14 April 2016

Your ref Royal Commission’s Consultation Paper on
Institutional Responses to Child Sexual Abuse in Out-of-Home Care
Our ref Children’s - 45

Commissioners
Royal Commission into
Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

By post and by email: OOHC@childabuseroyalcommission.gov.au

Dear Commissioners

Royal Commission’s March 2016 Consultation Paper on Institutional Responses to Child Sexual Abuse in Out-of-Home Care

Thank you for granting the Queensland Law Society a small extension of time to consider the Royal Commission’s Consultation Paper on Institutional Responses to Child Sexual Abuse in Out-of-Home Care.

This letter has been prepared with the assistance of the Queensland Law Society’s Children’s Law Committee.

In our previous submissions to the Royal Commission, we recognised and lauded the Federal Government for initiating the Royal Commission and for empowering the Commission to investigate all institutionalised responses to child sexual abuse in Australia. We repeat those sentiments and provide a further copy of our correspondence dated 8 November 2012 and 26 November 2012 which canvas issues that we consider are pertinent to the Consultation Paper.

We note the Royal Commission’s March 2016 Consultation Paper is seeking input from stakeholders regarding critical issues to inform the Royal Commission’s final report and recommendations regarding child sexual abuse in out-of-home care. In the time available to the Society and the commitments of our committee members, this submission is not intended to represent an exhaustive review of all the issues in the Consultation Paper. It is possible there are issues relating to unintended consequences which we have not identified. Our submission will therefore focus on treatment programs for children in Queensland.
Treatment programs for children in Queensland

As the paper notes at page 39, treatment programs and services in Queensland (and New South Wales) have limited capacity and limited geographical reach. In the experience of our members, the only way for a child to access therapeutic assistance in Queensland is for the child to be charged. This option is undesirable as it introduces the child into the youth justice system. We recommend that there be consideration for alternate pathways for children to access treatment programs and services in Queensland.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Ms Louise Pennisi on (07) 3842 5979 or l.pennisi@qls.com.au

Yours faithfully

[Signature]

Bill Potts
President
Our Ref: 21000337/12

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

By Post and Email: royalcommissionsecretariat@pmc.gov.au

28 November 2012

Dear Secretariat

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE – NOVEMBER 2012 CONSULTATION PAPER

Thank you for the opportunity to comment on the Consultation Paper on the Royal Commission into Institutional Responses to Child Sexual Abuse (the Consultation Paper). Queensland Law Society applauds the Federal Government for its decision to initiate this Royal Commission on this important matter of public interest. We also congratulate the broad nature of the Commission in seeking to investigate all institutional responses to child sexual abuse in Australia.

1. Scope of the Terms of Reference

Definition of child

We note that the definition of child under the Youth Justice Act 1992 (Qld) is an individual who is 17 years and under. In Queensland, 17 year olds are subject to the adult criminal justice system and are imprisoned in adult jails. The Child Protection Act 1999 (Qld) defines a child as an individual under 18 years. Therefore the definition of child in the Youth Justice Act 1992 (Qld) does not accord with the definition of child in the Child Protection Act 1999 (Qld). We note that no other Australian State or Territory defines a child as an individual of 17 year olds and under. We suggest that the terms of reference take into account this anomaly and specify that 17 year olds in the Queensland criminal justice system be included. This will be important when considering allegations of abuse from 17 year olds in Queensland adult prisons.

Definition of sexual abuse

We consider that a definition of ‘abuse’ should be included in the Royal Commission in order to provide clarity and guidance.

Human rights based approach

We suggest that an overarching human rights based approach be adopted when defining and conducting the Royal Commission. This should consider the impact of international human rights law standards, treaties, conventions (including the Convention on the Rights of the Child and the Convention against Torture) and customary international law.
We note that the Northern Ireland Human Rights Commission considered the human rights context when establishing an inquiry in a published paper, 'Historic Institutional Child Abuse in Northern Ireland: Advice on the human rights aspects of a public inquiry.' We consider the human rights issues raised in this paper should be considered when establishing the terms of reference for the Royal Commission.

2. Duration and reporting arrangements for the Royal Commission

The Society proposes that the Royal Commission adopt a strategy similar to that of the law reform commissions – that is formulation of terms of reference, issues paper and discussion paper and broad public consultation. The Royal Commission should issue periodic reports and newsletters in order to keep the public abreast of the progress and development of the Royal Commission. Targeted stakeholder consultation should also be undertaken.

3. Number and qualifications of Commissioner/s

We consider that there should be a number of independent and impartial Commissioners. We agree that the scale and the complexity of the matters to be considered by the Royal Commission supports the appointment of multiple Commissioners and will also allow concurrent hearings to be held. The Commissioners should have a wide range of skills and experience. The Society proposes the Victorian Cummins Inquiry model be adopted – that is, the Inquiry is headed by a lawyer or judge and supported by experienced social workers, and others. This model also featured in the Irish ‘Commission to Inquire Into Child Abuse’. We consider that it is important that at least one Commissioner with substantial legal qualifications, knowledge and experience be appointed. In our view, this will assist that the recommendations made by the Royal Commission may be transferrable into legislative change.

