



Australian Government

Australian Government Response
to the Royal Commission into
Institutional Responses to
Child Sexual Abuse



Australian Government Response

Part Three: Criminal Justice Report



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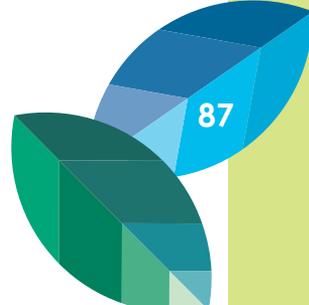
No.	RECOMMENDATION	RESPONSE	STATUS
1	<p>In relation to child sexual abuse, including institutional child sexual abuse, the criminal justice system should be reformed to ensure that the following objectives are met:</p> <ol style="list-style-type: none"> the criminal justice system operates in the interests of seeking justice for society, including the complainant and the accused criminal justice responses are available for victims and survivors victims and survivors are supported in seeking criminal justice responses. 	Accept	The Commonwealth criminal justice system is founded on principles of justice. Multiple safeguards and procedures are in place to ensure victims and survivors are able to effectively interact with the criminal justice system.
2	<p>Australian governments should refer to the Steering Committee for the Report on Government Services for review the issues of:</p> <ol style="list-style-type: none"> how the reporting framework for police services in the Report on Government Services could be extended to include reporting on child sexual abuse offences whether any outcome measures that would be appropriate for police investigations of child sexual abuse offences could be developed and reported on. 	Accept in principle	The Australian Federal Police (AFP) publicly reports data regarding child sexual abuse offences in its Annual Report. The Australian Government will, together with the States and Territories, work with the Steering Committee for the Report on Government Services to ascertain whether any outcome measures that would be appropriate for police investigations of child sexual abuse offences could be developed and reported on.

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3	<p>Each Australian government should ensure that its policing agency:</p> <ol style="list-style-type: none"> 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 b. ensures that all police who may come into contact with victims or survivors of institutional child sexual abuse are trained to: <ol style="list-style-type: none"> 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) ii. treat anyone who approaches the police to report child sexual abuse with consideration and respect, taking account of any relevant cultural safety issues c. establishes arrangements to ensure that, on initial contact from a victim or survivor, police refer victims and survivors to appropriate support services. 	Accept	<p>The AFP plays a vital role in responding to, and providing support for, victims of crime. The AFP has established governance which provides strong guidance for Victim Based Crime investigators for the management and treatment of primary and related victims of crime in the Commonwealth jurisdiction. These governance policies and procedures outline the framework for the police response to victims of crime and provide a consistent standard of service from the time the referral is received, during the investigation, and throughout the court process. This governance, and AFP practice, is consistent with the recommendation.</p>
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> <ol style="list-style-type: none"> a. takes steps to communicate to victims (and their families or support people where 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 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 	Accept in principle	<p>The AFP maintains a number of procedures and policies which allow, and encourage, reporting of allegations of child sexual abuse both domestically and internationally. These procedures and policies are consistent with recommendations 4(b)-(f). Currently, the Commonwealth Director of Public Prosecutions (CDPP) may decide to proceed with a prosecution after a victim has withdrawn from the process where it is determined to be in the public interest. This only occurs in very limited circumstances, and the CDPP and AFP will work together to review this policy to ensure it is appropriate.</p>



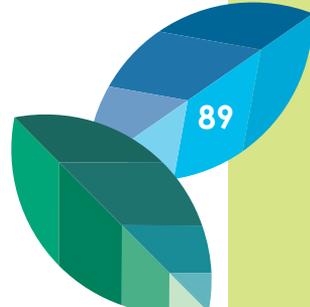
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4	<p>c. makes available a range of channels to encourage reporting, including specialist telephone numbers and online reporting forms, and provides information about what to expect from each channel of reporting</p> <p>d. works with survivor advocacy 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</p> <p>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</p> <p>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.</p>		
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>	Accept	<p>AFP policies and practices are consistent with this recommendation. The AFP has well established relationships and partnerships with various representatives, groups and committees of, and within, Aboriginal and Torres Strait Islander (ATSI) communities. The AFP has established community liaison teams which incorporate ATSI members.</p> <p>Additionally, the Crimes Act 1914 (Cth) (sections 23H and 23J) recognise that ATSI persons should have additional protections including interview friends and interpreters.</p> <p>Further, the AFP maintains a number of mechanisms that allow reporting of allegations of child sexual abuse outside of the community including both the AFP Hotline and an online form.</p>

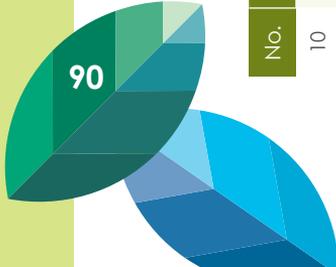
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6	<p>To encourage prisoners and former prisoners to report allegations of child sexual abuse, including institutional child sexual abuse, each Australian government should ensure that its policing agency:</p> <ol style="list-style-type: none"> provides channels for reporting that can be used from prison and that allow reports to be made confidentially does not require former prisoners to report at a police station. 	Accept	<p>The Commonwealth does not administer any prisons. The AFP maintains a number of mechanisms, which are available to prisoners in State or Territory prisons, for reporting of allegations of child sexual abuse including both the AFP Hotline and an online form.</p>
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> <ol style="list-style-type: none"> 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 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 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: <ol style="list-style-type: none"> 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 focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant. 	Accept	<p>The AFP plays a vital role in responding to, and providing support for, victims of crime. The AFP has established governance which provides strong guidance for Victim Base Crime investigators for the management and treatment of primary and related victims of crime in the Commonwealth jurisdiction. These governance policies and procedures outline the framework for the police response to victims of crime and provide a consistent standard of service from the time the referral is received, during the investigation, and throughout the court process. This governance, and AFP practice, is consistent with the recommendation.</p>



