2019.[379] The report noted:

> Unfortunately, though modest inroads have been achieved, due to a range of issues (most particularly high staff turnover, unexpected leave and major difficulty in recruiting, but also a high number of new external review requests requiring formal decisions), this has not occurred and the backlog remains.[380]

To address the backlog, Ombudsman Tasmania has dedicated additional resources and sought to recruit new staff to manage the external review process.[381] The Ombudsman has also updated its priority policy and approved a greater number of external review applications for expedited processing.[382] Prioritised requests include government responses to child sexual abuse in institutional settings.[383] As a consequence of focusing on the backlog, the Ombudsman could not offer formal training to public authorities in 2021–22.[384] Suspending training concerns us because regular training is likely to increase and maintain the skills and capabilities of staff managing right to information applications. In turn, this will reduce the need for victim-survivors to make applications for external review.

Despite these efforts, it appears the backlog is worsening. In February 2023, it was reported in the media that the backlog of active external right to information review requests had increased from 101 at 30 June 2022 to 129 at 7 February 2023.[385] It was also reported that some applicants for external review had been waiting for more than three years for the external review process to begin.[386] The Ombudsman has cited staffing and recruitment issues and a high number of external review requests as the reason for the continuing backlog.[387]

The second issue of concern regarding the external right to information review process is that the Ombudsman's decision is not enforceable.[388] While the Ombudsman is empowered to give directions (for example, to release documents), the public authority is not obliged to comply with these directions. The examples concerning Rachel and Ms Bianchi's right to information applications show a level of noncompliance, or at least delayed compliance, by the relevant public authorities in response to the Ombudsman's directions.

In a consultation, the Ombudsman proposed the Tasmanian Civil and Administrative Tribunal be given a right of review.[389] An order of the Tribunal would be enforceable. Other jurisdictions such as Victoria and New South Wales provide for review by a tribunal.[390]

The extensive delays associated with external reviews and the lack of enforceability of the Ombudsman's directions may contribute to public authorities' poor compliance with their obligations under the Personal Information Protection Act and Right to Information Act. Poor accountability and enforcement mechanisms may limit the incentive for public authorities to comply with their obligations.

6.2.7 Impact of the access to information scheme on victim-survivors

A persistent theme in statements, submissions and hearings was the significant adverse impact of the access to information scheme and its implementation on victim-survivors of institutional child sexual abuse. As highlighted in the examples discussed previously, victim-survivors described feeling obstructed, not prioritised and, ultimately,

retraumatised by a process that often required them to repeatedly tell their story and justify why they should be given access to records concerning their experiences of abuse.

Representatives of victim-survivors confirmed the traumatic impact of the process. Mr Strange commented that extensive redactions 'can be re-traumatising for a victim-survivor. … they can leave the victim in the dark about parts of their own history and abuse'.[391] He stated: 'the applicant's trauma is exacerbated by such decisions (about redaction) being made by the same institution perceived as responsible for the victim-survivor's child abuse'.[392] Referring to victim-survivors taken into state care as children, Mr Strange stated that:

> … to have significant redactions that take out, for instance, the name of those family members, it is viewed as perpetuating the abuse that happened to them as children and the negative experiences of being placed in an institution; they see that as re-traumatising, that it took them so long to try and reconnect with their family and here is the government or the state trying to keep information from them about their family again….[393]

Mr Strange also confirmed that delays can be retraumatising for victim-survivors who 'have difficulty in progressing their options for justice due to inability to access records made about them in a timely way'.[394] Ultimately, according to Ms Sdrinis, these delays can cause her clients to lose motivation to pursue their claims.[395] Representatives of victim-survivors called for the Government to adopt trauma-informed practices in responding to right to information applications, supported by training for all decision makers.[396]

In evidence, several departmental secretaries acknowledged they needed to adopt a trauma-informed response when dealing with matters involving child sexual abuse. Responding to questions about the Department of Health's investigation of allegations of child sexual abuse at Launceston General Hospital, Secretary Morgan-Wicks stated: 'It is apparent that trauma-informed practice is not embedded practice and may be a new way of working for many Departmental Officials. This must be a priority moving forward so that any communication and interactions with victim-survivors is applied to "do no harm"'.[397] Several departments have started providing training in trauma-informed practice to their staff, particularly in their legal services teams.[398]

6.2.8 Our observations

The concerns outlined above, and the traumatic impact on victim-survivors, confirm the current framework for providing victim-survivors with access to information does not meet the principle the National Royal Commission recommended that: 'Individuals' existing rights to access, amend or annotate records about themselves should be recognised to the fullest extent'.[399] Cultural, legislative, procedural and resourcing barriers have combined to impede individuals' ability to exercise their rights to access information in a meaningful and supportive way.

On 24 May 2022, Premier Rockliff committed to a number of actions to keep children safer, including:

> Improve the Right to Information process, including providing training across the State Service to ensure more consistent responses.[400]

The Premier's commitment is an important acknowledgement of the need for reform. However, the extent of progress towards that reform is unclear, with progress indicated to be 'underway', a discussion paper circulated, and an expected delivery date of July 2024.[401]

It is imperative the Government progress reforms urgently to overcome the current delays and lack of clarity that impedes victim-survivors' access to information in the current system. We recommend the Tasmanian Government review and reform the access to information scheme in Tasmania, with a particular focus on child sexual abuse in institutional contexts. Reforms should focus on the legislative scheme established by the Right to Information Act and Personal Information Protection Act. Reforms should also focus on their implementation in practice, to ensure it is as accessible, efficient, transparent and trauma informed as possible. In particular, the review should consider:

- including an explicit presumption in favour of disclosure in the Right to Information Act and Personal Information Protection Act
- embedding the public interest test in specific exemptions in the Right to Information Act, tailored to those exemptions
- streamlining the interface between the Right to Information Act and Personal Information Protection Act to overcome what has become a two-step process by default to request personal information
- requiring that a personal information custodian under the Personal Information Protection Act 'must provide' rather than 'may provide' personal information upon request from the individual who is the subject of that information (subject to exemptions)
- including a 'reasonableness' test in the Right to Information Act as part of the assessment of whether to withhold personal information relating to a person or third party other than the person making the request for information, which would allow for competing factors to be weighed when assessing whether to disclose information, including on review
- strengthening and streamlining internal and external review processes in the Right to Information Act and Personal Information Protection Act, with a focus on options to enforce decisions of the Ombudsman and review by the Tasmanian Civil and Administrative Tribunal

- providing an automatic fee waiver for Right to Information Act right to information applications which relate to child sexual abuse.

We recognise legislative reform can take time. To address the impact of the current access to information scheme on victim-survivors in the short term, the Tasmanian Government should allocate additional resources to:

- Tasmanian Government departments and agencies to enable them to process requests for information under the Right to Information Act and Personal Information Protection Act within statutory timeframes
- Ombudsman Tasmania to speed up external reviews of right to information decisions.

We also understand the Tasmanian Government has investigated the roll out of trauma-informed training across the State Service. It has partnered with Lifeline Tasmania through the Tasmanian Training Consortium to pilot trauma-informed training sessions for leaders. Feedback from these pilot sessions has informed the development of courses on trauma, trauma-informed practice and trauma-informed organisations for:

- State Service employees
- those involved in State Service Code of Conduct investigations
- State Service leaders.[402]

We recommend, in Chapter 19, the Government develops a whole of government approach to professional development in responding to trauma within government and government funded services that provide services to children and young people, and statutory bodies who have contact which child sexual abuse survivors.

