

Queensland Community Safety Bill 2024

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16 May 2024

Ms Mary Westcott
Committee Secretary
Community Safety and Legal Affairs Committee
Queensland Parliament

Via email: cslac@parliament.qld.gov.au

Dear Ms Westcott,

Queensland Community Safety Bill 2024

Due to the short timeframe, we have not been able to make a submission on the Queensland Community Safety Bill 2024. We endorse the comments made by the Youth Advocacy Centre on pages 9 to 11 of their submission, opposing the proposed amendment to youth justice principle 18.

knowmore has repeatedly raised concerns about the heightened risk of child sexual abuse for children in jail with committees of the Queensland Parliament. We refer, for example, to our comments on pages 12 to 15 of our recent submission to the Youth Justice Reform Select Committee. Keeping children out of jail must be a priority for preventing child sexual abuse.

Should we be able to provide any further information to assist, please do not hesitate to contact Sean Bowes, Law Reform and Advocacy Officer, on [REDACTED] or at [REDACTED].

Yours sincerely,



JACKIE MEAD
Chief Executive Officer

ENCL.

- knowmore's submission on youth justice reform in Queensland

Submission to the inquiry into youth justice reform in Queensland

9 January 2024

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About knowmore

Our service

knowmore legal service (knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). From 1 July 2018, knowmore has delivered legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). knowmore also delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since 2022, knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 September 2023, knowmore has received 98,126 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 16,433 clients. Almost 2 in 5 clients (37%) identify as Aboriginal and/or Torres Strait Islander peoples. Almost 1 in 6 (15%) clients are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in Queensland

knowmore has a significant client base in Queensland — 27 per cent of our clients reside in the state. We therefore have a strong interest in laws and policies relevant to victims and survivors of crime in Queensland.

Many of our clients experienced sexual abuse as children while in detention environments. We therefore also have a strong interest in keeping children out of detention and ensuring that children are safe in all places.

Introduction

This section outlines knowmore's overall approach to the inquiry into youth justice reform in Queensland and includes a list of recommendations.

knowmore's overall approach to the inquiry

knowmore's approach to the Committee's inquiry is informed by our experience assisting victims and survivors of child sexual abuse. In considering the issues raised by the inquiry, we have reflected on the findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and the Queensland Women's Safety and Justice Taskforce (Taskforce).

Our work intersects with the inquiry's focus in 2 main ways:

1. We assist victims and survivors who experienced child sexual abuse from other children.
2. We advocate for changes to prevent child sexual abuse, noting the heightened risk of child sexual abuse for children in detention environments.

While we acknowledge that the inquiry has a broader scope relating to all offending by children, we also consider that the legal system must work in a way that is fair to victims and survivors of child sexual abuse, and that keeps children, victims and survivors safe from harm.¹

In this submission, we have generally used the terminology of 'legal responses to offending by children', rather than 'youth justice', recognising that the legal system has often failed to deliver justice and has in fact often exacerbated injustice.² We have also generally used the terminology of 'Aboriginal and/or Torres Strait Islander peoples' or 'Aboriginal and/or Torres Strait Islander survivors', reflecting advice from knowmore's Aboriginal and Torres Strait Islander Engagement team.

In preparing our submission, we have had the opportunity to consider the draft submission prepared by the Youth Advocacy Centre (YAC). The YAC's submission raises issues and experiences consistent with what we have noted in our submission to the Committee's inquiry. Accordingly, we support the views expressed in the YAC's submission.

Our submission proceeds in 3 parts:

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- 1 See Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), *Criminal justice report: executive summary and parts I and II*, August 2017, Recommendation 1, p 14, <www.childabuseroyalcommission.gov.au/criminal-justice>.
 - 2 See, for example, C Cunneen, 'The criminal legal system does not deliver justice for First Nations people, says a new book', *The Conversation*, 9 November 2022, <theconversation.com/the-criminal-legal-system-does-not-deliver-justice-for-first-nations-people-says-a-new-book-191005>.

- First, we make general comments, relevant to the inquiry as a whole, as to the need for an evidence-based approach to reform.
- Second, we make comments about improving legal responses to offending by children (addressing Terms of Reference 1(a) and 2(a)–(c) of the Committee’s inquiry).
- Third, we make comments about improving support for victims of crime (addressing Terms of Reference 1(b) and 2(d) of the Committee’s inquiry).

List of recommendations

We have provided a list of our recommendations under 3 headings below, reflecting the general structure of our submission:

- recommendation relevant to the inquiry as a whole
- recommendations about improving legal responses to offending by children
- recommendations about improving support for victims of crime.

Recommendation relevant to the inquiry as a whole

We discuss this recommendation further on pages 10 to 11.

Recommendation 1

The Queensland Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

Recommendations about improving legal responses to offending by children

We discuss these recommendations further on pages 12 to 25.

Recommendation 2

The Queensland Government should prioritise reforms that will keep children out of detention, including Recommendations 3 to 8.

Recommendation 3

The Queensland Government should significantly increase funding for services that support children to remain safely with their families and their communities, and to avoid contact with or divert contact from the criminal legal system.

Recommendation 4

The Queensland Government should raise the minimum age of criminal responsibility to at least 14 years old.

Recommendation 5

The Queensland Government should repeal section 48AF of the *Youth Justice Act 1992* (Qld), which contains the presumption against releasing children charged with particular offences while on release for an indictable offence.

Recommendation 6

The Queensland Government should amend section 29 of the *Bail Act 1980* (Qld) to repeal the 'offence to breach conditions of bail' for children.

Recommendation 7

The Queensland Government should repeal the power to hold children in watchhouses.

Recommendation 8

The Queensland Government should retain the discretion of courts to impose appropriate sentences for offences — it should not adopt mandatory sentences as part of the legal response to offending by children.

Recommendations about improving support for victims of crime

We discuss these recommendations further on pages 26 to 43.

Recommendation 9

The Queensland Government should embed a trauma-informed approach to working with victims and survivors at every stage of the criminal legal process.

Recommendation 10

The Queensland Government should strengthen the Charter of Victims' Rights in the *Victims of Crime Assistance Act 2009* (Qld), in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and having regard to the model provided by the ACT's *Victims of Crime Act 1994*.

Recommendation 11

The Queensland Government should ensure that the Victims' Commissioner is empowered with broad functions to promote and protect the needs of victims and survivors, as contemplated by Recommendation 18 of the Women's Safety and Justice Taskforce.

Recommendation 12

The Queensland Government should amend the *Human Rights Act 2019* (Qld) to include specific protection of victims' and survivors' rights.

Recommendation 13

The Queensland Government should ensure that victims and survivors receive free, independent and trauma-informed legal assistance and wraparound support throughout their engagement with the legal system.

Recommendation 14

The Queensland Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice. Queensland's independent Victims' Commissioner should play an important role in this process.

Recommendation 15

The Queensland Government should take steps to increase awareness of Victim Assist, including by ensuring that all victims of violent crime are made aware of, and assisted to access, the Victim Assist scheme at the point of making a police report, and at additional points throughout any subsequent investigation and prosecution where necessary.

Recommendation 16

The Queensland Government should remove the time limits for victims and survivors of child abuse to apply for assistance under the *Victims of Crime Assistance Act 1994* (Qld).

Recommendation 17

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to reduce the evidence required to receive assistance by:

1. removing the requirement for victims and survivors of child sexual abuse to prove that they were injured as a result of the abuse
2. assessing victims' eligibility for assistance according to a 'reasonable likelihood' standard of proof.

Recommendation 18

Victim Assist should reduce the amount of supporting documentation that is required to claim for expenses.

Recommendation 19

The Queensland Government should index all amounts of financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) to ensure that the real value of financial assistance for victims and survivors is maintained.

Recommendation 20

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to establish access to counselling services as a specific component of Victim Assist.

Recommendation 21

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to provide for victim recognition statements and victim recognition meetings, consistent with Victoria's new financial assistance scheme.

General comments relevant to the inquiry as a whole

This section makes general comments, relevant to the inquiry as a whole, as to the need for an evidence-based approach to reform. We recommend that the Queensland Government prioritises reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

Need for an evidence-based approach

As a nation-wide service assisting survivors of child sexual abuse, knowmore strongly supports reforms to keep people safe from crime, to hold perpetrators to account and to provide victims and survivors with redress, support and justice. knowmore has consistently advocated for reforms in all jurisdictions, including Queensland, to better achieve these aims for victims and survivors of child sexual abuse.³

In light of our commitment to these aims, we have been concerned to see laws and policies that are not supported by evidence being advocated for and adopted. For example, we have seen recent changes in Queensland to:

- create a presumption against release for children charged with particular offences while on release for an indictable offence (see page 18)
- make it a criminal offence for a child to breach conditions of bail (see pages 18 to 21)
- make it lawful to hold children in watchhouses (see pages 21 to 23).

In some cases, the evidence has suggested that the laws and policies being pursued will harm victims and survivors and make the community less safe. For example, we note the following comments by researchers at the University of Queensland in a report submitted to the Committee's inquiry:

Public safety is an important goal of the youth justice system, however, harsh criminal law responses do not make the community safer. Instead, they seem to have a 'crime-causing' effect. If the goal of community safety is to be met, we need to find a way to stop children from offending and re-offending.

...

3 See, for example, knowmore, *Submission to the inquiry into support provided to victims of crime in Queensland*, 12 April 2023, <knowmore.org.au/wp-content/uploads/2023/06/submission-inquiry-into-support-provided-to-victims-of-crime-qld.pdf>; knowmore, *Submission on women's and girls' experiences across the criminal justice system as victims and survivors of child sexual abuse*, 6 April 2022, <knowmore.org.au/wp-content/uploads/2022/06/submission-womens-and-girls-experiences-across-the-criminal-justice-system-as-victims-and-survivors-of-child-sexual-abuse-qld.pdf>.

We need to ask: why are the basic needs of these children not being met in the community?

...

More important than the court process is what is being done outside the courtroom to assist these children to obtain housing, support, treatment, and, ideally, love.⁴

We also note the following comments made by academics from Griffith University in their submission to the Committee's inquiry:

While there may be a desire to implement traditional criminal justice solutions involving serious sanctions and detention ... these are costly band-aid solutions that can appear to promote community safety in the short-term, but will lead to a range of negative unintended and counterproductive impacts in the medium to long term ... Community safety is ultimately undermined by increasing the use of youth detention over the medium and long term.⁵

These comments align with knowmore's long held concerns about the heightened risk of child sexual abuse experienced by children in detention environments, which we repeat on pages 12 to 15. As noted below, knowmore's concerns arise from findings of the Royal Commission and our experience assisting survivors of child sexual abuse.