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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 <i>Family violence: A national legal response</i> in relation to disclosing or revealing the identity of a mandatory reporter to a law enforcement agency.</p>	Noted	The Australian Government will continue to work with state and territory governments to implement this recommendation through existing mechanisms.
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"> 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 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 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 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"> a specialist understanding of child sexual abuse, including institutional child sexual abuse, and the developmental and communication needs of children and other vulnerable witnesses skill development in planning and conducting interviews, including use of appropriate questioning techniques 	Accept	<p>AFP investigative interviewing in relation to victims of child sexual abuse is conducted in accordance with the principles listed in the recommendation. These principles are entrenched in training and governance procedures for AFP investigators.</p> <p>AFP Learning and Development and AFP Investigations Standards and Practices are responsible for training relevant officers, including a component on investigative interviewing in the Investigators Skills and Qualifications Framework. AFP officers involved in child protection operations receive technical training in caring for and interviewing victims, particularly children, and their families.</p>

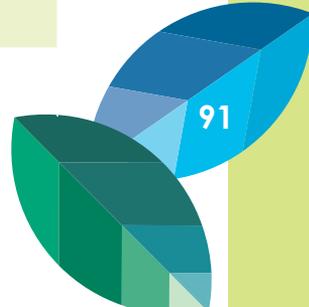
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10	<p>e. specialist police should undergo refresher training on a periodical basis to ensure that their specialist understanding and skills remain up to date and accord with current research from time to time, experts should review a sample of video 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</p> <p>f. 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</p> <p>g. 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</p> <p>h. police should recognise the importance of interpreters, including for some Aboriginal and Torres Strait Islander victims, survivors and other witnesses</p> <p>i. intermediaries should be available to assist in police investigative interviews of children and other vulnerable witnesses</p>	Accept	AFP procedures, and practice, provide that members are to seek early engagement with the CDPP to achieve appropriate outcomes for victims. AFP does not require corroborating evidence from a victim or survivor. These processes are consistent with this recommendation.





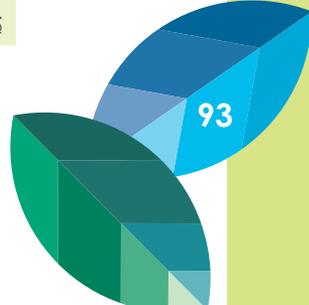
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10	<p>b. in making decisions about whether to charge, police should not:</p> <ul style="list-style-type: none"> i. expect or require corroboration where the victim or survivor's account does not suggest that there should be any corroboration available 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. 		
11	<p>The Victorian Government should review the operation of section 401 of the Criminal Procedure Act 2009 (Vic) 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>	Accept	<p>This recommendation is primarily a matter for the Victorian Government.</p> <p>It is possible for costs to be awarded against the police in States or Territories where this power is available to courts by the application of State or Territory laws pursuant to s.68 of the Judiciary Act 1903 (Cth). However, we have seen no instances of the AFP declining to investigate because of the risk of costs being awarded.</p> <p>To overcome this problem the Australian Government would either need to amend the scope of s.68 of the Judiciary Act 1903 (Cth) or otherwise legislate to override the operation of State and Territory law.</p>
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"> a. be treated by police with consideration and respect, taking account of any relevant cultural safety issues b. have their views about whether they wish to participate in the police investigation respected 	Accept in principle	<p>The AFP plays a vital role in responding to, and providing support for, victims of crime. AFP procedures and practice are consistent with the expectations listed in the recommendation. AFP will review current practices to ensure that this information is being appropriately communicated to the public.</p>

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13	<ul style="list-style-type: none"> c. be referred to appropriate support services d. contact police through a support person or organisation rather than contacting police directly if they prefer 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 f. have their statement taken by police even if the alleged perpetrator is dead g. be provided with the details of a nominated person within the police service for them to contact h. be kept informed of the status of their report and any investigation unless they do not wish to be kept informed 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. 	Accept	
	<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"> 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 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 	<p>The AFP plays a vital role in responding to, and providing support for, victims of crime. The AFP has established governance which provides strong guidance for Victim Based Crime investigators for the management and treatment of primary and related victims of crime in the Commonwealth jurisdiction.</p> <p>These governance policies and procedures outline the framework for the police response to victims of crime and provide a consistent standard of service from the time the referral is received, during the investigation, and throughout the court process. In particular, procedures are in place for dealing with vulnerable witnesses, including victims and survivors with disability. This governance, and AFP practice, is consistent with the recommendation.</p>	



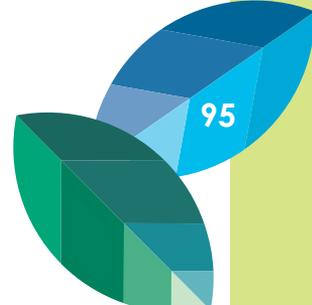
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13	<p>c. police who conduct investigative interviewing should make all appropriate use of any available intermediary scheme, and communication supports, to ensure that the victim or survivor is able to give their best evidence in the investigative interview</p> <p>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.</p>		
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>	<p>Accept</p>	<p>AFP procedures and practices are consistent with this recommendation.</p> <p>The AFP provides detailed information on its website in relation to the child sexual offences for which it has responsibility (i.e. online child sexual exploitation and overseas sex offences). This includes how to report offences and suspicious behaviour.</p> <p>The AFP also delivers this information through a number of different programs and initiatives including the ThinkUknow program and National Child Protection Week. The AFP also conducts education programs for other government agencies, law enforcement and non-governmental organisations on the application of Commonwealth child sexual offences.</p> <p>These procedures and programs are under constant review to ensure they are up-to-date and effective.</p>
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>	<p>Accept in principle</p>	<p>AFP already has procedures and practices in place which are consistent with recommendation 14.</p>

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16	<p>In relation to blind reporting, institutions and survivor advocacy and support groups should:</p> <ol style="list-style-type: none"> 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 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. 	Accept	<p>This is reflected broadly in the National Principles. In August 2017, the Australian Government agreed to the development of a Commonwealth Child Safe Framework to protect children and young people in Commonwealth care (Commonwealth Framework). The Commonwealth Framework requires all agencies to adopt the National Principles within 12 months of COAG endorsement.</p> <p>Consideration is being given to extend the Commonwealth Framework to Commonwealth funded third parties.</p> <p>The National Office for Child Safety, once established within DSS on 1 July 2018, will develop guidance material for organisations working with children to support best practice in reporting abuse, in consultation with sectors working with children and complaint handling organisations.</p>
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>	Accept	See recommendation 16.
18	<p>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.</p>	Accept	See recommendation 16.
19	<p>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:</p> <ol style="list-style-type: none"> information to inform them about options for reporting to police support to report to police if the survivor is willing to do so. 	Accept	See recommendation 16.