We also recommend the Government considers centralising how they access information requests within a specialist unit or department. The evidence above shows varying levels of expertise, resourcing, responsiveness and resourcing across government departments and agencies. In our view, centralising the management of access to information processes would:

- promote a culture committed to transparency with a presumption in favour of disclosure
- prioritise requests for information as its core business, rather than as part of a larger role competing with other demands and resourcing
- minimise potential conflicts of interest which may arise within units which operate in the same department or agency which is subject to the access to information application
- ensure deeper understanding and consistent application of legislative obligations, particularly in the application of exemptions

- develop deeper expertise in Tasmanian Government record-keeping systems and obligations helping to identify relevant records
- promote trauma-informed practice through dedicated staff training specific to access to information applications
- enable more transparent monitoring of and reporting on the access to information scheme, with a centralised source of data.

To implement centralised management of access to information processes, departments and other government agencies should establish access to information liaison officers with adequate resourcing to ensure timely and comprehensive responses to requests for information.

Recommendation 17.8

1. The Tasmanian Government should review and reform the operation of the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to ensure victim-survivors of child sexual abuse in institutional contexts can obtain information relating to that abuse. This review should focus on what needs to change to ensure:
    a. people's rights to obtain information are observed in practice
    b. this access is as simple, efficient, transparent and trauma-informed as possible.
2. The review should consider reforms to the *Right to Information Act 2009* and the *Personal Information Protection Act 2004* to:
    a. include an explicit presumption in favour of disclosure in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*
    b. embed the public interest test in specific exemptions in the *Right to Information Act 2009*, tailored to those exemptions
    c. streamline the interface between the *Right to Information Act 2009* and *Personal Information Protection Act 2004* to overcome what has, by default, become a two-step process to obtain personal information
    d. require that a personal information custodian under the *Personal Information Protection Act 2004* 'must provide' rather than 'may provide' personal information upon request from an individual who is the subject of that information, subject to any appropriate exemptions to that requirement
    e. include a 'reasonableness' test in the *Right to Information Act 2009* as part of the assessment of whether to withhold personal information relating to a person or third party other than the person making the request for information

f. strengthen and streamline internal and external review processes in the *Right to Information Act 2009* and *Personal Information Protection Act 2004*, with a focus on options to enforce decisions of the Ombudsman and to apply for review by the Tasmanian Civil and Administrative Tribunal

g. provide an automatic fee waiver for right to information applications relating to child sexual abuse made under the *Right to Information Act 2009* by victim-survivors or a person acting on their behalf.

3. The Tasmanian Government should consider centralising management of access to information processes in a specialist unit or department, supported by access to information liaison officers located in government departments and agencies.

4. The Tasmanian Government should provide funding to government departments, agencies and the Ombudsman, as the case may be, to:

   a. ensure access to information requests are processed within statutory timeframes

   b. speed up external review of right to information decisions

   c. provide trauma-informed training to the Tasmanian State Service in relation to victim-survivor access to information (Recommendation 19.2).

7 Conclusion

This chapter has examined the National Redress Scheme, civil litigation, the provision of apologies to victim-survivors and supports (including financial assistance) available to victim-survivors of institutional child sexual abuse who are also victims of crime. It has also explored access to information and records. While many of the National Royal Commission's recommendations relating to these areas have been adopted in Tasmania, there is still a need for further reform to improve the operation of mechanisms that seek to support and compensate victim-survivors of institutional child sexual abuse. It is essential that victim-survivors can:

- access redress or make civil claims
- access ongoing support
- where appropriate, have avenues available to receive a direct personal apology
- be given information and records that may provide much-needed clarification about the circumstances of their abuse and, potentially, support a National Redress Scheme or civil litigation claim.

These are the goals of the recommendations throughout this chapter.

Notes

1 Refer to, for example, Chapter 3; Statement of Azra Beach, 14 June 2022, 10 [60]–11 [64]; Transcript of 'Alex', [date redacted], 1676 [27–30]; Statement of 'Alex', 23 March 2022, 11 [47–49]. The name 'Alex' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2022.

2 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017), vol 3.

3 Transcript of Katrina Munting, 10 May 2022, 717 [9–47].

4 Transcript of 'Alex', [date redacted], 1681 [5–7]; Transcript of Stephen Smallbone, 9 May 2022, 647 [7–30]; Transcript of Katrina Munting, 10 May 2022, 716 [5–40]; Transcript of Angela Sdrinis, 12 May 2022, 1031 [2–14]; Transcript of Azra Beach, 16 June 2022, 1447 [40–45]; Statement of Katrina Munting, 5 April 2022, 11 [55]; Statement of Angela Sdrinis, 5 May 2022, 12 [52]; Statement of Azra Beach, 14 June 2022, 6 [36].

5 Transcript of Katrina Munting, 10 May 2022, 716 [31–40]; Statement of Azra Beach, 14 June 2022, 6 [36].

6 Commission of Inquiry into the Tasmanian Government's responses to Child Sexual Abuse in Institutional Settings, *Terms of Reference* (2021) <https://www.commissionofinquiry.tas.gov.au/__data/assets/pdf_file/0008/610388/Terms-of-reference.pdf>.

7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015).

8 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Recommendations, 73 [1], 79 [26–32], 88 [85–89], 89 [89].

9 Department of Justice, *Tasmanian Response: Royal Commission into Institutional Responses to Child Sexual Abuse* (Report, June 2018) <https://nla.gov.au/nla.obj-1382488533/view>.

10 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Recommendations, 79 [26–32].

11 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) Recommendations, 73 [2], 74 [5]–77 [15].

12 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth).

13 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 43; *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018* s 2; Elise Archer, 'Ministerial Statement – National Redress Scheme' (Media Release, 22 May 2018) <https://www.premier.tas.gov.au/releases/tasmania_opts_in_to_the_national_redress_scheme>.

14 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) ss 12–17.

15 National Redress Scheme, *Applying* (Web Page) <https://www.nationalredress.gov.au/applying>.

16 National Redress Scheme, *Applying* (Web Page) <https://www.nationalredress.gov.au/applying>.

17 Transcript of Warren Strange, 12 May 2022, 1029 [23–35].

18 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 20(1)(d) and (2). For these purposes, the *Social Security Act 1991* (Cth) s 23(5) defines a person as being in gaol if: (a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or (b) the person is undergoing a period of custody pending trial or sentencing for an offence. Similarly, a person cannot make an application for redress if a security notice is in force in relation to them: s 20(1)(b).

19 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) ss 62, 63(1), (2).

20 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 63(5).

21 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 63(3)(b)(i), (iii), (4), (6)(a).

22 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 63(6)(b)–(f).

23 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 63(7).

24 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 23 June 2021) 11.

25 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 23 June 2021) 11.

26 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 23 June 2021) 11, Recommendation 3.2.

27 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023).

28 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 5–6.

29 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 6.

30 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 6.

31 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 16(1)(a).

32 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 43.

33 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 16(1)(b).

34 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) ss 16(1)(c) 54(2).

35 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015) 145, 146, 282.

36 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015) 151.