Reforms that lack an evidence base are often ineffective and harmful, and not respectful of children or victims and survivors of crime. As an overarching recommendation, knowmore considers that the Queensland Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

Recommendation 1

The Queensland Government should prioritise reforms that are evidence-based, having regard to both academic research and the expertise of community-based organisations, including Aboriginal and/or Torres Strait Islander community controlled organisations.

4 T Wash, J Beilby, P Lim and L Cornwell, *Safety through support: building safer communities by supporting vulnerable children in Queensland's youth justice system*, April 2023, pp 4 and 8, <documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000008.pdf>.

5 M McCarthy and T Allard, *Submission to the inquiry into youth justice reform in Queensland*, 16 November 2023, pp 7–8, <documents.parliament.qld.gov.au/com/YJRSC-6004/YJRSC-54D8/submissions/00000013.pdf>.

Improving legal responses to offending by children

This section discusses how to improve legal responses to offending by children. It addresses Terms of Reference 1(a) and 2(a)–(c) of the Committee’s inquiry.

As noted on page 11, our overarching recommendation is that the Queensland Government should prioritise reforms that are evidence-based. An important part of this is the evidence of the heightened risk of child sexual abuse for children in detention environments (discussed on pages 12 to 15). In light of this evidence and contemporary human rights standards, knowmore considers that keeping children out of detention is a priority for preventing child sexual abuse. Keeping children out of detention is therefore key to improving legal responses to offending by children.

We begin this section of our submission by making comments about the heightened risk of child sexual abuse for children in detention environments, noting the Royal Commission’s findings and our experience assisting survivors of child sexual abuse. We express our view that the Queensland Government should significantly increase funding for services that support children to remain safely with their families and their communities, and to avoid contact with or divert contact from the criminal legal system.

We then discuss a range of legislative reforms to assist in keeping children out of detention — namely:

- raising the minimum age of criminal responsibility in Queensland to at least 14 years old
- repealing the presumption against releasing children who are charged with particular offences while on release for an indictable offence
- repealing the ‘offence to breach conditions of bail’ for children
- repealing the power to hold children in watchhouses.

All of these legislative reforms, except for raising the minimum age of criminal responsibility, reverse recent changes to Queensland law that place children at greater risk of being detained.

We conclude this section of our submission with comments about why it is important that the Queensland Government retain the discretion of courts to impose appropriate sentences and not introduce mandatory sentences for children.

The heightened risk of child sexual abuse for children in detention environments

As noted on page 11, knowmore has long held concerns about the heightened risk of child sexual abuse for children in detention environments, arising from findings of the Royal

Commission⁶ and our experience assisting survivors of child sexual abuse.⁷ knowmore has repeatedly raised these concerns, including with the Queensland Parliament's Legal Affairs and Safety Committee and Community Support and Services Committee.⁸

The heightened risk of child sexual abuse in places of detention is linked to the fact that many of these places have characteristics of 'total' or 'closed' institutions.⁹ These institutions 'are typically highly controlled and relatively closed to the outside world'.¹⁰ The Royal Commission took a strong interest in total or closed institutions, due to the heightened risk of child sexual abuse in these places.¹¹

The following characteristics of detention environments increase the risk of child sexual abuse:

- environmental characteristics, such as 'the deprivation of liberty and lack of privacy'
- operational characteristics, such as 'isolation and disconnection from family, friends, community and culture; lack of trusted adults; the power imbalance between adult staff and detained children; and the use of strict rules, discipline and punishment'
- cultural characteristics, such as 'a lack of voice for children and cultures of disrespecting children, tolerating the humiliating and degrading treatment of children, and engendering strong group allegiance among management staff'.¹²

While children are detained in a range of different detention environments,¹³ the Royal Commission found that youth detention centres 'perhaps illustrate the highest level of risk'.¹⁴ Of the 6,875 survivors the Royal Commission heard from in private sessions, 551 (8%) had been sexually abused in youth detention.¹⁵ Experiencing sexual abuse in youth detention was particularly common for Aboriginal and/or Torres Strait Islander survivors

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- 6 Royal Commission, *Final report: volume 15, contemporary detention environments*, December 2017, pp 20–21, <www.childabuseroyalcommission.gov.au/contemporary-detention-environments>.
- 7 As noted on page 4, many of knowmore's clients experienced sexual abuse while they were children in places of detention.
- 8 See, for example, knowmore, *Submission on the Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Bill 2022*, 11 January 2023, <knowmore.org.au/wp-content/uploads/2023/01/submission-monitoring-of-places-of-detention-opcat-bill-2022-qld.pdf>; knowmore, *Submission on Queensland's Criminal Law (Raising the Age of Responsibility) Amendment Bill 2021*, 29 November 2021, <knowmore.org.au/wp-content/uploads/2021/12/knowmore.-Committees-version.-Submission-on-Raising-the-Age-of-Criminal-Responsibility-Bill.pdf>.
- 9 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 38–40.
- 10 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 38.
- 11 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–40.
- 12 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 39–43.
- 13 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 34.
- 14 Royal Commission, *Final report: volume 15, contemporary detention environments*, p 66.
- 15 Royal Commission, *Final report: volume 2, nature and cause*, December 2017, p 114, table 2.12, <www.childabuseroyalcommission.gov.au/nature-and-cause>.

(15.2%),¹⁶ and survivors who were in adult prisons at the time of participating in their private sessions (32.7%).¹⁷

The Royal Commission summarised the ongoing risk presented by youth detention centres as follows:

*All youth detention centres are closed, secure environments under the control of adults who exercise a high degree of power and authority over detained children. This power dynamic can also allow perpetrators to exploit opportunities to sexually abuse children, prevent abuse from being identified and inhibit disclosure, both at the time of abuse and in the following years.*¹⁸

These issues are relevant in all states and territories, but especially in Queensland, which has the highest number of children in prison.¹⁹ Both the number and rate of children in Queensland prisons have increased in recent years.²⁰

The Royal Commission's concerns about youth detention extend to the detention of children in police facilities, such as watchhouses.²¹ Many of knowmore's clients experienced child sexual abuse in watchhouses, including child sexual abuse by the police and by other people detained in the watchhouse. In recent years, there have been concerning media reports about the treatment of children in Queensland's watchhouses, including reports about children being stripped naked or placed in a holding area with alleged sex offenders.²²

As stated on page 12, knowmore considers that keeping children out of detention is a priority for preventing child sexual abuse. We consider that the Queensland Government should prioritise reforms to keep children out of detention, including those outlined in Recommendations 3 to 8.

We also consider that the Queensland Government should significantly increase funding for services that support children to remain safely with their families and their communities, and to avoid contact with or divert contact from the criminal legal system. We note that the Queensland Council of Social Service (QCOS) has proposed a 'service-led response to

16 Royal Commission, *Final report: volume 5, private sessions*, December 2017, p 400, table P.13, <www.childabuseroyalcommission.gov.au/final-report-private-sessions>.

17 Royal Commission, *Final report: volume 5, private sessions*, p. 434, table S.14.

18 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 20–21.

19 Justice Reform Initiative, *Jailing is failing: state of incarceration*, November 2022, p 1, <assets.nationbuilder.com/justicereforminitiative/pages/318/attachments/original/1668450143/JRI_Insights_QLD.pdf?1668450143>.

20 Justice Reform Initiative, *Jailing is failing: state of incarceration*, p 14.

21 Royal Commission, *Final report: volume 15, contemporary detention environments*, pp 31, 35 and 39.

22 See, for example, Mark Willacy, *The Watch House Files: Queensland children kept in isolation in maximum security adult watch houses*, Four Corners, 13 May 2019, <www.abc.net.au/news/2019-05-13/queensland-children-in-watch-houses-detention/11100226>; Mark Willacy and Alexandra Blucher, *Boy kept 'completely naked' in Brisbane watch house for days*, ABC News, <www.abc.net.au/news/2019-06-18/boy-held-completely-naked-in-prison-watch-house-for-days/11207734>.

children under the age of 14 years old, who are interacting with the justice system'. In summary:

*The response would be supportive and therapeutic in nature, prioritising the welfare of Queensland children. It would adopt principles of restorative justice, ensuring that the needs of victims continue to be met.*²³

The Queensland Government should have regard to QCOSS's proposed service-led response when considering how to better support children and keep children safe. We note that QCOSS's proposed response includes raising the minimum age of criminal responsibility to at least 14 years old²⁴ and outline knowmore's support for this below.

Recommendation 2

The Queensland Government should prioritise reforms that will keep children out of detention, including Recommendations 3 to 8.

Recommendation 3

The Queensland Government should significantly increase funding for services that support children to remain safely with their families and their communities, and to avoid contact with or divert contact from the criminal legal system.

Raising the minimum age of criminal responsibility

In Queensland, the minimum age of criminal responsibility is 10.²⁵ In a recent open letter to Australia's Attorneys-General, Children's Commissioners and Guardians from across Australia explained:

*Every day that the age of criminal responsibility remains unchanged, is another day that children as young as 10 can be taken through police stations, courts and locked up in youth detention centres. This causes ongoing harm to children and fails to deliver on community safety. It particularly harms First Nations children and children with disabilities, who are particularly targeted and impacted by the criminal legal system.*²⁶

23 Queensland Council of Social Service (QCOSS), *Queensland Budget 2023: invest in Queensland's youth services*, 14 November 2022, accessed 3 January 2024, p 1, <www.qcoss.org.au/wp-content/uploads/2023/02/2.0-Youth-services-budget-ask-23-24.pdf>.

24 QCOSS, *Queensland Budget 2023: invest in Queensland's youth services*, p 1.

25 *Criminal Code Act 1899* (Qld), section 29.

