
INDIGENOUS ENGAGEMENT WITH THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

by Kyllie Cripps and Robert McCreery

INTRODUCTION

On 11 January 2013, the Governor-General of Australia appointed a six-member Royal Commission to investigate Institutional Responses to Child Sexual Abuse ('the Commission'). The Commission has been tasked under the *Royal Commissions Act 1902* (Cth) with inquiring into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse.¹ It will 'investigate where systems have failed to protect children, and make recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions'.²

The purpose of this Paper is to discuss the relevance of the Commission's work to an Indigenous context by providing some background to the Commission, the scope of its Inquiry and how this differs from previous inquiries into sexual abuse in Indigenous communities. We will also provide detail on how individuals, communities and institutions can contribute to the Inquiry and why this would be a worthwhile activity.

BACKGROUND TO THE ROYAL COMMISSION

The Commission was established in the context of increasing pressure on governments to act on allegations of child sexual abuse. This is in light of evidence of increasing notifications of child sexual abuse over the past decade.³ Of particular note, a 2006 Australian Bureau of Statistics Personal Safety Survey found 956,600 females and 337,400 males reporting to having experienced sexual abuse before the age of 15.⁴ The findings also show that more than 90 per cent of these victims knew the perpetrator.⁵

The announcement of the Commission can in particular be attributed to two state-based Inquiries (VIC, April 2012, and NSW, Nov 2012) into matters relating to the handling of alleged criminal abuse of children by religious, police and other organisations.⁶ In response to wide-ranging criticism that these Inquiries, particularly the NSW Inquiry, were too narrow in scope and had limited powers,⁷ increasing pressure was placed on the federal government

to set-up a national Inquiry into institutional responses to sexual abuse.⁸ On 12 November 2012, the Government announced the establishment of the Royal Commission.⁹ The Terms of Reference for the Commission were subsequently established via Letters Patent on 11th January 2013, directing the Commissioners to investigate:

- a. what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- b. what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- c. what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;
- d. what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.¹⁰

It is important at this point to define the significance of the term 'institution' and how this impacts on the scope of the Commission's work. For the purpose of the Inquiry, an institution includes 'any public or private body, agency, association, club, institution, organisation or other entity or group'¹¹ that has at any time provided 'activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families'.¹²

The types of institutions that the Royal Commission will be investigating will include, for example, residential care facilities such as orphanages; state government child protection agencies; agencies which organise and supervise

out of home care; religious organisations including schools and churches; recreational and sporting groups such as the Girl Guides, the Scouts, Little Athletics and sporting organisations; educational facilities including kindergarten, primary, secondary and boarding schools; and other state government departments and authorities, including juvenile justice centres and the police force, which have responsibilities for children.¹³

For the purpose of the Inquiry, child sexual abuse happens in an institutional context if, for example, it happens on premises of an institution, or it is engaged in by an official of an institution in circumstances where it is considered that the institution has, or its activities have in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or it happens in any other circumstances where one would consider that an institution is, or should be treated as being, responsible for adults having contact with children.

A NATIONAL INQUIRY

Sexual abuse in Indigenous communities has been the subject of four state based inquiries over the past decade (WA, NSW, NT, SA (APY Lands)). The announcement of this Commission sparked some nervousness and concern in some quarters that the Commission would simply be ‘re-doing’ past inquiries.¹⁴ Many people within Indigenous communities have already shared their personal and painful stories of sexual abuse with such inquiries with an expectation that systemic change to the conditions that created and supported the violence would be forthcoming. However, the reality has been that little has changed; children continue to be sexually abused and services to support and prevent such abuse are still lacking.

The purpose of this Inquiry is to acknowledge sexual abuse that continues to occur in the present but also in the past, recognising that this is part of a national story that needs to be addressed through actions that alleviate the impact of past abuses and that prevent future abuses. The Commission’s work through its focus on institutional involvement in sexual abuse, as opposed to individual or community engagement, facilitates a conversation around the accountability of institutions for individuals employed by or associated with them who have harmed children.

Previous Inquiries into Indigenous child sexual abuse have focused on individual experiences of abuse and community responses to the problem, the focus on institutional involvement was limited. That being said, comments on sexual abuse in the *Bringing Them Home* report in

particular are pertinent to the Commission’s work as they are reflective of an institutional context, as such, as part of its work the Commission will review these past inquiries to support its findings and recommendations.

