



26 November 2012

Secretariat Royal Commission into Child Sexual Abuse
PO Box 6555
CANBERRA ACT 2600

By email: royalcommissionsecretariat@pmc.gov.au

Dear Sir/Madam

Response to Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse

1. Women's Legal Services NSW (WLS NSW) warmly welcomes the establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse. This is a serious issue which has had a detrimental and long-lasting impact on victims/survivors of child sexual abuse and must be addressed. We commend you on undertaking a consultation on the terms of reference (ToRs) and thank you for the opportunity to provide comments.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. We have considerable experience in working with victims/survivors of child sexual abuse including through acting for clients in victims compensation matters and in litigating civil law actions in response to child sexual abuse. We are also concerned by ongoing barriers to disclosing child sexual abuse in proceedings before the family law courts.

Human Rights framework and due diligence obligations

4. It is important that this inquiry is grounded in a human rights framework. The abuse of children is a violation of human rights. It involves a grave abuse of power and should also be understood within the continuum of violence against women. Child sexual abuse is a violation of the rights:
 - a. To be free from torture or cruel, inhuman or degrading treatment or



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- punishment;¹
- b. To the enjoyment of the highest attainable standard of physical and mental health;²
 - c. The right to life;³
 - d. The right to equality and non-discrimination.⁴
5. Under international human rights instruments, states are required to act with due diligence to prevent, punish, investigate and redress harm as a result of acts of violence.⁵ It is important that all elements of due diligence are present in the ToRs of the Royal Commission. It will not be enough to look only to preventing such abuse happening again in the future. Perpetrators must be held to account and compensation must be included.⁶
6. Significantly, states may be held responsible for private acts, if they fail to act with due diligence to prevent, investigate or punish acts of violence.⁷

Early work of the Royal Commission

7. The very nature of holding a Royal Commission about child sexual abuse will likely raise issues for victims/survivors of child sexual abuse. The early work of the Royal Commission should include making free counselling and support available to all victims/survivors of child sexual abuse when they are ready to access it, including before, during and after the inquiry. This should be widely promoted. Counselling and support should not be limited only to those providing evidence to the Royal Commission. Adequate funding to provide such counselling and support is required.
8. Information about the Royal Commission should be developed and available in plain English, in languages other than English and in accessible formats. Information should include where to access free counselling, support, legal and other services.
9. The Royal Commission also needs to consider how it can be as accessible as possible for victims/survivors of child sexual abuse. It is important that victims/survivors are consulted in how best this can be achieved. Factors to consider should include: providing a range of ways for victims/survivors to choose to give evidence, including through confidential means; travelling to regional, rural and remote areas as well as metropolitan cities; having interpreters available where required; allowing victims/survivors to be

¹ *International Covenant on Civil and Political Rights (ICCPR)* ratified by Australia on 13 August 1980, Article 7; *Convention on the Rights of the Child, (CROC)* ratified by Australia on 17 December 1990, Article 37; CEDAW General Comment 19: Violence against Women, as contained in UN Doc A/47/38 (1992) at paragraph 7.

² *CROC*, Article 6; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, ratified by Australia on 10 December 1975, Article 12.

³ *CROC*, Article 6.

⁴ *CEDAW*, Article 3;

⁵ Human Rights Committee, *General Comment No. 31*, CCPR/C/74/CRP.4/Rev.6, para. 8; Committee on the Rights of the Child, *General Comment No. 5*, CRC/GC/2003/5, 27 November 2003, para. 1; Committee on Economic, Social and Cultural Rights, *General Comment No. 14*, E/C.12/2000/4 (2000), para. 33.

⁶ A right to reparations is also found at *CROC*, Article 39; UN Committee on the Rights of the Child, *General Comment No 13* CRC/C/GC/13, para 41(f); *CAT* Article 14; *ICCPR*, Article 2.

⁷ *CEDAW General Comment 19: Violence against Women*, as contained in UN Doc A/47/38 (1992) at paragraph 9.

accompanied by a support person when giving evidence.

