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Introduction

Responding to Historical Child Sexual Abuse and the Needs of Survivors

Special Issue Editors: Judy Cashmore and Rita Shackel

There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear ... (Annan 2000:4)

Child sexual abuse typically involves a breach of trust by the very persons or institutions that children should be able to rely on for their care and protection (Richards 2011). The exploitation of that trust and position and the grooming process allow abusers the opportunity to have unsupervised access to children, to engage with them, and to keep them compliant. Many children do not tell anyone about the abuse at the time, during their childhood or adolescence, or until many years later in adulthood. Some, an unknown number and the 'dark figure' of child sexual abuse, never tell anyone. While most children are sexually abused by someone known and trusted within their family or by those close to their family, strong evidence has emerged over the last few decades implicating an array of institutions such as churches and residential care facilities as well as sporting and recreational bodies, both in 'harbouring' abusers and in failing to respond appropriately to allegations of abuse. Their failed response often denied, minimised, and deflected such allegations and, in many cases, allowed abusers the opportunity to abuse more children. Such responses have involved a lack of sensitivity and respect for the needs and rights of complainants and an absence of appropriate avenues for victims to obtain redress in ways that recognise the trauma they have experienced. Where allegations have been investigated, that process and the criminal justice system has also been exposed as failing to treat victims and survivors with dignity and in ways that enable their accounts of abuse to be told in safe and supportive spaces that ultimately deliver the justice sought and deserved by victims.

In Australia, as in other countries, concern about such systemic failures has resulted in a number of inquiries to try to understand the nature and causes of such failures, to provide some means of redress, and to try to set in place measures to prevent their recurrence. In Australia, within the last three years, there have been two state-based inquiries (in Victoria and New South Wales), and a national Royal Commission established. The current Royal Commission into Institutional Responses to Child Sexual Abuse is focused on sexual abuse within institutions — looking back over decades of abuse and across a wide range of institutions, and investigating current practices and abuse. The Commission has conducted a series of public hearings and a large number of private sessions with victims of institutional abuse across the country. It is also undertaking a detailed research program focusing on prevention, identification, response and justice for victims. The Commission published its Interim Report in June 2014 (see <<http://www.childabuseroyalcommission.gov.au/about-us/reports>>) and its final report is currently scheduled for release at the end of 2015. At the heart of this inquiry is not only an agenda for prevention, but for recognition of the justice needs of victims of institutionally based child sexual abuse for a voice and appropriate means of redress, many of whom have remained silent for years.

This Special Issue of *Current Issues in Criminal Justice* has grown out of a series of papers presented at a multidisciplinary forum on responding to historical cases of child sexual abuse held at the University of Sydney in 2013, supported by the Sydney Social Justice Network and the Sydney Institute of Criminology. A key objective of this volume is to engage authors and the Journal's readership in reflection on how the needs of victims and survivors of child sexual abuse can be better recognised and their justice needs responded to appropriately.

The articles included in this issue canvass a range of issues from different professional and personal perspectives, and, importantly, brings together insights from both research and practice. The focus is on responses to historical cases of child sexual abuse, that is, cases involving allegations of abuse perpetrated many years earlier — a category of cases that is notoriously difficult to prosecute and for which redress or justice commonly remain elusive.

The first article, 'Conceptualising Responses to Institutional Abuse of Children' by Kathy Daly, provides a backdrop by examining why institutional abuse emerged as a social problem and the factors that precipitated a societal drive to respond to such abuse. This response has encompassed public inquiries, other major investigations, redress programs, and class action settlements in Australia, Canada, and other countries, including First Nations people. Daly's analysis highlights three main elements of her 'core' cases: police or officials' cover-ups, the *sexual* abuse of children by adults (as opposed to physical or emotional abuse or neglect), adult survivors' memories of their abuse and any complaint, and sustained media coverage. Other elements that heightened the concern included the location of abuse in various churches or religious orders, the sexual abuse of boys in particular, and public or political awareness of sexual abuse extending or located outside institutional care. Daly also links her analysis to concepts drawn from transitional justice.