37 Transcript of Katrina Munting, 10 May 2022, 716 [31–40]; Statement of Azra Beach, 14 June 2022, 6 [36].

38 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 9; Australian Government, 'Operator', National Redress Guide (Web Page) <https://guides.dss.gov.au/national-redress-guide/1/1/o/30>.

39 Statement of Ginna Webster, 29 April 2022, 50 [323].

40 Statement of Ginna Webster, 29 April 2022, 50 [321]–52 [334].

41 Statement of Ginna Webster, 29 April 2022, 50 [324], 51 [328].

42 Statement of Ginna Webster, 10 June 2022, 51 [325].

43 Statement of Ginna Webster, 10 June 2022, 51 [330] as modified by the Solicitor-General of Tasmania, *Procedural Fairness Response*, 16 March 2023, 2. Secretary Webster gave evidence to our Commission of Inquiry that the internal timeframe for agencies or departments to respond to priority applications was two weeks. However, the State of Tasmania has subsequently clarified that the relevant priority application timeframe is three weeks.

44 Statement of Ginna Webster, 10 June 2022, 51 [330–331].

45 Statement of Ginna Webster, 10 June 2022, 51 [327].

46 Statement of Ginna Webster, 10 June 2022, 53 [335(k)].

47 Statement of Ginna Webster, 10 June 2022, 53 [335(k)].

48 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023.

49 Statement of Ginna Webster, 10 June 2022, 52 [335(a)].

50 Statement of Ginna Webster, 10 June 2022, 52 [335(c)].

51 Statement of Ginna Webster, 10 June 2022, 53 [335(e)].

52 Statement of Ginna Webster, 10 June 2022, 52 [335(d)].

53 Statement of Ginna Webster, 10 June 2022, 53 [335(f)]; Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 2–3.

54 Statement of Ginna Webster, 10 June 2022, 53 [335(g)]; Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 3.

55 Statement of Ginna Webster, 10 June 2022, 51 [329].

56 Statement of Ginna Webster, 10 June 2022, 51 [329].

57 National Redress Scheme, *Operational Manual for Participating Institutions* (August 2018) 56.

58 Refer to National Redress Scheme, *Tasmania Redress Support Services* (Web Page) <https://www.nationalredress.gov.au/support/explore/tas-redress-support-services?gclid=CjwKCAiAzp6eBhByEiwA_gGq5KjhUwg8-gQfCUjngjbft_8sPKVvjc5ShuIGZutsghZjha7mvFsSkBoCV3cQAvD_BwE&gclsrc=aw.ds>. Other organisations that may provide advice in relation to redress applications include Youth Law Australia, Laurel House, and Shine Lawyers. Organisations that may provide counselling or other forms of support include Blue Knot, Sexual Assault Counselling Australia, Bravehearts, People With Disability, Australia Care Leavers Australasia Network, the Child Migrants Trust and the In Good Faith Foundation.

59 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 43.

60 Statement of Warren Strange, 28 April 2022; Transcript of Warren Strange, 12 May 2022, 1026 [1]–1044 [20].

61 Statement of Warren Strange, 28 April 2022, 2 [9]–3 [10].

62 Statement of Warren Strange, 28 April 2022, 13–14 [45].

63 Statement of Warren Strange, 28 April 2022, 12 [39].

64 Statement of Warren Strange, 28 April 2022, 5–6 [21].

65 Statement of Warren Strange, 28 April 2022, 3 [13]–4 [18].

66 Statement of Warren Strange, 28 April 2022, 4 [18].

67 Statement of Warren Strange, 28 April 2022, 5 [21], 8 [28]–9 [29].

68 Statement of Warren Strange, 28 April 2022, 9 [29(h)].

69 Statement of Warren Strange, 28 April 2022, 10 [32]–11 [34].

70 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 4–5.

71 Statement of Warren Strange, 28 April 2022, 11 [37].

72 Statement of Warren Strange, 28 April 2022, 12 [41].

73 Statement of Warren Strange, 28 April 2022, 12 [43–44].

74 Transcript of Kylee Pearn, 28 June 2022, 1792 [18–26].

75 Transcript of Kylee Pearn, 28 June 2022, 1792 [39–45].

76 Transcript of Kylee Pearn, 28 June 2022, 1793 [4–12].

77 Australian Government, 'Redress Payment (Monetary Payment)', *National Redress Guide* (Web Page, 8 November 2021) <https://guides.dss.gov.au/national-redress-guide/5/1>.

78 Statement of Ginna Webster, 10 June 2022, 51 [329].

79 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 192.

80 National Redress Scheme, *Second Anniversary Review* (Web Page) <https://www.nationalredress.gov.au/about/second-anniversary-review?gclid=EAIaIQobChMI7-rIuaOy_wIVVpFmAh2V8wO0EAAYASAAEgJty_D_BwE&gclsrc=aw.ds>.

81 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 26 March 2021) 8.

82 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 26 March 2021) 8–9.

83 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 26 March 2021) 9.

84 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 26 March 2021) 9–13.

85 Robyn Kruk, *Second Year Review of the National Redress Scheme* (Report, 26 March 2021) 13.

86 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 2.

87 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 3; National Redress Scheme, *Service Charter for Your National Redress Scheme* (Web Page) <https://www.nationalredress.gov.au/applying/charter?gclid=EAIaIQobChMI1tf8yLuy_wIVmLuWCh0vrA88EAAYASAAEgIRsvD_BwE&gclsrc=aw.ds>.

88 Australian Government, *The Australian Government Response to the Final Report of the Second Year Review of the National Redress Scheme* (4 May 2023) 3.

89 Refer to *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) s 14(1)(c).

90 Refer to *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth) ss 13(1)(b), 14(1)(c), 20(1)(c), 193(1).

91 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015) Recommendation 48.

92 Transcript of Ginna Webster, 8 July 2022, 2718 [42–47].

93 Transcript of Ginna Webster, 8 July 2022, 2718 [17–32].

94 For an example of a successful legal action by a victim-survivor against a perpetrator of child sexual abuse in a non-institutional context, refer to *Horne, Cherie Jayne v Wilson, Graeme James Gregory (No 2)* [1998] TASSC 44.

95 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015) 432.

96 Professor Harold Luntz has played a leading role in this area. Refer to Rebecca Graycar, 'Teaching Torts as if the World Really Existed: Reflections on Harold Luntz's Contribution to Australian Law School Classrooms' (2003) 27(3) *Melbourne University Law Review* 677, particularly Part III, which contains a critique of the torts system.

97 Productivity Commission, *Access to Justice Arrangements* (Report No. 72, September 2014) 42.

98 Refer to Law Council of Australia, *Access to Justice: The Justice Project* (Web Page) <https://www.lawcouncil.asn.au/justice-project/access-to-justice>.

99 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Report, August 2015) 76–78.

100 *Limitation Act 1974* s 5B, which provides that no limitation period applies to an action for damages for personal injury or death of a person arising from or related to the sexual abuse, or serious physical abuse, of the person when the person was a minor. Under section 5C of the *Limitation Act 1974*, the Court can set aside a previous settlement of such an action. This is likely to be relevant to claims settled by institutions.

101 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Final Report, August 2015) 53–57; *Justice Legislation Amendment (Organisational Liability for Child Abuse) Act 2019*.