26 The open letter was signed by 12 Children's Commissioners and Guardians, including Natalie Lewis (Commissioner for the Queensland Family and Child Commission) and Shayna Smith (the Public Guardian for Queensland). See Australia's Children's Commissioners and Guardians, *Open letter to raise the age of criminal responsibility*, 28 November 2023, accessed 12 December

knowmore supports raising the minimum age of criminal responsibility to at least 14 years old in all states and territories. We note that many Australian states and territories have taken steps in this direction:

- The Northern Territory has raised the minimum age of criminal responsibility to 12 years.²⁷
- The Australian Capital Territory has raised the minimum age of criminal responsibility to 12 years, with this increasing to 14 in 2025.²⁸
- The Victorian Government has committed to raising the minimum age of criminal responsibility first to 12 years, then to 14 by 2027.²⁹
- The Tasmanian Government has committed to raising the minimum age of criminal responsibility to 14 years and raising the minimum age of detention to 16 years by 2029.³⁰

There are also active community campaigns to raise the age of criminal responsibility to at least 14 years old nationally.³¹ As a nation-wide service, we are concerned to see Queensland falling behind other states and territories in the protection it offers to children. We share the concern expressed by Australian Children's Commissioners and Guardians that a patchwork approach to deciding the age of criminal responsibility 'will result in a confusion of legislation and practices across the country, and operational challenges for police and service providers'.³²

Raising the age of criminal responsibility to at least 14 would bring Queensland and Australia into closer alignment with contemporary human rights standards. Australia is a

2023, <raisetheage.org.au/news-stories/australias-childrens-commissioners-and-guardians-open-letter-to-raise-the-age-of-criminal-responsibility>.

- 27 *Criminal Code Act 1983* (NT), section 38, as amended by *Criminal Code Amendment (Age of Criminal Responsibility) Act 2022* (NT), item 4; Northern Territory Government, *Raising the minimum age of criminal responsibility*, accessed 11 December 2023, <nt.gov.au/law/young-people/raising-minimum-age-of-criminal-responsibility>.
- 28 *Justice (Age of Criminal Responsibility) Amendment Act 2023* (ACT), item 94; Australian Capital Territory Government, *Raising the age*, accessed 11 December 2023, <www.justice.act.gov.au/safer-communities/raising-the-age>.
- 29 Premier of Victoria, *Keeping young people out of the criminal justice system*, 26 April 2023, accessed 11 December 2023, <www.premier.vic.gov.au/keeping-young-people-out-criminal-justice-system>.
- 30 Tasmanian Government (Department for Education, Children and Young People), *Youth justice blueprint 2024–2034: keeping children and young people out of the youth justice system*, December 2023, p 5, <publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>.
- 31 See, for example, Raise the Age, *About the campaign*, accessed 3 January 2024, <raisetheage.org.au/campaign>; Raise the Age New South Wales, *About*, accessed 3 January 2024, <raisetheagensw.org.au/about>; Social Reinvestment Western Australia, *Raise the age*, accessed 3 January 2024, <www.socialreinvestmentwa.org.au/raise-the-age>.
- 32 Australia's Children's Commissioners and Guardians, *Open letter to raise the age of criminal responsibility*.

party to the Convention on the Rights of the Child. This provides that the best interests of the child must be a primary consideration in all actions concerning children, and that children must have the protection and care that is necessary for their wellbeing.³³

The Committee on the Rights of the Child, which monitors implementation of the Convention, observes that the ‘the most common minimum age of criminal responsibility internationally is 14’ and that a minimum age of at least 14 years old is supported by scientific evidence:

*States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances ...*³⁴

In their recent open letter, Australian Children’s Commissioners and Guardians also highlighted ‘substantial human rights issues that have been identified in youth detention across the country’. These human rights issues include child sexual abuse.

knowmore supports improving the protection of children’s human rights under Queensland law. In knowmore’s view, the Queensland Government should raise the minimum age of criminal responsibility to at least 14 years old.

Recommendation 4

The Queensland Government should raise the minimum age of criminal responsibility to at least 14 years old.

33 Convention on the Rights of the Child, article 3.

34 Committee on the Rights of the Child, *General comment no. 24 (2019) on children’s rights in the child justice system*, 11 November 2019, p 6, <www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>.

Repealing the presumption against releasing children charged with particular offences while on release for an indictable offence

On 30 April 2021, the *Youth Justice and Other Legislation Amendment Act 2021* (Qld) came into effect,³⁵ creating a presumption against release for children charged with particular offences while on release for an indictable offence (among other things).³⁶

knowmore made a submission opposing this change, largely due to the heightened risk of child sexual abuse for children in detention environments (discussed on pages 12 to 15). As we said in that submission, ‘the proposed amendments all but guarantee that the number of children who spend time in detention settings will increase’.³⁷

We recommend that the Queensland Government repeal section 48AF of the *Youth Justice Act 1992* (Qld), which contains the presumption against releasing children charged with particular offences while on release for an indictable offence.

Recommendation 5

The Queensland Government should repeal section 48AF of the *Youth Justice Act 1992* (Qld), which contains the presumption against releasing children charged with particular offences while on release for an indictable offence.

Repealing the ‘offence to breach conditions of bail’ for children

On 22 March 2023, the *Strengthening Community Safety Act 2023* (Qld) came into effect, making it a criminal offence for a child to breach conditions of bail (among other changes).³⁸

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- 35 Queensland Government (Department of Employment, Small Business and Training and Department of Youth Justice), *Changes to the Youth Justice Act 1992*, 25 August 2023, accessed 3 January 2024, <desbt.qld.gov.au/youth-justice/reform/changes-act>.
- 36 *Youth Justice Act 1992* (Qld), section 48AF, inserted by the *Youth Justice and Other Legislation Amendment Act 2021* (Qld), item 24. The particular offences are called prescribed indictable offences. They are outlined in schedule 4 of the *Youth Justice Act 1992* (Qld), as amended by the *Youth Justice and Other Legislation Amendment Act 2021* (Qld), item 34.
- 37 knowmore, *Submission on the Youth Justice and Other Legislation Amendment Bill 2021*, 11 March 2021, <knowmore.org.au/wp-content/uploads/2021/03/submission-youth-justice-and-other-legislation-amendment-bill-2021-qld.pdf>.
- 38 *Bail Act 1980* (Qld) section 29, as amended by the *Strengthening Community Safety Act 2023* (Qld), item 5; Queensland Government (Department of Employment, Small Business and Training and Department of Youth Justice), *Changes to the Youth Justice Act 1992*, 25 August 2023, accessed 3 January 2024, <desbt.qld.gov.au/youth-justice/reform/changes-act>.

This change was incompatible with the human rights of children and involved an unprecedented override of the *Human Rights Act 2019* (Qld). As the relevant Minister said:

The Government acknowledges that this proposed amendment is incompatible with the right of children to protection in their best interests in section 26(2) of the [Human Rights] Act.

The amendment may make it more likely that children will be detained pending trial and for this reason is inconsistent with international standards about the best interests of the child ...

The proposal may also tend to limit the ability to divert children away from formal criminal process.

*... because it appears that less restrictive options are available to achieve the same purpose, the proposal limits human rights in a way which is not justified.*³⁹

These comments speak for themselves. Media reports suggest that the offence to breach conditions of bail for children has led to a surge in the criminalisation of children, with 169 children charged with 299 breach of bail offences in a period of about 2 months from when the change came into effect.⁴⁰ Two-thirds of these children were Aboriginal and/or Torres Strait Islander children.⁴¹

The offence to breach conditions of bail for children has been widely criticised, including by:

- the Australian Human Rights Commission⁴²
- the Queensland Human Rights Commission⁴³
- the Queensland Family and Child Commission⁴⁴

39 M Ryan MP, *Strengthening Community Safety Bill 2023: statement of compatibility*, 26 October 2022, pp 2–3, <documents.parliament.qld.gov.au/tp/2023/5723T166-F46A.pdf>.

40 E Gillespie, *Hundreds of breach of bail charges laid against children in the first two months of controversial Queensland law*, The Guardian, 25 May 2023, <www.theguardian.com/australia-news/2023/may/25/hundreds-of-children-charged-for-breaching-bail-in-first-two-months-of-controversial-queensland-law>; E Gillespie, *Two-thirds of children charged with Queensland's new breach of bail offence are Indigenous*, The Guardian, 31 May 2023, <www.theguardian.com/australia-news/2023/may/31/two-thirds-of-children-charged-with-queenslands-new-breach-of-bail-offences-are-indigenous>.

41 E Gillespie, *Two-thirds of children charged with Queensland's new breach of bail offences are Indigenous*.

42 Australian Human Rights Commission, *Submission on the Strengthening Community Safety Bill 2023*, 28 February 2023, p 1, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000076.pdf>.

43 Queensland Human Rights Commission, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, pp 12–13, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000052.pdf>.

44 Queensland Family and Child Commission, *Submission on the Strengthening Community Safety Bill 2023*, February 2023, pp 4–5 and 8, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000060.pdf>.

- the Queensland Public Guardian⁴⁵
- the Bar Association of Queensland⁴⁶
- the Queensland Law Society⁴⁷
- QCOSS⁴⁸
- Amnesty International Australia⁴⁹
- Save the Children Australia⁵⁰
- Sisters Inside⁵¹
- the Queensland Aboriginal and Torres Strait Islander Coalition⁵²
- Community Legal Centres Queensland⁵³

45 Queensland Public Guardian, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, pp 1–2, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000068.pdf>.

46 Bar Association of Queensland, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, p 1, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000041.pdf>.

47 T Kleim, *QLS: Government reneges on election promise re youth bail breach laws*, Proctor, 27 February 2023, <www.qlsproctor.com.au/2023/02/qls-palaszczuk-labor-government-reneges-election-promise-on-youth-bail-breach-laws/>.

48 QCOSS, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, pp 2–3, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000063.pdf>.

49 Amnesty International Australia, *Why does the government keep doing the same thing and expect a different result: the looming human rights emergency in Qld*, 15 March 2023, <www.amnesty.org.au/why-does-the-government-keep-doing-the-same-thing-and-expect-a-different-result-the-looming-human-rights-emergency-in-qld/>.

50 Save the Children Australia, *Save the Children strongly condemns Queensland Government's decision to override its own human rights act and jeopardise the rights of children*, 22 February 2023, <www.savethechildren.org.au/media/media-releases/queensland-overrides-human-rights-act>.

51 Sisters Inside, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, pp 3–4, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000036.pdf>.

52 Queensland Aboriginal and Torres Strait Islander Coalition, *Submission on the Strengthening Community Safety Bill 2023*, 27 February 2023, p 2, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000074.pdf>.