CONTRIBUTING TO THE INQUIRY

In addition to reviewing past work the Commission is keen for individuals and organisations to contribute to the Inquiry. In the first instance, individuals and organisations are required to register their interest in speaking with the Commission about their experiences of child sexual abuse by either telephoning, writing or emailing the Commission. In this contact they should be thinking about whether they have any preferences for how their experience should be heard by the Royal Commission. They may want to provide a written statement or talk to a Commissioner or a Royal Commission officer. They may want to talk privately or publicly. Alternatively they may want to talk in groups with people they know who have had similar experiences.¹⁵

Throughout its Inquiry the Commission will be holding hearings designed for investigation of particular matters; to gather information and to test matters that have been raised. In some circumstances the Commission will request an individual or organisation to give evidence at a public or private hearing. Such a request is not an order, and individuals and organisations will only give evidence at hearings if they agree to do so. Information provided in hearings will form part of the evidence before the Royal Commission and will be relied upon by the Commission in making its findings.

Whilst the Commission will so far as is possible conduct its hearings in public, given the sensitive nature of the issues concerned some information and evidence will remain confidential to the Commission. Therefore, the Commission has been given general powers to order that any evidence may be taken in private. To facilitate this the *Royal Commissions Act 1902* (Cth) was specifically amended by Parliament to allow the Commission to receive accounts of alleged abuse from individuals in ‘private sessions’.¹⁶ Private sessions allow individuals to choose to tell their experience in a less formal setting than a hearing.¹⁷

Private sessions will be attended by an officer of the Royal Commission, the individual and a support person(s) of the individual’s choosing if required. Private sessions can also be held with a group of people who wish to tell of their experiences together. Representatives of the institution or person that is the subject of the statement will not be

present and the information provided in a private session will be kept confidential unless it is agreed by the person giving the evidence to it being made public. In this way the information provided in a private session will not be evidence before the Royal Commission, as a private session is not a hearing of the Royal Commission. Instead private sessions will assist the Royal Commission in the conduct of its Inquiry.¹⁸

To facilitate receiving private accounts, Commissioners will travel to different parts of Australia to listen to individual stories in all capital cities and many regional areas, accommodating peoples' preferences where possible.¹⁹

The Commission will also receive letters or statements outlining experiences of sexual abuse and institutional responses. The Commission is able to provide assistance in the preparation of statements; otherwise people can seek assistance from support or advocacy groups. If the Commission decides it would like to make a person's statement public it will contact that person and discuss this with them privately. If a person does not want to make their information public, then it will not be. However, the Chair of the Royal Commission may disclose information to a law enforcement agency if they believe it is necessary to prevent harm to any person.

People are also able to tell their story to a Commission Officer via a telephone call if they wish to do so. Telephone calls will be answered by trained personnel with skills in talking to people who have experienced abuse and with knowledge of available help services.²⁰

LEGAL ASSISTANCE

The Commonwealth Government has provided funding to establish a national legal advisory service for the duration of the Inquiry. The service will 'provide advice on the legal implications of providing statements and other forms of evidence as well as with general legal inquiries about dealing with the Royal Commission'.²¹ Additionally, the service will offer referral advice and advice on accessing financial assistance for legal representation. In terms of the operation of the Commission, practices have been put in place to protect witnesses should they wish to discuss institutional abuse that has previously been subject to an agreement that includes a confidentiality clause. Whilst the Commission expects that many institutions will cooperate and waive reliance on such a clause, if anyone wishes to tell their story and has a concern about a confidentiality clause in an agreement, the Commission has powers through their Letters Patent that will overcome the clause.²²

FINDINGS OF THE INQUIRY

The Commission is not a court of criminal law and cannot make decisions about criminal matters. It is tasked with making findings on institutional responses to allegations and instances of child sexual abuse, and has been directed to make recommendations—including on policy, legislative, administrative or structural reforms—arising out of its Inquiry. Given that this is a national Inquiry—following the practices of previous national Inquiries—the recommendations that will flow from this will, subject to budgetary constraints, have the backing of state and federal governments²³ and will facilitate the means by which systemic change can be achieved. The opportunity for change that the Commission provides is therefore far greater than any of the previous state based inquiries.