No.	RECOMMENDATION	RESPONSE	STATUS
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>	Accept	<p>AFP maintains a number of mechanisms that allows, and encourages, reporting of allegations of child sexual abuse both domestically and internationally. These procedures permit blind reporting.</p> <p>All reports received are evaluated, in order to determine what actions need to be taken with each report. For those reports that do not progress to further investigation, all information is recorded on police indices and is available for future reference or intelligence purposes.</p> <p>If it is determined that contact with the victim or survivor is necessary, existing governance policies and procedures will govern the manner in which AFP engages with the victim or survivor. This governance, and AFP practice, is consistent with the recommendation.</p>
21	<p>Each state and territory government should introduce legislation to amend its persistent child sexual abuse offence so that:</p> <ol style="list-style-type: none"> the actus reus is the maintaining of an unlawful sexual relationship an unlawful sexual relationship is established by more than one unlawful sexual act 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 the offence applies retrospectively but only to sexual acts that were unlawful at the time they were committed on sentencing, regard is to be had to relevant lower statutory maximum penalties if the offence is charged with retrospective application. 	Accept in principle	<p>Constitutional limitations mean that Commonwealth child sexual abuse legislation is limited to offences that occur overseas, via a postal service, and via a carriage service.</p> <p>The Australian Government has strong criminal offences to combat persistent child sexual abuse overseas. Persistent child sexual abuse outside Australia is criminalised under subdivision 272.1.1 of the <i>Criminal Code (Cth)</i>. This offence is established by a person committing an unlawful sexual act on three or more occasions during any period. The Australian Government will further consider amendments to this offence.</p>

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			<p>Carriage service and postal child sexual abuse offences are, by definition, non-contact offences. These offences target communications with children of a sexual nature, focusing on preparatory activity, such as grooming or procuring a child for sexual activity, noting that grooming can apply to a course of conduct. Due to the inherently non-physical nature of postal and virtual communications, these offences cannot capture sexual intercourse or physical contact with a child. As such, recommendations for persistent child abuse offences are not applicable to the Commonwealth's carriage service and postal child sex offences.</p> <p>On 13 September 2017, the Australian Government introduced the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 to the Australian Parliament. The Bill introduces mandatory minimum sentences for repeat offenders found guilty of Commonwealth child sex offences, including offenders whose first offence was a state or territory child sex offence. These measures appropriately address repeat and persistence child sexual abuse applicable to the offences allowable under Commonwealth legislative powers.</p>

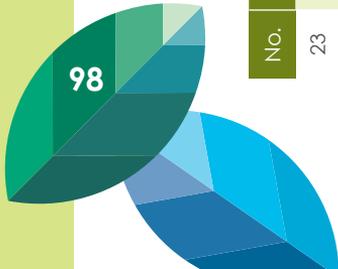




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22	<p>The draft provision in Appendix H provides for the recommended reform. Legislation to the effect of the draft provision should be introduced.</p>	<p>Accept in principle</p>	<p>Constitutional limitations mean that Commonwealth child sexual abuse legislation is limited to offences that occur overseas, via a postal service, and via a carriage service.</p> <p>The Australian Government has strong criminal offence to combat persistent child sexual abuse overseas. Persistent child sexual abuse outside Australia is criminalised under subdivision 272.11 of the <i>Criminal Code</i> (Cth). This offence is established by a person committing an unlawful sexual act on three or more occasions during any period. The Australian Government will further consider amendments to this offence.</p> <p>Carriage service and postal child sexual abuse offences are, by definition, non-contact offences. These offences target communications with children of a sexual nature, focusing on preparatory activity, such as grooming or procuring a child for sexual activity. Due to the inherently non-physical nature of postal and virtual communications, these offences cannot capture sexual intercourse or physical contact with a child. As such, recommendations for persistent child abuse offences are not applicable to the Commonwealth's carriage service and postal child sex offences.</p> <p>On 13 September 2017, the Australian Government introduced the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 to the Australian Parliament. The Bill introduces mandatory minimum sentences for repeat offenders found guilty of Commonwealth child sex offences, including offenders whose first offence was a state or territory child sex offence. These measures appropriately address repeat and persistence child sexual abuse applicable to the offences allowable under Commonwealth legislative powers.</p>

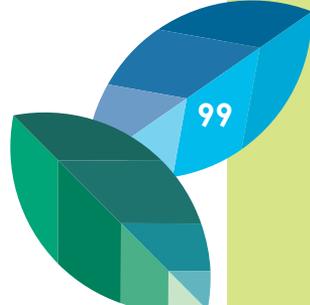
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23	<p>State and territory governments (other than Victoria) should consider introducing legislation to establish legislative authority for course of conduct charges in relation to child sexual abuse offences if legislative authority may assist in using course of conduct charges.</p>	<p>Accept in principle</p>	<p>Constitutional limitations mean that Commonwealth child sexual abuse legislation is limited to offences that occur overseas, via a postal service, and via a carriage service.</p> <p>The Australian Government has strong criminal offences to combat persistent child sexual abuse overseas. Persistent child sexual abuse outside Australia is criminalised under subdivision 272.11 of the <i>Criminal Code</i> (Cth). This offence is established by a person committing an unlawful sexual act on three or more occasions during any period. This offence does not require proof of the dates or exact circumstances of each occasion.</p> <p>Carriage service and postal child sexual abuse offences are, by definition, non-contact offences. Due to the inherently non-physical nature of postal and virtual communications, these offences do not relate to sexual intercourse or physical contact with a child. The exception is the offence for using a carriage service to engage in sexual activity with a child, which captures live-streamed child abuse. Live-streamed child abuse includes, but is not limited to, a person using a carriage service to view another person engaging in contact offending with a child. Where the contact offending occurs in Australia, state and territory offences for contact abuse will apply. Where the contact offending occurs outside Australia, section 272.11 of the <i>Criminal Code</i> (Cth) will apply to persistent child abuse perpetrated by an Australian citizen. The exception is the offence for using a carriage service to engage in sexual activity with a child, which captures live-streamed child abuse.</p>