53 Community Legal Centres Queensland, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, pp 3–4, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000072.pdf>.

- the Youth Advocacy Centre⁵⁴
- numerous academic experts.⁵⁵

We particularly note the comments of the Queensland Human Rights Commissioner, delivered in the context of the *Strengthening Community Safety Bill* as a whole, that:

*The proposals will inevitably lead to greater pressure on detention centres and threatens to normalise the inhumane treatment of children by exposing them to an unacceptable risk of psychological and physical harm.*⁵⁶

Building on the Commissioner's comments, knowmore would specifically note the risk of child sexual abuse in this context (see pages 12 to 15).

We recommend that the Queensland Government amend section 29 of the *Bail Act 1980* (Qld) to repeal the offence to breach conditions of bail for children.

Recommendation 6

The Queensland Government should amend section 29 of the *Bail Act 1980* (Qld) to repeal the 'offence to breach conditions of bail' for children.

Repealing the power to hold children in watchhouses

On 1 September 2023, part of the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld) came into effect. The changes included the following, with retrospective effect:

- allowing children to be held in watchhouses⁵⁷

54 Youth Advocacy Centre, *Submission on the Strengthening Community Safety Bill 2023*, 24 February 2023, p 4, <documents.parliament.qld.gov.au/com/EGC-A022/YJDRAFTTIT-9F73/submissions/00000065.pdf>.

55 See, for example, J Hinchliffe and E Gillespie, 'Recipe for disaster': Queensland bail law that overrides children's human rights won't work, experts say, *The Guardian*, 22 February 2023, <www.theguardian.com/australia-news/2023/feb/22/recipe-for-disaster-queensland-bail-law-that-overrides-childrens-human-rights-wont-work-experts-say>.

56 Queensland Human Rights Commission, *Commissioner alarmed about rush to pass harsher youth justice laws*, 21 February 2023, <www.qhrc.qld.gov.au/data/assets/pdf_file/0020/42509/2023.02.21-Media-statement-Rush-to-pass-youth-justice-laws.pdf>.

57 *Youth Justice Act 1992* (Qld), sections 56, 210 and 262, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), items 70 and 72–73; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, 24 August 2023, pp 10–12, <www.legislation.qld.gov.au/view/pdf/bill.third.exp/bill-2022-008>.

- validating the past conduct of the police in unlawfully holding children in watchhouses⁵⁸
- overriding the *Human Rights Act 2019* (Qld) for these purposes until the end of 2026 or 2027.⁵⁹

In noting the incompatibility of these changes with the human rights of children, the relevant Minister said:

It is acknowledged that watchhouses are designed to hold adults for relatively short periods of time. They are not designed for holding children for longer periods during which they may be held together with other children, may not have access to appropriate fresh air or direct sunlight, may face issues receiving visits from family members and may see or hear adult detainees in the watchhouse.

However ... holding children in police watchhouses is preferable to transferring them to overcrowded [youth detention centres].⁶⁰

As with the Minister's comments about the offence to breach conditions of bail for children (discussed on page 19), we think these comments speak for themselves. We would add that we hold particular concerns about the heightened risk of child sexual abuse for children in watchhouses (see pages 12 to 15), and the lack of adequate or trauma-informed support for children in watchhouses.⁶¹

We are particularly concerned by the suggestion that children must be detained in watchhouses due to overcrowding in youth detention centres. In knowmore's view, the overcrowding of youth detention centres reflects the excessive criminalisation and imprisonment of children, and the need for a stronger diversionary approach that supports children to remain safely with their families and their communities (see Recommendation 3 on page 15). We share the concerns of the National Children's Commissioner Anne Hollands as to the self-defeating nature of the present approach:

The recent toughening of bail laws has led to overflowing children's prisons, resulting in the need to lock up more children in adult facilities, in breach of human rights laws.

58 *Youth Justice Act 1992* (Qld), part 11, division 22, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), item 82; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, pp 10–12.

59 See, for example, *Youth Justice Act 1992* (Qld), sections 56, 210 and 262A, as amended by the *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Act 2023* (Qld), items 70, 72 and 74; *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: explanatory notes for amendments*, pp 10–12.

60 M Ryan MP, *Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022: statement of compatibility for amendments*, 24 August 2023, p 17, <www.legislation.qld.gov.au/view/pdf/bill.third.hrc/bill-2022-008>.

61 Youth Advocacy Centre, *Orange paper #1: the use of Queensland watch houses to hold children*, March 2019, pp 4–6, <yac.net.au/use-of-police-watch-houses/>.

*On any level — surely this is a sign of something seriously wrong. This is a system in crisis. And the community is not safer.*⁶²

We recommend that the Queensland Government repeal the power to hold children in watchhouses.

Recommendation 7

The Queensland Government should repeal the power to hold children in watchhouses.

Retaining the discretion of courts to impose appropriate sentences – comments about mandatory sentences

In knowmore's view, it is important that courts retain the discretion to impose appropriate sentences for offences. We do not support mandatory sentences as these are not supported by evidence, are inconsistent with human rights standards and do not have appropriate regard to the complex considerations that may arise in particular cases. We hold particular concerns as to the impact of mandatory sentences on people experiencing marginalisation, including children and victims and survivors of child sexual abuse. We have, for example, discussed the heightened risk of child sexual abuse for children in detention environments on pages 12 to 15.

We note that many legal stakeholders are opposed to mandatory sentences. For example, the Australian Law Reform Commission has recommended against mandatory sentences for federal offences⁶³ and made the following comments:

*Evidence suggests that mandatory sentencing increases incarceration, is costly and is not effective as a crime deterrent. Mandatory sentencing may also disproportionately affect particular groups within society, including Aboriginal and Torres Strait Islander peoples — especially those found guilty of property crime.*⁶⁴

Similarly, the Law Council of Australia opposes mandatory sentences and has commented that:

The community is rightly concerned that law and order policies are effective in reducing crime and recidivism. However, there is a lack of any persuasive

62 Australian Human Rights Commission, *National Children's Commissioner slams 'shocking' new Qld youth justice laws*, 25 August 2023, <humanrights.gov.au/about/news/media-releases/national-childrens-commissioner-slams-shocking-new-qld-youth-justice-laws>.

63 Australian Law Reform Commission, *Pathways to justice — an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: final report*, December 2017, p 277, <www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

64 Australian Law Reform Commission, *Pathways to justice*, p 273.

*evidence that mandatory sentencing leads to these outcomes. Rather the evidence points to the significant financial and social cost of mandatory sentencing to individuals and to the community without a corresponding benefit in crime reduction.*⁶⁵

We share the Law Council's concern that mandatory sentences are inconsistent with human rights standards, including the prohibition against arbitrary detention.⁶⁶ When applied to children, mandatory sentences also breach the obligation to ensure that decisions regarding children have their best interests as a primary consideration, and that children are only detained as a last resort and for the shortest possible appropriate period.⁶⁷ We note that these standards have parallels in Queensland's *Human Rights Act*.⁶⁸

With regard to child sexual abuse, we note that the Royal Commission commissioned sentencing research, which expressed concerns about mandatory sentencing, warning that it 'imposes a significant or complete constraint on judicial discretion' and noting consequent problems with respect to its effectiveness and fairness. According to the sentencing research report prepared for the Royal Commission:

*The criminological evidence is that mandatory sentences are not as effective as deterrents, do not reduce crime rates and generally operate in such a way that discriminates against certain minority groups. In terms of consistency, rather than leniency of sentences, mandatory sentencing has the effect of treating unlike cases as like, creating a form of unfairness analogous to the situation where there is too much discretion and where like cases are treated differently.*⁶⁹

We note that complex sentencing considerations can arise in many cases, including where a victim or survivor is convicted of an offence. The Royal Commission observed:

*While the vast majority of child sexual abuse victims do not go on to commit crimes, some research suggests a higher prevalence of offending than for people in the general community. According to one large-scale Australian study, child sexual abuse victims were almost five times more likely to be charged with an offence than their peers in the general population.*⁷⁰

65 Law Council of Australia, *Mandatory sentencing policy*, May 2014, p 2, <www.lawcouncil.asn.au/publicassets/2c6c7bd7-e1d6-e611-80d2-005056be66b1/143105-Policy-Statement-Mandatory-Sentencing-Policy-Position.pdf>.

66 Law Council of Australia, *Policy discussion paper on mandatory sentencing*, May 2014, p 6, <www.lawcouncil.asn.au/publicassets/f370dcfc-bdd6-e611-80d2-005056be66b1/1405-Discussion-Paper-Mandatory-Sentencing-Discussion-Paper.pdf>.

67 Law Council of Australia, *Policy discussion paper on mandatory sentencing*, p 6.

68 *Human Rights Act 2019* (Qld), sections 26, 29 and 33.

69 A Freiberg, H Donnelly and K Gelb, *Sentencing for child sexual abuse in institutional contexts*, July 2015, p 189, <www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Research%20Report%20-%20Sentencing%20for%20Child%20Sexual%20Abuse%20in%20Institutional%20Context%20-%20Government%20responses.pdf>.

70 Royal Commission, *Final report: volume 3, impacts*, December 2017, p 144, <www.childabuseroyalcommission.gov.au/impacts>.

Survivors are presently overrepresented in prison⁷¹ and mandatory sentencing is likely to worsen this problem. knowmore advises many survivors in prison and holds significant concerns as to the risk of further harm to survivors in the detention environment. The Royal Commission has addressed these issues at length in Volume 5 of its Final Report.⁷²

Where a survivor is convicted of a criminal offence, their experience of child sexual abuse and need for appropriate support should be important considerations in sentencing. Mandatory sentences significantly interfere with the ability of a court to give appropriate weight to these factors, and other relevant factors that may arise in the particular case.

knowmore considers that the Queensland Government should retain the discretion of courts to impose appropriate sentences for offences — it should not adopt mandatory sentences as part of the legal response to offending by children.

Recommendation 8

The Queensland Government should retain the discretion of courts to impose appropriate sentences for offences — it should not adopt mandatory sentences as part of the legal response to offending by children.

71 Royal Commission, *Final report: volume 3, impacts*, p 144.

72 Royal Commission, *Final report: volume 5, private sessions*, chapter 8.

Improving support for victims of crime

This section discusses how the Queensland Government can improve support for victims of crime. It addresses Terms of Reference 1(b) and 2(d) of the Committee's inquiry.

