



26/11/2012

Secretariat
Royal Commission into Child Sexual Abuse

Via email: royalcommissionsecretariat@pmc.gov.au

Dear Secretariat,

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

In our respective roles as Chairperson of the National Aboriginal and Torres Strait Islander Legal Services (NATSILS) and CEO of the Secretariat of National Aboriginal and Islander Child Care (SNAICC) we would like to provide the following feedback in response to the Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Scope of the Terms of Reference

The Terms of Reference for the Royal Commission into Institutional Responses to Child Sexual Abuse should make specific reference to:

1. The need for the Royal Commission to use the United Nation's *Convention on the Rights of the Child* as a framework for its work and for it to be guided by its provisions including:
 - Article 2 The Principle of Non-discrimination;
 - Article 3 Best interest of the child to be the primary consideration;
 - Article 12 Respect for the views of the child;
 - Article 13 Freedom of expression;
 - Article 19 Protection from all forms of violence;
 - Article 25 Review of treatment in care;
 - Article 34 Protection from sexual exploitation; and
 - Article 39 Rehabilitation of harmed children.

Ideally the Terms of Reference should include reference to all relevant internationally recognised human rights instruments to identify and apply best practice in the prevention of child abuse and the care of survivors of abuse;

2. The experiences of Aboriginal and Torres Strait Islander children and young people who were forcibly removed by State and Commonwealth past protection and segregation policies. This is inclusive of, but not limited to, institutions such as boys and girls dormitories, reformatory schools and church or secular run missions and reserves.

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It should also include the experiences of Aboriginal and Torres Strait Islander children and young people forcibly directed into employment as domestic or manual labor through the authority of State and Commonwealth protection and segregation polices and institutions who subsequently experienced sexual abuse at the hands of their employer;

3. The experiences of children and young people, including Aboriginal and Torres Strait Islander children and young people in particular given their level of over-representation, taken into state care, including residential care, kinship and foster care or adopted into non-Aboriginal and Torres Strait Islander families;
4. The experiences of children and young people with disabilities, mental health issues or cognitive impairment placed within institutions and foster carers;
5. The experiences of children and young people, including Aboriginal and Torres Strait Islander children and young people in particular given their level of over-representation, in places of detention, including the experience of youth (trilled as an adult) detained within adult correctional institutions;
6. The need for the findings from previous inquiries, including the *Bringing Them Home* Report,¹ to be taken into account;
7. That the Royal Commission place no time restriction on evidence to be heard, so long as the victim's experience is relevant and informative in relation to the Royal Commission's aim of preventing sexual abuse in the future, and where it does occur, that organisation responses are just and supportive of survivors;
8. Clear information about the legal implications for victims of sharing their experiences of child sexual abuse with the Royal Commission, in particular the extent to which they may subsequently be compelled (or not) to participate in criminal proceedings. To this end, the Royal Commission should develop clear protocols for referring matters to the relevant police authorities, and ensure that victims understand these protocols before giving evidence; and
9. Inquiring into the establishment of reparations tribunals for victims of child sexual abuse while in state and public institutions.²

¹ Commonwealth of Australia, *Bringing Them Home* (1997).

² Reparations tribunals should encompass the Van Boven Principles as evident in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations on International Human Rights Law and Serious Violations of International Humanitarian Law* as adopted by the United Nations general Assembly in Resolution 60/147 in December 2005.

Form of the Royal Commission

It is vital that the Royal Commission has the power to access information held by State and Territory governments, including Cabinet documents. We strongly urge all State and Territory governments to provide their full cooperation in such matters. Furthermore, we recommend that the best way forward would be a joint Commonwealth - State Royal Commission with Letters Patent from both the Commonwealth Government and the Relevant State governments according to where each Commissioner is inquiring.

In addition, NATSILS, as well as individual ATSILS across Australia, are currently considering what role they might play in the Royal Commission and would encourage the Government to give close consideration to the situations and circumstances in which leave will be granted to appear at the Royal Commission, in addition to what provisions will be put in place to ensure appropriate representation for victims. We would welcome an opportunity to contribute to this process.

In terms of conducting the Royal Commission, people who share their experiences of child sexual abuse should be offered counselling. Furthermore, the Royal Commission should facilitate access to a comprehensive set of support services for victims and their families. Appropriate arrangements to protect the privacy of victims and their families should also be a priority.

When providing information to the Royal Commission, victims should also be allowed to have a support person with them and, where possible, attempts should be made to accommodate victims' preferences to appear before either female or male Commissioners, or Commissioners from a particular cultural/ethnic background (e.g. Aboriginal and Torres Strait Islander peoples may prefer to appear before an Aboriginal and Torres Strait Islander Commissioner).

Number and Qualification of Commissioner/s

We recommend that more than one Commissioner should be appointed and we encourage the Government to ensure that appropriately qualified Aboriginal and Torres Strait Islander peoples are represented among the appointed Commissioners.

Furthermore, we encourage the Government to ensure that the appointed Commissioners encourage the participation of Aboriginal and Torres Strait Islander peoples, including those in remote communities. The Royal Commission should have the capacity to engage interpreters when needed, and should establish protocols to ensure that those wishing to participate receive culturally and linguistically appropriate support to participate. The appointment of appropriately qualified Aboriginal and Torres Strait Islander peoples as Commissioners would greatly assist in this process.

We would also recommend that when engaging with Aboriginal and Torres Strait Islander peoples, the Royal Commission be guided by the rights and

principles contained with the *Declaration on the Rights of Indigenous Peoples*, including:

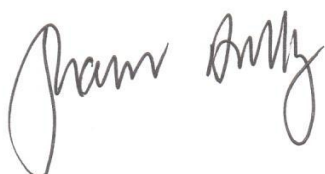
- Prior knowledge and informed consent;
- Full and equal participation of Aboriginal and Torres Strait Islander peoples and their representative organisations; and
- The use of non-discriminatory measures.

Duration and Reporting Arrangements for the Royal Commission

We support the suggestion in the Discussion Paper that the Terms of Reference should seek regular reporting throughout the work of the Commission so that governments, institutions and organisations can consider the early findings and recommendations of the Royal Commission. Regular reporting will also help the Royal Commission keep focus and momentum.

We recommend that a specified deadline not be applied to the Royal Commission. We do recognise however, that while the Royal Commission needs to be sufficiently comprehensive so as to allow for victim's stories to be heard and for investigations to be thorough, focus and momentum does need to be maintained so that the lessons learnt can be implemented as soon as possible and outcomes are reached. Regular reporting will assist in this endeavour.

Yours sincerely,



Shane Duffy
Chairperson
NATSILS



Frank Hytten
CEO
SNAICC