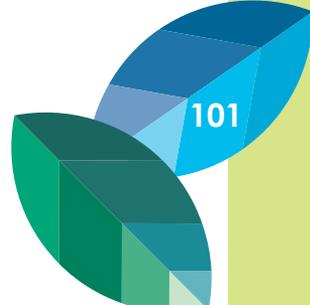
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23			<p>Live-streamed child abuse includes, but is not limited to, a person using a carriage service to view another person engaging in contact offending with a child. Where the contact offending occurs outside Australia, section 272.11 of the <i>Criminal Code (Cth)</i> will apply to persistent child abuse perpetrated by an Australian citizen.</p> <p>The Australian Government will continue to consider the appropriateness of new course of conduct offences for offences that occur overseas and via a carriage service.</p> <p>On 13 September 2017, the Australian Government introduced the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 to the Australian Parliament. The Bill introduces mandatory minimum sentences for repeat offenders found guilty of Commonwealth child sex offences, including offenders whose first offence was a state or territory child sex offence. These measures appropriately address repeat and persistence child sexual abuse applicable to the offences allowable under Commonwealth legislative powers.</p>
24	<p>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.</p>	<p>Accept in principle</p>	<p>Constitutional limitations mean that Commonwealth child sexual abuse legislation is limited to offences that occur overseas, via a postal service, and via a carriage service.</p> <p>The Australian Government has strong criminal offences to combat persistent child sexual abuse overseas.</p>

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			<p>Persistent child sexual abuse outside Australia is criminalised under subdivision 272.11 of the <i>Criminal Code</i> (Cth). This offence is established by a person committing an unlawful sexual act on three or more occasions during any period. This offence does not require proof of the dates or exact circumstances of each occasion. The Australian Government will continue to consider the appropriateness of new course of conduct offences. On 13 September 2017, the Australian Government introduced the <i>Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures)</i> Bill 2017 to the Australian Parliament. The Bill introduces mandatory minimum sentences for repeat offenders found guilty of Commonwealth child sex offences, including offenders whose first offence was a state or territory child sex offence. These measures appropriately address repeat and persistence child sexual abuse applicable to the offences allowable under Commonwealth legislative powers.</p>
25	<p>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.</p>	Accept	<p>The Commonwealth has existing broad grooming offences which are consistent with this recommendation. These offences capture communication or conduct with a child with the intention of grooming the child for sexual intercourse or sexual activity. These offences apply where the communication or conduct occurs overseas, using a carriage service, or using a postal or similar service. These offences are criminalised under sections 272.15, 471.25 and 474.27 of the <i>Criminal Code</i> (Cth).</p>



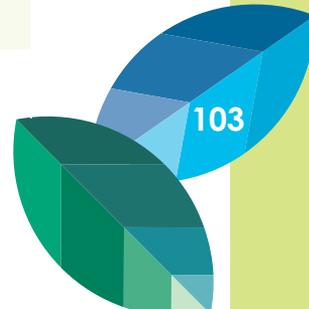
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26	<p>Each state and territory government (other than Victoria) should introduce legislation to extend its broad grooming offence to the grooming of persons other than the child.</p>	<p>Accept</p>	<p>The Commonwealth has existing broad grooming offences which apply overseas, via a carriage service, and via a postal or similar service. These offences are criminalised under subdivisions 272.15, 471.25 and 474.27 of the <i>Criminal Code</i> (Cth).</p> <p>On 13 September 2017, the Australian Government introduced the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 to the Australian Parliament. The Bill introduces a new Commonwealth offence to criminalise using a carriage service to groom another person to make it easier to procure a child for sexual activity, and using a postal or similar service to groom another person to make it easier to procure a child for sexual activity.</p> <p>The Commonwealth will also amend the existing offence of grooming a child overseas to extend it to the grooming of persons other than the child.</p>
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. 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>	<p>Accept</p>	<p>The Commonwealth has existing position of authority offences which are consistent with this recommendation. Sexual intercourse and sexual activity with a young person (16 or 17 years of age) outside Australia by a person who is in a position of trust or authority is criminalised under subdivisions 272.12 and 272.13 of the <i>Criminal Code</i> (Cth). These offences do not require more than the existence of a relationship of trust or authority between the offender and the victim.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
28	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. 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.	Accept	The Commonwealth has existing position of authority offences which are consistent with this recommendation. Sexual intercourse and sexual activity with a young person (16 or 17 years of age) outside Australia by a person who is in a position of trust or authority is criminalised under subdivisions 272.12 and 272.13 of the <i>Criminal Code</i> (Cth). These offences do not require more than the existence of a relationship of trust or authority between the offender and the victim.
29	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.	Accept	Sections 272.3 and 474.25B of the <i>Criminal Code</i> (Cth) sets out clear categories of persons in a position of trust or authority. The Australian Government considers these categories are not too broad and are appropriate.
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.	Noted	Implemented. There are no limitation periods or immunities that attach to specific Commonwealth child sex offences.
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 <i>Crimes Act 1900</i> (NSW) retrospective effect.	Noted	This recommendation is a matter for the New South Wales Government.
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).	Accept	See recommendation 16.



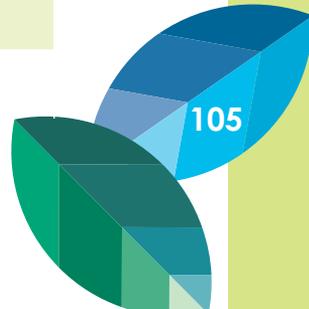
No.	RECOMMENDATION	RESPONSE	STATUS
33	<p>Each state and territory government should introduce legislation to create a criminal offence of failure to report targeted at child sexual abuse in an institutional context as follows:</p> <ul style="list-style-type: none"> a. the failure to report offence should apply to any adult person who: <ul style="list-style-type: none"> 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 ii. otherwise requires a Working with Children Check clearance for the purposes of their role in the institution b. but it should not apply to individual foster carers or kinship carers c. 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 d. 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 e. if the knowledge is gained or the suspicion is or should have been formed after the failure to report offence commences, the failure to report offence should apply if any of the following circumstances apply: <ul style="list-style-type: none"> 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) 	Accept in principle	The Australian Government is assessing whether relevant State and Territory legislation applies effectively to the Commonwealth.