We note that, while the focus of the Committee's inquiry is 'youth justice', Terms of Reference 1(b) and 2(d) ask about support for victims of crime, without drawing a distinction between victims of offending by children and victims of offending by adults. In knowmore's view, the support required for victims and survivors of child sexual abuse does not fundamentally differ with respect to child sexual abuse by children or child sexual abuse by adults. In all cases, victims and survivors require adequate, trauma-informed and culturally safe support.

knowmore has recently made a detailed submission to the Queensland Parliament's Legal Affairs and Safety Committee about improving support for victims of crime.⁷³ This detailed submission draws on previous submissions that knowmore has made, including to the Queensland Department of Justice and Attorney-General (DJAG).⁷⁴ It reflects findings and recommendations of:

- the Royal Commission about how to improve support for victims and survivors of institutional child sexual abuse
- the Queensland Women's Safety and Justice Taskforce (Taskforce) about how to improve support for women and girls who are victims and survivors of sexual assault.

Many of our comments in this section repeat comments that we have made previously about how to improve support for victims and survivors of child sexual abuse. They point to recommendations to improve support for victims and survivors of crime that are overdue and should be prioritised by the Queensland Government.

We begin this section of our submission by discussing ways to improve support for victims and survivors through the criminal legal system, before discussing ways to improve the support for victims and survivors under Queensland's victims support scheme (Victim Assist Queensland).

73 knowmore, *Submission to the inquiry into support provided to victims of crime in Queensland*, 12 April 2023, <knowmore.org.au/wp-content/uploads/2023/06/submission-inquiry-into-support-provided-to-victims-of-crime-qld.pdf>

74 knowmore, *Submission on Queensland's Victims of Crime Assistance Act 2009*, 9 December 2014, <knowmore.org.au/wp-content/uploads/2020/11/submission-review-of-the-victims-of-crime-assistance-act-2009-qld.pdf>.

Improving support for victims and survivors through the criminal legal system

The Royal Commission recognised that engaging with the legal system can be traumatic for survivors, ‘triggering the impacts of the abuse even after many years’.⁷⁵ This is consistent with our clients’ experiences. A common experience reported by our clients who have sought a criminal legal response to child sexual abuse is a feeling of being marginalised or excluded from the process. Some clients have perceived that their interests were given little consideration in the criminal legal process.

In our experience, victims and survivors are often particularly frustrated by barriers that impact on their ability to meaningfully participate in police and prosecution processes. Key concerns that victims and survivors have raised include:

- not having anyone to contact or not being given meaningful information about the progress of the police investigation
- not being consulted about police and prosecution decisions
- a lack of accessible information about the criminal legal process and the reasons for certain decisions
- a lack of understanding or consideration of the impacts of child sexual abuse — for example, in relation to memory⁷⁶
- having no voice to raise concerns or ask questions, or simply not knowing the right questions to ask because of a lack of information about relevant legal issues.⁷⁷

These problems are compounded by a lack of appropriate, dedicated support for victims and survivors throughout their engagement with the criminal legal system. While many of our clients have been very grateful for the information and assistance provided by Victim Assist’s Victim Coordination Program, for example, they often remain frustrated by their inability to access truly independent support and have their individual interests represented throughout the process.⁷⁸

To address these concerns, we submit that the support provided to victims and survivors through the criminal legal system should be improved by:

- embedding a trauma-informed approach to working with victims and survivors at every stage of the criminal legal process

75 Royal Commission, *Final report: volume 3, impacts*, p 184.

76 See Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 253.

77 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse’s criminal justice consultation paper*, 31 October 2016, pp 28–30, <knowmore.org.au/wp-content/uploads/2018/06/Consultation-Paper-Criminal-Justice-Submission-32-knowmore.pdf>.

78 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse’s criminal justice consultation paper*, pp 28–30.

- providing victims and survivors with access to free, independent, trauma-informed legal assistance and wraparound support throughout their engagement with the legal system.

These improvements should apply regardless of whether victims and survivors experience offending by children or offending by adults.

Embedding a trauma-informed approach

We consider it essential for a trauma-informed approach to working with victims and survivors to be embedded at every stage of the criminal legal process, including any interactions with the police, prosecutors, courts and support services. This means participants in all parts of the criminal legal system:

- ensuring they do no further harm to victims and survivors
- delivering services to victims and survivors in accordance with the core trauma-informed principles of safety, trustworthiness, choice, collaboration, empowerment and respect for diversity⁷⁹
- recognising the particular needs of victims and survivors and responding to these with an increased level of support.⁸⁰

We recommend that a commitment to ensuring that every stage of the criminal legal process operates within a trauma-informed framework should be incorporated into the Charter of Victims' Rights (Victims' Rights Charter) in the *Victims of Crime Assistance Act 2009* (Qld) (VOCA Act).⁸¹

In light of the experiences of our clients highlighted above on page 27, we consider that there needs to be a particular focus on embedding a trauma-informed approach in police and prosecution responses. In relation to victims and survivors of institutional child sexual abuse, the Royal Commission recommended that police and prosecution responses be underpinned by a number of key principles.⁸² These principles are appropriate to underpin police and prosecution responses to all types of crime, and we note that some of them are already reflected in the Victims' Rights Charter. These include victims being treated with

79 See Blue Knot Foundation, *Trauma-informed services*, accessed 3 January 2024, <professionals.blueknot.org.au/resources/trauma-informed-services/>.

80 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, p 7.

81 We also make comments on pages 30 to 31 about the need for the Queensland Government to amend the *Human Rights Act 2019* (Qld) to include specific protection of victims' and survivors' rights.

82 Royal Commission, *Criminal justice report: executive summary and parts I and II*, Recommendations 7 and 12, pp 23 and 29; Royal Commission, *Criminal justice report: parts III to VI*, August 2017, Recommendations 37 and 39, pp 320 and 351, <www.childabuseroyalcommission.gov.au/criminal-justice>.

consideration and respect,⁸³ and being informed about the progress of investigations and prosecutions.⁸⁴

A number of the Royal Commission's other recommended principles are not currently reflected in the Victims' Rights Charter and highlight ways that the Victims' Rights Charter could be strengthened. We specifically support amendments to the Victims' Rights Charter to ensure that victims and survivors:

- receive regular communication from police and prosecution agencies, as part of being kept informed about the status of their matter⁸⁵
- are meaningfully consulted about any proposal to downgrade or withdraw charges or to accept a plea of guilty to a lesser or different charge, and are given the opportunity to obtain independent legal assistance before giving their opinion on the proposal⁸⁶
- are able to exercise their rights around communication and consultation through a support person or organisation if they choose⁸⁷
- are referred to/assisted to contact appropriate support services and access available remedies, not just informed of them.⁸⁸

We note that these and other rights are recognised in the ACT's *Victims of Crime Act 1994*,⁸⁹ and submit that the ACT's legislation provides a comprehensive model for consideration in Queensland.

Recommendation 9

The Queensland Government should embed a trauma-informed approach to working with victims and survivors at every stage of the criminal legal process.

83 *Victims of Crime Assistance Act 2009 (Qld)*, schedule 1AA, part 1, division 1, item 1, consistent with Recommendation 12 (part a).

84 *Victims of Crime Assistance Act 2009 (Qld)*, schedule 1AA, part 1, division 2, items 1–5, consistent with Recommendations 7 (part b), 12 (part h) and 37 (part c).

85 Royal Commission, *Criminal justice report: executive summary and parts I and II*, Recommendations 7 and 12, pp 23 and 29; Royal Commission, *Criminal justice report: parts III to VI*, Recommendation 37, p 320.

86 Royal Commission, *Criminal justice report: parts III to VI*, Recommendation 39, p 351.

87 Royal Commission, *Criminal justice report: executive summary and parts I and II*, Recommendation 12, p 29.

88 Royal Commission, *Criminal justice report: executive summary and parts I–II*, Recommendations 12 (part c) and 37 (part d).

89 See, for example, section 16A (Police to update victims about the status of investigations) and section 16B (DPP to consider victims' views about dealing with charges).

Recommendation 10

The Queensland Government should strengthen the Charter of Victims' Rights in the *Victims of Crime Assistance Act 2009* (Qld), in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and having regard to the model provided by the ACT's *Victims of Crime Act 1994*.

In calling for changes to the Victims' Rights Charter, we note recommendations from the Taskforce that the Queensland Government:

- establish a victims' commissioner as an independent statutory office to promote and protect the needs of victims of all violent offences, with the commissioner to have a specific and dedicated focus on victims of domestic, family and sexual violence, and Aboriginal and/or Torres Strait Islander victims and survivors (Recommendation 18)⁹⁰
- review the Victims' Rights Charter and consider whether additional rights should be recognised or existing rights should be expanded (Recommendation 19).⁹¹

knowmore welcomes the Queensland Government's commitment to establish a permanent Victims' Commissioner, to be announced by 30 June 2024.⁹² In our view, the Victims' Commissioner must be empowered with broad functions to promote and protect the needs of victims and survivors, as contemplated by Recommendation 18 from the Taskforce.⁹³

Recommendation 11

The Queensland Government should ensure that the Victims' Commissioner is empowered with broad functions to promote and protect the needs of victims and survivors, as contemplated by Recommendation 18 of the Women's Safety and Justice Taskforce.

We also note that the Queensland Government has committed to considering whether to incorporate victims' rights in the *Human Rights Act 2019* (Qld) as part of a statutory review.⁹⁴ knowmore considers that the *Human Rights Act 2019* (Qld) should include specific protection of victims' and survivors' rights. This position aligns with Recommendation 20

90 Women's Safety and Justice Taskforce (Taskforce), *Hear her voice: report two, volume one*, 2022, p 139, <www.womenstaskforce.qld.gov.au/publications>.

91 Taskforce, *Hear her voice: report two, volume one*, p 140.

92 Queensland Government, *Interim Victims' Commissioner appointed*, 2 September 2023, <statements.qld.gov.au/statements/98579>.

93 We also make comments on page 35 about the important role that the Victims' Commissioner should play in improving support for victims and survivors under Victim Assist.

