



**Government of South Australia**  
Attorney-General's Department

# Royal Commission into Institutional Responses to Child Sexual Abuse

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Government of South Australia's response to the Criminal Justice report

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# Foreword

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The Royal Commission into Institutional Responses to Child Sexual Abuse began in 2013 and is scheduled to conclude on 15 December 2017. Its [Criminal Justice Report](#), containing 85 recommendations was released on 14 August 2017. The report contained the Royal Commission's final recommendations on the responses of the criminal justice system to child sexual abuse, based on the laws, policies and information current at that time.

The recommendations of the Criminal Justice Report aim to ensure:

- the criminal justice system in each State and Territory operates in the interests of seeking justice for the community
- criminal justice responses are available for victims and survivors of child sexual abuse
- support is available for victims and survivors who are seeking criminal justice responses.

The [Royal Commission's](#) views and recommendations were informed by input they received from a broad range of sources and research.

Criminal justice systems in Australia operate based on an adversarial system of justice where both parties put forward their case to the court as an independent arbiter, and where guilt must be established beyond reasonable doubt. The report found in part that there is seen to be an imbalance between the prosecution and the accused and that survivors often felt that the criminal justice system is weighted in favour of the accused.

The report recommendations aims to make a positive difference to survivors in the criminal justice system, helping them to feel less vulnerable, and promote fairness for all parties involved in child sexual abuse investigations and prosecutions.

The Government of South Australia has considered the recommendations of the report. I am pleased to note that many of the recommendations have already been implemented in this state either due to consistent legislation or existing policies and practices. The work already completed as a result of the [Child Protection Systems Royal Commission](#) recommendations from former Royal Commissioner Nyland and her team have meant that we are well underway with much of this work.

The government can confirm that 58 of the Royal Commission's recommendations are either already in place or underway, ongoing or more appropriately directed to non-government entities. A further 26 recommendations are being further considered for their application and potential implications in this state. Only one recommendation, Recommendation 6(b), is not supported in part.

My thanks is extended to the agencies and their staff that have been involved in the consultation for and development of this response document. Many of the recommendations under further consideration will benefit from further consultation with participants in the South Australian criminal justice system, including with victims and their support groups.

I welcome the findings of the Royal Commission report. It provides us with a broad map for the continuous improvement of the criminal justice system in the area of child sexual abuse, ensuring fairness and justice for all of those who are involved.



**John Rau MP**  
**Deputy Premier**  
**Attorney-General**

## Glossary

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ATSI	Aboriginal and Torres Strait Islander
AGD	Attorney-General's Department (South Australia)
CAA	Courts Administration Authority of South Australia
CPD Central	<a href="#">Continuing professional development events</a> for legal practitioners in South Australia.
Criminal Justice Report	The Royal Commission into Institutional Responses to Child Sexual Abuse <a href="#">report</a> published on 14 August 2017
Child Protection Systems Royal Commission	The South Australian royal commission which considered laws, policies, practices and structures in place for children at risk of harm, abuse or neglect. The <a href="#">report</a> was delivered in 2016.
DCP	Department for Child Protection (South Australia)
DPP Guidelines	Director of Public Prosecutions South Australia <a href="#">Statement of Prosecution Policy and Guidelines</a>
IPCP	Interagency Code of Practice in Child Protection Course
NAIDOC	National Aboriginal and Islander Day Observance Committee
ODPP	Office of the Director of Public Prosecutions
PSB	Prosecution Services Branch (South Australia Police)
Steering Committee for the Report on Government Services	The <a href="#">Report on Government Services (RoGS)</a> provides information on the equity, effectiveness and efficiency of government services in Australia.
SAPOL	South Australia Police
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse

# Recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse

#	Recommendation	Government response
1	<p>In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:</p> <ul style="list-style-type: none"> <li>a) the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused</li> <li>b) criminal justice responses are available for victims and survivors</li> <li>c) victims and survivors are supported in seeking criminal justice responses.</li> </ul>	<b>Agency:</b> All
		Supported
	<p><b>DISCUSSION</b></p> <p>The government endorses this statement of principle and will continue to work towards its achievement, including via the measures discussed in response to the recommendations of the Royal Commission.</p>	Ongoing

## Current police responses

#	Recommendation	Government response
2	<p>Australian governments should refer to the Steering Committee for the <a href="#">Report on Government Services</a> for review the issues of:</p> <ul style="list-style-type: none"> <li>a) how the reporting framework for police services in the Report on Government Services could be extended to include reporting on child sexual abuse offences</li> <li>b) whether any outcome measures that would be appropriate for police investigations of child sexual abuse offences could be developed and reported on.</li> </ul>	<b>Agency:</b> <a href="#">SAPOL</a>
		Supported
	<p><b>DISCUSSION</b></p> <p>SAPOL has one member as the Chair of the National Police Committee for the Report on Government Services. This recommendation will be discussed in that context.</p>	Work is in progress

## Issues in police responses

### Principles for initial police responses

#	Recommendation	Government response
3	<p>Each Australian government should ensure that its policing agency:</p> <ul style="list-style-type: none"> <li>a) recognises that a victim or survivor’s initial contact with police will be important in determining their satisfaction with the entire criminal justice response and in influencing their willingness to proceed with a report and to participate in a prosecution</li> <li>b) ensures that all police who may come into contact with victims or survivors of institutional child sexual abuse are trained to:               <ul style="list-style-type: none"> <li>i. have a basic understanding of complex trauma and how it can affect people who report to police, including those who may have difficulties dealing with institutions or persons in positions of authority (such as the police)</li> <li>ii. treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues</li> </ul> </li> <li>c) establishes arrangements to ensure that, on initial contact from a victim or survivor, police refer victims and survivors to appropriate support services.</li> </ul>	<p><b>Agency:</b> SAPOL</p> <hr/> <p>Supported</p> <hr/> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>Current SAPOL practices are consistent with this recommendation. Recent reviews of SAPOL General Orders together with the Interagency Code of Practice in Child Protection Course (IPCP) provide SAPOL members with a broad understanding of the dynamics of child sexual abuse and how trauma may impact on a victim or survivor’s ability to interact with police and the judicial system in general.</p>		

## Encouraging reporting

#	Recommendation	Government response
4	<p>To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:</p> <ul style="list-style-type: none"> <li>a) takes steps to communicate to victims (and their families or support people where the victims are children or are particularly vulnerable) that their decision whether to participate in a police investigation will be respected – that is, victims retain the right to withdraw at any stage in the process and to decline to proceed further with police and/or any prosecution</li> <li>b) provides information on the different ways in which victims and survivors can report to police or seek advice from police on their options for reporting or not reporting abuse – this should be in a format that allows institutions and survivor advocacy and support groups and support services to provide it to victims and survivors</li> <li>c) makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting</li> <li>d) works with survivor advocacy and support groups and support services, including those working with people from culturally and linguistically diverse backgrounds and people with disability, to facilitate reporting by victims and survivors</li> <li>e) allows victims and survivors to benefit from the presence of a support person of their choice if they so wish throughout their dealings with police, provided that this will not interfere with the police investigation or risk contaminating evidence</li> <li>f) is willing to take statements from victims and survivors in circumstances where the alleged perpetrator is dead or is otherwise unlikely to be able to be tried.</li> </ul>	<p><b>Agency:</b> SAPOL</p> <hr/> <p>Supported</p> <hr/> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>Current SAPOL practices are consistent with this recommendation. Recent reviews of SAPOL General Orders together with the Interagency Code of Practice in Child Protection Course (IPCP) provide SAPOL members with a broad understanding of the dynamics of child sexual abuse and how trauma may impact on a victim or survivor’s ability to interact with police and the judicial system in general.</p>		

#	Recommendation	Government response
5	<p>To encourage reporting of allegations of child sexual abuse, including institutional child sexual abuse, among Aboriginal and Torres Strait Islander victims and survivors, each Australian government should ensure that its policing agency:</p> <p>a) takes the lead in developing good relationships with Aboriginal and Torres Strait Islander communities</p> <p>b) provides channels for reporting outside of the community (such as telephone numbers and online reporting forms).</p>	<b>Agency:</b> SAPOL
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>SAPOL regularly liaises with the <a href="#">ATSI</a> community in South Australia including via regular meetings with Aboriginal Legal Rights Movement, and participation in ATSI Youth Justice Fora, <a href="#">NAIDOC</a> and Reconciliation Week and the Don McSweeney and Power Cups and other community events. SAPOL employs a dedicated Aboriginal Policy Officer to continually improve engagement between police and the ATSI community.</p>		