TIMELINES

The Commission will submit an initial report on the results of its Inquiry by no later than 30 June 2014, and a final report no later than 31 December 2015. The Commission may also choose to submit any additional interim reports that it considers appropriate. That said, representatives of the Commission have already intimated that it is unlikely that the Commission can complete its work within the current timeframe.²⁴ The reason being that the task defined by the Terms of Reference as drafted is large, 'both as to the number of people who may wish to give their account and the number of institutions who may be affected by allegations'.²⁵

THE NEED FOR INDIGENOUS PARTICIPATION

This is a national Inquiry that is seeking to understand the nation's story on institutional sexual abuse; the Indigenous experience is part of that story and requires Indigenous participation. This isn't about exceptionalising Indigenous sexual abuse, but rather appreciating that sexual abuse is a problem for the entire nation. It should be recognised that Indigenous people have in the past shown leadership in addressing child sexual abuse demonstrated through their participation in four state based inquiries and they continue to show leadership and courage in their actions at the community level responding to this issue. Indigenous people now have an opportunity to contribute to this Inquiry and to share their insights in to how governments and institutions can better protect children against child sexual abuse.

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- 1 Royal Commission into Institutional Responses to Child Sexual Abuse ('Royal Commission'), *Letters Patent*, m.
- 2 Royal Commission, *About* <<http://www.childabuseroyalcommission.gov.au/about/Pages/default.aspx>>.
- 3 Australian Institute of Health and Welfare, *Child protection Australia 2011–12* (Child Welfare Series, Number 55, 2013) 24 <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542752>>.
- 4 Australian Bureau of Statistics ('ABS'), 2006a, Table 29, *Experience of Sexual Abuse, Before the age of 15 - Selected characteristics* (2006) 42.
- 5 *Ibid.*
- 6 Parliament of Victoria, Committees, *Inquiry into the handling of child abuse by religious and other organisations* <<http://www.parliament.vic.gov.au/fcdc/article/1785>>; The Hon Barry O'Farrell MP, 'Special Commission of Inquiry' (Media Release, Friday 9 November 2012) <<http://www.premier.nsw.gov.au/sites/default/files/SPECIAL%20COMMISSION%20OF%20INQUIRY.pdf>>.
- 7 The Victorian Government Inquiry is a Parliamentary Inquiry that does not have the power to compel witnesses; The NSW Inquiry has powers similar to a Royal Commission to compel witnesses to give evidence, however the Inquiry is extremely limited in scope.
- 8 Simon Cullen, 'Gillard under pressure to set up sex abuse inquiry', *ABC News* (online), 12 November 2012 <<http://www.abc.net.au/news/2012-11-12/windsor-steps-up-pressure-for-sex-abuse-inquiry/4366468>>; Suzanne Smith, 'Detective challenges O'Farrell over Catholic abuse claims', *ABC News* (online), 9 November 2012 <<http://www.abc.net.au/news/2012-11-09/officer-peter-fox-claims-catholic-church-covering-up-abuse/4362000>>; Peter Fox, 'Opinion: Don't block your ears to abuse, Mr Premier', *Newcastle Herald* (online), 8 November 2012 <<http://www.theherald.com.au/story/757111/opinion-dont-block-your-ears-to-abuse-mr-premier/?cs=308>>.
- 9 The Hon Julia Gillard MP, 'Establishment of Royal Commission into Child Sexual Abuse' (Media Release, 12 November 2012) <<http://www.pm.gov.au/press-office/establishment-royal-commission-child-sexual-abuse>>.
- 10 Royal Commission, above n 1.
- 11 *Ibid.* m.
- 12 *Ibid.*
- 13 Transcript of Proceedings (Royal Commission, 3 April 2013) 13-14 (Ms Gail Furness SC).
- 14 Mark Schlieb and Nicholas Perpitch, 'Leaders say abuse inquiry should omit communities', *The Australian* (Sydney), 20 November 2012.
- 15 Royal Commission, *Frequently Asked Questions* <<http://www.childabuseroyalcommission.gov.au/FrequentQuestions/Documents/Frequent%20Questions.pdf>>.
- 16 Transcript of Proceedings (Royal Commission, 3 April 2013) 2 (J Peter David McClellan AM)
- 17 Royal Commission, *Practice Guidelines*, 'Practice Guideline 1' <<http://www.childabuseroyalcommission.gov.au/PracticeGuidelines/Pages/default.aspx>>.
- 18 Royal Commission, above n 15.
- 19 *Ibid.*
- 20 J McClellan, above n 16, 4.
- 21 Practice Guideline 1, above n 17.
- 22 J McClellan, above n 16, 5.
- 23 All state and territory governments have signed Letters Patent agreeing to participate and comply with the requests of the Commission.
- 24 J McClellan, above n 16, 7.
- 25 *Ibid.*



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