94 Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, 19 May 2023, accessed 4 January 2024, p 4, <documents.parliament.qld.gov.au/com/LASC-C96E/202324BE-8296/Government%20Response%20to%20LASC%20Report%20No.%2048,%20Inquiry%20into%20support%20provided%20into%20victims%20of%20crime.pdf>.

from the Taskforce,⁹⁵ and is shared by the Women's Legal Service Queensland.⁹⁶ Improving the Victims' Rights Charter in the VOCA Act would ideally be part of a journey towards including specific protection of victims' and survivors' rights in the *Human Rights Act 2019* (Qld).⁹⁷

Recommendation 12

The Queensland Government should amend the *Human Rights Act 2019* (Qld) to include specific protection of victims' and survivors' rights.

Providing access to free, independent, trauma-informed legal assistance and wraparound support

As noted on page 27, engaging with the criminal legal system is often traumatic and triggering for survivors. The Royal Commission recommended reforming the criminal legal system to ensure that victims and survivors are supported in seeking criminal legal responses to child sexual abuse.⁹⁸ In knowmore's view, victims and survivors of child sexual abuse should have access to free, independent and trauma-informed legal assistance throughout their engagement with the legal system. We note that elements of this already exist — for example:

- knowmore provides legal advice to victims and survivors of child sexual abuse about reporting child sexual abuse to the police
- Legal Aid Queensland and the Women's Legal Service Queensland provide legal assistance to victims and survivors of sexual assault in relation to the protection of counselling communications.⁹⁹

95 Taskforce, *Hear her voice: report two, volume one*, Recommendation 20, p 140.

96 See, for example, Women's Legal Service Queensland, *Response to call for public submissions*, Commission of Inquiry into Queensland Police Service responses to domestic and family violence, 8 July 2022, pp 14–15, <www.qpsdfvinquiry.qld.gov.au/assets/docs/submissions/Women's%20Legal%20Service%20Queensland%20Submission%20Nil%20Redactions%20Required.pdf>. See also knowmore, *Submission on Queensland's Human Rights Bill 2018*, 25 November 2018, <knowmore.org.au/wp-content/uploads/2020/11/submission-humanrights-bill-2018-qld.pdf>.

97 For more information about the need for specific protection of victims' and survivors' rights in human rights charters, see knowmore, *Submission to the inquiry into Australia's Human Rights Framework*, 17 July 2023, pp 7–8 and 11–12, <knowmore.org.au/wp-content/uploads/2023/08/submission-inquiry-into-australias-human-rights-framework-cth.pdf>.

98 Royal Commission, *Criminal justice report: executive summary and parts I and II*, Recommendation 1, p 14.

99 See Legal Aid Queensland, *Protecting sexual assault counselling records*, 7 September 2020, accessed 3 January 2024, <www.legalaid.qld.gov.au/Find-legal-information/Factsheets-and-guides/Factsheets/Counselling-Notes-Protect-Service#toc-what-is-the-counselling-notes-protect-service--2>.

However, there is not presently a service that provides free, independent and trauma-informed legal assistance and wraparound support to victims and survivors of child sexual abuse throughout all parts of the criminal legal system or the legal system in general.

We acknowledge, and welcome, the Queensland Government's commitment to piloting a statewide victim advocate service for victims of sexual violence in response to Recommendation 9 from the Taskforce.¹⁰⁰ The importance of victims and survivors having someone to champion their rights cannot be overstated. Based on the insights we have gained from our clients about the challenges they face in engaging with the criminal legal system, we believe that reforms to establish free, independent and trauma-informed legal assistance for victims and survivors would be strongly supported by victims and survivors of child sexual abuse.¹⁰¹ A service of this nature would:

- address a critical gap in the assistance available to victims and survivors of child sexual abuse
- contribute to making the legal processes more trauma-informed
- contribute to fairer outcomes that better consider the rights, interests and evidence of victims and survivors.

We envisage victims and survivors being assisted to exercise their rights and protect their interests, including in relation to:

- their engagement with the police and the prosecution, including being consulted about police and prosecution decisions (as discussed on pages 28 to 29)
- their rights and privileges in relation to evidence — for example, special measures for giving evidence¹⁰²
- their rights to privacy and the disclosure of identifying information, for example, prohibitions against publishing complainants' identifying information and the right for adult complainants to authorise publication¹⁰³
- their right to make a victim impact statement as part of sentencing¹⁰⁴

100 Queensland Government, *Action for victim-survivors of sexual violence*, 21 November 2022, <statements.qld.gov.au/statements/96625>; Taskforce, *Hear her voice: report two, volume one*, Recommendation 9, p 129.

101 See also knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, pp 28–32; Royal Commission, *Criminal justice report: executive summary and parts I and II*, pp 218–222; Victorian Law Reform Commission, *Improving the justice system response to sexual offences: report*, September 2021, Recommendation 46, p 268, <www.lawreform.vic.gov.au/wp-content/uploads/2023/08/VLRC_Improving_Justice_System_Response_to_Sex_Offences_Report_web.pdf>.

102 See, for example, *Evidence Act 1977* (Qld), division 4.

103 *Criminal Law (Sexual Offences) Act 1978* (Qld), section 10.

104 *Penalties and Sentences Act 1992* (Qld), section 179K; *Youth Justice Act 1992* (Qld), section 150(j).

- their options for redress and compensation, including under the VOCA Act (see further discussion on pages 34 to 43).¹⁰⁵

Based on our experience as a multidisciplinary service, we consider it essential for this legal assistance to be delivered by dedicated services that can provide wraparound support, recognising the impacts of child sexual abuse and the importance of a trauma-informed response.¹⁰⁶ We consider it important for any service delivering this assistance to be free from actual, potential or perceived conflicts of interest that may arise from also providing assistance to alleged offenders. This is important to ensure that victims and survivors are able to access and have confidence in the service.

The following are key features of knowmore's service delivery model that we recommend be embedded as good practice in the delivery of free, independent and trauma-informed legal assistance to victims and survivors:

- a targeted service that ensures funding is first used to assist survivors who are the most in need and who are least able to otherwise access legal assistance
- an integrated, multidisciplinary team that brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide a holistic, comprehensive response to clients' legal and associated non-legal needs
- a supportive, client-centred culture that focuses on providing survivors with assistance at a pace that is suitable for them
- staff and systems built on an understanding of the profound and life-long impacts of childhood trauma on clients' lives, to drive responses that are trauma-informed and appropriate
- a framework of Aboriginal and/or Torres Strait Islander cultural safety, which has an appreciation and conceptualisation of Aboriginal and Torres Strait Islander cultural knowledge as its own discipline at its centre.

These features can be summarised by describing knowmore as a service that delivers targeted, joined-up, timely, appropriate, survivor-focused, trauma-informed and culturally safe legal assistance and other support to victims and survivors of child sexual abuse.¹⁰⁷ We

105 See further discussion in knowmore, *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse's criminal justice consultation paper*, pp 30–32; Victorian Law Reform Commission, *Improving the justice system response to sexual offences*, pp 263–268.

106 The impacts of child sexual abuse are discussed at length in Volume 3 of the Royal Commission's Final Report. See also Royal Commission, *Criminal justice report: executive summary and parts I and II*, p 253.

107 The qualities of targeted, joined-up, timely and appropriate reflect what the Law and Justice Foundation of New South Wales has previously identified as the 4 key precepts of public legal assistance services. See P Pleasence, C Coumarelos, S Forell and HM McDonald, *Reshaping legal assistance services: building on the evidence base, a discussion paper*, Law and Justice Foundation of New South Wales, April 2014, p iii, <[www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/\\$file/Reshaping_legal_assistance_services_web.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/D76E53BB842CB7B1CA257D7B000D5173/$file/Reshaping_legal_assistance_services_web.pdf)>.

consider this offers a valuable and feasible model for supporting victims and survivors of other crimes throughout the criminal legal system and the legal system in general.

Recommendation 13

The Queensland Government should ensure that victims and survivors receive free, independent and trauma-informed legal assistance and wraparound support throughout their engagement with the legal system.

Improving support for victims and survivors under Victim Assist

Each Australian state and territory has a government-based scheme that provides support to victims and survivors of crime. We use ‘victims support’ as a general term for these schemes, although the name varies between states and territories. In Queensland, the victims support scheme is Victim Assist. It is regulated by the *Victims of Crime Assistance Act 2009* (Qld) (VOCA Act).

Depending on the circumstances, a victim or survivor of child sexual abuse in Queensland may have a range of redress and compensation options, including financial assistance under Victim Assist. Other options may include:

- the National Redress Scheme for institutional child sexual abuse
- a redress scheme provided by an institution where abuse occurred
- a civil claim for compensation
- a compensation or restitution order against an offender as part of a criminal law process.¹⁰⁸

A victim or survivor’s decision to seek redress or compensation is deeply personal, and there are many factors that may influence a victim or survivor’s choice between options.¹⁰⁹ For many victims and survivors of child sexual abuse, financial assistance under Victim Assist is an important option.

While we acknowledge that Victim Assist must consider the needs of victims of crime beyond our specific client group, we also consider that Victim Assist must work in a survivor-focused, trauma-informed and culturally safe way for victims and survivors of child sexual abuse. This includes victims and survivors who experienced child sexual abuse from other children. We believe that the experiences of survivors of child sexual abuse are likely to be shared by victims of many other crimes, particularly violent crimes, and that improvements

¹⁰⁸ See *Penalties and Sentences Act 1992* (Qld), sections 35(1), 190 and 194(1); *Youth Justice Act 1992* (Qld), section 235(2).

¹⁰⁹ These factors may include, for example, different application or claim processes, different eligibility criteria or legal tests, different supports available to help with the process, different impacts on other supports (such as Centrelink payments), different costs or costs risks, and different outcomes available.

to better support victims and survivors of child abuse are likely to have significant benefits for other victims too.¹¹⁰

Below, we make some brief, general comments about victims support in Australia, informed by our perspective as a nation-wide service. We then make some general comments about Victim Assist, leading into recommendations to reduce barriers to access assistance, and to provide victims and survivors with additional and more meaningful assistance.

Our comments in this section address the present victims support scheme in Queensland. Many victims and survivors of child sexual abuse are covered by previous victims support schemes, which raise their own issues that negatively affect applicants today.