#	Recommendation	Government response
6	<p>To encourage prisoners and former prisoners to report allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:</p> <p>a) provides channels for reporting that can be used from prison and that allow reports to be made confidentially</p> <p>b) does not require former prisoners to report at a police station.</p>	<b>Agency:</b> SAPOL
		Paragraph a) is completed
		Paragraph b) is not supported
<p><b>DISCUSSION</b></p> <p>SAPOL already has access to relevant channels for reporting as recommended in paragraph (a) such as through use of a secure location within relevant correctional facilities or by removing the person from the correctional facility for the purposes of an investigation.</p> <p>In relation to paragraph (b), initial reports post custody should ordinarily be made to frontline members at a police station, to facilitate the taking of statements and any other identified evidence by investigators. In exceptional circumstances, such as where SAPOL are informed that a person with complex communication needs would like to make a report, other arrangements are able to be considered on a case-by-case basis.</p>		No further action required

## Police investigations

#	Recommendation	Government response
7	<p>Each Australian government should ensure that its policing agency conducts investigations of reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles:</p> <ul style="list-style-type: none"> <li>a) While recognising the complexity of police rosters, staffing and transfers, police should recognise the benefit to victims and their families and survivors of continuity in police staffing and should take steps to facilitate, to the extent possible, continuity in police staffing on an investigation of a complaint</li> <li>b) Police should recognise the importance to victims and their families and survivors of police maintaining regular communication with them to keep them informed of the status of their report and any investigation unless they have asked not to be kept informed</li> <li>c) Particularly in relation to historical allegations of institutional child sexual abuse, police who assess or provide an investigative response to allegations should be trained to:               <ul style="list-style-type: none"> <li>i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record</li> <li>ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant.</li> </ul> </li> </ul>	<p><b>Agency:</b> SAPOL</p> <p>Supported</p> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>SAPOL's existing practices are consistent with the above principles. SAPOL ensures that specially trained officers within its Special Crime Investigation Branch, Family and Domestic Violence Branch and Criminal Investigation Branches conduct investigations into reports of child sexual abuse, with current arrangements providing continuity in investigations. Recent reviews of SAPOL General Orders together with the Interagency Code of Practice in Child Protection Course (IPCP) provide SAPOL members with a broad understanding of the dynamics of child sexual abuse and how trauma may impact on a victim or survivor's ability to interact with police and the judicial system in general.</p>		

#	Recommendation	Government response
8	<p>State and territory governments should introduce legislation to implement Recommendation 20-1 of the report of the Australian Law Reform Commission and the New South Wales Law Reform Commission Family violence: A national legal response in relation to disclosing or revealing the identity of a mandatory reporter to a law enforcement agency.</p> <p><b>DISCUSSION</b></p> <p>Existing South Australian legislation is consistent with these recommendations, in that s13 of the <i>Children’s Protection Act 1993</i> permits the disclosure of the identity of a mandatory notifier in the course of official duties (which would include disclosure to SAPOL for the purposes of a criminal investigation).</p> <p>While that provision is substantially replicated in the new <i>Child and Young People (Safety) Act 2017</i>, further consideration will be given to whether additional clarification is required in the drafting of regulations.</p>	<p><b>Agency:</b> AGD/SAPOL</p>
		<p>Supported</p> <p>Work is in progress</p>

### Investigative interviews for use as evidence in chief

#	Recommendation	Government response
9	<p>Each Australian government should ensure that its policing agency conducts investigative interviewing in relation to reports of child sexual abuse, including institutional child sexual abuse, in accordance with the following principles:</p> <ol style="list-style-type: none"> <li>a) all police who provide an investigative response (whether specialist or generalist) to child sexual abuse should receive at least basic training in understanding sexual offending, including the nature of child sexual abuse and institutional child sexual abuse offending</li> <li>b) all police who provide an investigative response (whether specialist or generalist) to child sexual abuse should be trained to interview the complainant in accordance with current research and learning about how memory works in order to obtain the complainant’s memory of the events</li> <li>c) the importance of video recorded interviews for children and other vulnerable witnesses should be recognised, as these interviews usually form all, or most, of the complainant’s and other relevant witnesses’ evidence in chief in any prosecution</li> <li>d) investigative interviewing of children and other vulnerable witnesses should be undertaken by police with specialist training. The specialist training should focus on: <ol style="list-style-type: none"> <li>i. a specialist understanding of child sexual abuse, including institutional child sexual abuse, and the developmental and communication needs of children and other vulnerable witnesses</li> <li>ii. skill development in planning and conducting interviews, including use of appropriate questioning techniques</li> </ol> </li> </ol>	<p><b>Agency:</b> SAPOL</p>

	<ul style="list-style-type: none"> <li>e) specialist police should undergo refresher training on a periodical basis to ensure that their specialist understanding and skills remain up to date and accord with current research</li> <li>f) from time to time, experts should review a sample of video recorded interviews with children and other vulnerable witnesses conducted by specialist police for quality assurance and training purposes and to reinforce best-practice interviewing techniques</li> <li>g) state and territory governments should introduce legislation to remove any impediments, including in relation to privacy concerns, to the use of video recorded interviews so that the relevant police officer, his or her supervisor and any persons engaged by police in quality assurance and training can review video recorded interviews for quality assurance and training purposes. This should not authorise the use of video recorded interviews for general training in a manner that would raise privacy concerns</li> <li>h) police should continue to work towards improving the technical quality of video recorded interviews so that they are technically as effective as possible in presenting the complainant's and other witnesses' evidence in chief</li> <li>i) police should recognise the importance of interpreters, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses</li> <li>j) intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses.</li> </ul>	<p>Supported</p> <hr/> <p>Work is in progress with respect to e) and f)</p>
<p><b>DISCUSSION</b></p> <p>SAPOL's existing practices are sufficient to satisfy the majority of this recommendation in terms of training offered at both recruit and specialist levels, and in terms of practices and facilities employed in interviewing children and other vulnerable witnesses based on reforms implemented as part of the <a href="#">AGD Disability Justice Plan</a>.</p> <p>SAPOL supports paragraphs e) and f) and is considering how they might best be implemented.</p>		

## Police charging decisions

#	Recommendation	Government response
10	<p>Each Australian government should ensure that its policing agency makes decisions in relation to whether to lay charges for child sexual abuse offences in accordance with the following principles:</p> <p>a) recognising that it is important to complainants that the correct charges be laid as early as possible so that charges are not significantly downgraded at or close to trial, police should ensure that care is taken, and that early prosecution advice is sought, where appropriate, in laying charges</p> <p>b) in making decisions about whether to charge, police should not:</p> <ol style="list-style-type: none"> <li>i. expect or require corroboration where the victim or survivor’s account does not suggest that there should be any corroboration available</li> <li>ii. rely on the absence of corroboration as a determinative factor in deciding not to charge, where the victim or survivor’s account does not suggest that there should be any corroboration available, unless the prosecution service advises otherwise</li> </ol>	<b>Agency:</b> SAPOL
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>SAPOL’s Prosecution Services Branch (PSB) operates consistently with the above principles. Corroboration, or lack thereof, is a factor for <a href="#">PSB</a> and <a href="#">ODPP</a> adjudicators to consider as per the <a href="#">DPP Guidelines</a> (which police prosecutors also follow), but is not determinative.</p>		

#	Recommendation	Government response
11	<p>The Victorian Government should review the operation of section 401 of the <i>Criminal Procedure Act 2009 (Vic)</i> and consider amending the provision to restrict the awarding of costs against police if it appears that the risk of costs awards might be affecting police decisions to prosecute. The government of any other state or territory that has similar provisions should conduct a similar review and should consider similar amendments.</p>	<b>Agency:</b> SAPOL
		Completed
		No further action required
<p><b>DISCUSSION</b></p> <p>In South Australia, the risks of adverse costs awards are not considered in decision-making around laying charges or continuing with a prosecution, and therefore no amendment is required.</p>		

