



WITNESS STATEMENT OF ELENA EVE CAMPBELL

I, Elena Eve Campbell of [REDACTED] in the State of Victoria, Associate Director of Research, Advocacy and Policy at the Centre for Innovative Justice, RMIT University, [REDACTED] do solemnly and sincerely declare that:

- 1 I make this statement on behalf of the Centre for Innovative Justice, RMIT University.
- 2 I make this statement on the basis of my own knowledge, save where otherwise stated. Where I make statements based on information provided by others, I believe such information to be true.
- 3 I consent to this statement being made public.

Background and qualifications

- 4 I have a Bachelor of Arts with Honours and a Bachelor of Laws with Honours from the University of Melbourne, awarded in 1997.
- 5 I have been working at the Centre for Innovative Justice (CIJ), RMIT University since its inception in 2012. Between 2012 and mid 2015, I helped to support the CIJ's establishment and conducted targeted research work while also acting as a consultant to the Australian Human Rights Commission in the context of its work in relation to gendered violence and structural reforms to large organisations.
- 6 Prior to that, from 2000 to 2010 I was an advisor to the Victorian Attorney-General, primarily working on matters concerning equal opportunity, gendered violence, Aboriginal justice, traditional owners' land rights and the like.
- 7 Attached to this statement and marked **EC-01** is a true copy of my curriculum vitae.

Current role

- 8 I am currently employed as an Associate Director at the CIJ. The CIJ is an independent research and reform body which conducts rigorous research, much of it qualitative, with people who have experienced contact with the criminal justice system, either as victim survivors or offenders. The CIJ also works to use that research as an evidence base for promoting and advocating

for reform. The CIJ also has a restorative justice service arm and undertakes research, policy and program design work in the area of restorative justice and restorative practice. This work is overseen by my counterpart Associate Director, Stan Winford.

- 9 At the moment I am overseeing a program of research which primarily looks at the system response to family violence in Victoria and, within that, interventions with perpetrators of family violence as well as court programs.
- 10 I have also done a lot of work to support the implementation of recommendations from Victoria's Royal Commission into Family Violence.
- 11 Within this focus on family violence, I run a specific stream of research looking at young people's use of violence at home or in their wider relationships. Most of the young people in that situation are victim survivors of harm or survivors of some sort of trauma themselves.
- 12 In addition, I run a number of projects which look at young people and women's contact with the justice system. The focus, again, is on recognising the primary drivers of young people and women's contact with the justice system – including their experience of harm either in childhood or in adulthood in the form of intimate partner or other kinds of family or sexual violence.
- 13 Finally, I also oversee a stream of work looking at the experiences of victims of crime in the justice system. This includes conducting a systemic review of support services in Victoria and a current interview study of the experiences of sexual offence complainants in New South Wales.
- 14 Across these programs of work, we examine the significant crossover between experiences of victimisation and contact with the criminal justice system as an offender, pointing to the significant need for trauma-informed interventions to prevent future contact with the youth and adult justice systems.

YOUTH JUSTICE SYSTEM

Characteristics of children and young people in contact with the criminal justice system and why the current model does not work

- 15 A consistent evidence base indicates that children and young people who come into contact with youth justice, including those who are held in detention,

have overwhelmingly experienced trauma or what in some disciplines are referred to as “adverse childhood experiences” (**ACEs**). ACEs might occur through direct exposure to family violence or other forms of harm, including childhood sexual abuse or other forms of neglect. ACEs impact almost every facet of a child’s life and their development.

- 16 For example, in 2017, the Victorian Commission for Children and Young People found that over two thirds of children in youth justice environments had experienced violence, abuse or neglect, while research in Queensland and Western Australia has found that three quarters of justice-involved young people had experienced some form of non-sexual abuse (the Kirby Institute, 2020).
- 17 In addition to having experienced direct trauma themselves, it is common for children who come into contact with the criminal justice system to live in environments where parents themselves have histories of trauma as well as involvement in the child protection and justice systems. It is also common for these children and their parents to have disabilities and cognitive impairment conditions. Recent studies indicate that a significant proportion (38%) of children in contact with courts and youth justice systems have cognitive impairments (Youth Parole Board, 2019; Australian Institute of Criminology 2022) and research in Western Australia suggest that the picture is even starker, with figures of 9 in 10 children with a neurological impairment (Bower et al, 2018). Evidence also indicates that a similar number of adults in custodial environments have cognitive impairments, with one study finding that 42% of men and 33% of women in Victorian prisons had an Acquired Brain Injury alone (Corrections Victoria, 2011).
- 18 We also know that trauma and developmental trauma disorder (van der Kolk, 2019) has significant impacts on children’s neurodevelopment, including their language development. In addition, trauma and ACEs have a significant impact on their capacity to regulate emotions and behaviour.
- 19 Clearly the relationship of trauma, including intergenerational trauma, adverse childhood experiences and their associated impacts is particularly acute for Aboriginal and Torres Strait Islander children. It is well recognised that Aboriginal and Torres Strait Islander children are vastly overrepresented in youth justice systems. In fact, over three quarters of children under 14 in