10. Given a significant proportion of women in prison have been victims/survivors of sexual violence, including child sexual abuse, consideration must be given to how people in prison can participate in the Royal Commission if they choose to do so.
11. Barriers to providing evidence to the Royal Commission should be identified early in the process so that steps can be taken to remove these barriers. For example:
 - a. Victims/survivors of child sexual abuse who have civil litigation on foot at the time of the Royal Commission should be able to give confidential evidence at the Royal Commission. Any barriers preventing them from giving such evidence should be removed.
 - b. Legal representatives who are acting for clients in civil litigation on foot related to child sexual abuse at the time of the Royal Commission should be able to give confidential evidence to the Royal Commission with the informed consent of the victim(s)/survivor(s) of child sexual abuse. Any impediments to legal representatives providing such evidence should be removed.
 - c. Victims/survivors who have entered into confidentiality deeds should be permitted to give evidence to the Royal Commission.
12. Barriers to seeking reparations and redress should also be removed, including the prejudice occasioned to victims of child sexual abuse by statute of limitations laws.
13. While acknowledging that the opportunity to give evidence at a Royal Commission will be a cathartic experience for many victims/survivors of child sexual abuse, victims/survivors should not be expected to repeat this process should they wish to apply for compensation. Compensation and redress should be available through a non-adversarial system. The Royal Commission should consider how compensation can be included as part of its processes.

Scope of the Terms of Reference

14. The abuse that is the subject of the Royal Commission should be limited to child sexual abuse.
15. Child sexual abuse should be broadly defined within a contemporary framework.
16. We note the Consultation Paper refers to the focus of the Royal Commission on 'public and private organisations and institutions'. We note this is not defined.
17. WLS NSW recommends the Royal Commission should look broadly at public and private organisations and institutions, including places where the child sexual abuse occurred, such as 'out of home' placements in child welfare, including foster care; and religious organisations.
18. In addition, the systemic failures of institutions, organisations and government agencies to respond to allegations of sexual abuse of children must be examined. Failure to include an examination of these systemic failures will miss a momentous opportunity to recommend broad systemic improvements. We submit that impediments and barriers to the making,

investigating and responding to allegations be included as part of the systemic failures as well as organisations and institutions responding to the abuse, such as police and family law courts. We submit that government agencies and institutions such as the police and family law courts must be part of this examination and consequent recommendation for change.

19. Through our work we hear reports of women with genuine concerns for the safety, welfare, well-being and best interests of their children who raise child sexual abuse allegations in family law proceedings without a protective response. In some cases it seems that outcomes put children more at risk and that those raising the allegations are treated harshly.
20. All systemic barriers which contribute to the failure to protect children from sexual abuse should be able to be examined. We strongly believe this should include an examination of the barriers to raising allegations and getting protective responses from the family law courts.
21. To include the family law courts in an examination of public and private organisations' and institutions' responses to child sexual abuse would be an important way to identify any systemic problems in raising child sexual abuse allegations in family law proceedings. Recommendations could then be made regarding changes required to any laws, policies or practices with respect to raising and responding to child sexual abuse allegations. The recommendations could build upon the important work undertaken by the Australian Law Reform Commission and the NSW Law Reform Commission in their report: *Family Violence – A National Response*.

Number and qualifications of Commissioner/s

22. We support the Royal Commission having multiple Commissioners with a range of skills, qualifications and expertise.
23. It is important that Commissioners have experience in working with victims/survivors of child sexual abuse and have the necessary knowledge and skills to appropriately question victims/survivors of child sexual abuse. It is also important that Commissioners act with compassion.
24. It is imperative that Commissioners engage in their work in a culturally aware and sensitive way and have experience working with Aboriginal and Torres Strait Islander people, Culturally and Linguistically Diverse communities and people with disabilities.
25. We recommend that at least one Commissioner be from an Aboriginal or Torres Strait Islander background.
26. Suitably qualified women Commissioners should also be appointed.

Duration and reporting arrangements for the Royal Commission

27. We believe that all victims/survivors of child sexual abuse who would like to give evidence should be given the opportunity to do so. It is very important that victims'/survivors' stories are heard. This is an important part of the healing process.
28. People working with victims, such as legal and mental health professionals, should be able to provide evidence on the issues of the terms of reference since they are likely to have significant experience of working with very vulnerable clients whose experiences may not

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otherwise be heard.

29. The Commission must also allow for the families and supporters of victims/survivors, who are often secondary victims of the abuse, to be heard.
30. To address the balance of allowing enough time for victims/survivors to share their experiences with the need for urgent reform, we support a timeframe for the work of the Royal Commission which includes regular interim report dates. Interim reports should include recommendations that can be implemented while the Royal Commission is ongoing.
31. Consideration should be given to how inquiries on this issue in other jurisdictions have been undertaken and the lessons learnt.
32. If you would like to discuss any aspect of this submission, please contact Janet Loughman, Principal Solicitor on 02 8745 6900.

Yours sincerely,

Women's Legal Services NSW

Janet Loughman
Principal Solicitor