## Police responses to reports of historical child sexual abuse

#	Recommendation	Government response
12	<p>Each Australian government should ensure that, if its policing agency does not provide a specialist response to victims and survivors reporting historical child sexual abuse, its policing agency develops and implements a document in the nature of a ‘guarantee of service’ which sets out for the benefit of victims and survivors – and as a reminder to the police involved – what victims and survivors are entitled to expect in the police response to their report of child sexual abuse. The document should include information to the effect that victims and survivors are entitled to:</p> <ul style="list-style-type: none"> <li>a) be treated by police with consideration and respect, taking account of any relevant cultural safety issues</li> <li>b) have their views about whether they wish to participate in the police investigation respected</li> <li>c) be referred to appropriate support services</li> <li>d) contact police through a support person or organisation rather than contacting police directly if they prefer</li> <li>e) have the assistance of a support person of their choice throughout their dealings with police unless this will interfere with the police investigation or risk contaminating evidence</li> <li>f) have their statement taken by police even if the alleged perpetrator is dead</li> <li>g) be provided with the details of a nominated person within the police service for them to contact</li> <li>h) be kept informed of the status of their report and any investigation unless they do not wish to be kept informed</li> <li>i) have the police focus on the credibility of the complaint or allegations rather than focusing only on the credibility of the complainant, recognising that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record.</li> </ul>	<p><b>Agency:</b> SAPOL</p> <hr/> <p>Supported</p> <hr/> <p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>SAPOL currently provides a specialist response via its Royal Commission Specialist Response Team. The continuation of such arrangements on a permanent basis is under consideration.</p>		

## Police responses to reports of child sexual abuse made by people with disability

#	Recommendation	Government response
13	<p>Each Australian government should ensure that its policing agency responds to victims and survivors with disability, or their representatives, who report or seek to report child sexual abuse, including institutional child sexual abuse, to police in accordance with the following principles:</p> <ul style="list-style-type: none"> <li>a) police who have initial contact with the victim or survivor should be non-judgmental and should not make any adverse assessment of the victim or survivor’s credibility, reliability or ability to make a report or participate in a police investigation or prosecution because of their disability</li> <li>b) police who assess or provide an investigative response to allegations made by victims and survivors with disability should focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant, and they should not make any adverse assessment of the victim or survivor’s credibility or reliability because of their disability</li> <li>c) police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview</li> <li>d) decisions in relation to whether to lay charges for child sexual abuse offences should take full account of the ability of any available intermediary scheme, and communication supports, to assist the victim or survivor to give their best evidence when required in the prosecution process.</li> </ul>	<p><b>Agency:</b> SAPOL</p> <p>Supported</p> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>SAPOL’s existing practices are consistent with these principles. SAPOL offers specialised training at both recruit and senior levels, and employs practices and facilities in interviewing victim and survivors with disability and other vulnerable witnesses based on reforms recently implemented as part of the AGD Disability Justice Plan. These reforms included access to communication assistants for the entirety of a vulnerable witness’ contact with the criminal justice system.</p>		

## Police responses and institutions

### Police communication and advice

#	Recommendation	Government response
14	<p>In order to assist in the investigation of current allegations of institutional child sexual abuse, each Australian government should ensure that its policing agency:</p> <p>a) develops and keeps under review procedures and protocols to guide police and institutions about the information and assistance police can provide to institutions where a current allegation of institutional child sexual abuse is made</p> <p>b) develops and keeps under review procedures and protocols to guide the police, other agencies, institutions and the broader community on the information and assistance police can provide to children and parents and the broader community where a current allegation of institutional child sexual abuse is made.</p>	<b>Agency:</b> SAPOL
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>Existing SAPOL procedures and protocols provide guidance to relevant officers for use in investigations and in making referrals to other agencies (both internal and external) for assistance.</p>		

#	Recommendation	Government response
15	<p>The New South Wales Standard Operating Procedures for Employment Related Child Abuse Allegations and the Joint Investigation Response Team Local Contact Point Protocol should serve as useful precedents for other Australian governments to consider.</p>	<b>Agency:</b> SAPOL
		Completed
		No further action required
<p><b>DISCUSSION</b></p> <p>Following consideration of precedents referred to in this recommendation, SAPOL's existing practices are considered appropriate for South Australia.</p> <p>Current practices applying to appropriate information sharing in the context of employment-related child abuse allegations were developed in South Australia following the Independent Education Inquiry (the <a href="#">Debelle Inquiry</a>) in 2013. SAPOL has further developed specific policy and procedures relating to Child Protection, Sexual Offences and Information Access and Release, which are consistent with statutory mandatory notification requirements, and the <a href="#">South Australian Information Privacy Principles and Information Sharing Guidelines</a>.</p>		

## Blind reporting

#	Recommendation	Government response
16	<p>In relation to blind reporting, institutions and survivor advocacy and support groups should:</p> <p>a) be clear that, where the law requires reporting to police, child protection or another agency, the institution or group or its relevant staff member or official will report as required</p> <p>b) develop and adopt clear guidelines to inform staff and volunteers, victims and their families and survivors, and police, child protection and other agencies as to the approach the institution or group will take in relation to allegations, reports or disclosures it receives that it is not required by law to report to police, child protection or another agency.</p>	<b>Agency: All</b>
		Supported
		Ongoing
	<p><b>DISCUSSION</b></p> <p>This recommendation is primarily applicable to institutions and survivor advocacy and support groups beyond those operated by government.</p> <p>To the extent that it does apply to government agencies, existing South Australian legislation places clear mandatory notification requirements on relevant persons where they suspect that a child or young person is or may be at risk of harm. The South Australian Information Privacy Principles and Information Sharing Guidelines, which apply to all government agencies and non-government organisations under contract with the government, provide clear guidance as to the appropriate treatment of personal information received by the agency, including the sharing of that information where it discloses that the wellbeing of a child or an adult may be at risk. The effectiveness of these requirements will continue to be monitored.</p>	

#	Recommendation	Government response
17	<p>If a relevant institution or survivor advocacy and support group adopts a policy of reporting survivors' details to police without survivors' consent – that is, if it will not make blind reports – it should seek to provide information about alternative avenues for a survivor to seek support if this aspect of the institution or group's guidelines is not acceptable to the survivor.</p>	<b>Agency: All</b>
		Supported
		Ongoing
	<p><b>DISCUSSION</b></p> <p>This recommendation is primarily applicable to institutions and survivor advocacy and support groups beyond those operated by government.</p> <p>To the extent that it does apply to government agencies, the South Australian Information Sharing Guidelines, which apply to all government agencies and non-government organisations under contract with the government, encourage providers to work together and coordinate services so that potential adverse outcomes (including of personal information being shared without consent) are prevented or lessened, and to do that from an early intervention perspective. The Guidelines further make clear that a formal report to SAPOL does not mean that existing coordination of services should stop. The effectiveness of these requirements will continue to be monitored.</p>	

#	Recommendation	Government response
18	Institutions and survivor advocacy and support groups that adopt a policy that they will not report the survivor's details without the survivor's consent should make a blind report to police in preference to making no report at all.	<b>Agency: All</b>
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>This recommendation has limited application to South Australian government institutions and non-government organisations under contract with the government, as the adoption of a policy to not report a survivor's details without consent would potentially be contrary to existing mandatory notification requirements and/or the Information Sharing Guidelines.</p> <p>SAPOL however supports the making of third party reports on behalf of a victim in appropriate circumstances, including via <i>Crimestoppers</i></p>		

#	Recommendation	Government response
19	Regardless of an institution or survivor advocacy and support group's policy in relation to blind reporting, the institution or group should provide survivors with:	<b>Agency: All</b>
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>This recommendation is primarily applicable to institutions and survivor advocacy and support groups beyond those operated by government.</p> <p>To the extent that it does apply to government agencies, the South Australian Information Sharing Guidelines, which apply to all government agencies and non-government organisations under contract with the government, encourage providers to work together and coordinate services so that potential adverse outcomes are prevented or lessened, which would include providing support to enable a report to be made to SAPOL where appropriate. The effectiveness of these requirements will continue to be monitored.</p>		