- custodial environments are likely to be Aboriginal or Torres Strait Islander (Australian Institute of Health and Welfare, 2020).
- 20 Aboriginal and Torres Strait Islander children are more likely to have early contact with the criminal justice system (Australian Institute of Health and Welfare 2020), while those children who are justice-involved have disproportionate rates of mental ill health and cognitive impairment (Justice Health and Forensic Mental Health Network, 2016; O'Malley, 2007).
- 21 Evidence further indicates that, while not the case for the majority of children from migrant backgrounds, children and young people from particular refugee and migrant backgrounds may be overpoliced and therefore overrepresented in youth justice environments (Centre for Multicultural Youth 2014).
- 22 It is in this context that the requirements and expectations of the justice system essentially set up children and young people to fail from the get-go. For example, my research in the PIPA project (Campbell et al, 2020) has explored how the justice system is set up on the basis of a compliance model and frequently requires that children and young people meet certain criteria and attend appointments. However, these children and young people have often not grown up in an environment in which these sorts of behaviours are modelled or capable of being achieved and children are then judged against their seeming lack of cooperation.
- 23 Similarly, the system is set up so that a child attends court and is supposed to understand that they should behave differently as a result of what the court says to them. However, statements made by the court often do not mean anything to young people who may have experienced language delays as a result of their exposure to trauma and/or who have no framework for how to process, let alone implement, the court's instructions.
- 24 In addition, many of these children have no basis or reason to trust adults. It is difficult for these young people to engage in orders which require them to, for example, attend a program for 12 weeks to talk about their feelings in circumstances where "talk therapy" does not assist them and where, because of their experiences of betrayal, there has not been any reason for them to develop rapport with the service provider.

- 25 In light of the above, children and young people often experience the justice system as just another form of control and punishment in which they are blamed, perpetuating the idea that they are not of any value.
- 26 Children and young people also often do not disclose their own experiences of harm, as they do not see such experiences as being relevant to their actions. My research through the PIPA project indicates that this means that they experience the weight of justice system intervention for behaviours that other people are perpetrating against them.
- 27 A lot of my work is focused on exploring what makes a difference in terms of engaging a young person in an intervention. It is clear that the system needs to take into account the needs of children and young people, including histories of trauma. Interventions need to be targeted, rather than expecting children to be responsive to the types of orders mentioned above. For example, we have seen that children and young people are able to develop the necessary rapport and trust where they have engagement with someone over a long period of time in the form of what we might call an “old fashioned” youth worker.
- 28 In such a situation, the practitioner or youth worker is there because of the young person’s contact with the criminal justice system, but their ongoing involvement means that disclosures often emerge in the course of their relationship with the young person. This makes sense, given the specific needs of many of the children who are in contact with the justice system, as described above. It is only once the young person has developed this relationship that they are able to make any connection between their experiences of violence and/or trauma and their own use of violence and/or risk-taking behaviour.
- 29 Overall, this means that, when we fail to prevent children’s experiences of trauma, or when we fail to listen to their experiences and intervene early to stem the trajectory of harm, we start children on the trauma to prison/youth detention pipeline, one that often travels directly through out of home care.

How trauma and harm is compounded in youth detention

- 30 When children and young people end up in youth detention, the level of harm or trauma suffered by them is compounded and entrenched, both in terms of

separation from family and separation from any support and peer networks. This is particularly unforgiveable when the “care to custody” pipeline is so well understood – for example, we know that ‘crossover kids’ (Sentencing Advisory Council, 2019) who have been removed from their family into out of home care are 19 times more likely to have contact with the youth justice system (CIJ Submission to Review of Age of Criminal Responsibility, 2020).

