



Australian
Human Rights
Commission

Royal Commission into institutional responses to child sexual assault

**AUSTRALIAN HUMAN RIGHTS COMMISSION
RESPONSE TO THE CONSULTATION PAPER**

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1 Introduction

1. The Commission strongly supports the establishment of a Royal Commission into Institutional Responses to Child Sexual Abuse and welcomes the opportunity to comment on this consultation paper.
2. The issue of child sexual abuse raises important children's rights issues. The Royal Commission will undoubtedly expose instances where children's rights have been breached. It will also likely result in recommendations that will enhance the protection of children's rights in Australia. This will particularly be the case where recommendations relate to the practices of institutions of various kinds in responding to and reporting child sexual abuse.
3. The Commission's comments on this consultation paper open with a consideration of the children's rights issues that are raised by child sexual assault. It then provides brief comments on the following matters raised in the consultation paper, including the:
 - scope of the terms of reference
 - form of the Royal Commission
 - number and qualifications of Commissioners
 - duration and reporting arrangements of the Royal Commission.

2 Human rights issues raise in the context of child sexual assault

4. The issue of child sexual abuse raises important human rights issues. Human rights as they relate to children are articulated in the Convention on the Rights of the Child (CRC). Most relevant of these rights is the provision set out in article 34 that:

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

5. Article 34 should be read in conjunction with article 19 of the CRC, which provides that:

(1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

6. Furthermore, article 39 of the CRC provides for measures to ensure recovery and reintegration:

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and the dignity of the child.
7. Other international human rights treaties ratified by Australia, such as the *Convention on the Elimination of all forms of Discrimination against Women*,¹ and also the *United Nations Declaration on the Rights of Indigenous Peoples* highlight the rights of women and children to have full protection and guarantees against all forms of violence.²
8. In particular, under international human rights law member States have an obligation of due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women and the girl child whether those actions are perpetrated by the State or private persons' and to provide access to just and effective remedies and specialised assistance to victims.³
9. Article 16 of the Convention on the Rights of Persons with Disabilities also emphasises the rights of persons with disabilities to be free from abuse; to be assisted with appropriate information to avoid, recognise and report incidents of abuse; and of governments to have in place effective independent monitoring to prevent the occurrence of abuse of persons with disabilities and measures to assist victims of abuse.
10. The Commission sees one of the outcomes of this Royal Commission as identifying specific changes required to ensure the protection of children's rights, particularly systemic reform to institutional response to and reporting of child sexual abuse.

3 Scope of the Terms of Reference

11. Having considered the scope of the terms of reference in the Consultation Paper, the Commission provides comments on the following issues:
 - Coverage of persons with disabilities
 - defining private organisations and institutions
 - listening to the experiences of those affected by child sexual abuse
 - counselling and support mechanisms
 - time limitations
 - reference to previous inquiries
 - protocols for referring matters to other relevant authorities
 - prevention and action where child sexual assault occurs or is raised.

3.1 Coverage of persons with disabilities

12. The Commission is particularly concerned at the vulnerability of people with disabilities living permanently in institutional settings, including children. This group of Australians face distinct and unique challenges, particularly in having their voices heard and from the power imbalance that they face in being able to assert their rights. The Commission recommends that the Royal Commission explicitly include reference to this issue in the terms of reference.

3.2 Defining private organisations and institutions

13. The Commission recommends that the definition of private organisation or institution be clearly articulated in the terms of reference and explanatory materials.
14. A particular issue for consideration is that many private organisations and institutions provide foster care services. Although child sexual assault in foster care arrangements may occur within a family home, there remains institutional responsibility for foster care arrangements. Private organisations and institutions recruit foster carers and supervise the care that the carers provide to children in their homes. The Irish Commission to Inquire into Child Abuse included foster care in its terms of reference. Similarly, some people with disability spend time in respite care and others reside in residential care facilities or institutions. Research shows that these environments increase the risk of sexual abuse. It will be important to include them in the terms of reference.⁴