#	Recommendation	Government response
20	<p>Police should ensure that they review any blind reports they receive and that they are available as intelligence in relation to any current or subsequent police investigations.</p> <p>If it appears that talking to the survivor might assist with a police investigation, police should contact the relevant institution or survivor advocacy and support group, and police and the institution or group should cooperate to try to find a way in which the survivor will be sufficiently supported so that they are willing to speak to police.</p>	<p><b>Agency:</b> SAPOL</p> <hr/> <p>Supported</p> <hr/> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>SAPOL's existing practices are consistent with this recommendation. Beyond statutory mandatory notification requirements, employees of institutions or survivor advocacy and support groups are able to make third party reports on behalf of a victim to SAPOL, including via <i>Crimestoppers</i>.</p>		

## Persistent child sexual abuse offences

#	Recommendation	Government response
21	<p>Each state and territory government should introduce legislation to amend its persistent child sexual abuse offence so that:</p> <ul style="list-style-type: none"> <li>a) the actus reus is the maintaining of an unlawful sexual relationship</li> <li>b) an unlawful sexual relationship is established by more than one unlawful sexual act</li> <li>c) the trier of fact must be satisfied beyond reasonable doubt that the unlawful sexual relationship existed but, where the trier of fact is a jury, jurors need not be satisfied of the same unlawful sexual acts</li> <li>d) the offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed</li> <li>e) on sentencing, regard is to be had to relevant lower statutory maximum penalties if the offence is charged with retrospective application.</li> </ul>	<b>Agency:</b> AGD
		Completed
		No further action required
<p><b>DISCUSSION</b></p> <p>Legislation implementing this recommendation and to address the impact of a recent High Court ruling in <i>Chiro v R</i> [2017] HCA 37 was introduced into <i>Statutes Amendment (Attorney-General's Portfolio) (No 2) Act 2017</i> which passed Parliament in October 2017. Additional provisions relating to sentencing were included to address the particular issues arising from <i>Chiro</i>, thus recommendation 21(e) was not adopted in that legislative reform.</p>		

#	Recommendation	Government response
22	<p>The draft provision in Appendix H provides for the recommended reform. Legislation to the effect of the draft provision should be introduced.</p>	<b>Agency:</b> AGD
		Completed
		No further action required
<p><b>DISCUSSION</b></p> <p>See discussion for recommendation 21.</p>		

#	Recommendation	Government response
23	State and territory governments (other than Victoria) should consider introducing legislation to establish legislative authority for course of conduct charges in relation to child sexual abuse offences if legislative authority may assist in using course of conduct charges.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered, in light of the recent amendments noted in relation to recommendations 21 and 22.</p>	

#	Recommendation	Government response
24	State and territory governments should consider providing for any of the two or more unlawful sexual acts that are particularised for the maintaining an unlawful sexual relationship offence to be particularised as courses of conduct.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered, in light of the recent amendments noted in relation to recommendations 21 and 22.</p>	

## Grooming offences

#	Recommendation	Government response
25	To the extent they do not already have a broad grooming offence, each state and territory government should introduce legislation to amend its criminal legislation to adopt a broad grooming offence that captures any communication or conduct with a child undertaken with the intention of grooming the child to be involved in a sexual offence.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<p><b>DISCUSSION</b></p> <p>The existing South Australian provision, s63B of the <i>Criminal Law Consolidation Act</i>, is consistent with this recommendation, however consideration could be given to the clarification of its application if the appropriate opportunity presents.</p>		

#	Recommendation	Government response
26	Each state and territory government (other than Victoria) should introduce legislation to extend its broad grooming offence to the grooming of persons other than the child.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<p><b>DISCUSSION</b></p> <p>The existing South Australian provision, s63B of the <i>Criminal Law Consolidation Act</i>, is consistent with this recommendation, however consideration could be given to the clarification of its application if the appropriate opportunity presents.</p>		

## Position of authority offences

#	Recommendation	Government response
27	<p>State and territory governments should review any position of authority offences applying in circumstances where the victim is 16 or 17 years of age and the offender is in a position of authority (however described) in relation to the victim.</p> <p>If the offences require more than the existence of the relationship of authority (for example, that it be ‘abused’ or ‘exercised’), states and territories should introduce legislation to amend the offences so that the existence of the relationship is sufficient.</p>	<b>Agency:</b> AGD
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The existing South Australian provisions are consistent with this recommendation. A higher age of consent (being 18) applies in South Australia in relation to all relevant offences where the offender is in a position of authority to a child.</p>		

#	Recommendation	Government response
28	<p>State and territory governments should review any provisions allowing consent to be negated in the event of sexual contact between a victim of 16 or 17 years of age and an offender who is in a position of authority (however described) in relation to the victim.</p> <p>If the provisions require more than the existence of the relationship of authority (for example, that it be ‘abused’ or ‘exercised’), state and territory governments should introduce legislation to amend the provisions so that the existence of the relationship is sufficient.</p>	<b>Agency:</b> AGD
		Completed
		No further action is required.
<p><b>DISCUSSION</b></p> <p>The existing South Australian provisions are consistent with this recommendation. A higher age of consent (being 18) applies in South Australia in relation to all relevant offences where the offender is in a position of authority to a child.</p>		

#	Recommendation	Government response
29	<p>If there is a concern that one or more categories of persons in a position of authority (however described) may be too broad and may catch sexual contact which should not be criminalised when it is engaged in by such persons with children above the age of consent, state and territory governments could consider introducing legislation to establish defences such as a similar-age consent defence.</p>	<p><b>Agency:</b> AGD</p> <hr/> <p>Under consideration</p> <hr/> <p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>Relevant defences exist in South Australian legislation, but are not consistent throughout the suite of offences. This recommendation will be further considered to determine whether some consolidation or clarification of existing defences ought be recommended.</p>		

## Limitation periods and immunities

#	Recommendation	Government response
30	State and territory governments should introduce legislation to remove any remaining limitation periods, or any remaining immunities, that apply to child sexual abuse offences, including historical child sexual abuse offences, in a manner that does not revive any sexual offences that are no longer in keeping with community standards.	<b>Agency:</b> AGD
		Completed
		No further action is required
<b>DISCUSSION</b> The existing South Australian provision, section 72A of <i>the Criminal Law Consolidation Act 1935</i> , is consistent with this recommendation.		

#	Recommendation	Government response
31	Without limiting recommendation 30, the New South Wales Government should introduce legislation to give the repeal of the limitation period in section 78 of the Crimes Act 1900 (NSW) retrospective effect.	<b>Agency:</b> AGD
		Completed
		No further action is required
<b>DISCUSSION</b> This recommendation is not applicable to South Australia.		

## Failure to report offence

### Moral or ethical duty to report to police

#	Recommendation	Government response
32	Any person associated with an institution who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to police (and, if relevant, in accordance with any guidelines the institution adopts in relation to blind reporting under recommendation 16).	<b>Agency:</b> AGD
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>The South Australian government supports the moral or ethical duty to report in the circumstances described in this recommendation.</p>		

### Failure to report offence

#	Recommendation	Government response
33	<p>Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:</p> <p>a) the failure to report offence should apply to any adult person who:</p> <ol style="list-style-type: none"> <li>i. is an owner, manager, staff member or volunteer of a relevant institution – this includes persons in religious ministry and other officers or personnel of religious institutions</li> <li>ii. otherwise requires a Working with Children Check clearance for the purposes of their role in the institution</li> </ol> <p>but it should not apply to individual foster carers or kinship carers</p> <p>b) the failure to report offence should apply if the person fails to report to police in circumstances where they know, suspect, or should have suspected (on the basis that a reasonable person in their circumstances would have suspected and it was criminally negligent for the person not to suspect), that an adult associated with the institution was sexually abusing or had sexually abused a child</p> <p>c) relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster and kinship care services should be included (but not individual foster carers or kinship carers). Facilities and services provided by religious institutions, and any services or functions performed by persons in religious ministry, should be included</p> <p>d) if the knowledge is gained or the suspicion is or should have been formed after the failure to report offence commences, the failure</p>	<b>Agency:</b> AGD
		Under consideration
		Work is in progress

to report offence should apply if any of the following circumstances apply:

- i. a child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years)
  - ii. the person who is known to have abused a child or is or should have been suspected of abusing a child is either:
    - still associated with the institution
    - known or believed to be associated with another relevant institution
  - iii. the knowledge gained or the suspicion that is or should have been formed relates to abuse that may have occurred within the previous 10 years
- e) if the knowledge is gained or the suspicion is or should have been formed before the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply:
- i. a child to whom the knowledge relates or in relation to whom the suspicion is or should have been formed is still a child (that is, under the age of 18 years) and is still associated with the institution (that is, they are still in the care, supervision or control of the institution)
  - ii. the person who is known to have abused a child or is or should have been suspected of abusing a child is either:
    - still associated with the institution
    - known or believed to be associated with another relevant institution

## DISCUSSION

This recommendation will be further considered, in light of the mandatory notification offence provisions within the *Child and Young People (Safety) Act 2017*.

