



# **ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

**ACT IMPLEMENTATION OF  
CRIMINAL JUSTICE REFORMS**

**September 2020**

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# ROYAL COMMISSION CRIMINAL JUSTICE REFORMS

The Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was established in response to allegations of sexual abuse of children in institutional contexts that had been emerging in Australia for many years. Over the course of its inquiry, the Royal Commission was contacted by over 16,000 individuals, heard personal stories from over 8,000 people, and received over 1,000 written accounts from survivors. In addition, it held public hearings, roundtables, and conducted extensive policy and research work. The Royal Commission released its [Criminal Justice Report](#) in August 2017, and its [Final Report](#) in December 2017.

The Criminal Justice Report (the Report) makes 85 recommendations which provide a pathway for improving the way the criminal justice system addresses child sexual abuse, and responds to victims. The recommendations are intended to bring about a community in which:

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

While the ACT has long been a leader in sexual assault law reform, and many of the Royal Commission's recommendations were already reflected in ACT laws and practice, the Report highlighted more work needed to be done.

In June 2018 the ACT Government formally [responded](#) to all of the Royal Commission's recommendations, including the Criminal Justice Report's recommendations. Our response shows our clear, unambiguous commitment to protecting children and righting wrongs. Since tabling our response, the ACT has come a long way in reforming the criminal justice system in response to the recommendations.

By August 2020, 61 (or 72%) of 85 recommendations were fully implemented, in accordance with the ACT Government's response to the Report. Many recommendations required complex law reform programs and extensive community consultation. Significant progress has also been made against many remaining recommendations.

## Key achievements

### **An intermediary program for the ACT**

The ACT Intermediary Program commenced in early 2020 with a focus on assisting child witnesses to communicate their best evidence at police interview and during the court trial process. Adults with communication difficulties may be eligible for the program.

- > A set of provisions from the *Evidence (Miscellaneous Provisions) Amendment Act 2019* commenced on 31 January 2020 making intermediaries available to assist in police investigative interviews. Additional provisions from the *Evidence (Miscellaneous Provisions) Amendment Act 2019* commenced on 9 March to provide for intermediaries to assist in ground rules in the courts.
- > Intermediaries are trained and accredited professionals who can facilitate the communication of witnesses with communication difficulties. An intermediary provides specific guidance to the

police and the court about the witness's communication. In the ACT program they work with people who have experienced recent or historical sexual assaults as well as homicide witnesses.

- > A ground rules hearing is a pre-hearing process where the court takes into consideration the communication, support or other needs of a witness and sets 'ground rules' accordingly. Where an intermediary has been appointed, the ground rules hearing provides an opportunity for the intermediary to inform the court of the communication needs of the witness, and for the court to make any adjustments that are in the interests of justice.

As at the end of August 2020, the ACT Intermediary Program has assisted 58 witnesses to engage with police investigations, noting that each witness may require multiple intermediary attendances at the police station, hospital, school or other location. Representatives of the program were ordered to attend three separate ground rules hearings, followed by intermediary attendance at the related criminal proceeding to ensure the witness was enabled to provide their best evidence at trial. Witnesses with communication difficulties assisted by the program spanned 4 to 92 years of age. Eleven of these were Aboriginal and Torres Strait Islander people and 13 were people from culturally and linguistically diverse backgrounds.

The ACT Intermediary Program has innovated by using therapy dogs to work alongside intermediaries while witnesses give evidence at police interviews. The presence of a therapy dog reduces anxiety for some witnesses and has significantly assisted witnesses' communication of their evidence.

## **Police responses and investigations**

ACT Policing play a critical role in the criminal justice response to child sexual abuse. Police training practices and operating procedures align with many recommendations from the Report that relate to policing practices.

- > All ACT Policing recruits undertake a three-part Victim Management training module which includes information from internal and external subject matter experts on best practice approaches on interacting with and responding to victims of crime.
- > The Sexual Assault and Child Abuse Team (SACAT) receives extensive training in relation to sexual offence investigation – including an Interviewing Vulnerable Witnesses program.
- > A Better Practice Guide and Standard Operating Procedures for Interviewing Young People or Vulnerable Witnesses has been incorporated into the AFP's professional standards framework. Members are given guidance on how to appropriately and compassionately interact with children and vulnerable witnesses, including those with an intellectual impairment.
- > Ensuring that allegations of child sexual abuse are responded to by police in a timely and evidence based way.
- > All ACT Policing interview rooms have now been updated with the new Digital Record of Interview System. The system is now used as standard practice across ACT Policing.
- > Launching an online reporting option for victims of historical sexual assault.

## **Prosecution responses**

Prosecution responses to people who experience sexual abuse was also emphasised in the Report. The ACT Director of Public Prosecutions is highly responsive to the needs of witnesses of sexual assault and has implemented all recommendations relating to their work. This includes:

- > Developing detailed victim engagement policies including a Director's Guideline *Decisions to Discontinue Prosecutions – Victims' Right of Review* (September 2019) available on the website at [www.dpp.act.gov.au](http://www.dpp.act.gov.au) under witnesses and victims portal.
- > Preparing two new 'Director's Instructions' that support the guideline and ensure that reviewable decisions are audited annually and reported on in the annual report.
- > Providing videos on the website about going to court as witness and what to expect at a trial.
- > Training staff in cultural awareness and understanding the impacts of trauma.

