

BRIEFING PAPER

**ROYAL COMMISSION
INTO INSTITUTIONALISED
RESPONSES TO CHILD
SEXUAL ABUSE**

**THE ESSENTIAL MEMBERSHIP FOR
THE LEGAL PROFESSION**

Prepared by the Law Society of Western Australia

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ROYAL COMMISSION INTO INSTITUTIONALISED RESPONSES TO CHILD SEXUAL ABUSE

Issue

The Royal Commission into Institutionalised Responses to Child Sexual Abuse was established by the Australian Government in November 2012 with Terms of Reference to report on the following:

- 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, 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 current impediments to 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, ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution, and support services.

The Royal Commission's final report is due by 15 December 2017.

The Western Australian Government has introduced a Bill into Parliament which will remove the limitation period for bringing a claim for child sexual abuse.

The Australian Government has announced it will establish a Commonwealth Redress Scheme for survivors of sexual abuse in institutional settings,

which is planned to commence in 2018 (see the media release dated 4 November 2016).

Policy Position

Law Council of Australia

It is critical that survivors of institutional child sexual abuse have access to redress. "A national scheme is therefore needed, as the most effective structure for ensuring justice for survivors of child sexual abuse. The lack of consistency between institutional and State and Territory Government responses has created inequality between survivors of abuse in institutional settings. This should be addressed as the Commission recommends."

A number of key recommendations made by the Law Council of Australia in its submission and appearance before the Royal Commission have been supported in the Royal Commission's report on redress and civil litigation, including:

- The establishment of a single national redress scheme, with the Australian Government and State and Territory Governments as funders of last resort
- Funding for support services and community legal centres to assist applicants in applying for redress
- Legislative reforms by State and Territory Governments so that liabilities can be met by an institution's property trust and remove limitation periods for child sexual abuse claims

The Law Council welcomes the Australian Government's commitment to lead the development of a national approach to redress for survivors of institutional child sexual abuse. The Law Council is calling upon States and Territories to work with the Commonwealth to opt in to the redress scheme (see the media release dated 4 November 2016).

The Commonwealth, States and Territories should also consider the broader response to survivors of child sexual abuse, namely reforms to civil litigation identified by the Royal Commission. Limitation periods, vicarious liability and identifying defendants are just some of legal areas, according to the Royal Commission, which require reform.

Law Society of Western Australia

The Law Society provided a submission to the Law Council in June 2014 on the Royal Commission into Institutional Responses to Child Sexual Abuse – Issues Paper 7 commenting on statutory victims of crime compensation schemes.

Funding implications

The Australian Government has committed \$33.4 million in the 2017/18 budget to establish the redress scheme. The Australian Government encourages States, Territories and non-government institutions to maximise the impact of the redress scheme by opting in on a ‘responsible entity pays’ basis (see the media release dated 9 May 2017).

The Law Council is of the view that in developing national principles for the redress scheme, it is imperative that the Commonwealth, States and Territories are established as the funders of last resort. This is necessary to ensure all survivors can obtain redress.

Additionally, it is vital that provision be made for additional funding for legal aid commissions, Aboriginal and Torres Strait Islander legal services, family violence prevention legal services and appropriate community legal services to assist applicants in navigating the redress scheme.

Recommendation

The Law Society of Western Australia seeks the support of all parties to:

- Develop a single or nationally consistent redress scheme;
- Ensure that funding for legal assistance services is made available to assist applicants in the development of any redress scheme;
- Consider nationally consistent reforms to civil litigation laws affecting survivors of child sexual abuse through the Law, Crime and Community Safety Council; and
- Support the *Limitation Amendment (Child Sexual Abuse Actions) Bill 2015* removing the limitation period.