## Interaction with regulatory reporting

#	Recommendation	Government response
34	<p>State and territory governments should:</p> <p>a) ensure that they have systems in place in relation to their mandatory reporting scheme and any reportable conduct scheme to ensure that any reports made under those schemes that may involve child sexual abuse offences are brought to the attention of police</p> <p>b) include appropriate defences in the failure to report offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.</p>	<b>Agency:</b> AGD/DCP
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The existing South Australia position is consistent with this recommendation. Current DCP practice ensures that SAPOL are notified of reports of suspected criminal offending.</p> <p>South Australian legislation includes appropriate defences as per paragraph (b) of the recommendation - see section 31(2) of the <i>Child and Young People (Safety) Act 2017</i>.</p>		

## Treatment of religious confessions

#	Recommendation	Government response
35	<p>Each state and territory government should ensure that the legislation it introduces to create the criminal offence of failure to report recommended in recommendation 33 addresses religious confessions as follows:</p> <p>a) the criminal offence of failure to report should apply in relation to knowledge gained or suspicions that are or should have been formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession</p> <p>b) the legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective</p> <p>c) religious confession should be defined to include a confession about the conduct of a person associated with the institution made by a person to a second person who is in religious ministry in that second person's professional capacity according to the ritual of the church or religious denomination concerned.</p>	<b>Agency:</b> AGD
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The existing South Australian position is consistent with this recommendation. The <i>Child and Young People (Safety) Act 2017</i> requires mandatory reporting by ministers of religion, and has not replicated the former exemption applying to confessions.</p>		

## Failure to protect offence

#	Recommendation	Government response
36	<p>State and territory governments should introduce legislation to create a criminal offence of failure to protect a child within a relevant institution from a substantial risk of sexual abuse by an adult associated with the institution as follows:</p> <p>a) The offence should apply where:</p> <ol style="list-style-type: none"> <li>i. an adult person knows that there is a substantial risk that another adult person associated with the institution will commit a sexual offence against: <ul style="list-style-type: none"> <li>• a child under 16</li> <li>• a child of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child</li> </ul> </li> <li>ii. the person has the power or responsibility to reduce or remove the risk</li> <li>iii. the person negligently fails to reduce or remove the risk</li> </ol> <p>b) the offence should not be able to be committed by individual foster carers or kinship carers</p> <p>c) relevant institutions should be defined to include institutions that operate facilities or provide services to children in circumstances where the children are in the care, supervision or control of the institution. Foster care and kinship care services should be included, but individual foster carers and kinship carers should not be included. Facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included</p> <p>d) state and territory governments should consider the Victorian offence in section 49C of the <i>Crimes Act 1958</i> (Vic) as a useful precedent, with an extension to include children of 16 or 17 years of age if the person associated with the institution is in a position of authority in relation to the child</p>	<p><b>Agency:</b> AGD</p> <p>Under consideration</p> <p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>		

## Issues in prosecution responses

### Principles for prosecution responses

#	Recommendation	Government response
37	<p>All Australian Directors of Public Prosecutions, with assistance from the relevant government in relation to funding, should ensure that prosecution responses to child sexual abuse are guided by the following principles:</p> <ul style="list-style-type: none"> <li>a) all prosecution staff who may have professional contact with victims of institutional child sexual abuse should be trained to have a basic understanding of the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and how it can affect people who are involved in a prosecution process, including those who may have difficulties dealing with institutions or person in positions of authority</li> <li>b) while recognising the complexity of prosecution staffing and court timetables, prosecution agencies should recognise the benefit to victims and their families and survivors of continuity in prosecution team staffing and should take steps to facilitate, to the extent possible, continuity in staffing of the prosecution team involved in a prosecution</li> <li>c) prosecution agencies should continue to recognise the importance to victims and their families and survivors of the prosecution agency maintaining regular communication with them to keep them informed of the status of the prosecution unless they have asked not to be kept informed</li> <li>d) witness assistance services should be funded and staffed to ensure that they can perform their task of keeping victims and their families and survivors informed and ensuring that they are put in contact with relevant support services, including staff trained to provide a culturally appropriate service for Aboriginal and Torres Strait Islander victims and survivors. Specialist services for children should also be considered</li> <li>e) particularly in relation to historical allegations of institutional child sexual abuse, prosecution staff who are involved in giving early charge advice or in prosecuting child sexual abuse matters should be trained to: <ul style="list-style-type: none"> <li>i. be non-judgmental and recognise that many victims of child sexual abuse will go on to develop substance abuse and mental health problems, and some may have a criminal record</li> <li>ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant</li> </ul> </li> <li>f) prosecution agencies should recognise that children with disability are at a significantly increased risk of abuse, including child sexual abuse. Prosecutors should take this increased risk into account in any decisions they make in relation to prosecuting child sexual abuse offences.</li> </ul>	<p><b>Agency:</b> ODPP</p> <hr/> <p>Supported</p> <hr/> <p>Work is in progress</p>

## DISCUSSION

The ODPP are in the process of working towards full compliance with this recommendation.

#	Recommendation	Government response
38	Each state and territory government should facilitate the development of standard material to provide to complainants or other witnesses in child sexual abuse trials to better inform them about giving evidence. The development of the standard material should be led by Directors of Public Prosecutions in consultation with Witness Assistance Services, public defenders (where available), legal aid services and representatives of the courts to ensure that it:  a) is likely to be of adequate assistance for complainants who are not familiar with criminal trials and giving evidence  b) is fair to the accused as well as to the prosecution  c) does not risk rehearsing or coaching the witness.	<b>Agency:</b> ODPP
		Supported
		Work is in progress
<b>DISCUSSION</b> The ODPP are in the process of working towards full compliance with this recommendation.		

## Charging and plea decisions

#	Recommendation	Government response
39	<p>All Australian Directors of Public Prosecutions should ensure that prosecution charging and plea decisions in prosecutions for child sexual abuse offences are guided by the following principles:</p> <ul style="list-style-type: none"> <li>a) prosecutors should recognise the importance to complainants of the correct charges being laid as early as possible so that charges are not significantly downgraded or withdrawn at or close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought</li> <li>b) regardless of whether such advice has been sought, prosecutors should confirm the appropriateness of the charges as early as possible once they are allocated the prosecution to ensure that the correct charges have been laid and to minimise the risk that charges will have to be downgraded or withdrawn closer to the trial date</li> <li>c) while recognising the benefit of securing guilty pleas, prosecution agencies should also recognise that it is important to complainants – and to the criminal justice system – that the charges for which a guilty plea is accepted reasonably reflect the true criminality of the abuse they suffered</li> <li>d) prosecutors must endeavour to ensure that they allow adequate time to consult the complainant and the police in relation to any proposal to downgrade or withdraw charges or to accept a negotiated plea and that the complainant is given the opportunity to obtain assistance from relevant witness assistance officers or other advocacy and support services before they give their opinion on the proposal. If the complainant is a child, prosecutors must endeavour to ensure that they give the child the opportunity to consult their carer or parents unless the child does not wish to do so.</li> </ul>	<p><b>Agency:</b> ODPP</p> <hr/> <p>Supported</p> <hr/> <p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>The ODPP are in the process of working towards full compliance with this recommendation.</p>		

## ODPP complaints and oversight mechanisms

#	Recommendation	Government response
40	Each Australian Director of Public Prosecutions should: <ul style="list-style-type: none"> <li>a) have comprehensive written policies for decision-making and consultation with victims and police</li> <li>b) publish all policies online and ensure that they are publicly available</li> <li>c) provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.</li> </ul>	<b>Agency:</b> ODPP
		Supported
		Work is in progress
<b>DISCUSSION</b> The ODPP are in the process of working towards full compliance with this recommendation.		

