

## Response to Criminal Justice Consultation paper

### Key issues for survivors and advocacy and support groups

The Alliance for Forgotten Australians congratulates the Royal Commission into Institutional Responses to Child Sexual Abuse for its comprehensive consultation paper.

However:

1. The Alliance is wary of entering an arena that is complex and often seen by survivors of sexual abuse as being “owned” and dominated by legal and medico-legal experts. If there is a field where a survivor feels intimidated it is the field of criminal justice. The arena of criminal justice is a foreign country; one enters this country warily and with vigilance for often the players the survivor is relying on are the very players who were unable or unwilling to help years ago when the abuse occurred.
2. The Alliance’s experience is that even when there has been a successful prosecution the survivor may still feel as if the system has used them for the its own purposes.
3. The notion that everyone deserves their day in court is worthy but the exercise of “your day in court” is fraught and potentially damaging.
4. Therefore the Alliance’s contribution to this discussion focuses on ways of reducing this damage while still honouring the legitimacy of legal process and recognising the critical importance of survivors gaining an element of justice.

### Chapter 3: Issues in police responses

Reports from survivors suggest that in many cases the police response has improved significantly. In Victoria the creation of the SANO task force (coming from the Parliamentary Inquiry which led to the *Betrayal of Trust* report) and its work has gained increasing credibility in survivor circles. Their willingness to deal directly with groups and to explain their processes is commendable.

SANO has also emphasised the importance of complaints being made even if the perpetrator is dead. This willingness to engage survivors in the criminal justice system even if there is no possibility of a prosecution being brought, provides a validation for past events.

AFA cannot stress how important continuity of police personnel is during the course of the investigation. It must be recognised that the issue of power and the imbalance of power remains at the forefront of many survivors perception of the “authorities”. The decision to report a crime of sexual abuse will once again bring the survivor up against the institution(s) which failed to protect and then report the abuse.

For police personnel, knowledge of complex trauma and its impact on adults who suffered in their childhood is important, but equally important is the need for police to understand the nature and impact of institutionalization. The need for an investigation to have organizational and operational practices that support the survivor are fundamental. Some of these practices will include an understanding of the institutional care environment and an emphasis on autonomy, collaboration and strength based approaches. Creating a safe environment where the past experiences are believed and validated is important. A non-judgemental approach is required; the focus needs to be on the complaint rather than the complainant.

The process itself needs to be carefully and repeatedly explained. Once a statement has been made the survivor will be anxious for the next step. Realistic timelines need to be provided. It is at this point that ensuring continuity of police personnel is important. The police role will become one of “touching base” and providing updates. Even if there is nothing to say about the progression of the case, the fact that contact is maintained and that the survivor does not feel abandoned is reassuring and will maintain trust and confidence.

### Chapter 4: Police responses and responsibility of institutions to report

What is the responsibility of an agency/support service/institution to pass on a report of abuse?

Some survivors feel they would be unable to report and discuss abuse if they knew the complaint was going to the police without their consent. Issues of power, trust and autonomy are at play here. To pass on information without consent can be seen as a breach of trust, as consent is an important element in maintaining “empowerment of the individual”.

One solution to this dilemma is the use of “blind reporting” as described by the Royal Commission in its *Final Report on Redress and Civil Litigation*. However AFA’s advice is that efforts need to be made by support services and staff to work through the issues and implications of not making a report, particularly if the alleged perpetrator is still alive. Many survivors have indicated that they may not be able to make a decision, on their own, to go to the police.

## **Chapter 5: Child sexual abuse offences**

A complaint that has repeatedly been made to AFA is that many historical sexual abuse events are, by dint of passage of time, difficult to particularise. Identifying particular dates and times and even locations can be challenging. Attempts to clarify these details in the search for precision (reasonably so given that our legal system is based on the right of innocence until proven guilty) can lead to damaging survivor responses and intense frustration.

This is a conundrum that continues to plague the bringing of matters before the court and the gaining of a successful prosecution. This is another argument for the creation of specialist historic abuse investigation units (such as SANO in Victoria) that are skilled at managing sensitively the ambiguity of the legal process that the survivor is undergoing.

## **Chapter 6: Third party offences**

AFA supports the following position in terms of reporting of child abuse namely: Penalties should apply to any person in a position of authority for,

- Failing to report child sexual abuse to police (mandatory reporting)
- Deliberate and intentional omission or acts to cover up information and evidence in relation to an investigation of child sexual abuse

## **Chapter 7: Issues in prosecution responses**

Many of the above remarks made in relation to the consistency of police personnel is applicable to prosecution responses. Ideally survivors need to be linked into witness services who can provide a consistent level of advice and support. Prosecution staff must be sensitive to the fear and trepidation the survivor will face entering the pointy end of the criminal justice process. Up to date information and consultation about any changes made to the charge sheet are important.

AFA is aware of cases where survivors have been informed at the door of the court that a number of charges have been dropped and/or downgraded. This behaviour simply serves to reinforce the foreign nature of the legal process and that the survivor is simply a pawn in a complex process.

## Chapter 9: Evidence of victims and survivors

Survivors can expect the court process to be clearly explained. The process of questioning and cross examination should be outlined in plain language. The presence of a calm and consistent support person is hugely important. The pre-recording of evidence would be helpful.

### Conclusion

AFA understands that gaining justice via the criminal justice system poses major challenges for individual or groups of Forgotten Australians. AFA understands that the historic abuse claims do not fit neatly into our adversarial and “beyond reasonable doubt” legal framework. But within this framework there is much that could be done to make the criminal justice journey easier and less stressful.

#### *In summary these are:*

Create a specialist historic abuse investigation and prosecution unit in each state and territory.

The unit will be trained in the impact of institutionalization and relevant trauma informed responses.

One of the performance indicators of this unit will be the number of investigators and prosecution staff that survivors are involved with. The preferred number is as low as possible!!

Caroline Carroll

Chairperson, Alliance for Forgotten Australians

November 2016