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	<ul style="list-style-type: none"> ii. the person who is known to have abused a child or is or should have been suspected of abusing a child is either: <ul style="list-style-type: none"> – 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: <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> – still associated with the institution – known or believed to be associated with another relevant institution. 		
34	<p>State and territory governments should:</p> <ul style="list-style-type: none"> 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 	Accept in principle	<p>This recommendation is primarily for state and territory governments. There is, however, a mandatory reporting framework in the Family Law Act 1975 (Cth) in relation to family law proceedings.</p> <p>This scheme requires allegations of child abuse to be reported to appropriate prescribed child welfare agencies. These agencies are most appropriately placed to assess and consider whether these allegations should be referred to police.</p>



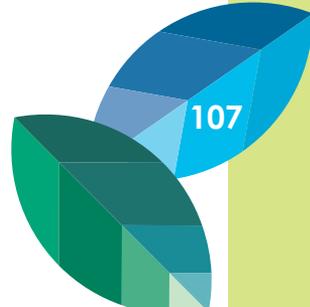
No.	RECOMMENDATION	RESPONSE	STATUS
34	<p>b. include appropriate defences in the failure to report offence to avoid duplication of reporting under mandatory reporting and any reportable conduct schemes.</p>	Accept in principle	The Australian Government is assessing whether relevant State and Territory legislation applies effectively to the Commonwealth.
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> <ol style="list-style-type: none"> 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 the legislation should exclude any existing excuse, protection or privilege in relation to religious confessions to the extent necessary to achieve this objective 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. 	For further consideration	The Australian Government is assessing whether relevant State and Territory legislation applies effectively to the Commonwealth.
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> <ol style="list-style-type: none"> the offence should apply where: <ol style="list-style-type: none"> 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"> – a child under 16 – 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 	Accept in principle	The Australian Government is assessing whether relevant State and Territory legislation applies effectively to the Commonwealth.

No.	RECOMMENDATION	RESPONSE	STATUS
	<ul style="list-style-type: none"> ii. the person has the power or responsibility to reduce or remove the risk iii. the person negligently fails to reduce or remove the risk <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</p> <p>d. facilities and services provided by religious institutions, and any service or functions performed by persons in religious ministry, should be included</p> <p>e. 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>		
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> <p>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</p> <p>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</p>	<p>Accept</p> <p>Accept</p>	<p>CDPP Practice Group Action Plan commits to victims of crime training for lawyers. A national training package in relation to victims of crime was delivered for CDPP staff in 2017. A national plan for ongoing training is in development. Higher level training is appropriate and will require the engagement of external specialists.</p> <p>The CDPP's Victims of Crime Policy recognises that all reasonable steps should be taken to endeavour to have continuity of CDPP staff (both legal and from the CDPP Witness Assistance Service), particularly in cases involving vulnerable victims such as children.</p> <p>The CDPP is compliant with this recommendation.</p>



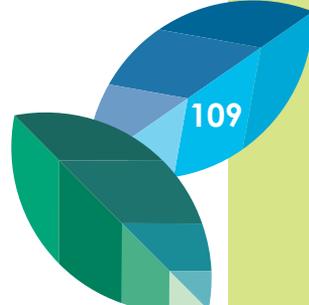
No.	RECOMMENDATION	RESPONSE	STATUS
37	<p>c. prosecution agencies should continue to recognise the importance to victims and their families and survivors of the prosecution agency maintaining regular communication with them to keep them informed of the status of the prosecution unless they have asked not to be kept informed</p>	<p>Accept</p>	<p>The CDP's Victims of Crime Policy recognises that victims should, on request, be kept informed of the progress of the prosecution in a timely manner, including:</p> <ul style="list-style-type: none"> a. a decision to commence a prosecution (and the charges laid); b. a decision not to commence a prosecution; c. the date and place of hearing of any charges laid; d. the outcome of any bail proceedings; e. plea negotiations; and f. the outcome of proceedings, including appeal proceedings. <p>The CDP is compliant with this recommendation.</p>
d.	<p>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</p>	<p>Accept</p>	<p>In 2008, the CDP implemented a small Witness Assistance Service (WAS) to provide limited assistance to victims of crime, particularly the most vulnerable victims of crime, children and their families. WAS staff are qualified social workers providing a range of information and support services to child victims and their families, including information and updates about the prosecution process, court familiarisation, referrals to relevant support services and support at court and during conferences.</p>

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	<p>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:</p> <ul style="list-style-type: none"> 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 ii. focus on the credibility of the complaint or allegation rather than focusing only on the credibility of the complainant 	Accept	This will need to be incorporated into CDPP training.
	<p>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.</p>	Accept in principle	All decisions regarding instituting or continuing a prosecution are made in accordance with the Prosecution Policy of the Commonwealth.
38	<p>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:</p> <ul style="list-style-type: none"> 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. 	Accept	The CDPP is in the process of reviewing and enhancing all material that relates to advice to witnesses/victims on all stages of the criminal process.



No.	RECOMMENDATION	RESPONSE	STATUS
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> <p>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 close to trial. Prosecutors should provide early advice to police on appropriate charges to lay when such advice is sought</p>	Accept	<p>The CDPP's Victims of Crime Policy recognises that the CDPP should endeavour to ensure the most appropriate charges are identified and laid as early as possible, including via early engagement with investigators, in order to minimise distress to victims by the downgrading or withdrawal of charges. The CDPP provides pre-brief advice to investigators to assist in determining appropriate charges.</p> <p>The decision whether or not to prosecute is recognised in the Prosecution Policy of the Commonwealth as the most important step in the prosecution process.</p> <p>The CDPP is compliant with this recommendation.</p>
	<p>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 to 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</p>	Accept	<p>The CDPP's Victims of Crime Policy recognises that the CDPP should endeavour to ensure the most appropriate charges are identified and laid as early as possible, including via early engagement with investigators, in order to minimise distress to victims by the downgrading or withdrawal of charges.</p> <p>The CDPP reviews all charges in accordance with the Prosecution Policy of the Commonwealth. The CDPP has implemented a requirement for lawyers to complete a declaration that a matter has been assessed in accordance with the Prosecution Policy of the Commonwealth.</p> <p>The CDPP is compliant with this recommendation.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
c.	<p>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</p>	Accept	<p>This is addressed by the Prosecution Policy of the Commonwealth that requires that on any plea negotiation “the charges to be proceeded with should bear a reasonable relationship to the nature of the criminal conduct of the defendant”.</p> <p>The CDPP has issued a National Legal Direction for the early resolution of matters, which recognises the above policy. The Legal Direction also recognises that the views of any victim must be taken into account.</p> <p>The CDPP is compliant with this recommendation.</p>
d.	<p>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.</p>	Accept	<p>CDPP policy is for consultation to occur in all matters involving the downgrading or withdrawal of charges.</p> <p>The CDPP is compliant with this recommendation.</p>
40	<p>Each Australian Director of Public Prosecutions should:</p>		
a.	<p>have comprehensive written policies for decision-making and consultation with victims and police</p>	Accept	<p>The CDPP has a Victims of Crime Policy and Decision-making Matrix, which ensures that decisions are made with the appropriate authority and consultation takes place.</p> <p>The CDPP is compliant with this recommendation.</p>
b.	<p>publish all policies online and ensure that they are publicly available</p>	Accept	<p>The CDPP has all policies publicly available online.</p> <p>The CDPP is compliant with this recommendation.</p>