General comments about victims support in Australia

knowmore's perspective on victims support is informed by our experience as a nation-wide service, assisting survivors with victims support matters in all Australian states and territories. A striking feature of victims support, from a nation-wide perspective, is the significant inconsistencies between victims support schemes in different states and territories. These inconsistencies affect almost every aspect of victims support, including the types of support available, the maximum amount of payments, the eligibility criteria, the application process, interaction with other support options, and review options. There is no good reason for this level of inconsistency between states and territories. It results in significantly different experiences and outcomes for survivors, depending on where they live, and creates difficulties for survivors who have experienced abuse in more than one state or territory.

In knowmore's view, the Queensland Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice. We consider that Queensland's independent Victims' Commissioner should play an important role in this process.¹¹¹

Recommendation 14

The Queensland Government should work collaboratively with other Australian governments to improve consistency between victims support schemes, based on national best practice. Queensland's independent Victims' Commissioner should play an important role in this process.

General comments about Victim Assist

As a nation-wide service, we know that Victim Assist has some strengths compared to victims support schemes in other states and territories. For example:

¹¹⁰ See also our comments on pages 5 and 26 about the intersection of our work with the inquiry's focus.

¹¹¹ For further discussion of Queensland's independent Victims' Commissioner, see page 30.

- The maximum amount of financial assistance available to primary victims under Victim Assist (\$120,000) has recently increased¹¹² and is now the highest among Australian victims support schemes, albeit still lower than the maximum payment under the National Redress Scheme (\$150,000).
- Some processes in Queensland better recognise the impacts of child sexual abuse, for example:
 - allowing victims of sexual offences (among others) the option to report acts of violence to a counsellor, psychologist, doctor or domestic violence service instead of the police¹¹³
 - recognising a broad range of impacts of sexual offences (and domestic violence) in defining ‘injury’.¹¹⁴
- Assistance payments for victims and survivors under Victim Assist are not reduced by redress payments received under the National Redress Scheme.¹¹⁵

However, the Victim Assist scheme also has a number of shortcomings that can prevent survivors from accessing assistance and mean that survivors often do not derive significant benefits from the scheme.

In seeking to improve support for victims and survivors under Victim Assist, we note that our recommendations above for improved support through the criminal legal system also apply here — that is, a trauma-informed approach should be embedded in all aspects of the Victim Assist scheme (see pages 28 to 31), and legal assistance services for victims should have a specific role in helping victims to access and navigate the scheme (see pages 31 to 34). We further submit that there should be a focus on:

- reducing barriers to victims and survivors accessing assistance under Victim Assist
- providing victims and survivors with additional and more meaningful assistance under Victim Assist.

We provide more comments on these points below.

Reducing barriers to accessing assistance

In our view, there are 4 key ways to reduce barriers to victims and survivors of child sexual abuse accessing assistance under Victim Assist:

1. Increase awareness of Victim Assist.
2. Remove time limits to apply for assistance.
3. Reduce the evidence required to receive assistance.

112 *Victims of Crime Assistance Act 2009* (Qld), subsection 38(1), as amended by the *Victims of Crime Assistance and Other Legislation Amendment Act 2023* (Qld), item 6.

113 *Victims of Crime Assistance Act 2009* (Qld), section 81.

114 *Victims of Crime Assistance Act 2009* (Qld), paragraph 27(1)(f).

115 *Victims of Crime Assistance Act 2009* (Qld), schedule 3, definition of ‘relevant payment’, paragraph (d).

4. Make it easier for victims to claim assistance for expenses.

Increase awareness of Victim Assist

In our experience, many victims and survivors are unaware of the assistance available to victims of violent crime through Victim Assist. An inevitable outcome of this is that few victims will seek to access Victim Assist — we note that it was reported in 2014 that only 5 per cent of victims of violent offences went on to make a claim for assistance under the VOCA Act.¹¹⁶ We expect uptake continues to be low, as indicated by DJAG at a public briefing for the Queensland Parliament’s Legal Affairs and Safety Committee on 31 March 2023.¹¹⁷

On page 29, we called for victims and survivors to be referred to/assisted to contact appropriate support services and access available remedies as part of their engagement with the criminal legal system. As part of that, we support all victims of violent crime being made aware of, and assisted to access, the Victim Assist scheme at the point of making a police report, and at additional points throughout any subsequent investigation and prosecution where necessary. The wraparound legal assistance services we have recommended above (see pages 31 to 34) would also have an important role to play in making victims aware of Victim Assist, as part of their work in helping victims to access and navigate the scheme.

Recommendation 15

The Queensland Government should take steps to increase awareness of Victim Assist, including by ensuring that all victims of violent crime are made aware of, and assisted to access, the Victim Assist scheme at the point of making a police report, and at additional points throughout any subsequent investigation and prosecution where necessary.

Remove time limits to apply for assistance

Generally, victims can apply to Victim Assist in relation to crimes committed against them as children until they turn 21, although Victim Assist can extend this time limit.¹¹⁸ Our experience is that applications from victims and survivors of child sexual abuse outside of the standard time limit are rarely refused and we welcome this approach from Victim Assist.

116 Queensland Government (Department of Justice and Attorney-General), *Review of the Victims of Crimes Assistance Act 2009: consultation paper*, October 2014, p 13, <www.publications.qld.gov.au/dataset/review-of-the-victims-of-crime-assistance-act-2009/resource/b9a6e42d-bfd8-4c8f-88c3-51ff490b1666>.

117 Queensland Parliament (Legal Affairs and Safety Committee), *Public briefing – inquiry into the support provided to victims of crime: transcript of proceedings*, 31 March 2023, p 5, <documents.parliament.qld.gov.au/com/LASC-C96E/ISVC-98C6/Public%20briefing%20by%20Office%20of%20the%20Director%20of%20Public%20Prosecutions,%20Department%20of%20Justice%20and%20Attorney-General%20and%20Queensland%20Police%20Service%20held%20on%2031%20March%202023.pdf>.

118 *Victims of Crime Assistance Act 2009* (Qld), section 54.

Nevertheless, we are concerned that the time limit in the legislation fails to recognise the long time that many survivors take to disclose their abuse¹¹⁹ and may deter some survivors from applying for financial assistance under Victim Assist. This is likely to be a particular risk where survivors lack information about Victim Assist and do not have support to apply.

We recommend that time limits to apply for assistance under the VOCA Act be removed for victims and survivors of child abuse. This would embed recognition of the time taken to disclose in the VOCA Act and be consistent with the removal of limitation periods for civil claims about child abuse in Queensland.¹²⁰ It would also be consistent with victims support schemes in Victoria and New South Wales.¹²¹

Recommendation 16

The Queensland Government should remove the time limits for victims and survivors of child abuse to apply for assistance under the *Victims of Crime Assistance Act 1994* (Qld).

Reduce the evidence required to receive assistance

There are 2 particular requirements in the VOCA Act that have the potential to severely restrict the ability of victims and survivors of child abuse to access financial assistance under Victim Assist.

1. Victims and survivors are only eligible for assistance under the VOCA Act (as primary victims) if they have been injured as a direct result of their abuse.¹²² In our view, requiring any survivor of child sexual abuse to prove that they were injured by that abuse is unnecessary and inappropriate given the significant body of research demonstrating the inherent, debilitating and often life-long health impacts of abuse. The recent Australian Child Maltreatment Study, for example, found that people who experienced childhood maltreatment were 4.6 times more likely to have current

119 The Royal Commission reported that survivors who participated in private sessions took, on average, 23.9 years to disclose the abuse to someone: see Royal Commission, *Final report: volume 4, identifying and disclosing child sexual abuse*, December 2017, p 30, <www.childabuseroyalcommission.gov.au/identifying-and-disclosing-child-sexual-abuse>.

120 *Limitation of Actions Act 1974* (Qld), section 11A. Limitation periods were removed for civil claims about child sexual abuse on 1 March 2017 by the *Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016* (Qld). Limitation periods were removed for civil claims about serious physical abuse and connected psychological abuse on 2 March 2020 by the *Civil Liability and Other Legislation Amendment Act 2019* (Qld).

121 In Victoria, there is no time limit to apply for assistance in relation to child abuse (physical abuse or sexual abuse): see *Victims of Crime Assistance Act 1996* (Vic), section 29(1A). In New South Wales, there is no time limit to apply for a recognition payment in relation to child sexual abuse: see *Victims Rights and Support Act 2013* (NSW), section 40(7).

122 *Victims of Crime Assistance Act 2009* (Qld), subsection 26(1).

PTSD; 3.2 times more likely to have major depressive disorder; 2.6 times more likely to have severe alcohol use disorder; and 1.2 times more likely to have obesity.¹²³

Proving causation is also difficult for many victims and survivors given their experience of multiple episodes of violence across their lives — for example, it has been estimated that survivors of child sexual abuse are 2 to 3 times more likely to be sexually revictimised in adolescence and/or adulthood.¹²⁴ In these circumstances, causation is a live and complex issue.

2. Eligibility for assistance under the VOCA Act is assessed on the balance of probabilities.¹²⁵ This is the same standard of proof that applies in civil law proceedings, and, in our view, is inappropriate in a scheme that is not intended to provide compensation equivalent to a civil claim for compensation¹²⁶ and does not purport to make findings of liability against an offender in the way that a court would.¹²⁷

To address these barriers, we support changes to the VOCA Act to:

1. remove the requirement for victims and survivors of child sexual abuse to prove that they were injured as a result of the abuse
2. assess victims' eligibility for assistance according to a lower standard of proof. We suggest that 'reasonable likelihood', as adopted in the National Redress Scheme in line with recommendations of the Royal Commission,¹²⁸ offers a more appropriate standard of proof for Victim Assist.¹²⁹

123 D Haslam, B Mathews, R Pacella et al, *The prevalence and impact of child maltreatment in Australia: findings from the Australian Child Maltreatment Study: brief report*, Australian Child Maltreatment Study, Queensland University of Technology, 2023, pp 25 and 28, <www.acms.au/resources/the-prevalence-and-impact-of-child-maltreatment-in-australia-findings-from-the-australian-child-maltreatment-study-2023-brief-report/>.

124 M Stathopoulos, *Sexual revictimisation: individual, interpersonal and contextual factors*, ACSSA Research Summary, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, May 2014, <aifs.gov.au/resources/practice-guides/sexual-revictimsation>.

125 *Victims of Crime Assistance Act 2009* (Qld), section 78.

