

Submission in response to the Australian Government's Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse

Professor Shurlee Swain, Australian Catholic University

Professor Cathy Humphreys, Social Work, University of Melbourne

Gavan McCarthy, Director, eScholarship Research Centre, University of Melbourne

Dr Cate O'Neill, eScholarship Research Centre, University of Melbourne

Mike Jones, eScholarship Research Centre, University of Melbourne

Dr Debra Rosser, Australian Catholic University

Introduction

We are a team of academics and researchers, from the disciplines of historical studies, social work and archival science, who have substantive years of experience working on projects exploring the legacy of Australia's institutional 'care' of children. Our work in this space, particularly since the release of the Forgotten Australians report in 2004, has involved ongoing engagement with a broad range of stakeholders, including care leavers, support and advocacy groups, past and current providers of out-of-home care, state and federal government departments, and cultural institutions.

We welcome the opportunity to make a submission in response to the Australian Government's Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse. Our submission discusses the vital importance that records will play in this Royal Commission, with particular reference to records in the custody of past providers in religious, charitable and government sectors. We submit that records are a key issue for this Royal Commission.

The Consultation Paper contends that Commissioner/s will need to have 'substantial legal knowledge as well as experience in child welfare, health and social services'. We recommend that the Commissioner/s also have knowledge of the historical context, and that the Commission includes or utilises specialised historical and archival researchers. This will greatly enhance the Commission's ability to identify, locate and interpret the archival records and the existing scholarly literature vital to understanding the settings, jurisdictions and complex historical contexts in which abuse against children has occurred.

We support the suggestion that multiple Commissioners will be beneficial, given the breadth of skills and experience required to work in these multiple, varied contexts. Multiple Commissioners will also allow for concurrent hearings, as noted in the Consultation Paper. This may result in reducing the overall time required to conduct the Royal Commission.

With regard to duration, we do not believe a pre-determined length is practical or advisable. However, as the Commission is likely to run into a number of years, we suggest government request interim reports – including recommended actions – throughout the period of the Royal Commission.

In terms of scope, we urge the Commission to recognise in its Terms of Reference that child sexual abuse in children's institutions often occurred within a broader context of systematic abuse in other manifestations.¹ These other forms of child abuse include maltreatment, physical abuse, neglect and psychological abuse.² So that the experiences of Forgotten Australians are not excluded from this Commission, this broader context of child abuse needs to be considered in the Royal Commission's investigations.

We submit that it is crucial to establish adequate support systems for those who will be telling their story to this Commission. These systems need to be in place by the time the Commission commences, and they need to remain available to those who require them for a period beyond the life of the Commission.

We strongly support the suggestion that the Terms of Reference allow the Commission to take into account what has been learnt from past inquiries that have already taken place in Australia. This is vital particularly to ensure that survivors who have already given testimony are not compelled to go through the ordeal again.

Finally, our submission recommends that the Royal Commission support the development of a public knowledge space in the model of the Find & Connect Web Resource, to be populated throughout the course of the Royal Commission and remain accessible beyond the conclusion of the Commission. This publicly accessible online information resource should use established standards of description to systematically map the context and events leading up to the Royal Commission, and the key components of the Commission as it happens, including key people, organisations, events, legislation, publications and more. This will ensure that the long and complex work of the Commission remains accessible, manageable and understandable to all involved, and to the community more broadly.

This web resource will complement the web site for the Royal Commission itself, with the latter focusing on the immediate activities of the Commission, current calls for submissions, news, events and similar material. The public knowledge space as proposed will also provide a valuable framework for the effective management of information and records.

¹ Indeed, Professor Shurlee Swain has contended that abuse was experienced by all children in institutional 'care', as abuse 'was, and is, endemic in all forms of out-of-home care'. See 'Traces in the archives: evidence of institutional abuse in surviving child welfare records', *Children Australia*, volume 32 number 1 2007, p.25.