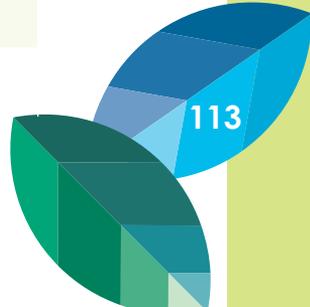
No.	RECOMMENDATION	RESPONSE	STATUS
40	<p>c. provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.</p>	<p>Accept</p>	<p>The CDPP has a Practice Group Instruction which provides that where a decision has been made to not commence a prosecution or to wholly discontinue a prosecution involving child complainants in child sex matters against a defendant, the victim will be notified in writing of the decision, and also notified of their right to seek review of the decision by the Director.</p> <p>The CDPP's Victims of Crime Policy and Prosecution Policy of the Commonwealth recognise that the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:</p> <ol style="list-style-type: none"> commence a prosecution; discontinue a prosecution; agree to a plea negotiation; or decline to proceed with a prosecution after a committal. <p>The CDPP is compliant with this recommendation.</p>
41	<p>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.</p>	<p>Accept</p>	<p>The CDPP has a National Legal Direction in relation to Feedback and Complaints.</p> <p>The CDPP is compliant with this recommendation.</p>
42	<p>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.</p>	<p>Accept</p>	<p>The CDPP regularly audits compliance with policies and procedures. The CDPP also has an independent audit committee.</p> <p>The CDPP is compliant with this recommendation.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
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.	Accept	<p>The CDPP has a National Legal Direction in relation to Feedback and Complaints, which is available online. The Legal Direction provides for the publishing of anonymised data regarding complaints.</p> <p>The CDPP is compliant with this recommendation.</p>
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.	Accept in principle	<p>On 1 December 2017 the Council of Attorneys-General agreed to the establishment of an Evidence Working Group, including representatives from all uniform evidence law and other interested jurisdictions, which would consider reform to the current test for the admissibility of tendency and coincidence evidence. The Working Group will report back to the Council of Attorneys-General with a reform proposal by the end of 2018.</p> <p>The Working Group has agreed to Terms of Reference and is considering and consulting on a number of Reform Directions contained within a Scoping Paper prepared by New South Wales. Jurisdictions are encouraged to provide feedback on the Scoping Paper which will guide the direction of an Options Paper. The Options Paper will be taken to the next meeting of the Council of Attorneys-General for discussion. Jurisdictions will have the opportunity to undertake further consultation on the Options Paper before providing further feedback. This feedback will guide the preparation of the Proposal Paper which will go before the Council of Attorneys-General at the end of the year.</p> <p>The Australian Government is of the view that any reform should operate consistently across all jurisdictions, especially those that apply the uniform evidence law.</p>



No.	RECOMMENDATION	RESPONSE	STATUS
45	<p>Tendency or coincidence evidence about the defendant in a child sexual offence prosecution should be admissible:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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 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 b. unless, on the application of the defendant, the court thinks, having regard to the particular circumstances of the proceeding, that both: <ul style="list-style-type: none"> i. admission of the evidence is more likely than not to result in the proceeding being unfair to the defendant 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. 	Accept in principle	See recommendation 44.
46	<p>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.</p>	Accept in principle	See recommendation 44.
47	<p>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.</p>	Accept in principle	See recommendation 44.

No.	RECOMMENDATION	RESPONSE	STATUS
48	Tendency or coincidence evidence about a defendant in a child sexual offence prosecution should not be required to be proved beyond reasonable doubt.	Accept in principle	See recommendation 44.
49	Evidence of: <ul style="list-style-type: none"> 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.	Accept in principle	See recommendation 44.
50	Australian governments should introduce legislation to make the reforms we recommend to the rules governing the admissibility of tendency and coincidence evidence.	Accept in principle	See recommendation 44.
51	The draft provisions in Appendix N provide for the recommended reforms for Uniform Evidence Act jurisdictions. Legislation to the effect of the draft provisions should be introduced for Uniform Evidence Act jurisdictions and non-Uniform Evidence Act jurisdictions.	Accept in principle	See recommendation 44.
52	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: <ul style="list-style-type: none"> a. in summary and indictable matters, the use of a pre-recorded investigative interview as some or all of the witness's evidence in chief 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. 	Accept	All child sexual offences in the Criminal Code (Cth) are indictable offences as they carry penalties greater than 12 months. Under Part 1A, s4H of the Crimes Act 1914 (Cth), an indictable offence is an offence which is punishable by imprisonment for a period exceeding 12 months. Part 1AD, Division 5 of the Crimes Act 1914 (Cth) provides for the use of video recordings for vulnerable witnesses. s15YM provides for a video recording of an interview of a vulnerable person to be admitted as evidence in chief (subject to the interview being conducted by a specified person and the court gives leave).



No.	RECOMMENDATION	RESPONSE	STATUS
52			<p>The Commonwealth is compliant with recommendation 52(a) as provided for in s15YM of the <i>Crimes Act 1914</i> (Cth).</p> <p>The Commonwealth is not compliant with recommendation 52(b). Compliance would require legislative change.</p>
53	<p>Full prerecording should be made available for:</p> <ol style="list-style-type: none"> all complainants in child sexual abuse prosecutions any other witnesses who are children or vulnerable adults any other prosecution witness that the prosecution considers necessary. 	Accept in principle	<p>As above.</p> <p>Full compliance with recommendations 53(a), (b) and (c) will require amendment to the <i>Crimes Act 1914</i> (Cth).</p>
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.	Accept	<p>While Division 3 of the <i>Crimes Act 1914</i> (Cth) sets out a range of restrictions relating to cross-examination of vulnerable persons, given that prerecording of evidence or cross-examination is not prescribed in the Act, the Commonwealth is not consistent.</p> <p>Full consistency with recommendation 54 will require amendment to the <i>Crimes Act 1914</i> (Cth).</p>
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 pre-recorded and remote evidence.	Accept	<p>This recommendation relates to the effective implementation of recommendations 52-54. Accordingly, it is a question of how courts prioritise resources.</p>
56	State and territory governments should introduce legislation to require the audio-visual 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 pre-recorded hearing.	Accept	<p>The Commonwealth is not consistent with recommendation 56. Compliance would require legislative change.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
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.	Noted	This is a question of how courts prioritise resources.
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.	Accept	The CDPP regularly uses the provisions contained in Division 5A of the Crimes Act 1914 (Cth) in relation to vulnerable witnesses. The CDPP is compliant with this recommendation. The Attorney-General's Department (AGD) will work with the CDPP to consider appropriate legislative reform designed to strengthen protection for vulnerable witnesses.
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> <ol style="list-style-type: none"> requires intermediaries to have relevant professional qualifications to assist in communicating with vulnerable witnesses 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 makes intermediaries available at both the police interview stage and trial stage 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. 	For further consideration	While this recommendation is directed to states and territories, the Australian Government supports victims of comparable Commonwealth offences being afforded the same protections. Some jurisdictions are already piloting intermediary schemes and these should be fully assessed before settling a position on this recommendation. Consideration will need to be given to how and whether a Commonwealth scheme could supplement or stand alongside these schemes so as not to complicate processes or overburden court resources.



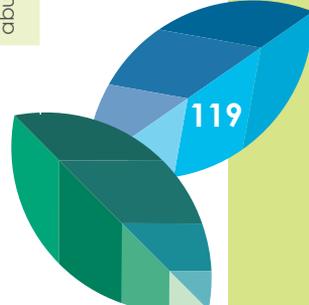
No.	RECOMMENDATION	RESPONSE	STATUS
60	<p>State and territory governments should work with their courts administration to ensure that ground rules hearings are able to be held – and are in fact held – in child sexual abuse prosecutions to discuss the questioning of prosecution witnesses with specific communication needs, whether the questioning is to take place via a pre-recorded 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>	For further consideration	As above. Compliance would require legislative change.
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> <ol style="list-style-type: none"> 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 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 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 clearing the public gallery of a courtroom during the witness's evidence the judge and counsel removing their wigs and gowns. 	Accept	<p>Part IAD of the <i>Crimes Act 1914</i> (Cth) contains a broad range of protections for vulnerable persons engaging in legal proceedings.</p> <p>Recommendations (a) through (d) are provided for in Part IAD.</p> <p>Recommendation (e) is not explicitly provided for, but this is at the discretion of individual judges and counsel and should not require legislative change.</p>
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> <ol style="list-style-type: none"> 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 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. 	Noted	The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law. The Australian Government will work with states and territories to discuss reform proposals that impact across multiple jurisdictions.

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63	<p>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>	<p>Noted</p>	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law. The Australian Government will work with states and territories to discuss reform proposals that impact across multiple jurisdictions.</p>
64	<p>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.</p>	<p>Noted</p>	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law. The Australian Government will work with states and territories to discuss reform proposals that impact across multiple jurisdictions.</p>
65	<p>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:</p> <ol style="list-style-type: none"> <li data-bbox="628 1089 655 1645">a. delay and credibility: Legislation should provide that: <ol style="list-style-type: none"> <li data-bbox="662 877 716 1601">i. there is no requirement for a direction or warning that delay affects the complainant's credibility <li data-bbox="723 877 821 1601">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 <li data-bbox="827 877 901 1601">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' <li data-bbox="915 967 942 1645">b. delay and forensic disadvantage: Legislation should provide that: <ol style="list-style-type: none"> <li data-bbox="948 957 1001 1601">i. there is no requirement for a direction or warning as to forensic disadvantage to the accused 	<p>Noted</p>	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law.</p>



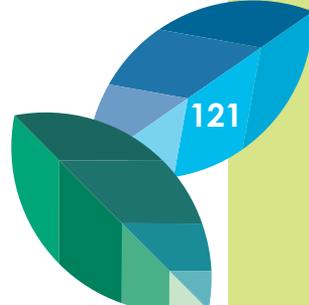
No.	RECOMMENDATION	RESPONSE	STATUS
65	<p>ii. the judge must not direct, warn or suggest to the jury that delay has caused forensic disadvantage to the accused unless the direction, warning or suggestion is requested by the accused and there is evidence that the accused has suffered significant forensic disadvantage</p> <p>iii. the mere fact of delay is not sufficient to establish forensic disadvantage</p> <p>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</p> <p>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'</p>		
	<p>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'</p>		
	<p>d. children's evidence: Legislation should provide that:</p> <p>i. the judge must not direct, warn or suggest to the jury that children as a class are unreliable witnesses</p> <p>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'</p> <p>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.</p>		

No.	RECOMMENDATION	RESPONSE	STATUS
66	<p>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.</p>	<p>Noted</p>	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law.</p>
67	<p>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.</p>	<p>Noted</p>	<p>The Australian Government provides funding to the Australasian Institute of Judicial Administration and the National Judicial College of Australia for the training and education of judicial personnel including judges and magistrates. The Australian Government supports and encourages regular training and education programs in relation to understanding child sexual abuse. However, the federal courts do not have jurisdiction to hear child sexual offence proceedings.</p>
68	<p>Relevant Australian governments should ensure that bodies such as:</p> <ul style="list-style-type: none"> a. the Australasian Institute of Judicial Administration b. the National Judicial College of Australia c. the Judicial Commission of New South Wales d. the Judicial College of Victoria <p>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.</p>	<p>Accept in principle</p>	<p>The Australian Government provides funding to the Australasian Institute of Judicial Administration and the National Judicial College of Australia for the training and education of judicial personnel including judges and magistrates. The Australian Government supports and encourages regular training and education programs in relation to understanding child sexual abuse.</p>
69	<p>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.</p>	<p>Noted</p>	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law.</p> <p>The Australian Government commits to prioritising collaboration with States and Territories.</p>