102 *Civil Liability Act 2002* pt 10C, ss 49C (defines the 'organisations' which are covered by pt 10C and includes a 'public sector body' as defined, which covers a State agency), 49G (defines an 'associated person' which includes, but is not limited to, an individual who is an 'office holder, officer, employee, owner, volunteer, or contractor', of the organisation*)* and 49H(5) (the definition of child abuse includes sexual, psychological or physical abuse).

103 *Civil Liability Act 2002* s 49H(4). This 'reverse onus' provision was recommended by the National Royal Commission (Recommendation 98).

104 *Civil Liability Act 2002* s 49I.

105 *Civil Liability Act 2002* ss 4(7)–(8).

106 Office of the Solicitor-General, *Model Litigant Guidelines* (2019).

107 Office of the Solicitor-General, *Guidelines for the Conduct of Civil Claims* (2019).

108 Transcript of Paul Turner, 8 July 2022, 2670 [34–41].

109 Submission 069 Laurel House, 6.

110 Statement of Angela Sdrinis, 5 May 2022, 11 [48].

111 Statement of Angela Sdrinis, 5 May 2022, 4 [18]–5[21].

112 *ZAB v ZWM* [2021] TASSC 64. This case did not concern institutional sexual abuse but the abuse of a boy by his father when he was aged between 10 and 15. Nevertheless, the principles involved in the calculation of the award could also be relevant in assessing damages for institutional sexual abuse and in negotiating settlements for such abuse. The son was professionally qualified and a significant proportion of his loss related to how his earning capacity had been reduced by the effect of the abuse.

113 Statement of Warren Strange, 28 April 2022, 32 [109(a)].

114 Statement of Warren Strange, 28 April 2022, 33 [110].

115 Elise Archer, 'New State Litigation Office to Support Victim-Survivors' (Media Release, 1 March 2023) <https://elisearcher.com.au/new-state-litigation-office-to-support-victim-survivors/>.

116 Statement of Angela Sdrinis, 5 May 2022, 11 [48].

117 Statement of Angela Sdrinis, 5 May 2022, 5 [23]; Transcript of Angela Sdrinis, 12 May 2022, 1038 [40–49].

118 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 8.

119 Transcript of Angela Sdrinis, 12 May 2022, 2039 [1–16].

120 Statement of Angela Sdrinis, 5 May 2022, 3–4 [17].

121 Transcript of Angela Sdrinis, 12 May 2022, 2039 [21–23].

122 Statement of Angela Sdrinis, 5 May 2022, 3–4 [17].

123 Statement of Angela Sdrinis, 5 May 2022, 3–4 [17].

124 Statement of Angela Sdrinis, 5 May 2022, 11 [49].

125 Statement of Angela Sdrinis, 5 May 2022, 4 [18].

126 Statement of Angela Sdrinis, 5 May 2022, 4 [18].

127 Transcript of Angela Sdrinis, 12 May 2022, 1036 [21–29].

128 Statement of Angela Sdrinis, 5 May 2022, 10 [46].

129 Submission 048 Shine Lawyers, 2.

130 Submission 048 Shine Lawyers, 3.

131 Submission 048 Shine Lawyers, 3.

132 Submission 048 Shine Lawyers, 6.

133 Submission 048 Shine Lawyers, 7.

134 Submission 048 Shine Lawyers, 7.

135 State of Tasmania, *Procedural Fairness Response*, 16 March 2023, 9.

136 Office of the Solicitor-General, *Guidelines for the Conduct of Civil Claims* (2019) cl 15.

137 Statement of Angela Sdrinis, 5 May 2022, 8 [37]–9 [41].

138 Statement of Angela Sdrinis, 5 May 2022, 8 [37]–9 [41].

139 Statement of Angela Sdrinis, 5 May 2022, 9 [40].

140 Statement of Angela Sdrinis, 5 May 2022, 8 [37].

141 Transcript of Paul Turner, 8 July 2022, 2691 [31–35].

142 Office of the Solicitor-General, *Procedural Fairness Response*, 16 March 2023, 10 [20].

143 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023* (Report, December 2022) 21.

144 Statement of Ginna Webster, 29 April 2022, 8 [66–68].

145 Statement of Ginna Webster, 29 April 2022, 8 [66–68].

146 Submission 048 Shine Lawyers, 4–5; Transcript of Warren Strange, 12 May 2022, 1032 [44]–1033 [4]; Transcript of Angela Sdrinis, 12 May 2022, 1034 [3].

147 Transcript of Warren Strange, 12 May 2022, 1033 [40–45]; Transcript of Angela Sdrinis, 12 May 2022, 1034 [3–5].

148 Submission 048 Shine Lawyers, 5.

149 Submission 048 Shine Lawyers, 5.

150 Transcript of Ginna Webster, 12 September 2022, 3957 [10–19].

151 Submission 048 Shine Lawyers, 6.

152 With an exception for proceedings under the *Crime (Confiscation of Profits) Act 1993*.

153 Solicitor-General, *Report for 2021–22* (Report, 29 September 2022) 4.

154 Under section 3 of the *Financial Management Act 2016,* ''Agency' means a Government department, State authority, body, organisation, or office that is specified in Column 1 of Part 1 or 2 of Schedule 1'.

155 *Financial Management Act 2016* s 51(4). Under section 3 of the *Financial Management Act 2016* an 'Accountable authority' means a person, from time to time, holding or acting in a position specified in Column 2 of Part 1 or 2 of Schedule 1, opposite an Agency specified in Column 1 of that Part of the Schedule, or the position of a person specified in an order under section 6(3) to be the accountable authority in relation to an entity. 'Officer' means a person who is a State Services officer or State Service employee, or employed by or in an Agency or by the Governor-in Council pursuant to the royal prerogative or pursuant to any written law, or for the purposes of an Agency pursuant to any written law, whether that person is employed under a contract of service or a contract for service and whether or not that person received any remuneration for the employment.

156 Department of Treasury and Finance, *Treasurer's Instruction, Financial Management Act 2016, FC-17 Engagement of Legal Practitioners* (1 July 2019) 1 [17.2–17.3]. The direction also applies to independent bodies such as the Ombudsman, the Commissioner for Children and Young People and the Integrity Commission, as well as government agencies.

157 *Financial Management Act 2016* s 51; Department of Treasury and Finance, *Treasurer's Instruction, Financial Management Act 2016, FC-17 Engagement of Legal Practitioners* (1 July 2019), 1 [17.2–17.3], [17.6–17.8]. The direction also applies to independent bodies such as the Ombudsman, the Commissioner for Children and Young People and the Integrity Commission, as well as Government agencies.

158 Department of Treasury and Finance, *Treasurer's Instruction, Financial Management Act 2016, FC-17 Engagement of Legal Practitioners* (1 July 2019) 2 [17.6–17.8].

159 *Solicitor-General Act 1983* s 7; Statement of Ginna Webster, 10 June 2022, 44 [277–278].

160 Transcript of Sarah Kay, 8 July 2022, 2652 [11–21].

161 Department of Treasury and Finance, *Treasurer's Instruction, Financial Management Act 2016, FC-17 Engagement of Legal Practitioners* (1 July 2019) 1 [17.2].

162 *Financial Management Act 2016* sch 1, Pt 1.

163 Transcript of Sarah Kay, 8 July 2022, 2652 [23]–2653 [28].

164 Refer to, for example, Statement of Michael Pervan, 14 June 2022, 93 [512]; Transcript of Kathrine Morgan-Wicks, 9 September 2022, 3850 [3–15].

