SASVic Community Proposal

Addressing the glaring gap in Victorian CSA grooming offences

Prompt and serious consideration by the Victorian Attorney General and Parliament is required to rectify the absence of a grooming offence within Victorian child sexual offences legislation applicable to 16 and 17 year olds under care, supervision or authority. While offences related to grooming were introduced and came into force in 2014, they failed to include protection for older children in institutional contexts.

We need to rectify this omission borne of it can be argued, the collective blind spot we still have as a society about older children being at risk of predation, and failing to fully comprehend the extent to which grooming is a core strategy utilised by perpetrators of CSA.

Amendments to Section 49M of the *Crimes Act 1958* should be introduced to make it an offence to groom a child aged 16 or 17 where the child is under the care, supervision and authority of the accused person, including where there is an intent to facilitate the child engaging in a sexual contact with the accused person or with another person once the child turns18 years of age.

This legislative omission occurred in 2013 despite the fact that:

- the need to protect young people aged 16 and 17 from exploitation by people in positions of power has been recognised in Victorian legislation since at least 1980, (ss 48 & 49 of the Crimes Act)
- the current 'relationship of authority' offences have existed in some form since the reduction in the age of consent from 18 to 16 in 1991

Following the Victorian *Inquiry into The Handling of Child Abuse by Religious and Other Non-Government Organisations*, the resulting 2013 *Betrayal of Trust* report, included a key recommendation that a stand-alone criminal offence of grooming should be created (not just included as an aggravating feature of abuse). This was based on the well-established recognition that grooming is harmful in itself, both to the child and also their family. The numerous submissions made to this Inquiry from affected families were repeatedly referenced in parliament at the time the Report was released.

Inexplicably however, the 2013 Human Rights Compatibility Statement (required by the Charter of Human Rights and Responsibilities Act 2006) that accompanied the introduction of the new legislation, described grooming as not directly harmful in itself (see Hansard 12/12/2013 p 4667-8), instead treating the newly proposed offence of grooming as an instrument to protect children from 'the risk of later harm'.

In doing so, it failed to acknowledge that both grooming and further 'harm at a later time' **can and does occur** while a 16/17yo is under the care, supervision and authority of another e.g. Teachers, pastoral carers, sports instructors, recreational youth leaders etc.

Overwhelmingly, research and lived experience testimony has established grooming is a not just a behaviour that 'leads' to harm, it is a deliberate criminal activity that is intrinsically damaging in the moment and persists beyond the moment with lifelong consequences across many life domains.

The Crimes Act Section 8B Sexual Offenses Against Children currently includes:

- 49C Sexual penetration of a child aged 16 or 17 under care, supervision or authority
- 49E Sexual assault of a child aged 16 or 17 under care, supervision or authority
- 49L Encouraging a child aged 16 or 17 under care, supervision or authority to engage in, or be involved in, sexual activity
- 49M Grooming for sexual conduct with a child **under the age of 16**

With the introduction of 49M, conduct that deliberately intends to facilitate a person's sexual activity with a child under 16 years of age was made illegal. It was a marker that properly recognised the damage that such conduct causes to children and their families even in where no other sexual offence is committed against a child.

Why though this grooming offence was treated differently from the other CSA offences that relate to older children under care, supervision and authority of another (49 C,E & L) and again when legislation was updated in 2016, is unfathomable.

Those who conceive of, draft and approve legislation, with all the good will and reform intention in the world, are not immune from having blinkers, or from a shared collective blind spot. A survivor-informed approach to rectifying this anomaly is essential.

Recommendation 36, of the *Royal Commission into Institutional Responses to Child Sexual Abuse*, emphasised the importance of:

"protecting older children who, despite being old enough to consent to sex, remain vulnerable to sexual abuse by those who hold positions of authority in relation to them".

The absence of a grooming offence applicable to 16 and 17 year olds under care, supervision or authority, creates a gap within which perpetrators of CSA in positions of authority can operate and abuse the imbalance of power and duty of care they have by virtue of their role.

It equally muddies understanding in the general community about consent and vulnerability of children to abuse within institutions and from people in positions of authority. This remains the case despite the 2021 Victorian Law Reform Commission, *Improving the Justice System Response to Sexual Offences* review receiving a submission from the Victorian Institute of Teaching highlighting this very anomaly. The VIT also identified that 'the current grooming offence also allows for a situation where offenders are able to engage in grooming behaviours towards children as long as they do not pursue the sexual component of their relationship until the student turns 18."

This glaring gap in the protection of children needs to be closed now.

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