#	Recommendation	Government response
41	Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.	<b>Agency:</b> ODPP
		Supported
		Work is in progress
<b>DISCUSSION</b> The ODPP are in the process of working towards full compliance with this recommendation.		

#	Recommendation	Government response
42	Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.	<b>Agency:</b> ODPP
		Supported
		Work in progress
<b>DISCUSSION</b> The ODPP are in the process of working towards full compliance with this recommendation.		

#	Recommendation	Government response
43	Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports.	<b>Agency: ODPP</b> Supported Work is in progress
<p><b>DISCUSSION</b></p> <p>The ODPP are in the process of working towards full compliance with this recommendation.</p>		

## Tendency and coincidence and joint trials

#	Recommendation	Government response
44	In order to ensure justice for complainants and the community, the laws governing the admissibility of tendency and coincidence evidence in prosecutions for child sexual abuse offences should be reformed to facilitate greater admissibility and cross-admissibility of tendency and coincidence evidence and joint trials.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered.		

#	Recommendation	Government response
45	Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible: <ol style="list-style-type: none"> <li>a) if the court thinks that the evidence will, either by itself or having regard to the other evidence, be ‘relevant to an important evidentiary issue’ in the proceeding, with each of the following kinds of evidence defined to be ‘relevant to an important evidentiary issue’ in a child sexual offence proceeding:               <ol style="list-style-type: none"> <li>i. evidence that shows a propensity of the defendant to commit particular kinds of offences if the commission of an offence of the same or a similar kind is in issue in the proceeding</li> <li>ii. evidence that is relevant to any matter in issue in the proceeding if the matter concerns an act or state of mind of the defendant and is important in the context of the proceeding as a whole</li> </ol> </li> <li>b) unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both:               <ol style="list-style-type: none"> <li>i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant</li> <li>ii. if there is a jury, the giving of appropriate directions to the jury about the relevance and use of the evidence will not remove the risk</li> </ol> </li> </ol>	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered.		

#	Recommendation	Government response
46	Common law principles or rules that restrict the admission of propensity or similar fact evidence should be explicitly abolished or excluded in relation to the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered, including via proposed interjurisdictional discussions within the Council of Attorneys-General (CAG).		

#	Recommendation	Government response
47	Issues of concoction, collusion or contamination should not affect the admissibility of tendency or coincidence evidence about the defendant in a child sexual offence prosecution. The court should determine admissibility on the assumption that the evidence will be accepted as credible and reliable, and the impact of any evidence of concoction, collusion or contamination should be left to the jury or other fact-finder.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered.		

#	Recommendation	Government response
48	Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered.		

#	Recommendation	Government response
49	Evidence of: a) the defendant's prior convictions b) acts for which the defendant has been charged but not convicted (other than acts for which the defendant has been acquitted) should be admissible as tendency or coincidence evidence if it otherwise satisfies the test for admissibility of tendency or coincidence evidence about a defendant in a child sexual offence prosecution.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<b>DISCUSSION</b> This recommendation will be further considered.	

#	Recommendation	Government response
50	Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<b>DISCUSSION</b> This recommendation will be further considered.	

#	Recommendation	Government response
51	The draft provisions in Appendix N provide for the recommended reforms for <i>Uniform Evidence Act</i> jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non Uniform Evidence Act jurisdictions.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<b>DISCUSSION</b> This recommendation will be further considered.	

## Evidence of victims and survivors

### Prerecording

#	Recommendation	Government response
52	<p>State and territory governments should ensure that the necessary legislative provisions and physical resources are in place to allow for the prerecording of the entirety of a witness's evidence in child sexual abuse prosecutions. This should include both:</p> <p>a) in summary and indictable matters, the use of a prerecorded investigative interview as some or all of the witness's evidence in chief</p> <p>b) in matters tried on indictment, the availability of pre-trial hearings to record all of a witness's evidence, including cross-examination and re-examination, so that the evidence is taken in the absence of the jury and the witness need not participate in the trial itself.</p>	<b>Agency:</b> AGD/ <a href="#">CAA</a>
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions, sections 12AB and 13 of the <i>Evidence Act 1929</i>, are consistent with this recommendation.</p>		

#	Recommendation	Government response
53	<p>Full prerecording should be made available for:</p> <p>a) all complainants in child sexual abuse prosecutions</p> <p>b) any other witnesses who are children or vulnerable adults</p> <p>c) any other prosecution witness that the prosecution considers necessary.</p>	<b>Agency:</b> AGD/CAA
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions, sections 12AB and 13 of the <i>Evidence Act 1929</i>, are consistent with this recommendation.</p>		

#	Recommendation	Government response
54	Where the prerecording of cross-examination is used, it should be accompanied by ground rules hearings to maximise the benefits of such a procedure.	<b>Agency:</b> AGD/CAA
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions and the relevant Court rules allow for directions hearings to be held to address these issues.</p>		

#	Recommendation	Government response
55	State and territory governments should work with courts to improve the technical quality of closed circuit television and audio visual links and the equipment used and staff training in taking and replaying prerecorded and remote evidence.	<b>Agency:</b> AGD/CAA
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>The South Australian government will continue to consider improvements to facilities and services within the courts to enhance prerecording and remote evidence.</p>		

## Recording

#	Recommendation	Government response
56	State and territory governments should introduce legislation to require the audiovisual recording of evidence given by complainants and other witnesses that the prosecution considers necessary in child sexual abuse prosecutions, whether tried on indictment or summarily, and to allow these recordings to be tendered and relied on as the relevant witness's evidence in any subsequent trial or retrial. The legislation should apply regardless of whether the relevant witness gives evidence live in court, via closed circuit television or in a prerecorded hearing.	<b>Agency:</b> AGD/CAA
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions, sections 13C and 13D of the <i>Evidence Act 1929</i>, are consistent with this recommendation.</p>		

#	Recommendation	Government response
57	State and territory governments should ensure that the courts are adequately resourced to provide this facility, in terms of both the initial recording and its use in any subsequent trial or retrial.	<b>Agency:</b> AGD/CAA
		Supported
		Ongoing
<b>DISCUSSION</b> The South Australian government will continue to consider improvements to facilities and services within the courts to enhance prerecording of evidence.		

#	Recommendation	Government response
58	If it is not practical to record evidence given live in court in a way that is suitable for use in any subsequent trial or retrial, prosecution guidelines should require that the fact that a witness may be required to give evidence again in the event of a retrial be discussed with witnesses when they make any choice as to whether to give evidence via prerecording, closed circuit television or in person.	<b>Agency:</b> ODPP
		Completed
		No further action is required
<b>DISCUSSION</b> Current ODPP practice is consistent with this recommendation.		