126 See *Victims of Crime Assistance Act 2009* (Qld), subsection 3(3).

127 Although the Queensland Government can recover money from the offender for assistance under Victim Assist, this happens after a court has convicted the offender and the offender has exhausted their appeal rights. See *Victims of Crime Assistance Act 2009* (Qld), part 16.

128 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 12(2)(b) and section 6, definition of 'reasonable likelihood'. See Royal Commission, *Redress and civil litigation report*, September 2015, Recommendation 57, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

129 We note that an independent review of the National Redress Scheme concluded that the 'reasonable likelihood' standard remained appropriate, but that there were inconsistencies in the way the standard was being applied by decision-makers. This highlights the importance of decision-makers being appropriately skilled and equipped to apply the legislated standard of proof. See R Kruk AO, *Final report: second year review of the National Redress Scheme*, 26 March 2021, pp 62–64 and Recommendation 3.4, <www.nationalredress.gov.au/document/1386>.

Recommendation 17

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to reduce the evidence required to receive assistance by:

1. removing the requirement for victims and survivors of child sexual abuse to prove that they were injured as a result of the abuse
2. assessing victims' eligibility for assistance according to a 'reasonable likelihood' standard of proof.

Make it easier for victims to claim assistance for expenses

In our experience, victims and survivors need to submit an enormous amount of paperwork to support claims for expenses such as counselling and medical expenses. Survivors often need a great deal of support from services like ours to do this, and many survivors will not claim assistance for these expenses if it is too difficult for them to gather the required documents.

It is beyond argument that victims and survivors of child sexual abuse experience significant adverse impacts as a result of their abuse, including significant mental and physical health impacts, some of which have been noted on pages 38 to 39 above.¹³⁰ These impacts frequently necessitate significant levels of contact with counsellors and other health providers — for example, the Australian Child Maltreatment Study found that, in a 12 month period, people who experienced child maltreatment were 2.3 times more likely to have had 24 or more visits to any health practitioner, 2.4 times more likely to have seen a psychologist and 3 times more likely to have seen a psychiatrist.¹³¹ We recommend that these realities be recognised within the Victim Assist scheme through an application process that removes the need for victims to provide detailed supporting documentation for claims for expenses.

Recommendation 18

Victim Assist should reduce the amount of supporting documentation that is required to claim for expenses.

Providing additional and more meaningful assistance

We strongly support 3 key avenues for providing victims and survivors with additional and more meaningful assistance under Victim Assist:

1. Index all amounts of financial assistance.
2. Embed access to free counselling services in the VOCA Act.
3. Provide access to personal acknowledgments as part of Victim Assist.

¹³⁰ See also Royal Commission, *Final report: volume 3, impacts*, pp 84–107 and 115–122.

¹³¹ D Haslam, B Mathews, R Pacella et al, *The prevalence and impact of child maltreatment in Australia*, p 31.

Index all amounts of financial assistance

On 8 December 2023, amendments to the VOCA Act came into effect, significantly increasing the amounts of financial assistance available under Victim Assist.¹³² knowmore welcomed the significant increase in the amounts of financial assistance.¹³³ In our submission on the amendments, we said:

*We note that, in most cases, this is the first increase to the amounts of financial assistance available under the Victims of Crime Assistance Act 2009 (VOCA Act) since the Act commenced in 2009. In our view, all amounts should be indexed for future years to ensure that the real value of financial assistance for victims and survivors is maintained. This would also prevent a repeat of the present situation, whereby amounts of financial assistance available under the VOCA Act have not increased in 14 years, representing a significant deterioration in the real value of the assistance and a failure to keep pace with the rising costs of supports.*¹³⁴

We repeat this recommendation.

Recommendation 19

The Queensland Government should index all amounts of financial assistance under the *Victims of Crime Assistance Act 2009* (Qld) to ensure that the real value of financial assistance for victims and survivors is maintained.

Embed access to counselling services in the VOCA Act

We acknowledge that, as of March 2023, DJAG was funding 5 services to provide counselling and other support to victims of crime.¹³⁵ Access to counselling is an essential component of support for victims and survivors of child sexual abuse (and other violent crimes) and we support the Queensland Government continuing this funding.

While some funding is currently being provided, access to free counselling services for victims and survivors is not provided for in the VOCA Act itself. This contrasts to the victims support scheme in New South Wales, where support for victims specifically includes counselling services under the legislation.¹³⁶

We strongly support the VOCA Act being amended to establish access to counselling services as a specific component of the Victim Assist scheme. In our view, incorporating this

132 *Proclamation No. 1 — Victims of Crime Assistance and Other Legislation Amendment Act 2023* (commencing certain provisions), 7 December 2023, <www.legislation.qld.gov.au/view/whole/html/asmade/sl-2023-0191>.

133 knowmore, *Submission on the Victims of Crime Assistance and Other Legislation Amendment Bill 2023*, 27 October 2023, p 1, <knowmore.org.au/wp-content/uploads/2023/11/submission-victims-of-crime-assistance-and-other-legislation-amendment-bill-2023-qld.pdf>.

134 knowmore, *Submission on the Victims of Crime Assistance and Other Legislation Amendment Bill 2023*, pp 1–2.

135 Queensland Parliament (Legal Affairs and Safety Committee), *Public briefing – inquiry into the support provided to victims of crime: transcript of proceedings*, p 2.

136 *Victims Rights and Support Act 2013* (NSW), subsection 26(1).

into legislation provides appropriate recognition of the importance of non-financial assistance for victims and survivors and creates an imperative for the government to support and fund appropriate counselling services.

Obviously, any legislative commitment to counselling services will need to be met with significant government investment in funding to ensure appropriate services are available. We emphasise here the importance of the Queensland Government ensuring that Queensland has a responsive therapeutic treatment service system for victims and survivors of child sexual abuse (and other violent crimes), with services that meet the Royal Commission's principles of being trauma-informed, collaborative, available, accessible, acceptable and high quality.¹³⁷

Recommendation 20

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to establish access to counselling services as a specific component of Victim Assist.

Provide access to personal acknowledgments as part of Victim Assist

For many victims and survivors, having someone recognise the crimes committed against them and acknowledge how those crimes have impacted their lives is the most important outcome of seeking justice and a critical part of their healing journey. We have particularly seen this in the work we do supporting survivors of institutional child sexual abuse to access the National Redress Scheme which, among other things, provides eligible survivors with the opportunity to receive a direct personal response from the institution responsible for their abuse.¹³⁸ A direct personal response is an opportunity for survivors to receive an apology or other recognition from the institution for the harm they experienced.¹³⁹ A similar option exists under the Territories Stolen Generations Redress Scheme, where eligible survivors can a personal acknowledgement from a senior government representative.¹⁴⁰

137 See Royal Commission, *Final report: volume 9, advocacy, support and therapeutic treatment services*, 2017, pp 60–82 and Recommendations 9.1 and 9.6, <www.childabuseroyalcommission.gov.au/advocacy-support-and-therapeutic-treatment-services>.

138 *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (Cth), section 16(1)(c).

139 Australian Government (Department of Social Services), 'National Redress Guide – Version 1.17', Guides to Social Policy Law, 27 November 2023, accessed 3 January 2024, part 5.3, <guides.dss.gov.au/national-redress-guide/5/3>.

140 National Indigenous Australians Agency, *Personal acknowledgment*, accessed 3 January 2024, <territoriesredress.gov.au/personal-acknowledgement>. For more information about the Territories Stolen Generations Redress Scheme, see knowmore, *Territories Stolen Generations Redress Scheme*, accessed 4 January 2024, <knowmore.org.au/redress-schemes/territories-stolen-generations-redress/>.

We note that Victoria's new Victims of Crime Financial Assistance Scheme includes specific provisions relating to victim recognition.¹⁴¹ Specifically, victims who receive assistance under the scheme will be able to ask the scheme for a 'victim recognition statement' or 'victim recognition meeting' to acknowledge the effects of the crime on them.¹⁴² Victim recognition meetings will be held with a scheme decision-maker and give victims the opportunity to speak about how the crime has affected them and discuss these effects with the decision-maker.¹⁴³ These provisions are consistent with recommendations from the Victorian Law Reform Commission, which concluded that:

*While ... some victims may feel recognised and acknowledged by payments of financial assistance, in the Commission's view, recognition for victims under [victims of crime assistance schemes] is better provided for in non-pecuniary ways, through comprehensive statements of reasons for decisions, recognition statements and through the introduction of victim conferences.*¹⁴⁴

We note that the Queensland Parliament's Legal Affairs and Safety Committee has recommended that the Queensland Government 'investigate developing a "victim recognition statement" or "victim recognition meeting", as occurs in the Victorian victim financial assistance scheme'.¹⁴⁵ The Queensland Government supported this recommendation in principle.¹⁴⁶

Given the value many survivors place on personal responses/acknowledgements in the redress schemes mentioned above, we strongly support the VOCA Act being amended to provide recognition options for victims that are consistent with those in Victoria.

Recommendation 21

The Queensland Government should amend the *Victims of Crime Assistance Act 2009* (Qld) to provide for victim recognition statements and victim recognition meetings, consistent with Victoria's new financial assistance scheme.

141 Victoria's new Victims of Crime Financial Assistance Scheme is expected to begin in 2024. See Victorian Government, *Victims of Crime Financial Assistance Scheme*, 5 July 2023, accessed 3 January 2024, <www.vic.gov.au/victims-crime-financial-assistance-scheme#recognising-victims>.

142 *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic), sections 40 and 41.

143 *Victims of Crime (Financial Assistance Scheme) Act 2022* (Vic), sections 41(1) and 41(3).

144 Victorian Law Reform Commission, *Review of the Victims of Crime Assistance Act 1996: report*, July 2018, p 192, <www.lawreform.vic.gov.au/project/victims-of-crime-assistance-act-1996/>.

145 Queensland Parliament (Legal Affairs and Safety Committee), *Inquiry into support provided to victims of crime: report*, May 2023, Recommendation 10, p 19, <www.parliament.qld.gov.au/docs/find.aspx?id=5723T648>.

146 Queensland Government, *Inquiry into support provided to victims of crime: Queensland Government response*, p 7.

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Image inspired by original artwork by Ngunawal man Dean Bell, depicting knowmore's connection to the towns, cities, missions and settlements within Australia.

knowmore acknowledges the Traditional Owners of the lands and waters across Australia upon which we live and work. We pay our deep respects to Elders past and present for their ongoing leadership and advocacy.

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