- 31 Functioning properly, youth justice systems could use their interaction with young people to provide genuine and trauma-informed care, to start to build a reason for children and young people to trust adults.
- 32 Instead, Australian youth justice systems replicate the lack of choice and voice that young people have previously experienced; the lack of autonomy over their liberty and time; and frequently replicate the lack of physical control and bodily integrity which shaped children’s experiences of trauma.
- 33 Detention is also highly criminogenic in that these children are exposed to other young people who are even more damaged than they are, while lacking the trauma-informed care that they need to address their experiences of harm. In particular, the Sentencing Advisory Council has found that, the younger a child is at first sentence, the more likely they are to reoffend; to reoffend violently; to continue reoffending into adulthood and be imprisoned in the adult system by the time they are 22 (Sentencing Advisory Council, 2016).
- 34 This means that, while the community expectation is that the youth justice system is there to provide a rehabilitative function, in the vast majority of cases the opposite is true. I cannot fathom why we continue to put these young people in detention when the evidence regarding how trauma is compounded in detention is so overwhelming.
- 35 There are also specific factors to consider in the context of placing female offenders in youth detention. Research has shown that anywhere from 70 to 95 per cent of any adult female prison population has experienced gendered violence, including childhood sexual abuse. We then put people in an environment that replicates the power imbalance in terms of women’s agency and autonomy over their own bodies.
- 36 For example, the use of strip searching, which was only abolished in female prisons in Victoria a few years ago, as well as other restrictive and invasive

practices, replicate the dynamics of family violence and childhood sexual abuse where people have no control over what is done to them.

- 37 While evidence indicates that the vast majority (over 90%) of young people in youth justice detention are male (Australian Institute of Health and Welfare, 2020), given what we know about the rates of sexual assault in youth detention environments it is crucial that we prevent as many vulnerable young people who may have experienced trauma from having that trauma compounded.
- 38 Similar to adult prisons, Victoria's youth detention facilities have become like warehouses for our failures to support people more appropriately in the community. This is evidenced by, for example, the extremely disproportionate representation of Aboriginal children in detention as well as children who have experienced other kinds of trauma, who have an undiagnosed or diagnosed disability or learning delay, or who have poor mental health.
- 39 Children and young people's experience in youth detention compounds the harm that communities are trying to address and then sets society up for even greater harm down the line when kids who are in contact with the youth justice system are more likely to be in contact with the adult justice system. When children are placed in youth detention, it becomes very clear to them that it might be the end of their prospects for a well-functioning life. This makes it even more crucial that staff in youth detention facilities are trained to be trauma experts – that the jobs are not about enforcing rules and punishing wrongdoing, but about identifying and building on strengths and setting young children up for a life beyond institutionalisation.

Taking a person-centred approach

- 40 It is therefore important that the youth justice system takes a person-centred approach when dealing with children and young people – and that efforts are made to understand the individual child and their experiences. This requires us to consider what a child is able to understand and process, as well as their particular circumstances. As part of this, we need to take into account a child's developmental stage and acknowledge that this will not necessarily equate with their chronological age.

- 41 For example, the legal system is almost impossible to understand for most adults and it is severely problematic that a 13-year-old can end up with a civil restraint or protection order imposed on them without being able to understand how or why this has happened, let alone what it means.
- 42 Similarly, we need to consider the specific experiences of the child or young person and the impact of any trauma that they have suffered. One of the biggest mistakes that the youth justice system and society as a whole makes is lumping children and young people together in terms of their needs and the impact of trauma. For example, we assume that all children (that is, anyone under 18 years of age) and their experiences must be the same as their mother's in the context of family violence. Instead, it really needs to be about understanding the individual child and their unique experiences.
- 43 Another factor is the way in which offending behaviour is perceived by the justice system, depending on the gender of the accused. For clarity, I am using a binary understanding of gender here. On the one hand, my research in the PIPA project indicated that physical violence by girls was perceived as more deviant and therefore received a particularly punitive response from police. In my research I have seen examples of the use of very extreme violence by young girls and it is often the case that they have profound trauma histories, including serious sexual abuse, which can often just be accepted as the norm by the system. This is something that the youth justice system should take into consideration when a child is presented before it, together with what we know about the rates of child sexual abuse, the impact of gender and exposure to other forms of trauma, as well as the child's developmental stage. Overall, the PIPA project suggested a greater tolerance for misbehaviour or acting out from boys, with it tending to be minimised or dismissed as 'boys being boys' along the lines of traditional gender norms (Campbell et al, 2020).
- 44 By contrast, some international research suggests the opposite, where physical use of violence by girls is minimised, while use of physical violence by boys beyond a certain age is seen as particularly intimidating and is therefore likely to attract a justice response (Miles & Condry, 2016).
- 45 More broadly, the PIPA project highlighted the importance of understanding developmental stage, as well as chronological age, in terms of how a child experiences contact with the justice system.