The article by John and Nicola Ellis, 'A New Model for Seeking Meaningful Redress for Victims of Church-related Sexual Assault', provides a personal account of John and Nicola's experience with *Towards Healing* and the civil litigation that followed, examined closely in an extended hearing by the Royal Commission and documented in Case Study 8 in the Commission's *Interim Report*. The determination of the New South Wales Court of Appeal that found that civil action against the Catholic Church was not a sustainable avenue for redress came to be known as the 'Ellis defence'. Frustrated and distressed by these processes, John and Nicola discuss the challenges they have faced in developing the 'Ellis Model' — an alternative process of redress for survivors of Church-based abuse. Their approach is one that places the survivor at the centre of the process, and empowers them through shared dialogues, quality relationships and the opportunity for therapeutic outcomes. As John and Nicola Ellis experienced firsthand:

Mistrust of authority, not being believed, being punished for speaking out, being judged for being fragile or mentally unwell: these are all hurdles to justice that must be attended to sensitively. (at 35)

The next two articles 'Historical Child Sexual Abuse Investigations: A Case for Law Reform' by Michael Newbury and 'Responding to Historical Child Sexual Abuse: A Prosecution Perspective and Suggested Future Directions' by Kara Shead, discuss some of the current challenges that face criminal justice responses to child sexual abuse, particularly in historical cases. Michael Newbury is a South Australian detective, with a law degree and extensive experience in the investigation of historical child sexual abuse cases, as well as the author of a new book on the investigation process. He discusses challenges at the front-end of criminal intervention, focusing on investigation of such cases and the barriers that often obstruct quality evidence being obtained in such cases. He argues the case

for reforms, particularly in relation to admissions and confessions, and the need for telecommunications interception as necessary and important steps to obtaining more viable evidence for historical child sexual abuse.

Kara Shead provides the perspective of an experienced Crown Prosecutor in New South Wales on the legal and evidentiary challenges to the successful prosecution of historical child sexual abuse cases. Shead challenges the criminal justice system to wholesale reform in delivering greater justice for victims of child sexual abuse, particularly in relation to tendency and context evidence, and the issues concerning the separation for trials as they affect the likelihood of obtaining the best evidence from child sexual assault complainants.

The next article is our own contribution to this special issue. Our article, 'Gender Differences in the Context and Consequences of Child Sexual Abuse', reviews the key research findings concerning the dynamics of child sexual abuse of male and female children and adolescents, its disclosure and sequelae. Our analysis highlights the complex interactions between a multiplicity of factors in how male and female victims respond to their experience of abuse both in the short- and long-term; gender is one such influencing factor.

Judge Yvonne Murphy's article, 'The Effect of Delay on Historical Child Sex Abuse Cases: Commentary on the Irish Experience', provides insights into the challenges that the Irish legal system has faced in responding to mass allegations of historical child sexual abuse, particularly Church-based cases. This discussion highlights law's potential malleability in adapting to evolving expectations and notions of justice. This discussion is timely given the current Royal Commission in Australia and the anticipated wave of cases that are likely to flow from the private hearings and referrals from the Royal Commission, and further challenge our legal processes and legal doctrine.

In the final article, 'Child Sexual Abuse and the Churches: A Story of Moral Failure?', Patrick Parkinson examines the extent of Church-related child sexual abuse, and suggests several explanations for the higher rate of child sexual abuse in the Catholic Church compared with the Anglican and other churches. His analysis goes beyond the often advanced celibacy argument and also looks to the reasons for the lack of accountability of the Church in response to allegations of sexual abuse. These explanations include the role of Canon Law in the Catholic Church worldwide that was 'a law unto itself', as well as 'a culture of clericalism' that justified the protection of the Church and its members against such allegations. He echoes the call made by the other authors in this special issue, and increasingly in other quarters, that lessons must be learnt from past mistakes in responding to child sexual abuse (particularly those of the Catholic Church and other institutions) — the challenge now is that of reform and reparation and ultimately prevention.

Lesley Laing concludes the issue with a review of *Good Practice in Promoting Recovery and Healing for Abused Adults*, a collection edited by Jacki Pritchard. This title, published in 2013, is an invaluable resource in understanding the experiences of survivors — a perspective that is essential as we move forward to redress past mistakes and facilitate justice for all victims of child sexual abuse.

We thank all the contributors for joining together in discussion of this very important and timely subject. Silence is a hallmark of child sexual abuse, the fortitude demonstrated by survivors, serves to demonstrate how that silence can transform to voice.

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References

- Annan K (2000) 'Foreword' in United Nations Children's Fund (UNICEF), *The State of the World's Children 2000*, 4
- Richards K (2011) 'Misperceptions about Child Sex Offenders', *Trends & Issues in Crime and Criminal Justice* 429, Australian Institute of Criminology