165 Statement of Ginna Webster, 14 June 2022, 43 [272]; Transcript of Ginna Webster, 6 May 2022, 579 [31–40]; Transcript of Ginna Webster, 8 July 2022, 2716 [20–32]; Transcript of Timothy Bullard, 12 May 2022, 973 [38]–974 [5]; Transcript of Timothy Bullard, 13 May 2022, 1086 [3]–1089 [35]; Statement of Tim Bullard, 10 May 2022, 71 [426]–73 [443]; Statement of Michael Pervan, 14 June 2022, 93 [512]–94 [514]. Secretary Morgan-Wicks expressed a different view: refer to Transcript of Kathrine Morgan-Wicks, 9 September 2022, 3849 [2]–3850 [15].

166 Transcript of Paul Turner, 8 July 2022, 2674 [38]–2675 [3].

167 Transcript of Paul Turner, 8 July 2022, 2674 [38]–2675 [6].

168 Refer, for example, to Office of the Solicitor-General, *Model Litigant Guidelines* (2019) cl 9(c). x.

169 Statement of Ginna Webster, 29 April 2022, 4 [25].

170 Elise Archer, 'New State Litigation Office to Support Victim-Survivors' (Media Release, 1 March 2023) <https://elisearcher.com.au/new-state-litigation-office-to-support-victim-survivors/>.

171 Elise Archer, 'New State Litigation Office to Support Victim-Survivors' (Media Release, 1 March 2023) <https://elisearcher.com.au/new-state-litigation-office-to-support-victim-survivors/>.

172 The name 'Alex' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 30 August 2023; Transcript of 'Alex', [date redacted] 1681 [6–9], 1682 [20–22].

173 Transcript of Katrina Munting, 10 May 2022, 712 [46]–714 [22]; Statement of Katrina Munting, 5 April 2022, 11 [55].

174 Statement of Katrina Munting, 5 April 2022, 11 [55].

175 Statement of Katrina Munting, 5 April 2022, 11 [55].

176 Transcript of Katrina Munting, 10 May 2022, 716 [24–25].

177 Transcript of Katrina Munting, 10 May 2022, 716 [33–40].

178 Transcript of Azra Beach, 16 June 2022, 1450 [32–37].

179 Transcript of Azra Beach, 16 June 2022, 1450 [39–45].

180 Transcript of Angela Sdrinis, 12 May 2022, 1031 [2–14].

181 Peter Gutwein, 'No Stone Must Be Left Unturned in Protecting Our Most Vulnerable' (Media Release, 26 February 2021) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/no_stone_must_be_left_unturned_in_protecting_our_most_vulnerable>; Darren Hine, 'Outcomes of Tasmania Police Griffin Review Released' (Media Release, 26 February 2021) <https://www.police.tas.gov.au/news-events/media-releases/outcomes-of-tasmania-police-griffin-review-released/>; David Killick, 'Premier and Police Chief Apologise over Griffin Investigation Failings', *The Mercury* (online, 26 February 2021) <https://www.themercury.com.au/news/tasmania/premier-and-police-chief-apologise-over-griffin-investigation-failings/news-story/e47718cab59ce5c6eafae15c14e82667>; Rob Inglis and Jessica Willard, 'Police Review into James Geoffrey Griffin Handed Down', *The Examiner* (online, 26 February 2021) <https://www.examiner.com.au/story/7144073/police-review-finds-deficiencies-in-handling-of-griffin-allegations/>.

182 Tasmania, *Parliamentary Debates*, House of Assembly, 2 March 2021, 4 (Peter Gutwein, Premier).

183 Tasmania, *Parliamentary Debates,* House of Assembly, 11 November 2021, 6 (Peter Gutwein, Premier).

184 In November 2021, following the release of the *Independent Inquiry into the Department of Education's Responses to Child Sexual Abuse* Report, Timothy Bullard, Secretary, Department of Education, made a public apology that included the following: 'As an organisation we are deeply sorry for the historical abuse that happened in our schools and apologise unreservedly to the victims and survivors'. Refer to Transcript of Timothy Bullard, 11 May 2022, 893 [43]–894 [6]. Ginna Webster, Secretary, Department of Justice, apologised to victim-survivors in her statement to our Commission of Inquiry. Refer to Statement of Ginna Webster, 10 June 2022, 1 [3]. Kathrine Morgan-Wicks, Secretary, Department of Health, also apologised to victim-survivors. Refer to Transcript of Kathrine Morgan-Wicks, 5 July 2022, 2375 [33]–2378 [4]. Mr Michael Pervan, the then Secretary of the Department of Communities, repeated the words of the Premier that 'We are so terribly sorry that we failed those people, our system failed those people'. He also apologised to Azra Beach, who had given evidence, and to other witnesses who had given evidence to our Inquiry about what had happened to them. Refer to Transcript of Michael Pervan, 17 June 2022, 1589 [23–44].

185 Tasmania, *Parliamentary Debates*, House of Assembly, 8 November 2022, 29–39 (Jeremy Rockliff, Premier; Rebecca White, Leader of the Opposition; Cassy O'Connor, Leader of the Greens; Kristie Johnston; David O'Byrne).

186 Tasmania, *Parliamentary Debates,* House of Assembly, 8 November 2022, 29–32 (Jeremy Rockliff, Premier).

187 Tasmania, *Parliamentary Debates*, House of Assembly, 8 November 2022, 31 (Jeremy Rockliff, Premier).

188 Statement of Angela Sdrinis, 5 May 2022, 12 [52].

189 Transcript of Angela Sdrinis, 12 May 2022, 1031 [2–14]. Refer also to Statement of Warren Strange, 28 April 2022, 23 [75(c)].

190 *Civil Liability Act 2002* s 7(1). An 'apology' is defined as 'an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, which does not contain an admission of fault in connection with the matter': s 7(3).

191 *Civil Liability Act 2002* ss 3B(1)(a), 6A.

192 For example, Ms Munting emailed the Premier on 15 December 2022 to point out that, following the Tasmanian Parliament's apology to victim-survivors of child sexual abuse in Tasmanian Government institutions, no settlement was reached in her case, which had been set down for trial in March 2023, as a result of which she would have to submit to cross-examination again. She said she considered the apologies made by the secretaries of the Tasmanian Government departments and the Premier were empty words.

193 Statement of Ginna Webster, 10 June 2022, 47 [305].

194 The *Civil Liability Act 2002* defines 'child abuse' for the purposes of section 49H (the 'duty of care' provision) and section 49J (vicarious liability claims) as '(a) sexual abuse, or physical abuse, of the child; and (b) any psychological abuse of the child that arises from the sexual abuse or physical abuse'. Thus, the provision is not confined to child sexual abuse.

195 Some aspects of support for victims of crime are also discussed in relation to criminal justice responses in Chapter 16.

196 *Victims of Crime Assistance Act 1976* s 6A. These figures relate to 'primary victims', that is, those who are directly harmed. The cap of $30,918 applies up to 30 June 2023 and is now indexed to the Consumer Price Index. Refer to *Victims of Crime Assistance Regulations 2010* reg 4. There is also provision for family members and others to obtain compensation if the primary victim has died.

197 *Victims of Crime Assistance Act 1976* s 6A(4).