4. Concluding comments

The Society requests clarification on whether the Royal Commission will consider issues or gather evidence in relation to children who are currently in state care or have recently left state care, as well as examining the more historical issues. The Society notes that our member legal practitioners work with a diverse client group, and therefore would be able to provide valuable information on these issues. As such, we request that the Society be consulted in more detail at a later stage if these matters will be included in the Royal Commission’s terms of reference.

We also note that the Society has recently made a substantive submission to the Queensland Child Protection Commission of Inquiry. Our submission might be accessed at the following link – http://www.childprotectioninquiry.qld.gov.au/_date/assets/pdf_file/0004/167044/Queensland_Law_Society.pdf. We draw your attention to section 12 of our submission which is reproduced below for your convenience.

12. Other legal needs of children and young people in care

The Society is aware of some situations where children have a right to commence civil proceedings for damages arising from incidents that have occurred prior to entering care or whilst they were in the care of the State. Our members report that material disclosed by the Department or filed in proceedings not infrequently contains information suggesting a child in care may need advice in relation to victim of crime compensation, negligence claims (including against the Department), and other matters. In our view, there is a lack of adequate mechanisms, or clarity in relation to such mechanisms, to ensure that young people in the care of the State have access to legal advice and information for these kinds of matters. It appears to our members that there is no systematic way within the Department of identifying and flagging these issues as they arise. We acknowledge the complexities involved, particularly where young people may need to obtain advice about a matter many years after the incident occurred. We consider that identifying these matters is an essential obligation of the Department to children in their care. It is crucial to ensure that the Department can obtain legal advice on the situation at the earliest possible opportunity and arrange for independent advice to be obtained on behalf of the child at an appropriate time given the child’s age and the nature of the matter. Young people in care traditionally access legal advice from Legal Aid Queensland and community legal centres, but our members report that these organisations are inadequately resourced to respond to these particular legal needs.

We consider that a viable option for addressing this problem would be the development of a legal needs passport for a child in care. This would be similar to the health passport for a child in care which is retained and updated with new matters and details of action taken over the child’s time in care, to then be provided to the child upon exiting care along with the appropriate referrals and support for advice. We consider that the Inquiry should investigate this potential option. This may also require collaboration between the Department and legal service providers (Legal Aid Queensland, community legal centres, and private firms) to develop the necessary casework tools and to ensure that Departmental staff are adequately trained and supported to implement this.

RECOMMENDATIONS

- Departmental officers, as part of their practice, should be mandated to flag any legal issues that arise with a view to obtaining early legal advice.
- The Inquiry investigate the development of a legal needs passport for a child in care, in consultation with the Department and legal service providers.

Yours faithfully,

Dr John de Groot
President
8 November 2013

Our ref 337/12

Commissioners
Royal Commission to investigate
Institutional Responses to Child Sexual Abuse
GPO Box 5283
SYDNEY NSW 2001

By Post and Email to: solicitor@childabuseroyalcommission.gov.au

Dear Commissioners

Issues Paper 4- Preventing Sexual Abuse of Children in Out-of-Home Care

Thank you for providing the Society with the opportunity to comment on Issues Paper 4: Preventing Sexual Abuse of Children in Out-of-Home Care (the Issues Paper). This response has been compiled with the assistance of our Children’s Law Committee.

We limit our response to question 11 of the Issues Paper, namely addressing what implications exist for record keeping and access to records, from delayed reporting of child sexual abuse.

From 1 July 2012 to 1 July 2013, the Queensland government held a Commission of Inquiry into the Queensland Child Protection System. As part of this Inquiry, the Society has made a number of observations regarding the legal needs of young people in care, which we consider are relevant to your consideration within the context of question 11.

The Society is aware of some situations where children have a right to commence civil proceedings for damages arising from incidents that have occurred prior to entering care or whilst they were in the care of the State. Our members report that material disclosed by the Department or filed in proceedings not infrequently contains information suggesting a child in care may need advice in relation to victim of crime compensation, negligence claims (including against the Department), and other matters. In our view, there is a lack of adequate mechanisms, or clarity in relation to such mechanisms, to ensure that young people in the care of the State have access to legal advice and information for these kinds of matters. It appears to our members that there is no systematic way within the Department of identifying and flagging these issues as they arise. We acknowledge the complexities involved, particularly where young people may need to obtain advice about a matter many years after the incident occurred. We consider that identifying these matters is an essential obligation of the Department to children in their care. It is crucial to ensure that the Department can obtain legal advice on the situation at the earliest possible opportunity and arrange for independent
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Thank you for providing the Society with the opportunity to comment. Please contact our Policy Solicitor, Ms Raylene D'Cruz on (07) 3842 5884 or r.dcruz@qls.com.au for further inquiries.

Yours faithfully

Annette Bradfield
President