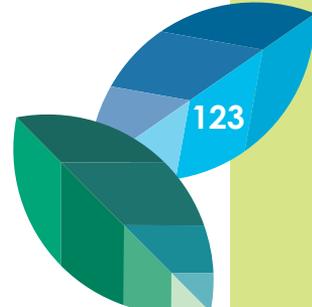
No.	RECOMMENDATION	RESPONSE	STATUS
70	<p>Each state and territory government should lead a process to consult the prosecution, defence, judiciary and academics with relevant expertise in relation to judicial directions containing educative information about children and the impact of child sexual abuse, 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.</p>	Noted	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law.</p> <p>The Australian Government commits to prioritising collaboration with States and Territories.</p>
71	<p>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.</p>	Noted	<p>The Commonwealth is a Uniform Evidence Law jurisdiction and will need to be involved in any discussions relating to proposed legislative changes to the Uniform Evidence Law.</p> <p>The Australian Government commits to prioritising collaboration with States and Territories.</p>
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> <ol style="list-style-type: none"> a. the early allocation of prosecutors and defence counsel 	Accept	<p>The CDPP's Victims of Crime Policy recognises that all reasonable steps should be taken to endeavour to have continuity of CDPP staff (both legal and from the CDPP Witness Assistance Service), particularly in cases involving vulnerable victims such as children.</p> <p>CDPP procedure is for a matter to be allocated to a prosecutor as soon as it comes into the CDPP. As far as reasonably practicable, that prosecutor will retain carriage of the matter for the life of the prosecution.</p> <p>The CDPP is compliant with this recommendation.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
	<p>b. the Crown – including subsequently allocated Crown prosecutors – to be bound by early prosecution decisions</p> <p>c. appropriate early guilty pleas</p> <p>d. case management and determination of preliminary issues before trials.</p>	<p>Accept in principle</p> <p>Accept</p> <p>Accept</p>	<p>All prosecution decisions are made by an appropriate officer in accordance with the CDPP Decision-making Matrix. The CDPP is of the view that the prosecution should stand by earlier decisions unless they are wrong or otherwise not in the public interest.</p> <p>The CDPP has issued a National Legal Direction for the early resolution of matters.</p> <p>The CDPP is compliant with this recommendation.</p> <p>The CDPP regularly participates in court run case management and pre-trial hearings to determine preliminary issues.</p> <p>The CDPP is compliant with this recommendation.</p>
73	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.	Noted	The Commonwealth does not have a qualified privilege. The Australian Government commits to prioritising collaboration with States and Territories.
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.	Accept	This recommendation has been implemented by the Australian Government through the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017.
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.	Accept	This recommendation has been implemented by the Australian Government through the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017.



No.	RECOMMENDATION	RESPONSE	STATUS
76	<p>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.</p> <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> <ol style="list-style-type: none"> give them a better understanding of the role of the victim impact statement in the sentencing process 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 	Accept	This recommendation has been implemented by the Australian Government through the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017.
77	<ol style="list-style-type: none"> give them a better understanding of the role of the victim impact statement in the sentencing process 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 	Accept	The CDPP is in the process of improving material regarding victim impact statements. The CDPP Witness Assistance Service also provides assistance to victims in relation to victim impact statements.
78	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	Accept	The CDPP is in the process of improving material regarding victim impact statements. The CDPP Witness Assistance Service also provides assistance to victims in relation to victim impact statements. Implemented. Subsection 16AB(7) of the Crimes Act 1914 (Cth) provides that any protections available under Part IAD about protecting vulnerable persons are available for the reading of a victim impact statement or cross-examination of the maker of the statement. Part IAD covers cross examination, special facilities for vulnerable persons to give evidence, use of video recordings and special rules for later trials.

No.	RECOMMENDATION	RESPONSE	STATUS
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"> 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 b. is not subject to a requirement for leave c. extends to 'no case' rulings at trial. 	<p>For further consideration</p> <p>For further consideration</p> <p>For further consideration</p>	<p>The High Court of Australia has noted on many occasions that the criminal process should not be fragmented by interlocutory appeals and applications. Implementation of this recommendation would be contrary to long standing procedure and requires more consideration.</p> <p>The High Court of Australia has noted on many occasions that the criminal process should not be fragmented by interlocutory appeals and applications. Implementation of this recommendation would be contrary to long standing procedure and requires more consideration.</p> <p>The CDPP supports legislative reform to give the prosecution the right to appeal "no case" decisions in child sexual abuse matters. This will significantly enhance the rights of victims.</p>
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>Noted</p>	<p>This is a matter for states and territories.</p>



No.	RECOMMENDATION	RESPONSE	STATUS
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>Accept</p>	<p>The CDPP's Victims of Crime Policy and Prosecution Policy of the Commonwealth recognise that the views of any victims, where those views are available, and where it is appropriate, to be considered and taken into account when deciding whether it is in the public interest to:</p> <ol style="list-style-type: none"> commence a prosecution; discontinue a prosecution; agree to a plea negotiation; or decline to proceed with a prosecution after a committal. <p>The CDPP view is that this includes a decision as to whether a matter should proceed to re-trial.</p>
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> <ol style="list-style-type: none"> identify areas of the law in need of reform ensure any reforms – including reforms arising from the Royal Commission's recommendations in relation to criminal justice, if implemented – are working as intended. 	<p>Accept</p>	<p>The CDPP has robust systems that record all data concerning the outcomes of prosecutions. The CDPP practice group model ensures consistency on a national basis and identifying areas for legislative reform is part of Branch Action Plans. The CDPP is compliant with this recommendation.</p>
83	<p>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.</p>	<p>Noted</p>	<p>This recommendation does not fall within the Australian Government's jurisdiction as there is no equivalent presumption in Commonwealth criminal legislation.</p>

No.	RECOMMENDATION	RESPONSE	STATUS
84	<p>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.</p>	Accept	Implementation of this recommendation would require amendment to the <i>Crimes Act 1914</i> (Cth).
85	<p>State and territory governments should keep the interaction of:</p> <ol style="list-style-type: none"> a. their legislation relevant to regulatory responses to institutional child sexual abuse 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 <p>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.</p>	Accept	Commonwealth legislation is constantly under review to ensure it is effective and appropriate.