198 Department of Justice, *Victims Support Services* (Web Page) <https://www.justice.tas.gov.au/victims>.

199 Department of Justice, *Victims of Crime Service* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

200 Department of Justice, *Victims of Crime Service* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

201 Statement of Catherine Edwards, 4 July 2022, 3 [14–15], 10 [70].

202 Department of Justice, *Victims of Crime Service* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

203 Department of Justice, *Eligible Persons Register* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/eligible-persons-register>.

204 Department of Justice, *Victims of Crime Service* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

205 Department of Justice, *Victims of Crime Service* (Web Page, 4 April 2022) <https://www.justice.tas.gov.au/victims/services/victims-of-crime-service>.

206 Statement of Catherine Edwards, 4 July 2022, 3 [20].

207 Statement of Catherine Edwards, 4 July 2022, 9 [62–63].

208 Statement of Catherine Edwards, 4 July 2022, 3 [22].

209 Statement of Catherine Edwards, 4 July 2022, 3–4 [23].

210 Statement of Catherine Edwards, 4 July 2022, 17 [120], 18 [124–125].

211 Letter from anonymous to Attorney-General, 19 January 2021, produced by the Department of Justice in response to a Commission notice to produce, 2. Section 7(5) of the *Victims of Crime Assistance Act 1976* also permits a Commissioner to direct that a person appears before them; however, Ms Edwards told us she could not recall the provision ever being used in the time she was employed at the Victims Support Services: refer to Statement of Catherine Edwards, 4 July 2022, 21 [147–149].

212 Statement of Catherine Edwards, 4 July 2022, 19 [129–132].

213 Statement of Catherine Edwards, 4 July 2022, 4 [25–26].

214 Statement of Catherine Edwards, 4 July 2022, 4 [27].

215 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 13.

216 *Victims of Crime Assistance Act 1976* s 4(1). The provision also applies where the other person had some other justification for that act or where they were injured assisting a police officer to make an arrest or to prevent a crime from being committed.

217 *Victims of Crime Assistance Act 1976* s 5(2).

218 *Victims of Crime Assistance Act 1976* s 4(2). Different matters are covered where the applicant is the family member of a victim who has died. We do not discuss these matters here.

219 *Victims of Crime Assistance Act 1976* s 7(1A), (1B).

220 *Victims of Crime Assistance Act 1976* s 7(1C).

221 Submission 014 Anonymous, 48–49.

222 Statement of Catherine Edwards, 4 July 2022, 9 [64].

223 *Victims of Crime Assistance Act 1976* s 7(1D) as amended by the *Justice Miscellaneous (Royal Commission Amendments) Act 2022* s 45.

224 *Victims of Crime Assistance Act 1976* s 5(3).

225 *Victims of Crime Assistance Act 1976* s 5(3A).

226 Statement of Catherine Edwards, 4 July 2022, 19 [133–138].

227 *Victims of Crime Assistance Act* s 5(4).

228 *Victims of Crime Assistance Act 1976* s 10. An application for judicial review, on grounds including error of law, can be made under the *Judicial Review Act 2000*, but the merits of a decision cannot be reviewed.

229 *Victims of Crime Assistance Act 1976* (Vic) s 59(1).

230 *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic) s 46.

231 *Victims Rights and Support Act 2013* (NSW) ss 40(7), 51.

232 Submission 014 Anonymous, 45.

233 Submission 014 Anonymous, 46.

234 Submission 014 Anonymous, 33.

235 Submission 014 Anonymous, 33.

236 Submission 014 Anonymous, 33.

237 Statement of Catherine Edwards, 4 July 2022, 6 [39].

238 Statement of Catherine Edwards, 4 July 2022, 7 [45].

239 Statement of Catherine Edwards, 4 July 2022, 6 [40]–7 [44].

240 Statement of Catherine Edwards, 4 July 2022, 7 [46].

241 Transcript of Ginna Webster, 8 July 2022, 2699 [29–36], as modified by Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023.

242 Administrative decisions currently subject to merits review by the Tasmanian Civil and Administrative Tribunal include decisions under the *Motor Accidents (Liabilities and Compensation) Act 1973*, *Workers' (Occupational Diseases) Relief Fund Act 1954* and *Workers Rehabilitation and Compensation Act 1988*.

243 For a discussion of the importance of access to information for victim-survivors of child sexual abuse in institutional contexts, refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 87–88. Refer also to Statement of Warren Strange, 28 May 2022, 30 [100], which discusses the importance of records to people who have few records of childhood, noting: 'They may assist in restoring a sense of who an individual is, where they came from, why they went into care, and may help re-establish family connections'.

244 *Right to Information Act 2009* s 7. Refer also to *Personal Information Protection Act 2004* sch 1, cl 6. For an overview of rights to information and privacy legislation in Australia, refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 88–92.

245 As discussed above, victim-survivors may also obtain some information about offenders through the Eligible Persons Register. There are also civil litigation procedures, such as discovery, which can be used to obtain government information.

246 Transcript of Samuel Leishman, 13 May 2022, 1062 [1–8].

247 For definitions and descriptions of the stages of record keeping, refer to *Royal Commission into Institutional Responses to Child* Sexual *Abuse* (Final Report, December 2017) vol 8, 40–41.

248 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 30. For an overview of the impact of poor records and record keeping on victim-survivors of child sexual abuse in institutional contexts, refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 42–43.

249 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 108–109, Recommendation 8.4.

250 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 108–109, Recommendation 8.4.

251 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 10.

252 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 22, Recommendations 8.1, 8.2 and 8.3.

253 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 22, Recommendation 8.1.

254 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 22, Recommendations 8.2 and 8.3.

255 Office of the State Archivist, *Disposal Schedule for Records Relating to Child Abuse: Disposal Authorisation DA2520* (December 2019).

256 Office of the State Archivist, *Disposal Schedule for Records Relating to Child Abuse: Disposal Authorisation DA2520* (December 2019) 2.

257 Office of the State Archivist, *Notice of a Disposal Freeze on Records Relating to Children* (December 2019) 1.

258 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23.

259 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23. Refer also to Office of the State Archivist, *Information and Records Management Standard* (28 October 2020).

260 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23.

261 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23–24.

262 Department of Communities, 'Item 15', 13 September 2021, 3, produced by the Department of Communities in response to a Commission notice to produce.

263 Submission 107 knowmore, 4.

264 Statement of Michael Pervan, 14 June 2022, 96 [529].

265 Statement of Michael Pervan, 14 June 2022, 87 [472].

266 Statement of Kathrine Morgan-Wicks, 24 May 2022, 48 [412].

267 Statement of Kathrine Morgan-Wicks, 24 May 2022, 49 [415–416].

268 Statement of Timothy Bullard, 10 May 2022, 64 [403].

269 Statement of Michael Pervan, 14 June 2022, 86 [472], 96 [529].

270 Statement of Kathrine Morgan-Wicks, 24 May 2022, 49 [415–416]; Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 24.

271 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 2.

272 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 2.

273 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 3.

274 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 24.

275 The name 'Rachel' is a pseudonym; Order of the Commission of Inquiry, restricted publication order, 11 May 2022; Transcript of 'Rachel', 11 May 2022, 823 [10-12].

276 Transcript of 'Rachel', 11 May 2022, 823 [12–16].

277 Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 15.

278 Statement of Angela Sdrinis, 5 May 2022, 9 [42].

279 Statement of Angela Sdrinis, 5 May 2022, 9 [42].

280 Letter from Timothy Bullard to Commission of Inquiry, 9 February 2023, 10. Department for Education, Children and Young People, *Procedural Fairness Response*, 16 March 2023, 22–23.