² For more information, see National Child Protection Clearinghouse, 'Australian legal definitions: When is a child in need of protection?' (2010), available at: <http://www.aifs.gov.au/nch/pubs/sheets/rs12/rs12.html>

The importance of records

We contend that the Commissioner/s need to have appropriate powers to scrutinise all relevant records. The Royal Commission will potentially open up access for the first time to records that are of vital significance:

- as bearing witness to past wrongs and injustices against children; and,
- as evidence of how organisations have historically responded to allegations of child sexual abuse – the practices, policies and protocols in children's institutions for the handling of allegations of criminal abuse of children, and how structural and cultural factors that have changed over time have affected responses to child abuse.

We stress that measures need to be in place to ensure that the management of all records identified, located and accessed in the course of the Commission meets the international archival standards of authenticity, useability and reliability – so that these records can continue to be accessible beyond the life of the Royal Commission.

In the past, there have been various calls for all documentary evidence of child abuse, held by charitable, church and government agencies, to be made available. The recommendations of the Forgotten Australians report raised the prospect of a royal commission into crimes committed against children in care. Recommendation 11 called on the Commonwealth Government to get past providers to

open their files and premises and provide full cooperation to authorities to investigate the nature and extent within these institutions of criminal physical assault, including assault leading to death, and criminal sexual assault, and to establish and report on concealment of past criminal practices or of persons known, suspected or alleged to have committed crimes against children in their care, by the relevant authorities, charities and/or Church organisations.³

If the Government was not able to achieve the 'requisite cooperation' for the above to happen, the Recommendation was for a royal commission to be established.

'Full cooperation and access' as called for by the Senate in 2004 has not been achieved in terms of the documentary evidence held by charitable and church agencies. The consultations undertaken for the 2009 Inquiry into the Implementation of the Recommendations of the Forgotten Australians and Lost Innocents report (2009) found that 'most submitters and witnesses agreed that churches and other institutions had failed to meet the conditions of transparency and cooperation described in the Committee's original recommendation'.⁴ In recent weeks, it has been revealed that the Victorian

³ Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children (2004), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/report/index.htm

⁴ See p.225 of the Report of the Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports,

parliamentary inquiry into abuse had asked the Catholic Church to provide access to its own files relating to allegations of sexual abuse by members of the clergy.⁵

The 2009 'Forgotten Australians Revisited' report acknowledged that there had been 'considerable, albeit ad hoc, improvements across the States and other relevant organisations and agencies in terms of the preservation and identification of care leaver records (p.221)'. Indeed, the federally-funded Find & Connect Web Resource project (which we have been working on since 2011) demonstrates the commitment by government and past and current providers to improve access to records and to work with the Find & Connect Web Resource team to capture accurate documentation of the known surviving records.⁶

However, in terms of records management, there is a long way to go, and not only in the charitable/church sector. To cite one recent example from Victoria, earlier this year, the Victorian Ombudsman released its report on the storage and management of state ward files by the Department of Human Services, which concluded that 'the department's efforts to come to grips with its vast archive of documents have been piecemeal and ultimately unsuccessful'.⁷

The legacy of inadequate management of child welfare records, and the significant resources required to bring records management up to standard, should not impede the Commissioner/s' powers to locate these documents for the Commission into child sexual abuse. As the Ombudsman's report stressed, poor document organisation will not excuse the unavailability of documents as evidence in court.⁸

Access to the records of government, church and charitable agencies that have provided out-of-home care is crucial to the success of this Royal Commission. One important 'by-product' of the Royal Commission will be the opening up of previously unavailable records relating to out-of-home care. These records, like all records, perform multiple functions in society and have different meaning for different groups of people. The importance of records to people who have been in out-of-home care (in the past, present and future) is now acknowledged in the National Standards for out-of-home care, published in 2011:

Children and young people in care are to know who they are and where they have come from. Memories and experiences during their time in care will be recorded in

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2008-10/recs_lost_innocents_forgotten_aust_rpts/index.htm

