
Disability Royal Commission Issues Paper: The Criminal Justice System

Sexual Assault Support Service Inc. (SASS) Submission

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Sexual
Assault
Support
Service

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Introduction

Sexual Assault Support Service (SASS) Inc. is a community-based service committed to providing high-quality support and information services to survivors of sexual assault in Southern Tasmania, carers and support people, professionals and the general public. SASS offers a 24-hour sexual assault crisis response program; 24-hour phone support and counselling service to people affected by sexual assault; and face to face information, counselling, and referral services for anyone affected by sexual assault.

In order to provide responsive and holistic services to individuals, families and the broader community, SASS facilitates therapeutic intervention programs for children and young people (aged under 18 years) who are displaying harmful sexual behaviours. We are currently accepting referrals into this free program for children aged up to 11 years. We can provide a fee-for-service behavioural change program for adolescents aged 12-17 years.

SASS is also funded to provide a Redress Scheme Support Service. This is a free and confidential support service for people who are seeking information on or wanting to apply to the National Redress Scheme for people who have experienced institutional child sexual abuse.

SASS appreciates the opportunity to provide comment on the Disability Royal Commission's Issues Paper on the Criminal Justice System. We note that in our response we will be drawing on our experience and knowledge of people with a disability who have experienced sexual assault (as opposed to other forms of assault and abuse).

People with a disability experience disproportionately higher levels of sexual violence than the general population. We note particularly significant figures from the ABS indicating that since the age of 15;

- 25 per cent of women with a disability have experienced sexual violence (compared with 15 per cent of women without a disability); and
- 6.6 per cent of men with a disability (compared to 3.9 per cent without a disability) have experienced sexual violence.

These figures increase the more severe a disability someone has:

- Nearly 31 per cent of women with a severe disability have experienced sexual violence since the age of 15; and
- 13 per cent of men with a severe disability have experienced sexual violence since the age of 15.¹

Such alarming statistics mean that the questions contained in this paper are particularly critical to consider. In our response we address only a few of these, but we do note that there is some excellent Australian research available on sexual assault and people with a disability which the Royal Commission will no doubt be referencing.²

Question 3:

A. What do you think prevents people with disability who have experienced violence, abuse, neglect, or exploitation from getting protection or justice from the police or the courts?

B. What problems have you had getting protection or justice from the police or the courts?

Sexual assault victims with a disability face particular barriers in accessing justice beyond those experienced by victims who do not have a disability. Two significant factors adding to this are communication challenges and perceptions of their reliability as complainants and witnesses.

The ability of a victim to effectively communicate with police, counsel and throughout the court process is a critical factor in their ability to access justice. People with cognitive, developmental and/or intellectual disabilities, and people whose disability affects their ability to speak or hear, face particular challenges in being able to communicate – to be heard and understood – in these environments.

Whilst SASS' experience of police is that they are generally empathetic, non-judgmental and accepting of the survivors they interview, a number of SASS counsellors indicate that they have still perceived situations in which people with complex communication needs (including people with disabilities) face barriers when interacting with police as victims/survivors and witnesses. These barriers are also seen within the judicial system as a whole. These include:

- Language choice. Language used is not appropriate to the cognitive ability of the victim or witness, either in that it cannot be understood, or in that it conveys judgement which then impacts on how survivors view themselves and how comfortable they feel sharing information with others. The language used by people when interacting with survivors is very important, as it can help or hinder individual pathways through recovery. This also applies to body language.
- Procedural delays with regard to processes and outcomes. People with cognitive, intellectual or developmental disabilities may not understand how the legal process functions, including the lengthy timeframes often intrinsic within it. This can then in turn lead to psychological effects for the victim or witness such as depression, anxiety

or externalising behaviours such as anger outbursts; and use of unhelpful coping mechanisms such as self-harming. Timely responses throughout the process in terms of keeping the complainant and their supports informed about processes and outcomes can help improve their levels of wellbeing and emotional safety.

- People with a cognitive, intellectual and/or developmental disability may not follow ‘typical patterns’ in how they disclose abuse to police or communicate what has happened to them to legal counsel or within court. They may recount the sexual assault in a complex, non-linear manner, and/or in a manner that does not go into a sufficient level of detail and particularity, which can lead to confusion over or misinterpretation of information by the recipient and hinder or altogether halt progress towards further investigation and charges. If they have limited verbal communication, family members, support workers, other relevant professionals and police need to be trained in recognising non-verbal cues that may indicate that someone has been sexually abused. A report on the issue by the Royal Commission into Institutional Responses to Child Sexual Assault found that where children with disability “show physical and behavioural indicators of abuse, these may be misinterpreted as bad behaviour or as part of the child’s disability, so they may be overlooked or dismissed.”³
- Even if someone is able to articulate what has happened to them, they may be too uncomfortable or anxious to disclose this to a stranger in an unfamiliar setting.

The following de-identified case example highlights the barriers that someone with different communication needs can experience during police interviews:

A SASS client, victim of a sexual assault, with autism and complex communication needs was initially questioned by police in a manner which did not recognise his needs. Questioning was rushed and he could not answer effectively. He needed a patient approach and to be given the opportunity to hear the questions a few times so that he could feel sure that he was answering them correctly. When an appropriately trained person supported him at a second interview, he was able to answer the questions more easily and effectively.

Question 4:

A. What supports do people with disability need to participate in the criminal justice system on an equal footing as others without disability?

B. When would these supports be needed to assist people with disability who are:

(i) victims of crime

(ii) witnesses required to give evidence

(iii) accused or suspected of criminal offences

(iv) convicted of criminal offences or

(v) jurors?

C. What are some examples of good supports? How have these supports worked to keep people with disability out of the criminal justice system or safe within the system?

In her submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, the Director of the Tasmanian Law Reform Institute made this comment,

At the most fundamental level, in order to participate in the criminal justice process, children and witnesses with cognitive impairments who allege sexual abuse must be able to give a comprehensible account of what has happened. This also means that they must be able to comprehend questions they are asked and communicate comprehensible answers to questions.⁴

Witness intermediary schemes, such as those operating in the United Kingdom, Victoria and New South Wales (and being proposed in Tasmania) have been designed to help overcome this exact challenge, and have proven invaluable in assisting people with a disability to access justice. SASS suggests that the Royal Commission examine how these are being implemented in their consideration of this issue. It is critical that intermediaries are not just available during the trial phase of the criminal justice process, but are also available and utilised within the police investigation stage. The Royal Commission into Institutional Responses to Child Sexual Abuse highlighted a number of cases of child sexual assault, no doubt symptomatic of a much larger number, that did not proceed to prosecution due to insufficient evidence being gained during police interviewing as a result of a lack of knowledge and experience in communicating with and interviewing people with a disability.

Question 7:

A. What barriers are there to effectively identify, disclose and report instances of violence, abuse, neglect or exploitation in the criminal justice system?

B. What types of problems have you experienced in identifying, disclosing and reporting violence, abuse, neglect or exploitation in the criminal justice system?

Where the abuser is a carer or family member of the person with a disability disclosing may carry significant negative impacts for that person. It could put them at further risk of abuse from the abuser or impact on the care they are receiving from the abuser or from other supports. They may also fear that if they disclose the abuse they will be put into an institution or taken away themselves. In many situations the person with a disability may fear that the abuser will be punished or taken away if they disclose abuse, and feel guilt that they have 'caused' this. These factors may also hinder their carers or family members reporting the abuse.

Further barriers are the myths that still exist regarding people with a disability and sexuality, as well as the 'believability' or reliability of people with a disability who disclose abuse. Put simply, people with a disability who disclose abuse are often not believed.

Lack of opportunity to disclose abuse, as well as inadequate monitoring and reporting mechanisms within disability support systems create a further barrier. In many situations professionals do not know how to respond to allegations or disclosures of abuse.

A further significant barrier to disclosing is knowledge. At a Royal Commission event in 2016 a young panellist who herself had a severe physical disability described how as a child she had numerous care workers touching her body on a daily basis to help her with tasks such as washing, dressing and toileting. She was therefore naked around other people on a daily

basis. Due to the nature of care provision model, the care workers were often different people. Being touched by strangers was therefore a normal, accepted way of life to her. She described how this made it difficult for her to distinguish between ‘right’ and ‘wrong’ touch, and meant she had no confidence to speak out when something didn’t feel right.

This issue was also discussed in a 2016 research report which summarised consultations with carers and children with a disability on what safety means;

Several professionals pointed to the ways in which multiple service systems interfere with what one person called the ‘trust radar’ of children and young people with high support needs, impairing their understanding of what is safe and not safe:

From a very early age [he] has been exposed to many more strangers and many more that invade his personal space than other children. This has already broken his trust radar, we teach him to trust anyone...

Lee, speech therapist

For children and young people who rely on physical personal care, this extends to sometimes quite intimate touch. Without contextualising education or strong protective mechanisms, as one disability support worker asked, ‘How do you know what hands on you are meant to be doing or not doing?’⁵

This discussion points to the importance of ensuring that people with a disability are given educational opportunities to learn about their own rights, protective behaviours and to how to access support if they need it. Children with a disability “are often not included in mainstream education on protective behaviours and sexuality, so they may not be equipped with the necessary understanding and language to speak out about abuse”.⁶ This then flows on to their understanding about these concepts as adults.

Question 8:

A. What barriers are there to adequately investigate violence, abuse, neglect or exploitation in the criminal justice system?

B. What is being done or should be done to encourage effective investigation and reporting of violence, abuse, neglect or exploitation in the criminal justice system when it occurs?

Barriers to adequately investigate include:

- Myths or perceptions around the reliability of people with a disability as witnesses – with cases often not being pursued as the complainant is not assessed to be a strong enough witness;
- Lack of corroborating evidence, resulting in a situation of one person’s word against another (which connects to the above point about people with a disability often not being believed when they disclose abuse); and
- Communication barriers in interviewing the complainant (as discussed above).

We once again thank the Royal Commission for giving us the opportunity to make comment on these issues. For any further information about anything in our submission please do not hesitate to contact us.

¹ ABS (Australian Bureau of Statistics) 2017. Microdata: Personal safety, Australia, 2016. ABS cat. no. 4906.0.55.001. Canberra: ABS. AIHW analysis of detailed microdata in DataLab. Available at <https://www.aihw.gov.au/reports/dis/73-1/people-with-disability-in-australia/justice-and-safety/violence-against-people-with-disability>.

² See for example Breckenridge, J. and Flax, G. (2016). Service and support needs of specific population groups that have experienced child sexual abuse. Royal Commission into Institutional Responses to Child Sexual Abuse. Sydney; and ANROWS suite of research available at <https://www.anrows.org.au/publication/women-disability-and-violence-barriers-to-accessing-justice-key-findings-and-future-directions/>.

³ Royal Commission into Institutional Responses to Child Sexual Abuse (2016). *Consultation Paper – Criminal Justice*. Commonwealth of Australia, p.347.

⁴ Ibid.

⁵ Robinson, S. (2016). *Feeling safe, being safe: What is important to children and young people with disability and high support needs about safety in institutional settings?* Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p46.

⁶ Royal Commission (2016), p.347.