The importance of youth justice responses being culturally appropriate

- 46 Given the shameful overrepresentation of Aboriginal and Torres Strait Islander children in youth justice systems (frequently via the out of home care system) it is particularly important that youth justice systems focus efforts on the development of approaches which are more culturally safe and responsive. As a priority this involves keeping First Nations children with families and communities – intervening early, not with referrals, mandates and monitoring, but with genuine support and the facilitation of access and engagement with necessary services.
- 47 This should be provided by an appropriately trained workforce and leveraging the strength of culture, such as through programs like Bunjilwarra in Victoria, to divert young children from harmful trajectories. Other models in Victoria include the more culturally appropriate approach taken to child protection and welfare matters in the Broadmeadows and Shepparton Divisions of the Children’s Court. Marram-Ngala Ganbu is a model of reaching determination about child welfare matters via a collaboration with the family, the Magistrate sitting at the Bar table with all parties around a possum skin and seeking input and ownership of the ultimate decision. It involves proactive docketing and judicial monitoring and is lauded as a less damaging approach to the intervention of statutory authorities in Aboriginal families’ lives.

The importance of diversion

- 48 As set out above, trauma and harm are often compounded in youth detention, which leads to further adverse outcomes for children. In this context, as soon as a young person comes into contact with any part of the criminal justice system, the aim should be to divert that young person away from the criminal justice system. It is the failure of our capacity to provide that earlier intervention and service support which leads to children being on such a damaging trajectory.
- 49 There are many examples of this. For example, we know from a wide range of evidence that, as soon as a child disengages from school, the trajectory into the criminal justice system involvement skyrockets. In addition, we see that the imposition of a civil order for the use of violence or some other kind of problem

behaviour (for example, a Family Violence Intervention Order in Victoria or a generic restraint order in Tasmania) escalates a child's involvement into the criminal justice system straight away because, as soon as it is breached, this becomes a criminal matter. For the reasons mentioned above, however, it is almost impossible for children to understand or comply with the expectations of the court (including in relation to these types of orders) and breaches become almost inevitable.

- 50 There are some exceptions where the legal process can function as a sort of scaffolding or lever for the supports that a young person would otherwise never have had. For example, a creative Magistrate may be able to link a young person's sentence or legal process with an educational outcome or with a service intervention, such as the provision of an NDIS package. These mechanisms need to be built into the system, however, and not left to chance or creative exceptionalism.
- 51 More formal diversionary models in Victoria include the legislated state wide Diversion Scheme, in which court appointed Diversion Coordinators work with young people to engage them in much needed services via a judicial monitoring process and where all parties – including the prosecution – are invested in seeing a better outcome for the young person.
- 52 Youth Justice Group Conferencing (discussed further below) is also an incredibly important and well established mechanism where, with the consent of the police or prosecution, young people who plead guilty to an offence can be referred to a conferencing process, facilitated by expert restorative justice facilitators. Victims of an offence can participate but do not have to for this process to proceed. Rather, the process is about exploring the harm that an offence has caused and identifying opportunities for reparation.

Therapeutic justice

- 53 We currently have an adversarial system that generally functions as an incredibly negative intervention in people's lives. In rare cases, the system can be leveraged in ways that create positive outcomes but that is the exception and not the rule.