281 The Northern Territory combines the management of freedom of information, privacy and records in the *Information Act 2002* (NT). South Australia and Western Australia do not have separate privacy legislation. South Australia relies on a Premier and Cabinet Circular: Department of Premier and Cabinet, *PC012 Information Privacy Principles (IPPS) Instructions* (Government of South Australia, May 2020). Western Australia is drafting privacy and responsible information-sharing legislation: Government of Western Australia, *Privacy and Responsible Information Sharing* (Web Page, 14 December 2022) <https://www.wa.gov.au/government/privacy-and-responsible-information-sharing>.

282 The Right to Information Act categorises these channels as 'required disclosure', 'routine disclosure' and 'active disclosure': *Right to Information Act 2009* ss 5, 12(2).

283 *Right to Information Act 2009* s 12(3).

284 *Right to Information Act 2009* s 7.

285 Refer to Part 3 of the *Right to Information Act 2009*.

286 *Right to Information Act 2009* ss 44, 45.

287 *Personal Information Protection Act 2004*.

288 *Personal Information Protection Act 2004* sch 1, cl 6.

289 *Personal Information Protection Act 2004* sch 1, cl 6(1). 'Personal information custodian' means: a public authority; any body, organisation or person who has entered into a personal information contract relating to personal information; or a prescribed body: *Personal Information Protection Act 2004* s 3.

290 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 93.

291 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 103.

292 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 23, Recommendation 8.4.

293 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23.

294 Department of Justice, *Fifth Annual Progress Report and Action Plan 2023: Appendix A* (Report, December 2022) 23.

295 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 1 [2].

296 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 1 [3].

297 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 1 [3].

298 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 2 [4].

299 The Department of Health amended some of the claimed exemptions during the Ombudsman's review process. For details, see: Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 2 [5].

300 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 31 [207].

301 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 31 [208].

302 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 31 [208].

303 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 25 [182].

304 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 25 [182].

305 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 28 [190].

306 Ombudsman Tasmania, *Right to Information Act Review: Camille Bianchi and the Department of Health* (Case reference: O2006-113, 4 November 2021) 22 [167].

307 Transcript of Camille Bianchi, 5 May 2022, 461 [35–38].

308 Transcript of Camille Bianchi, 5 May 2022, 462 [21–22].

309 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 30.

310 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 30.

311 Ombudsman Tasmania, *Annual Report 2019–2020* (Report, 2020) 29, 75.

312 Statement of Angela Sdrinis, 5 May 2022, 3 [14].

313 Statement of Angela Sdrinis, 5 May 2022, 3 [13].

314 Transcript of Warren Strange, 12 May 2022, 1032 [47].

315 Statement of Warren Strange, 28 May 2022, 30 [101]–32 [107].

316 Information and Privacy Commission New South Wales, *National Dashboard – Utilisation of Information Access Rights – 2020–21* (Web Page) <https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP_Metrics_all_jusridictions_all_years_June_2022.pdf>. This analysis was commissioned and published by the Association of Information Access Commissioners of Australia and New Zealand, the network of authorities who administer freedom of information legislation: Office of the Australian Information Commissioner, *Regulatory Networks* (Web Page) <https://www.oaic.gov.au/engage-with-us/networks/international-networks>.

317 Richard Connock, *Procedural Fairness Response,* 17 May 2023, 2.

318 *Right to Information Act 2009* s 3(4)(b).

319 *Government Information (Public Access) Act 2009* (NSW) s 12; *Right to Information Act 2009* (Qld) s 39; *Information Privacy Act 2009* (Qld) ss 58, 64; *Freedom of Information Act 2016* (ACT) s 9.

320 Refer to *Freedom of Information Act 1982* (Vic) s 29 (documents containing matter communicated by any other State) and s 30 (internal working documents). Section 36 contains an exemption due to a 'disclosure contrary to public interest'; however, this exemption is confined to matters affecting the economy of Victoria, business and financial affairs and council documents.

321 *Right to Information Act 2009* sch 1. Schedule 2 lists matters that are irrelevant to assessment of public interest.

322 Refer to, for example, *Government Information (Public Access) Act 2009* (NSW) s 14; *Right to Information Act 2009* (Qld) sch 4.

323 It should be noted that the exemptions in the *Right to Information Act 2009* sch 1 include a broad range of matters, not all of which are relevant to the issues discussed in our Inquiry. For example, these include business information and information relating to law enforcement.

324 *Personal Information Protection Act 2004* sch 1, cl 6(1)(a).

325 *Personal Information Protection Act 2004* sch 1, cl 6(1)(b).

326 Consultation with Ombudsman Tasmania, 2 September 2021.

327 *Personal Information Protection Act 2004* sch 1, cl 6(1)(a).

328 Refer to, for example, *Privacy and Data Protection Act 2014* (Vic) sch 1, cl 6; *Privacy and Personal Information Act 1998* (NSW) s 14; *Information Privacy Act 2014* (ACT) sch 1, cl 12.1 and *Information Act 2002* (NT) sch 2, cl 6.1.

329 *Right to Information Act 2009* s 36(1).

330 For a discussion of the approach to a third party's privacy, refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 89—90.

331 *Privacy and Data Protection Act 2014* (Vic) sch 1, cl 6.1(b). Refer also to *Information Act 2002* (NT) sch 2, cl 6.1(c).

332 *Right to Information Act 2009* s 36(2).

333 *Right to Information Act 2009* s 36(3), (4).

334 *Right to Information Act 2009* s 36(5).

335 Statement of Warren Strange, 28 May 2022, 31 [102].

336 Transcript of Warren Strange, 12 May 2022, 1033 [27–28].

337 Transcript of Samuel Leishman, 13 May 2022, 1061 [8] –1063 [38].

338 Transcript of Samuel Leishman, 13 May 2022, 1061 [22–45].

339 Transcript of Samuel Leishman, 13 May 2022, 1062 [1–8].

340 Transcript of Samuel Leishman, 13 May 2022, 1062 [37–46].

341 Transcript of Timothy Bullard, 13 May 2022, 1071 [26–27].

342 Transcript of Timothy Bullard, 13 May 2022, 1071 [32–34].

343 Transcript of Timothy Bullard, 13 May 2022, 1071 [36–41].

344 Transcript of Samuel Leishman, 12 May 2022, 1063 [9–10].

345 *Right to Information Act 2009* s 15(1).

346 *Right to Information Act 2009* s 15(5). The timeframes for consultation, notification and review in these instances mean the process may require more time than the additional 20 days. Refer to the timeframes for these processes in the *Right to Information Act 2009* ss 36, 37.

347 *Right to Information Act 2009* s 15(4).

348 *Personal Information Protection Act 2004* sch 1, cl 6(1)(b).

349 Statement of Angela Sdrinis, 5 May 2022, 2–3 [13]. Refer also to Transcript of Angela Sdrinis, 12 May 2022, 1034 [12–19].

350 Statement of Warren Strange, 28 May 2022, 31 [105]. Refer also to Transcript of Warren Strange, 12 May 2022, 1033 [34–38].