3.3 Listening to the experiences of those affected by child sexual abuse

15. The Commission agrees that it will be very important that the Royal Commission provides an opportunity for those affected by child sexual abuse to share their experiences.
16. Some individuals may choose to share their stories publically whilst others may wish to tell them privately. Appropriate provisions for the receipt of confidential evidence will be required.
17. Provisions should also be made to receive evidence from those individuals who did not experience child sexual abuse directly but were aware of it and did not take any action.
18. One of the foundation principles of the Royal Commission should be that the process is conducted with the utmost sensitivity. This will mean that the consultation process will have to be as open and as inclusive as is possible, and specifically be culturally appropriate and gender-specific.
19. The Royal Commission should focus on processes that promote healing for survivors of child sexual assault. Formal 'legal' or 'hearing' formats should not be the only options available for people to tell their stories. A range of styles and formats will have to be utilised to enable people to tell their stories in ways

which suit them. This will involve not only calling for submissions but offering interviews, community meetings and travelling to different communities.

20. The Royal Commission will need to reach out and travel to different locations. The Commission believes that to operate most effectively the Royal Commission will need to have a presence in a number of States and Territories, rather than operating solely from a centralised office in Canberra.

3.4 Counselling and support mechanisms

21. The Commission encourages the Royal Commission to ensure that appropriate counselling and support is available to individuals who provide evidence. It should be culturally appropriate, gender-specific and appropriate for LGBTI people. It should be available at all stages of the process, including prior to giving evidence if this is required.

3.5 Time limitations

22. As noted in section 2 above, various human rights standards emphasise the Government's obligation to institute measures to address abuse and to provide measures of rehabilitation and recovery for victims. These standards do not place any time limitations on when claims of abuse can be brought.
23. The Commission envisages that the Royal Commission is likely to hear claims of abuse from Aboriginal and Torres Strait Islander peoples who were forcibly removed from their families, as well as from the 'Forgotten Australians'. While the longer time period involved will create some evidentiary challenges, the Commission does not support the terms of reference for the Royal Commission being confined to more recent instances of abuse.

3.6 Reference to previous Inquiries

24. The Commission agrees that it will be important for the Royal Commission to consider the findings of previous inquiries, including:
- *Bringing them home*, the report of National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families
 - *Irish Commission to Inquire into Child Abuse*
 - *Special Commission of Inquiry into Child Protection Services in New South Wales*
 - Various reports conducted at the state and territory level relating to violence against Aboriginal women and children, including *Little Children are Sacred* (the Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse),
 - *Putting the picture together* (Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities in Western Australia (the Gordon Report)), and

Breaking the Silence: Creating the Future. Addressing child sexual assault in Aboriginal communities in NSW

- *Growing them Strong, Together: Promoting the safety and wellbeing of the Northern Territory's children*, Report of the Board of Inquiry into the Child Protection System in the Northern Territory (the Barth Report).

3.7 Protocols for referring matters to other relevant authorities

25. The Commission agrees that there should be very clear protocols for referring matters to police and other relevant authorities. The Royal Commission will have an immediate impact on individuals and organisations and some issues will need to be addressed as they arise and without delay. It will not be appropriate to wait to incorporate them into either interim or final reports.
26. The Commission also agrees that the Royal Commission will have to determine its protocols for addressing matters that are currently before the court or will be coming before the court in the future.

3.8 Prevention and action where child sexual assault occurs or is raised

27. The focus of the Royal Commission appears to be on identifying what public and private organisations and institutions should do to prevent child sexual abuse from occurring in their midst and what should be done by organisations and institutions when allegations are raised. This will require looking at the leadership, governance, culture, policies and procedures, and complaints systems that currently exist within a range of institutions. This analysis will need to be informed by listening to individual's experiences within organisations or institutions.
28. Engaging with public and private organisations and institutions under the review of the Royal Commission will aid access and understanding and build the goodwill and support for change going forward. It is also important to acknowledge that real and lasting change will have to be carried by champions within public and private organisations and institutions.
29. The Commission has recently undertaken a review of the treatment of women in the Australian Defence Forces. The terms of reference for that review included the ability to conduct a follow up audit of implementation of recommendations, to be conducted 12 months after the release of the review's main recommendations. This has been an extremely valuable mechanism, and the Commission recommends consideration to a similar mechanism being included within the terms of reference for the Royal Commission to promote lasting change in the public, private organisations and institutions whose practices are considered as part of the Royal Commission.

4 Form of the Royal Commission

30. The Commission agrees that the Royal Commission will require the full cooperation of States and Territories in order effectively to inquire into the issues relating to institutional responses to child sexual abuse.

5 Number and qualifications of Commissioners

31. The Commission supports the appointment of multiple Commissioners, including:
- male and female Commissioners (there are commonly protocols for victims of abuse to be able to speak to people of the same gender and this should be provided for in the composition of the Commission)
 - an Aboriginal or Torres Strait Islander Commissioner (as the Commission considers that the significant representation of Aboriginal and Torres Strait Islander peoples in institutional settings will make this an issue for the Royal Commission)
 - A Commissioner with a disability, given the significance of issues facing people with disabilities in institutional settings.
32. The Commission believes that there should be a national Commissioner, as well as specific Commissioners with responsibility for each State and/or Territory.
33. Ideally, the Commissioners should bring expertise or experience in the following areas:
- legal
 - issues in dealing with sexual assault and abuse, particularly in relation to women and the girl-child
 - issues relating to child protection systems generally
 - issues relating to Aboriginal and Torres Strait Islander peoples
 - issues relating to disability
 - issues relating to culturally and linguistically diverse communities
 - issues relating to organisational and cultural change management.

6 Duration and reporting arrangements for the Royal Commission

34. The Commission recognises that the Royal Commission may take a significant amount of time to complete. The Commission suggests that consideration be given to setting a time frame for reporting, for example within three years.
35. If the Royal Commission does take a considerable amount of time to complete, there could be provision for interim reports to be made.

36. An annual report could be beneficial in the sense that it could provide an indication of what had been achieved to date, and what remains to be done. Reporting on themes or emerging systemic issues and providing recommendations as part of this annual reporting process could also allow early identification of recommendations and their swift implementation. It would also then be possible to have the final report of the Royal Commission to include reporting on the outcomes of the implementation of these earlier recommendations.
37. Issues relating to current institutional responses to child sexual abuse should be considered and reported on as a matter of urgency. Issues relating to alleviating the impact of abuse that has already occurred may reasonably be considered over a longer time frame.
38. Consideration could also be given to a parallel process of research into child abuse within family contexts – while this is outside the scope of the Commission, it will quickly be identified as a stark issue due to the significant proportion of abuse that occurs within the family context.
39. The Commission looks forward to assisting the Australian Government as the Royal Commission is established.

¹ Violence against women and the girl child has been recognised as a form of discrimination and as a violation of the rights of women under the *Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)* (CEDAW general recommendations 12 (1989) & 19 (1992).

² Article 22 in *United Nations Declaration on the Rights of Indigenous Peoples*.

³ See further: UN Declaration on Elimination of Violence against Women Article 4 (c and d); CEDAW Committee, General Recommendation 19; *A.T. v. Hungary*, CEDAW, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003 (2005); UN Special Rapporteur on violence against women, *The Due Diligence Standard as a Tool for the Elimination of Violence against Women*, UN Doc E/CN.4/2006/61 (20 January 2006); *Opuz v Turkey* [2009] ECHR 33401/02.

⁴ French, P., Dardel, J. and Price-Kelly, S. (2010) *Rights Denied: Towards A National Policy Agenda About Abuse, Neglect & Exploitation Of Persons With Cognitive Impairment*. People With Disability Australia 16-17.