## Laws protecting children from child sexual abuse

The Royal Commission showed that thousands of children have been sexually abused in numerous institutions in Australia, and in too many cases adults failed to speak up and protect them. As a result, it made a number of recommendations to require child sexual abuse reporting to authorities. In response, the ACT Government:

- > Made improvements to the Reportable Conduct Scheme.
- > Created a new offence for a person in authority failing to protect a child from sexual abuse.
- > Created a new offence for failing to report child sexual abuse which applies to all adults.
- > Commissioned the Hon. Justice Julie Dodds-Streeton to consult with key stakeholders and provide advice on recommendations related to the confessional seal.
- > Added ministers of religion to the list of mandated reporters under the *Children and Young People Act 2008*.
- > Instigated law reform to clarify that there is no privilege that exempts a priest from making a report to authorities where information is disclosed in a religious confession.

The ACT Government has implemented all of the Criminal Justice Report recommendations that relate to reporting of child sexual abuse and institutions taking steps to protect children in their care from being abused. Protecting children from sexual abuse remains a work in progress with ongoing work to bring about cultural change in organisations and communities required.

## Child sexual offences

Legislation passed since the release of the Report has updated criminal offences relating to child sexual abuse to reflect current understandings of sexual abuse. All recommendations in relation to child sexual offences have now been implemented in the ACT.

In 2017, the Government passed legislation (the *Crimes Legislation Amendment Bill 2017 (No. 2)*)

- > amending the offence of maintaining a sexual relationship with a young person to enable repeated but largely indistinguishable occasions of child sexual abuse to be charged effectively);
- > creating a new offence to criminalise the grooming of a child (other than by electronic means); and
- > creating a new offence to criminalise the grooming of persons other than a child to gain access to a child.

In 2018, the Government passed the *Royal Commission Criminal Justice Amendment Bill 2018* creating a procedural mechanism for charging offences as a 'course of conduct' for child sexual abuse. This improves the ability to charge where the abuse is ongoing and persistent, and it is difficult for the victim to recall specific incidents of offending. This Bill also included amendments to mandatory reporting legislation, to extend its application to ministers of religion, and an offence for failing to report child sexual abuse (discussed above), and changes to the way survivors and victims of child sexual abuse can give evidence (discussed below).

In 2019, the *Royal Commission Criminal Justice Legislation Amendment Bill 2019* was passed and created laws:

- > rectifying a technical inconsistency in the availability of alternative verdicts for child sexual abuse; and
- > removing an outdated and anachronistic common law presumption that, prior to 1985, a male under 14 years was 'incapable' of having sexual intercourse.

## Evidence of victims and survivors

The Report made a series of recommendations in relation to how and what evidence is used in child sexual assault prosecutions – seeking to minimise trauma for those giving evidence in court. The ACT Government has completed all the recommendations in this area (including the creation of an intermediary program (see above)).

The ACT has extensive special measures in place for a broad range of child and adult victims and witnesses in order to ensure access to justice, reduce trauma and capture the best quality evidence for the court. The use of pre-recorded evidence and evidence delivered via audio-visual link is central to this.

- > The *Royal Commission Criminal Justice Legislation Amendment Act 2018* strengthened existing measures contained in the *Evidence Miscellaneous Provisions Act 1991* (EMPA).
- > The ACT Magistrates and Supreme Court has undergone extensive renovations resulting in the provision of state-of-the-art Remote Witness Rooms to support vulnerable witnesses to give evidence via audio-visual link.
- > Vulnerable witnesses have greater access to justice and less exposure to traumatic experiences when giving evidence.

The *Royal Commission Criminal Justice Legislation Amendment Bill 2020* was passed on 23 July 2020 and commenced on 1 September 2020.

- > The Bill includes reforms to ACT laws to allow greater admissibility of tendency and coincidence evidence in child sexual assault prosecutions. The reforms were based on the Uniform Evidence Law (Tendency and Coincidence) Model Provisions 2019 agreed on by the Council of Attorneys General.
- > These reforms expand the kinds of evidence that can be considered by juries, including evidence that an accused person has previously demonstrated a sexual interest in children or there have been other allegations of sexual assault against the same accused person.

- > The Royal Commission found that laws limiting the admissibility of tendency and coincidence evidence were based on incorrect assumptions about the degree to which this evidence influences jury reasoning.

## Sentencing

The Royal Commission highlighted that some elements of sentencing laws were not in keeping with changing community attitudes towards sexual abuse of children. It also made some recommendations about making it easier for victims to have a voice in the sentencing process.

In response, the ACT Government made amendments

- > Excluding good character as a mitigating factor in sentencing for child sexual abuse offences where that good character “enabled” the offending (*Crimes Legislation Amendment Bill 2017 No. 2*).
- > Ensuring that a court sentence child sexual assault matters in accordance with current practices not historical practices (*Royal Commission Criminal Justice Amendment Bill 2018*).
- > Extending the availability of special measures that assist victims to give evidence, to victims making victim impacts statements at the sentencing stage (*Royal Commission Criminal Justice Legislation Amendment Bill 2019*).

To help victims understand and prepare for giving victim impact statements, the ACT Director of Public Prosecutions has published comprehensive information online about the role of a victim impact statement and what can and cannot be included in a victim impact statement.

Through this work, the ACT has completed all the recommendations which relate to sentencing.

## What’s next?

ACT Government will continue to progress reforms recommended by the Report with a focus on progressing:

- > non-legislative reforms including improving information available to victims of sexual abuse and their supporters to make reports to police, increasing the use of intermediaries to assist evidence giving by vulnerable witnesses, reviewing the information and support available to institutions after there has been an allegation of child sexual abuse.
- > cross-directorate work on ‘blind-reporting’ – developing procedures and guidance for institutions to report child sexual abuse without disclosing the victim’s name if the victim does not consent for the report to be made.
- > community consultation on the complex legislative changes required for jury directions and consent law reforms.



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