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

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*The purpose of this document is to seek the input of interested individuals and organisations to the arrangements for the establishment of the Royal Commission, including the scope of the Terms of Reference, the form of the Royal Commission, the number and qualifications of Royal Commissioner/s and the reporting timetable for the Royal Commission. These factors will guide the Commissioner/s in their task of examining responses to instances or allegations of child sexual abuse in the context of public and private institutions or organisations in Australia. The explanatory material and questions below are provided as a guide to start discussions.*

On 12 November 2012, the Prime Minister announced that she will be recommending to the Governor-General the establishment of a Royal Commission into institutional responses to child sexual abuse in Australia.

Child sexual abuse is a horrific breach of a child's right to a safe and happy childhood, with immediate and long term impacts on the victims and their families. Child sexual abuse is also a crime that requires the most serious and committed of responses by the whole community. It is important that claims of institutional and systemic failures be fully explored.

The Royal Commission announced by the Prime Minister will be asked to identify what can be done to ensure that child sexual abuse is prevented in the future and, where it does occur, that organisational responses are just and supportive of survivors.

The Government acknowledges that child sexual abuse occurs in other contexts, including within families. The Government does not wish to in any way diminish the seriousness of abuse in those other settings, but the focus of this Royal Commission will be on public and private institutions and organisations. All child sexual abuse is a crime and should be reported to Police.

## **Scope of the Terms of Reference**

The Government proposes to ask the Royal Commission to identify what public and private organisations and institutions should do to prevent child sexual abuse from occurring in their midst; what should be done by organisations and institutions when allegations are raised; and what can be done by the relevant institutions, organisations and government agencies to alleviate the impact of abuse that has already occurred.

The Royal Commission should provide an opportunity for those affected by child sexual abuse to share their experiences, if that is their wish. The Government believes it is important that these experiences feed into the Commission's deliberations to influence the shaping of its recommendations.

The Commission's findings and recommendations may extend to:

- ensuring that there are no obstacles to the making of claims and that there is sufficient support for victims of abuse in pursuing those claims,
- identifying impediments within institutions and organisations to the proper notification, investigation and prevention of child sexual abuse,
- the need for changes to any laws, policies or practices within institutions, organisations and government agencies to better prevent and respond to child sexual abuse,
- the impact and effectiveness of changes to any laws, policies or practices over time either generally or within institutions, organisations and government agencies, and
- the counseling and support needs of victims and their families.

The Commission should provide an avenue to identify any policy, legal, administrative or structural reforms required to ensure the safety and wellbeing of children is central to the policies and practices of all organisations who engage with children.

While it is important that the Royal Commission form its own opinions and recommendations, there is a large body of work already on hand from recent inquiries. The Terms of Reference for the Commission can request that this work be taken into account, both to ensure that the relevant findings, recommendations and responses are considered as well as to ensure that survivors who have already shared their stories in these inquiries do not need to do so again if they do not want to.

It is important to note that Royal Commissions are not substitutes for criminal investigations, and statements made to a Royal Commission cannot be used in subsequent court proceedings. However, the Commission will be able to refer matters to the relevant police authorities. This could be done during the course of the Royal Commission, but investigation and prosecution would ultimately be a matter for the relevant authorities to pursue. The Commission may also wish to consider its protocols for addressing matters that are before current or upcoming court proceedings.

### **Form of the Royal Commission**

In announcing the Royal Commission, the Prime Minister acknowledged the need for national leadership and a national approach to the investigation of institutional responses to child sexual abuse. The proposed Royal Commission is likely to go further than any inquiry conducted in Australia before, due to geographic scale and the time period over which the child sexual abuse is reported to have occurred in institutions.

It will be important to make sure the Royal Commission has the reach it needs to undertake this important work. To do its job, the Commission will need access to information held by state governments so that no individual, institution or organisation can avoid scrutiny if the Royal Commission considers there is a need for such scrutiny.

The Commonwealth and States and Territories will need to work together throughout the duration of the Commission so that the Commission has access to information held by State Governments. This has happened with a number of previous Commonwealth Royal Commissions. The Prime Minister is pleased that States and Territories have expressed their willingness to do so.

States and Territories could support the Royal Commission by endorsing the Commonwealth's Terms of Reference for the Commission, to be established under Commonwealth powers.

Alternatively, States and Territories could provide the Commissioners with powers to investigate matters within their jurisdictions.

States and Territories could provide concurrent functions and powers to the Commission, as is allowed for under the Royal Commissions Act 1902.

### **Number and qualifications of Commissioner/s**

It is possible to have one Commissioner only or multiple Commissioners.

Early advice received by the Government suggests that it may be more appropriate to have more than one Commissioner. This advice is based on the likely scale and the complexity of the matters to be considered by the Royal Commission, and importantly, the benefits of having Commissioners with a diverse range of skills and experience.

The selection of Commissioner/s will need to ensure a careful balance of skills, qualifications and perspectives so that stakeholders and the community can have confidence that all the relevant issues can be adequately handled and considered. This will likely require the skills and knowledge of Commissioner/s to include substantial legal knowledge as well as experience in child welfare, health and social services.

In addition, there may be advantages in the Commission having the capacity to conduct concurrent hearings to maximise the opportunity to gather relevant evidence.

### **Duration and reporting arrangements for the Royal Commission**

The Government appreciates that the extent of the problem and the scale of hurt caused to individuals and families will take time to examine. It will also take the Commissioner/s time to formulate recommendations for lasting solutions to help prevent child sexual abuse, ensure that victims are supported in reporting abuse and ensure organisations are proactive, accountable and compassionate in dealing with the allegations and impact of abuse.

Experience with inquiries in Australia and overseas suggests that the sort of far-reaching investigation announced by the Prime Minister, involving potentially thousands of victims and hundreds of organisations, will take years rather than months.

Accordingly, the Government is giving careful consideration to the reporting arrangements for the Commission. The Government intends for the Terms of Reference to indicate a timeframe for the Commission's work that strikes a balance between the

time required to do the task well and the imperative to ensure that the reforms necessary are identified and considered as soon as possible.

To provide the opportunity for governments, institutions and organisations to consider early findings and recommendations from the Royal Commission, the Terms of Reference could seek regular reporting throughout the work of the Commission. Ultimately, if the Commission believes that the timing of a final report to the Government needs to be revised they can advise so in due course.

### **Key Issues for Feedback**

To assist the Commissioner/s to determine how best to undertake their task, the Government would like to gather the views and insights of stakeholders on all of the issues listed above, and any other key issues not covered in this paper which in the opinions of interested individuals or organisations are important in making sure we get the establishment of the Royal Commission right.

### **How to make a submission**

Comments on this paper and any other issues are requested in writing by close of business 26 November 2012. This deadline takes into consideration the Prime Minister's desire to have arrangements for the establishment of the Royal Commission in place before the end of 2012, to enable the Commission to commence its public work in early 2013. However, the Government may continue to accept comments after this date, depending on the number of comments received, and the ability of individuals and organisations to meet this deadline.

Submission can be made:

by email: [royalcommissionsecretariat@pmc.gov.au](mailto:royalcommissionsecretariat@pmc.gov.au)

or by post to the following address:

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

Government of Australia  
19 November 2012