- 54 Therapeutic justice is based on understanding the whole person and not just their offending, what brought them to that point, and what they therefore need to move beyond that and to redirect their trajectory. In the context of a child or young person, this should include understanding the needs that exist across the whole family ecosystem. For example, the justice system tells a young person that they need to work on their behaviour and alcohol or drug use but it is difficult for them to do that in circumstances where they have not seen their wider family or support mechanisms behaving in that way; where they do not have any control about whether or how they engage; and when they have often been let down profoundly by the service system before.
- 55 An example of the way in which therapeutic justice can work is that of the Family Drug Treatment Court program (**FDTC**) within the Family Division of the Children's Court of Victoria. The FDTC is a judicially monitored, therapeutic 12 month program which seeks to engage parents whose children have been removed from their care due to parental substance use. It looks at the needs of the whole family to determine an appropriate intervention. For example, it might acknowledge that a young person's behaviour will not be addressed unless their parent's support needs are also met and the intervention is tailored accordingly. The aim is achieving safe and sustainable family reunification of parents and their children.
- 56 I think we also need to take lessons from the Aboriginal and Torres Strait Islander context. We need to understand what a young person's community is and what kind of things they value; identify their strengths instead of pathologising them; and apply a whole of family approach.
- 57 A therapeutic model dovetails with taking a strengths-based approach. It is important to take a strengths-based approach and look at what will actually help the individual child, giving them a framework or map that works for them. This is resource and labour intensive, but it is certainly not as resource intensive as the custodial system and it will not compound the harm that we are trying to address.
- 58 For example, we know in Victoria that the Koori Court model is incredibly effective in leveraging the strength of community so that the process has meaning and relevance for the accused and so that any orders made or sentence passed are more likely to be effective because the individual's

circumstances, history and community are understood and taken into account. In Victoria we have Koori Courts in the adult and children's jurisdictions.

- 59 The Rangatahi Courts in New Zealand are similarly powerful – involving strong cultural conditions in the context of family group conferencing hearings held on traditional marae to empower the young person and support them to make links to their culture.
- 60 Therapeutic justice should not be seen as an alternative or exception, particularly in the context of responses to young people. Therapeutic justice is not about being 'soft' on an offender or excusing behaviour – it is about identifying and addressing the causes of crime so that the behaviour does not happen again and so that trajectories of harm are not completed. Therapeutic justice is therefore about making the community safer – in the life of an individual child and in the context of the wider population.

Other models of youth detention

- 61 Detention should always be an absolute last resort as far as children and young people are concerned, as the Convention on the Rights of the Child spells out. Where all other options have been exhausted, however, a youth detention model works more effectively where it functions as a positive intervention in a child's life, providing them with some form of respite and access to all of the services and opportunities that they have missed, including those which their families may not have had the capacity to facilitate before. Given that we know that it is very likely that children who come into contact with the criminal justice system have, amongst other things, disabilities, learning delays, mental ill health and histories of trauma, any form of youth detention should function as a method for identifying these issues and putting in place supports, as well as providing children with life skills and access to education and employment pathways, which is the focus of the Diagrama Foundation model in Spain for example. Once this is done, we can start to get the results we expect the youth justice system to achieve, but which we do not get because of the way in which the system is currently set up.
- 62 In order to achieve this, it is important that there is a screening process for every child who comes into youth detention so that they can have individualised plans and support services made available. This approach

would make an enormous difference, both in terms of mitigating the otherwise criminogenic impact of detention, but also in relation to their broader lives. This includes identifying learning delays, physical and mental health issues, cognitive impairments and any needs for specialised trauma supports, which should be a staple of any youth detention facility.

- 63 If a young person is taken into custody, it is also vital that their cultural background and community relationships are identified and understood – so that they can be linked with culturally appropriate interventions and programs. Ideally these would include programs based in the community, so that a young person could transition back into the community with strong links made with Elders and senior community members which can help provide models of who they want to be as adults.
- 64 Models such as Parkville College in Victoria, a government school specifically for young people who are in custody, secure care, or transitioning out of these settings, provides education by qualified teaching staff and makes education the predominant focus within the facility. The college’s foundational principles take a strengths-based approach to supporting education, with all teachers trained in trauma-informed approaches. The college delivers the Victorian Certificate of Education and Victorian Certificate of Applied Learning, which the majority of its students undertake. It also has auspice arrangements to provide vocational training.
- 65 By providing a focus on education across a range of custodial and secure settings, educational staff can function as a positive intervention in young people’s lives – providing stability and predictability and creating secure attachments in an environment which is primarily about learning, mitigating what would otherwise be a primarily punitive experience for young people.
- 66 Parkville College is also linked to the Education Justice Initiative at the Melbourne Children’s Court and is also linked to the Koorie Cultural Education program, through which Aboriginal and Torres Strait Islander young people in custody can be connected with culture and community.
- 67 More generally, models that work well are those in which there is a collective responsibility to identify the needs of the young person and a collaborative approach is taken to responding to those needs. This recognises that a young

person will develop rapport with different people and you cannot necessarily expect the child to develop that rapport with one educator or one mental health practitioner. Rather, there needs to be a collective approach wherein a plan is developed with the child in order to support the child and identify their goals. It may be that those goals change and, as a result, it is important that the plan is constantly reviewed, refined and adapted. It is also important that the professionals who are involved in working with the child are perceived to be there in their capacity to support and help the child, rather than in their capacity to punish or restrict the child's liberty.