351 Transcript of Angela Sdrinis, 12 May 2022, 1034 [3–5].

352 Submission 068 Care Leavers Australasia Network, 7. A submission from Shine Lawyers also noted that it can take months, sometimes in excess of a year, for victim-survivors to be provided with personal records: Submission 048 Shine Lawyers, 5–6.

353 Transcript of 'Rachel', 11 May 2022, 822.

354 Transcript of Ann Moxham, 12 May 2022, 1023 [46]–1024 [11].

355 Transcript of Emily Baker, 5 May 2022, 463 [37–40].

356 Transcript of Emily Baker, 5 May 2022, 464 [3–4].

357 Transcript of Emily Baker, 5 May 2022, 463 [47].

358 Information and Privacy Commission New South Wales, *National Dashboard – Utilisation of Information Access Rights – 2020–21* (Web Page) <https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP_Metrics_all_jusridictions_all_years_June_2022.pdf>.

359 Queensland did not supply information on this metric: Information and Privacy Commission New South Wales, *National Dashboard – Utilisation of Information Access Rights – 2020–21* (Web Page) <https://www.ipc.nsw.gov.au/sites/default/files/2022-06/OGP_Metrics_all_jusridictions_all_years_June_2022.pdf>.

360 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 28.

361 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 28–29.

362 Refer to, for example, Transcript of Timothy Bullard, 13 May 2022, 1073 [18]–1074 [30]; Statement of Gina Webster, 10 June 2022, 41 [258–261]; Statement of Kathrine Morgan-Wicks, 24 May 2022, 46 [396]–47 [398]; Statement of Michael Pervan, 14 June 2022, 88 [475]–89 [483].

363 Transcript of Timothy Bullard, 13 May 2022, 1074 [11–12].

364 Transcript of Timothy Bullard, 13 May 2022, 1074 [28–30].

365 Statement of Ginna Webster, 10 June 2022, 41 [258].

366 Statement of Kathrine Morgan-Wicks, 24 May 2022, 46 [394]

367 Statement of Ginna Webster, 10 June 2022, 42 [265]; Statement of Kathrine Morgan-Wicks, 24 May 2022, 47–48 [402]; Statement of Timothy Bullard, 10 May 2022, 61 [387].

368 Statement of Kathrine Morgan-Wicks, 24 May 2022, 48 [402].

369 Statement of Tim Bullard, 10 May 2022, 61 [387].

370 Transcript of Ann Moxham, 12 May 2022, 1023 [46]–1024 [11].

371 Statement of Ginna Webster, 10 June 2022, 42 [265–269].

372 Statement of Angela Sdrinis, 5 May 2022, 2–3 [13].

373 The application fee is 25 fee units: *Right to Information Act 2009* s 16(1). Refer also to: *Fee Units Act 1997* ss 5, 6. The value of a fee unit in 2023–2024 is $1.78: Department of Treasury and Finance, *Fee Units* (Web Page, 15 February 2023) <https://www.treasury.tas.gov.au/economy/economic-policy-and-reform/fee-units>.

374 *Right to Information Act 2009* s 16(2).

375 For a description, refer to *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 89.

376 Ombudsman Tasmania, *Guideline 1/2012: Guideline in Relation to Charges for Information* (21 April 2012).

377 Statement of Timothy Bullard, 10 May 2022, 61 [384].

378 Submission 061 Maurice Blackburn Lawyers, 3.

379 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31.

380 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31.

381 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31. A media report in February 2023 also suggested that filling staff vacancies continues to be a challenge: Alex Treacy, 'Ombudsman Tasmania: Three-Year Wait for Review Has Labor Fuming', *The Mercury* (online, 10 February 2023) <https://www.themercury.com.au/news/tasmania/ombudsman-tasmania-threeyear-wait-for-review-has-labor-fuming/news-story/2d4c760bb36f286940f77f3d99fcd43b>.

382 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31.

383 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31.

384 Ombudsman Tasmania, *Annual Report 2021–2022* (Report, 2022) 31.

385 Alex Treacy, 'Ombudsman Tasmania: Three-Year Wait for Review Has Labor Fuming', *The Mercury* (online, 10 February 2023) <https://www.themercury.com.au/news/tasmania/ombudsman-tasmania-threeyear-wait-for-review-has-labor-fuming/news-story/2d4c760bb36f286940f77f3d99fcd43b>. We do not have access to recent data to identify the details of recent requests, or to confirm the number of external review requests that have been cleared.

386 Alex Treacy, 'Ombudsman Tasmania: Three-Year Wait for Review Has Labor Fuming', *The Mercury* (online, 10 February 2023) <https://www.themercury.com.au/news/tasmania/ombudsman-tasmania-threeyear-wait-for-review-has-labor-fuming/news-story/2d4c760bb36f286940f77f3d99fcd43b>.

387 Alex Treacy, 'Ombudsman Tasmania: Three-Year Wait for Review Has Labor Fuming', *The Mercury* (online, 10 February 2023) <https://www.themercury.com.au/news/tasmania/ombudsman-tasmania-threeyear-wait-for-review-has-labor-fuming/news-story/2d4c760bb36f286940f77f3d99fcd43b>.

388 This is also the case for other Ombudsman decisions, but it causes particular problems in the context of release of information.

389 Consultation with Ombudsman Tasmania, 2 September 2021.

390 Refer to, for example, *Freedom of Information Act 1982* (Vic) pt VI, div 3; *Government Information (Public Access) Act 2009* (NSW) pt 5, div 4.

391 Statement of Warren Strange, 28 May 2022, 31 [103].

392 Statement of Warren Strange, 28 May 2022, 31 [103].

393 Transcript of Warren Strange, 12 May 2022, 1033 [18–25].

394 Statement of Warren Strange, 28 May 2022, 31 [105].

395 Submission 086 Angela Sdrinis, 75.

396 Refer to, for example, Statement of Warren Strange, 28 May 2022, 31 [104].

397 Statement of Kathrine Morgan-Wicks, 24 May 2022, 46 [391].

398 Statement of Tim Bullard, 10 May 2022, 78 [476–477]; Statement of Ginna Webster, 29 April 2022, 8 [68]; Statement of Michael Pervan, 14 June 2022, 89 [487].

399 *Royal Commission into Institutional Responses to Child Sexual Abuse* (Final Report, December 2017) vol 8, 22, Recommendation 8.4.

400 Statement of Ginna Webster, 10 June 2022, 21–22 [134]; Tasmania, *Parliamentary Debates,* House of Assembly, 24 May 2022, 21–29 (Jeremy Rockliff, Premier); Department of Premier and Cabinet, *Keeping Children Safer Implementation Status Report* (Report, 31 May 2023); Department of Premier and Cabinet, 'Keeping Children Safer Implementation Status Report', *Keeping Children Safer* (Policy Document, 31 May 2023) Action 2 <https://www.dpac.tas.gov.au/keepingchildrensafer>.

401 Department of Premier and Cabinet, *Keeping Children Safer Implementation Status Report* (Report, 31 May 2023); Department of Premier and Cabinet, 'Keeping Children Safer Implementation Status Report', *Keeping Children Safer* (Policy Document, 31 May 2023) Action 2 <https://www.dpac.tas.gov.au/keepingchildrensafer>.

402 Department of Premier and Cabinet, 'Keeping Children Safer Implementation Status Report', *Keeping Children Safer* (Policy Document, 31 May 2023) Action 2 <https://www.dpac.tas.gov.au/keepingchildrensafer>