#	Recommendation	Government response
59	<p>State and territory governments should establish intermediary schemes similar to the Registered Intermediary Scheme in England and Wales which are available to any prosecution witness with a communication difficulty in a child sexual abuse prosecution. Governments should ensure that the scheme:</p> <ul style="list-style-type: none"> <li>a) requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses</li> <li>b) provides intermediaries with training on their role and in understanding that their duty is to assist the court to communicate with the witness and to be impartial</li> <li>c) makes intermediaries available at both the police interview stage and trial stage</li> <li>d) enables intermediaries to provide recommendations to police and the court on how best to communicate with the witness and to intervene in an interview or examination where they observe a communication breakdown.</li> </ul>	<p><b>Agency: AGD</b></p>
		<p>Completed</p> <p>No further action is required</p>
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions as implemented under the <i>Statutes Amendment (Vulnerable Witnesses) Act 2015</i>, provide for communication partners to assist vulnerable witnesses consistent with this recommendation.</p>		

#	Recommendation	Government response
60	<p>State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a prerecorded hearing or during the trial. This should be essential where a witness intermediary scheme is in place and should allow, at a minimum, a report from an intermediary to be considered.</p>	<p><b>Agency: AGD/CAA</b></p>
		<p>Completed</p> <p>No further action is required</p>
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions within the <i>Evidence Act 1929</i> and the relevant Court rules allow for directions hearings to be held to address these issues.</p>		

## Other special measures

#	Recommendation	Government response
61	<p>The following special measures should be available in child sexual abuse prosecutions for complainants, vulnerable witnesses and other prosecution witnesses where the prosecution considers it necessary:</p> <ul style="list-style-type: none"> <li>a) giving evidence via closed circuit television or audio visual link so that the witness is able to give evidence from a room away from the courtroom</li> <li>b) allowing the witness to be supported when giving evidence, whether in the courtroom or remotely, including, for example, through the presence of a support person or a support animal or by otherwise creating a more child-friendly environment</li> <li>c) if the witness is giving evidence in court, using screens, partitions or one-way glass so that the witness cannot see the accused while giving evidence</li> <li>d) clearing the public gallery of a courtroom during the witness's evidence</li> <li>e) the judge and counsel removing their wigs and gowns.</li> </ul>	<p><b>Agency:</b> AGD/CAA</p>
		<p>Completed</p>
		<p>No further action is required</p>
	<p><b>DISCUSSION</b></p> <p>The current South Australian provisions, sections 13 and 13A of the <i>Evidence Act 1929</i>, are consistent with this recommendation.</p>	

## Courtroom issues

#	Recommendation	Government response
62	<p>State and territory governments should introduce legislation to allow a child's competency to give evidence in child sexual abuse prosecutions to be tested as follows:</p> <ul style="list-style-type: none"> <li>a) where there is any doubt about a child's competence to give evidence, a judge should establish the child's ability to understand basic questions asked of them by asking simple, non-theoretical questions – for example, about their age, school, family et cetera</li> <li>b) where it does not appear that the child can give sworn evidence, the judge should simply ask the witness for a promise to tell the truth and allow the examination of the witness to proceed.</li> </ul>	<p><b>Agency:</b> AGD/CAA</p>
		<p>Under consideration</p>
		<p>Work is in progress</p>
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>	

## Use of interpreters

#	Recommendation	Government response
63	State and territory governments should provide adequate interpreting services such that any witness in a child sexual abuse prosecution who needs an interpreter is entitled to an interpreter who has sufficient expertise in their primary language, including sign language, to provide an accurate and impartial translation.	<p data-bbox="1090 327 1402 383"><b>Agency:</b> AGD/CAA</p> <p data-bbox="1090 383 1402 465">Completed</p> <p data-bbox="1090 465 1402 566">No further action is required</p>
<p data-bbox="300 584 453 613"><b>DISCUSSION</b></p> <p data-bbox="300 636 1299 696">The current South Australian position is sufficient, in that the courts are able to ensure that witnesses are provided with an interpreter where required.</p>		

## Judicial directions and informing juries

### Reforming judicial directions

#	Recommendation	Government response
64	State and territory governments should consider or reconsider the desirability of partial codification of judicial directions now that Victoria has established a precedent from which other jurisdictions could develop their own reforms.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<b>DISCUSSION</b> This recommendation will be further considered.	

#	Recommendation	Government response
65	Each state and territory government should review its legislation and introduce any amending legislation necessary to ensure that it has the following provisions in relation to judicial directions and warnings: a) delay and credibility: Legislation should provide that: i. there is no requirement for a direction or warning that delay affects the complainant's credibility ii. the judge must not direct, warn or suggest to the jury that delay affects the complainant's credibility unless the direction, warning or suggestion is requested by the accused and is warranted on the evidence in the particular circumstances of the trial iii. in giving any direction, warning or comment, the judge must not use expressions such as 'dangerous or unsafe to convict' or 'scrutinise with great care' b) delay and forensic disadvantage: Legislation should provide that: i. there is no requirement for a direction or warning as to forensic disadvantage to the accused ii. the judge must not direct, warn or suggest to the jury that delay has caused forensic disadvantage to the accused unless the direction, warning or suggestion is requested by the accused and there is evidence that the accused has suffered significant forensic disadvantage iii. the mere fact of delay is not sufficient to establish forensic disadvantage iv. in giving any direction, warning or comment, the judge should inform the jury of the nature of the forensic disadvantage suffered by the accused	<b>Agency:</b> AGD
		Completed
		No further action is required

- v. in giving any direction, warning or comment, the judge must not use expressions such as ‘dangerous or unsafe to convict’ or ‘scrutinise with great care’
- c) uncorroborated evidence: Legislation should provide that the judge must not direct, warn or suggest to the jury that it is ‘dangerous or unsafe to convict’ on the uncorroborated evidence of the complainant or that the uncorroborated evidence of the complainant should be ‘scrutinised with great care’
- d) children’s evidence: Legislation should provide that:
  - i. the judge must not direct, warn or suggest to the jury that children as a class are unreliable witnesses
  - ii. the judge must not direct, warn or suggest to the jury that it would be ‘dangerous or unsafe to convict’ on the uncorroborated evidence of a child or that the uncorroborated evidence of a child should be ‘scrutinised with great care’
  - iii. the judge must not give a direction or warning about, or comment on, the reliability of a child’s evidence solely on account of the age of the child.

#### **DISCUSSION**

The current South Australian provisions, sections 12A, 34M and 34CB of the *Evidence Act 1929*, are consistent with these recommendations.

#	Recommendation	Government response
66	The New South Wales Government, the Queensland Government and the government of any other state or territory in which Markuleski directions are required should consider introducing legislation to abolish any requirement for such directions.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<b>DISCUSSION</b> This recommendation will be further considered.		

#	Recommendation	Government response
67	State and territory governments should support and encourage the judiciary, public prosecutors, public defenders, legal aid and the private Bar to implement regular training and education programs for the judiciary and legal profession in relation to understanding child sexual abuse and current social science research in relation to child sexual abuse.	<b>Agency:</b> AGD/ODPP/CCA
		Supported
		Ongoing
<b>DISCUSSION</b> AGD's Disability Justice Symposium and <a href="#">CPD Central</a> seminar series have provided relevant training and education programs for the profession in relation to vulnerable witnesses within the criminal justice system. The South Australian government will continue to explore the ability to support similar initiatives in future.		

#	Recommendation	Government response
68	Relevant Australian governments should ensure that bodies such as: <ol style="list-style-type: none"> <li>the Australasian Institute of Judicial Administration</li> <li>the National Judicial College of Australia</li> <li>the Judicial Commission of New South Wales</li> <li>the Judicial College of Victoria</li> </ol> are adequately funded to provide leadership in making relevant information and training available in the most effective forms to the judiciary and, where relevant, the broader legal profession so that they understand and keep up to date with current social science research that is relevant to understanding child sexual abuse.	<b>Agency:</b> AGD/CAA
		Supported
		Ongoing
<b>DISCUSSION</b> The South Australian government via the CAA is currently providing funding to the National Judicial College each year.		