- 68 Examples include the Diagrama Foundation models in Spain, as mentioned above, but I am not aware of similar approaches in Australia beyond the benefits of education being centred in the Parkville College context. This is of huge concern – that, as a former world leader in human rights on the world stage, we have not embraced the Convention on the Rights of the Child and centred a strengths-based and trauma-informed response to children who come into contact with the criminal justice system.

Issues faces by children on remand

- 69 There are particular issues faced by children on remand. Generally, justice systems are set up on the assumption that people will usually get bail and that, if they do not get bail, they will only be held in detention on remand for a short period of time. In this context, there is potentially the view that the government should not need to invest in services for someone who may not be convicted and that those services should be available for only those who are sentenced.
- 70 At the moment in Victoria, however, the legislative bail settings are such that it is incredibly difficult to get bail. This is following the introduction of reforms which were designed to respond to incidents of really serious violent offences by men, but the laws are having a disproportionate impact on people who commit low level offences but do so repeatedly because of poverty and trauma. In some cases, this includes young people, the majority of whom commit low level offences. It also includes where young people have been made respondent to a family violence intervention order and the onerous thresholds of the bail legislation are invoked when they breach.

- 71 We then have this ridiculous situation where Corrections Victoria data indicates that, at any one time, around 50% of the population of our maximum security female prison is on remand, with equivalent figures for young people according to the Sentencing Advisory Council (2020). In fact, the number of children on remand doubled in the ten years from 2010 to 2020.
- 72 The assumption built into the system that resources should not be allocated to a person who is only in detention for a short period of time and who might not be sentenced then does not sit with the reality that young people are in detention on remand for a long period of time, including because of backlogs in the system, particularly as a result of COVID-19.
- 73 What happens then is that, by the time a matter is brought forward and a young person is convicted for an offence, they have served their time and they are then released from detention without any kind of Corrections support following them into the community. All the justice system does is damage and sever any connections that they had to services, housing, mental health, medication and family. This again compounds their experiences of harm.
- 74 In addition, while those sitting on remand are supposed to have access to education, including through the Education Justice Initiative mentioned above, this can become disrupted. This includes where disciplinary measures exclude them from access to education and treat it as a 'privilege' rather than a right, or where insufficient staff are available to supervise. In Victoria, for example, while children were generally just doing remote learning during the COVID-19 pandemic through Victoria's extended lockdowns, I'm not confident that children in custodial environments were supported to have that same access.

RESTORATIVE JUSTICE

- 75 Restorative justice approaches recognise that, while the adversarial system meets the imperative of the State in prosecuting wrongdoing, it does very little to meet the needs of the people who have experienced this wrongdoing. By contrast, restorative justice approaches give victim-survivors a voice and validation, essentially allowing them to be heard, to ask questions and to feel that somebody who has caused harm to them has taken steps to repair it.

- 76 Restorative justice can be used in a variety of circumstances, and it is much broader than just putting a victim and offender together to talk. As mentioned above, within the youth justice context in Victoria and elsewhere there is a well-established and very effective process of Youth Justice Group Conferencing (YJGC). Young people are referred to YJGC by the court with the consent of the police to enable the young person and their family or support network to come together with those affected by the offence and talk about the harm that has been experienced and the impact on different people. This enables the offender to work towards a way of repairing that harm or making amends, at least to some extent.
- 77 This is a particularly important mechanism in the context of youth justice, because we know that children have a significant opportunity to desist from offending where appropriate supports and interventions are provided. Across my research, practitioners who support young people, victims of crime or even prosecute offences involving young people all emphasise the power of a restorative process in enabling a young person to see the harm that they have caused; to take ownership of their future choices with support and to be diverted from further offending.

