



Truth, Healing and Reconciliation Taskforce

Statement by the Truth, Healing and Reconciliation Taskforce (the Taskforce) June 2022

On behalf of the Truth, Healing and Reconciliation Taskforce (the Taskforce), I would like to extend our appreciation on the opportunity to provide comment on the *Criminal Procedure Review – Magistrates Courts*.

1. About the Truth, Healing and Reconciliation Taskforce

The Taskforce was established in 2018 by the Queensland Government in response to the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

The role of the Taskforce is to provide advice to the Queensland Government on the implementation of Royal Commission related reforms. The Taskforce reports to the Minister for Children, Youth Justice and Minister for Multicultural Affairs.

The Taskforce is chaired by Mr Robert (Bob) Atkinson AO APM and comprises of nine members, including four members with lived experience of institutional child sexual abuse.

More information about the Taskforce and its members can be found at:
www.cyjma.qld.gov.au/thr-taskforce

For the purpose of this statement, people who experienced institutional child sexual abuse and people who experienced abuse and neglect in institutions are referred to as people with lived experience, unless otherwise indicated.

2. Child abuse in institutional settings

Over the last 25 years, there have been a number of inquiries which have revealed the abuse and neglect experienced by children while they were in the care of an institution.

The 1997 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (*Bringing Them Home*) was a landmark inquiry that revealed the lasting trauma caused by the forced removal of Aboriginal and Torres Strait Islander children from their families and communities. Under these policies and practices, children were placed in institutions such as orphanages and mission dormitories as well as in foster care and/or adoption.

In 1999, Queensland was the first Australian jurisdiction to formally investigate child abuse in orphanages, children's homes and youth detention centres through the establishment of the *Commission of Inquiry into Abuse of Children in Queensland Institutions* (the Forde Inquiry).

This was followed by the 2001 Senate Community Affairs References Committee inquiry into child migrant schemes (*Lost Innocents: Righting the Record*) and the 2004 Senate Inquiry into Children in Institutional Care (*Forgotten Australians*).

More recently, the Royal Commission demonstrated the prevalence of sexual abuse in a wide range of institutions caring for children. The Royal Commission heard from over 8,000 people with lived experience in private sessions, read over 1000 written accounts and reviewed allegations of sexual abuse in more than 4000 institutions.¹ These institutions included out-of-home care and youth detention centres, schools, religious activities, child care, health services, disability services, music and dance schools, and sporting clubs.

3. The impact of child abuse in institutional settings

As outlined in its final report, the Royal Commission found that child sexual abuse can have profound, cumulative and lasting impacts, causing a range of effects across an individual's lifespan which can manifest in different ways. This includes:

- mental health issues such as depression, anxiety and post-traumatic stress disorder, as well as emotional issues such as feelings of shame, guilt and low self-esteem
- relationship and interpersonal difficulties such as difficulties with trust and intimacy, lack of confidence with parenting and relationship problems
- use of alcohol and drugs to cope with psychological trauma
- adverse physical health effects
- a loss of connection to family, community and country
- social isolation and social exclusion
- homelessness and housing impacts
- education, employment and economic impacts.²

The Royal Commission found that distrust, fear and hatred of institutions and authority are particular features of the effects of child sexual abuse in an institutional context.³ Previous inquiries have shown that these negative feelings towards institutions and authority are also common for people who experienced abuse and neglect as children in out-of-home care institutions such as orphanages, children's homes, youth detention centres and foster care.

While the work of the Taskforce is focused on child abuse in an institutional context, we acknowledge that people who have experienced child abuse within family settings also experience many of the impacts described.

4. Taskforce response to the Criminal Procedure Review - Magistrates Courts consultation paper

While members acknowledge that significant progress has been made by the Queensland Government in implementing the recommendations of the Criminal Justice report by the Royal Commission, Taskforce members wish to raise two items for consideration by the *Criminal Procedure Review - Magistrates Courts*.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Preface and Executive Summary*, vol 3, Sydney, 2017, p 8.

² Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Impacts*, vol 3, Sydney, 2017, pp 73-156.

³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Impacts*, vol 3, Sydney, 2017, pp 41-42.

The Taskforce acknowledges that the below issues are outside the scope of the review, however members are passionate in raising these two issues and would like its position noted within the review.