## Improving information for jurors

#	Recommendation	Government response
69	In any state or territory where provisions such as those in sections 79(2) and 108C of the Uniform Evidence Act or their equivalent are not available, the relevant government should introduce legislation to allow for expert evidence in relation to the development and behaviour of children generally and the development and behaviour of children who have been victims of child sexual abuse offences.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>	

#	Recommendation	Government response
70	Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, with a view to settling standard directions and introducing legislation as soon as possible to authorise and require the directions to be given. The National Child Sexual Assault Reform Committee's recommended mandatory judicial directions and the Victorian Government's proposed directions on inconsistencies in the complainant's account should be the starting point for the consultation process, subject to the removal of the limitation in the third direction recommended by the National Child Sexual Assault Reform Committee in relation to children's responses to sexual abuse so that it can apply regardless of the complainant's age at trial.	<b>Agency:</b> AGD/CAA
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>	

#	Recommendation	Government response
71	In advance of any more general codification of judicial directions, each state and territory government should work with the judiciary to identify whether any legislation is required to permit trial judges to assist juries by giving relevant directions earlier in the trial or to otherwise assist juries by providing them with more information about the issues in the trial. If legislation is required, state and territory governments should introduce the necessary legislation.	<b>Agency:</b> AGD/CAA
		Completed
		No further action is required
	<p><b>DISCUSSION</b></p> <p>The current South Australian position is consistent with this recommendation, in that there is no impediment to judges giving directions to a jury about relevant matters at any time.</p>	

## Delays and case management

#	Recommendation	Government response
72	<p>Each state and territory government should work with its courts, prosecution, legal aid and policing agencies to ensure that delays are reduced and kept to a minimum in prosecutions for child sexual abuse offences, including through measures to encourage:</p> <ul style="list-style-type: none"> <li>a) the early allocation of prosecutors and defence counsel</li> <li>b) the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions</li> <li>c) appropriate early guilty pleas</li> <li>d) case management and the determination of preliminary issues before trial.</li> </ul>	<b>Agency:</b> AGD/CAA
		Supported
		Ongoing
<p><b>DISCUSSION</b></p> <p>The current South Australian position is consistent with this recommendation, in that all participants in the criminal justice system constantly work to reduce delays.</p>		

#	Recommendation	Government response
73	<p>In those states and territories that have a qualified privilege in relation to sexual assault communications, the relevant state or territory government should work with its courts, prosecution and legal aid agencies to implement any necessary procedural or case management reforms to ensure that complainants are effectively able to claim the privilege without risking delaying the trial.</p>	<b>Agency:</b> AGD/ODPP/CAA
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provisions, sections 67D, 67E and 67F of the <i>Evidence Act 1929</i>, are consistent with this recommendation.</p>		

## Sentencing

### Excluding good character as a mitigating factor

#	Recommendation	Government response
74	All state and territory governments (other than New South Wales and South Australia) should introduce legislation to provide that good character be excluded as a mitigating factor in sentencing for child sexual abuse offences where that good character facilitated the offending, similar to that applying in New South Wales and South Australia.	<b>Agency:</b> AGD
		Completed
		No further action is required
	<p><b>DISCUSSION</b></p> <p>This recommendation is not applicable to South Australia.</p>	

### Cumulative and concurrent sentencing

#	Recommendation	Government response
75	State and territory governments should introduce legislation to require sentencing courts, when setting a sentence in relation to child sexual abuse offences involving multiple discrete episodes of offending and/or where there are multiple victims, to indicate the sentence that would have been imposed for each offence had separate sentences been imposed.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>	

### Sentencing standards in historical cases

#	Recommendation	Government response
76	State and territory governments should introduce legislation to provide that sentences for child sexual abuse offences should be set in accordance with the sentencing standards at the time of sentencing instead of at the time of the offending, but the sentence must be limited to the maximum sentence available for the offence at the date when the offence was committed.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
	<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>	

## Victim impact statements

#	Recommendation	Government response
77	<p>State and territory governments, in consultation with their respective Directors of Public Prosecutions, should improve the information provided to victims and survivors of child sexual abuse offences to:</p> <p>a) give them a better understanding of the role of the victim impact statement in the sentencing process</p> <p>b) better prepare them for making a victim impact statement, including in relation to understanding the sort of content that may result in objection being taken to the statement or parts of it.</p>	<b>Agency:</b> AGD/ODPP
		Supported
		Work is in progress
<p><b>DISCUSSION</b></p> <p>The ODPP are in the process of working towards full compliance with this recommendation.</p>		

#	Recommendation	Government response
78	<p>State and territory governments should ensure that, as far as reasonably practicable, special measures to assist victims of child sexual abuse offences to give evidence in prosecutions are available for victims when they give a victim impact statement, if they wish to use them.</p>	<b>Agency:</b> AGD/ODPP
		Completed
		No further action is required
<p><b>DISCUSSION</b></p> <p>The current South Australian provision, s14 <i>Sentencing Act 2017</i> (s7A in the existing legislation), is consistent with this recommendation.</p>		

## Appeals

#	Recommendation	Government response
79	<p>State and territory governments should introduce legislation, where necessary, to expand the Director of Public Prosecution's right to bring an interlocutory appeal in prosecutions involving child sexual abuse offences so that the appeal right:</p> <ul style="list-style-type: none"> <li>a) applies to pre-trial judgments or orders and decisions or rulings on the admissibility of evidence, but only if the decision or ruling eliminates or substantially weakens the prosecution's case</li> <li>b) is not subject to a requirement for leave</li> <li>c) extends to 'no case' rulings at trial.</li> </ul>	<p><b>Agency:</b> AGD/ODPP</p>
		<p>Under consideration</p>
		<p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>		

#	Recommendation	Government response
80	<p>State and territory governments should work with their appellate court and the Director of Public Prosecutions to ensure that the court is sufficiently well resourced to hear and determine interlocutory appeals in prosecutions involving child sexual abuse offences in a timely manner.</p>	<p><b>Agency:</b> AGD/ODPP</p>
		<p>Under consideration</p>
		<p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>		

#	Recommendation	Government response
81	<p>Directors of Public Prosecutions should amend their prosecution guidelines, where necessary, in relation to the decision as to whether there should be a retrial following a successful conviction appeal in child sexual abuse prosecutions. The guidelines should require that the prosecution consult the complainant and relevant police officer before the Director of Public Prosecutions decides whether to retry a matter.</p>	<p><b>Agency:</b> ODPP</p>
		<p>Supported</p>
		<p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>The current practice of the ODPP is consistent with this recommendation, and it is proposed that it will be formalised in the DPP Prosecution Guidelines.</p>		

#	Recommendation	Government response
82	<p>State and territory governments should ensure that a relevant government agency, such as the Office of the Director of Public Prosecutions, is monitoring the number, type and success rate of appeals in child sexual abuse prosecutions and the issues raised to:</p> <ul style="list-style-type: none"> <li>a) identify areas of the law in need of reform</li> <li>b) ensure any reforms – including reforms arising from the Royal Commission’s recommendations in relation to criminal justice, if implemented – are working as intended.</li> </ul>	<p><b>Agency:</b> AGD/ODPP</p> <hr/> <p>Supported</p> <hr/> <p>Work is in progress</p>
<p><b>DISCUSSION</b></p> <p>The ODPP are in the process of working towards full compliance.</p>		

## Juvenile offenders

#	Recommendation	Government response
83	State and territory governments (other than the Northern Territory) should give further consideration to whether the abolition of the presumption that a male under the age of 14 years is incapable of having sexual intercourse should be given retrospective effect and whether any immunity which has arisen as a result of the operation of the presumption should be abolished. State and territory governments (other than the Northern Territory) should introduce any legislation they consider necessary as a result of this consideration.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>		

#	Recommendation	Government response
84	State and territory governments should review their legislation – and if necessary introduce amending legislation – to ensure that complainants in child sexual abuse prosecutions do not have to give evidence on any additional occasion in circumstances where the accused, or one of two or more co-accused, is a juvenile at the time of prosecution or was a juvenile at the time of the offence.	<b>Agency:</b> AGD
		Under consideration
		Work is in progress
<p><b>DISCUSSION</b></p> <p>This recommendation will be further considered.</p>		

## Criminal justice and regulatory responses

#	Recommendation	Government response
85	<p>State and territory governments should keep the interaction of:</p> <ul style="list-style-type: none"> <li>a) their legislation relevant to regulatory responses to institutional child sexual abuse</li> <li>b) their crimes legislation and the crimes legislation of all other Australian jurisdictions, particularly in relation to child sexual abuse offences and sex offender registration under regular review to ensure that their regulatory responses work together effectively with their relevant crimes legislation and the relevant crimes legislation of all other Australian jurisdictions in the interests of responding effectively to institutional child sexual abuse.</li> </ul>	<p><b>Agency:</b> All</p> <p>Supported</p> <p>Ongoing</p>
<p><b>DISCUSSION</b></p> <p>The government will continue to monitor opportunities for law reform to enhance the operation and interaction of its own legislation and that of other jurisdictions, and will continue to actively participate in inter-governmental working groups to achieve that aim.</p>		



**Government  
of South Australia**

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Attorney-General's  
Department