Restorative justice approaches in the context of children and young people exhibiting harmful sexual behaviours (and the need for therapeutic treatment)

- 78 The CIJ published a report titled “Innovative Responses to Sexual Offending” in 2014 that set out a blueprint for a restorative justice (RJ) approach that should sit alongside the criminal justice system with various points of entry and exit and eligibility points along the way. The CIJ found that any such model should be supported by
- an overarching legislative framework and operational guidelines;
 - an oversight body incorporating a specialist gender-based violence team;
 - skilled, specialist RJ facilitators;
 - an expert assessment panel to determine the suitability of individual matters for RJ conferencing;

- basic eligibility criteria, including relating to consent and age limits;
- no offence or offender exclusions – rather, the process should be victim-led and each matter examined on its circumstances;
- pathways into and out of RJ conferencing, including appropriate police, prosecution and judicial oversight;
- the need for protection around admissions made during a conference;
- potential outcome agreements and what to do in the event of a breakdown;
- funded, accessible, community-based sexual offender treatment programs to complement the RJ process.

79 The CIJ does not have a formal position on the use of RJ in relation to children who use harmful sexual behaviours (**HSB**) but my own view is that this should be approached with great caution. Because of the vulnerability of young people who use HSB and because of the high likelihood that they have experienced harm themselves, a direct therapeutic model of intervention is generally used for children exhibiting HSB. In Victoria we have Therapeutic Treatment Orders in the Children's Court which are unique and innovative in that they are not so much about compelling the engagement of the young person but about compelling the engagement of services. While these are resource intensive (and therefore expensive), the international evidence suggests that therapeutic interventions do make a difference for children using HSB. For example, a United Kingdom review of interventions in HSB found that interventions are effective where the individual needs and context of the young people have been taken into account and where interventions are specifically directed towards addressing those needs (Campbell, F. et al, 2020).

80 In my PIPA project research (as distinct from the United Kingdom research cited above) I also encountered a community-based service in Tasmania which worked directly with young people exhibiting HSB and their families and which seemed to be having great impact. They explained that working to repair the ruptures in the family is a huge part of their role, a feature echoed in international research. Whole of family responses are particularly important in


this context, not so much in terms of bringing people together to discuss and repair the harm but to identify what caused the harm in the first place, as well as the extreme distress, stigma and blame that family members feel once this harm has been discovered.

The use of restorative justice approaches in the context of an institution's response

- 81 There is also a lot of scope to use RJ approaches in the context of an institution's response. It is extremely transformative when a person in a position of power and leadership hears stories directly from victim survivors, rather than just hearing about the issue up the chain in circumstances where it is presented as an "institutional problem". The institution cannot distance itself from the issue in the same way, and this enables the institution at least to acknowledge and apologise for the initial harm experienced and/or any compounding harm that followed as a result of the institution's response. I believe that this can lead to real structural reform.
- 82 The challenge for an institution is that often a RJ approach sits at odds with the legal advice it may be receiving in terms of its legal liability or exposure. While institutions need to afford procedural fairness, for example, to its staff members, there is a difficulty in saying that we should be believing children but at the same time need to afford procedural fairness. Institutions need to allow room for acknowledging, recognising and validating the child's experience without setting themselves up for exposure at the same time. There is a way to walk the line which shows empathy, respect and fairness to everyone.
- 83 This partly involves emphasising the organisational commitment to child safety and also providing information to the victim survivor in the case of a disclosure as to why the institution cannot say certain things publicly. It is otherwise traumatising for the child and their family because they feel like no one believes them.
- 84 An example of this is the impact for the victim survivor and their family of receiving a one paragraph letter in response to a devastating disclosure. It is better that the institution explains the system or process in the particular situation, what it can and cannot do at that point in time, what its observations are and the process that will follow.

- 85 In this regard, no institution should assume that people are aware of its processes. It is crucial that the process is explained to those involved because at least when they have information as to why something works in an incredibly unfamiliar or unexpected way, they are better able to manage their expectations and not feel that there is a sense that nobody is believing them or shutting them out.
- 86 Institutions that have adopted an organisation-wide restorative response to sexual harm include the Australian Defence Force and the Defence Abuse Response Taskforce. These organisations chose to adopt the model of inviting leaders to hear directly from victim survivors about their experience and to offer an acknowledgement and apology on behalf of the institution after a review of the treatment of women across the whole institution, in which I was directly involved from 2012 – 2013.
- 87 My own institution, RMIT University, has also adopted that approach in more recent times, to powerful effect. My counterpart Associate Director, Stan Winford, and his staff at Open Circle, the CIJ's Restorative Justice service delivery arm, can provide the Commission of Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings with more information in this regard.

I make this solemn declaration under the *Oaths Act 2001* (Tas).

Declared at: 
on 4 July 2022



Signature of witness

Before me:

