

VIC PARLIAMENTARY INQUIRY INTO THE CJS

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INGRID TAMARA IRWIN
LAWYER, ADVOCATE, WRITER

The issues associated with the operation of Victoria's justice system, including, *but not limited to*

- (1) an analysis of factors influencing Victoria's growing remand and prison populations;
- (2) strategies to reduce rates of criminal recidivism;
- (3) an examination of how to ensure that judges and magistrates have appropriate knowledge and expertise when sentencing and dealing with offenders, including an understanding of recidivism and the causes of crime; and
- (4) the consideration of judicial appointment processes in other jurisdictions, specifically noting the particular skillset necessary for judges and magistrates overseeing specialist courts.

As a matter of urgency (far more desperate than the issues above), the most overdue line of CJS INQUIRY today should be:

1. **Changing the victim of crime from their current non-legal status in the CJS** (a police complainant/possibly a police witness) **to a legal status** (a separate party to the criminal proceeding with their own independent legal status and their own independent lawyer). Until they have a recognised legal interest in the criminal matter it is utterly futile reporting to police (just like before the church was a recognised legal entity through the abolishment of the Ellis defence, it was pointless suing the offending priest/diocese etc.)
2. **Examining the Police and DPP/OPP** - Why reporting sexual assault to the police only leads to a conviction in 1% of all cases reported to police. ie: currently unfettered OPP prosecutorial discretion needs to be subject to some form of external review, for the OPP fails to achieve its core aim in prosecuting crime (sex assault cases) 99% of the time.
3. **Telling victim survivors about the ripple effect of failed prosecutions in other jurisdictions:** that all family law, child protection and intervention order matters that involve allegations of sexual assault also fail 99% of the time because they too rely on a sexual assault conviction (which is only achieved in 1% of reported cases).
4. **Telling victim survivors that advocacy like Let her speak are very limited in their success** because the legislative changes to Judicial Reporting Act only effect 1% of victim survivors in their ability to speak out about their experience (where a conviction was achieved).

5. Telling victim survivors that the abolishment of the Statute of Limitations for sex offence cases (so that the bringing of legal civil cases are no longer time-limited) is futile in most cases, but especially in cases of familial abuse because:

- a. The first thing you have to do after you file is satisfy the court that the passage of time hasn't caused too much prejudice to the defendant (they may have ABI now, memory fails them etc)
- b. In most historical sex offence cases, the courts are permanently staying matters anyway (citing reasons that the alleged offending was too long ago for the accused to fairly defend the allegations, so in practise it's as if the Statute of Limitations is still there).
- c. Most institutions have money to make it worth suing but most sex assault is familial so, unless your abusing relative is rich, there is no point suing because even if you win you'll have a pyrrhic victory (it will cost you more than you stand to gain as any court award against your perpetrator is near impossible to enforce if they have little money)
- d. When a lawyer agrees to take on your case to sue your perpetrator via 'no win no fee', remember that if you lose you still have to pay the alleged abuser's legal fees which are usually six figure sums.

6. Legislative change needed:

- a. **The Open Courts Act (2013)** needs to recognise the victim survivor as a party to the proceeding in suppression order matters so that the victim survivor is:
 - i. served with a copy of the application for a Suppression Order (they currently aren't)
 - ii. served with a copy of any Suppression Order made (they currently aren't)
 - iii. notified of all pre-trial criminal hearings including the filing hearing
- b. **Victims Bill** – make the victim survivor a party in the CJS
- c. **Drop the age of criminal responsibility to 10 years of age**, or at least retain the presumption of Doli Incapax (High Court precedent of *Johnson v R* have caused OPP to not bring these cases now), because current moves to raise the criminal age of responsibility to 14 are ill-conceived because :

- i. it creates a class of victims that will have NO access to justice (ie: 10-14 year old victim survivors)
 - ii. recent statistics have shown that most sex abuse is committed by older children on younger children, not by adults, so why decriminalise sexual offences in such an age bracket?
7. **Scrap with Witness Assistance** people and support dogs like Coop, and use that money for “lawyers for victims” instead. Anything less is patronising and cheap political point scoring fooling the masses into thinking that the CJS is victim-friendly.
8. **Stop wasting precious tax payer money on further research and victim survivor surveys** (like the one the OPP commissioned the Centre of Innovative Justice to do which was a cleverly designed way for the OPP to give itself a pat on the back as a PR exercise after the George Pell High Court decision). We already know why and how the CJS destroys survivors, their families and friends;
 - a. The victim survivor has no legal say in the criminal matter
 - b. The victim survivor has no legal status in the criminal matter
 - c. The victim survivor has no right to a lawyer
 - d. The victim survivor has no right to stand at the bar table and self-represent
 - e. The victim survivor has no right to be notified about the application for a suppression order
 - f. There is a presumption that the victim survivor does not want to speak and needs protecting, when the reality is often otherwise
9. **Stop with the false narratives:**
 - a. that but for evil outdated and unethical defence lawyers, the CJS would work fairly for victim survivors. It is not defence lawyers who create the legal havoc for victim survivors, it’s the fact that there is no lawyer for the victim that makes them legal fodder.
 - b. “police believe you”– police and victim survivors are currently in a legal conflict of interest position, and the government is acutely aware of this. Police are nothing more than an independent investigator. Police and OPP lawyers are not your legal reps, nor can they be.
 - c. Until the above is acted on, tell survivors the truth “Do not report you sex abuse to the police as the legal retrauma will destroy you”

I have written 2 books about this woeful state of affairs for victim survivors, ***Doli Incapax*** and ***Nolle Prosequi***, and I suggest that anyone who truthfully wants to fix the CJS for us should read these books that detail the systemic legal changes required through my lived experience as a lawyer and as a victim survivor.