- a) *Criminal Code Act 1899* (Qld) (Criminal Code), Section 229B Maintaining a sexual relationship with a child.

The Taskforce acknowledges the work of the Queensland Government in implementing the recommendations made by the Royal Commission. Specifically, the work undertaken to review, amend and create legislation and policy and practice enhancements.

It is noted by the Taskforce, that the Criminal Justice report by the Royal Commission did not recommend the *maintaining a sexual relationship with a child* offence be changed, and additionally identified Queensland as having a high standard in the interpretation of this piece of legislation, with the Royal Commission stating:

*“the only concern we have with the current Queensland offence is its name: ‘maintaining an unlawful sexual relationship.’ The language of ‘relationship’ does not sit easily with the exploitation involved in child sexual abuse offending”.*⁴

The Royal Commission did suggest for Queensland to give the offence retrospective application⁵, which Queensland has implemented⁶. Additionally, the Royal Commission noted the preference of the New South Wales Parliamentary Counsel’s Office in reviewing the legislation for New South Wales, in retaining the language used in the Queensland offence:

*“primarily because it has been the subject of consideration by the Queensland Court of Criminal Appeal on a number of occasions”.*⁷

The Taskforce note that the Royal Commission did state that the Queensland offence:

*“in making the actus reus the relationship rather than the individual occasion of abuse, provides the best opportunity to charge repeated or ongoing child sexual abuse in a manner that is more consistent with the sort of evidence a complainant is more likely to be able to give”.*⁸

However, it is the view of Taskforce members that the current wording of Section 229B of the *Criminal Code Act 1899* in Queensland, referencing *maintaining an unlawful sexual relationship with a child*, requires review, taking into account the Royal Commission’s commentary about the language of ‘relationship’ in the context of exploitative offending against children.⁹

⁴ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, Parts III-VI, Sydney, 2017, p 71.

⁵ Recommendation 21(d) Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*

⁶ Clauses 17 and 21 of the *Criminal Code (Child Sexual Offences Reform) and Other Legislation Amendment Act 2020*

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, Parts III-VI, Sydney, 2017, p 73.

⁸ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, Parts III-VI, Sydney, 2017, p 68.

⁹ Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report*, Parts III-VI, Sydney, 2017, p 71.

As the Royal Commission noted, the limitations and impacts of amending the name of the offence require careful consideration. However, members with lived experience and service providers who work with survivors, both represented on the Taskforce, continue to advocate for the wording to be reconsidered given the nature, cause and impact of child sexual abuse, and the inability for a child to consent to a sexual relationship with an adult.

Additionally, Taskforce members are of the view that currently there is no adequate definition across states and territories for child sexual abuse, and that a nationally consistent definition of child sexual abuse should be considered.

b) Trauma-informed practice

The Taskforce has heard from people with lived experience that the process of reporting sexual abuse and assault, through to criminal justice procedures taking place, lacks a framework that is informed by trauma-informed principles.

This view supports dot points 2.38, 2.39, 2.40 and 2.41 in the consultation paper. It is the recommendation of the Taskforce that consultation occur with people with lived experience and the services that support vulnerable cohorts, as specifically mentioned in section 2.38 of the consultation paper. Further strategies could also be explored to develop processes that support survivors to feel safe and supported to disclose their experience, and to participate in the criminal justice proceedings in a way that is best suited to the survivor.

The Royal Commission recommended both specialist and mainstream services adopt trauma-informed approaches where all service providers are sensitive and responsive to the ongoing impact of trauma on survivors. It is important that the criminal justice system is mindful of these approaches.¹⁰ The Taskforce support the view of the Royal Commission that all parts of a responsive service system should have an understanding of trauma-informed practice, appropriate to their role.

In addition, the Taskforce are supportive of mandatory trauma-informed training for staff across all areas of the criminal justice system, to ensure that people with lived experience are supported.

Thank you for your consideration of this statement. Should you wish to discuss these issues further, please contact the Taskforce Secretariat via [REDACTED].

Yours sincerely

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Mr Robert (Bob) Atkinson AO APM
Chair – Truth, Healing and Reconciliation Taskforce

¹⁰ Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Advocacy, support and therapeutic treatment services*, vol 9, Sydney, 2017, p 60.