⁵ Victorian inquiry seeks access to Catholic abuse files, 9 November 2012,

<http://www.abc.net.au/pm/content/2012/s3629665.htm>

⁶ The Find & Connect Web Resource went live in November 2011, and work is continuing on developing content until the end of 2014. See <http://www.findandconnect.gov.au/about.html>

⁷ Victorian Ombudsman, 'Investigation into the storage and management of ward records by the Department of Human Services', March 2012, available at:

http://www.ombudsman.vic.gov.au/resources/documents/REPORT_Investigation_into_the_storage_and_management_of_ward_records_by_DHS_-_Mar_2012.pdf

⁸ See the Victorian *Evidence (Document Unavailability) Act 2006*, available at

http://www.austlii.edu.au/au/legis/vic/num_act/eua200653o2006357/

photos and other memorabilia to help them recall the people and events that have shaped their lives.⁹

Learning from the past, learning from others

We note with approval that the Government acknowledges that there is already a large body of work from past inquiries in Australia. We believe that there is a lot to be learned from the various reports, submissions, and policy responses that have already taken place. We also would like to stress the importance of ensuring that survivors who have already told their stories are not required to go through this again.

The relevant Australian inquiries include:

- National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families (1995 - 1997)
- Commission of inquiry into abuse of children in Queensland institutions, Queensland (1998 - 1999)
- Inquiry into Child Migration (2000 - 2001)
- Ombudsman's Review of Abuse while in State Care, Tasmania (2003 - 2006)
- Inquiry into Children in Institutional Care (2003 - 2004)
- Children in State Care Commission of Inquiry, South Australia (2004 - 2008)
- Inquiry into the Implementation of the Recommendations of the Lost Innocents and Forgotten Australians Reports (2008 - 2009)
- Commonwealth Contribution to Former Forced Adoption Policies and Practices (2011 - 2012)
- Special Inquiry into St Andrew's Hostel [Katanning], Western Australia (2011 - 2012)
- Inquiry into handling of child abuse by religious and other organisations, Victoria (2012 -)
- Special Commission of Inquiry into allegations about the police handling of child sex abuse by the clergy within the Catholic Church in the Hunter, New South Wales, (2012 -).

A number of international inquiries in this space have generated important bodies of work for the Royal Commission to consider. As has already been widely acknowledged, the Commission to Inquire

⁹ See Standard 10, Department of Families, Housing, Community Services and Indigenous Affairs, 'An outline of National Standards for Out-of-home Care: A Priority Project under the National Framework for Protecting Australia's Children 2009 – 2020', available at http://www.fahcsia.gov.au/sites/default/files/documents/pac_national_standard.pdf

into Child Abuse in Ireland, established in 2000, is an important precursor to this Royal Commission.¹⁰ An early Royal Commission into institutional abuse was the Hughes Inquiry in Canada, concerning abuse at the Mount Cashel Orphanage in Newfoundland (1989-1992). In Scotland, the Historic Abuse Systemic Review (2007) has led to reform in archival legislation as well as a range of projects concerned with restorative justice for survivors of child abuse.¹¹

In terms of learning from the past experience in Australia, the Senate Inquiry into Children in Institutional Care (2003-2004) is an important precursor to this Royal Commission. The 'Forgotten Australians' report, and the hundreds of submissions made to the inquiry, contains accounts of sexual abuse suffered by children in orphanages, children's homes, foster care and other out-of-home care settings.

The Senate Committee acknowledged that the abuse suffered by Forgotten Australians was not confined to 'child sexual abuse' – their stories 'outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault. Their stories also told of neglect, humiliation and deprivation of food, education and healthcare. Such abuse and assault was widespread across institutions, across States and across the government, religious and other care providers'.¹²

We would like to draw the Government's attention to existing collections of testimony that have been created in the course of past inquiries into similar areas, for example the inquiries conducted by HREOC and the Senate. Within these submissions there are allegations of abuse by religious and charitable organisations, as well as details of the response to such allegations.

An important collection of testimony became available in November 2012, with the completion of the National Library of Australia's Forgotten Australians and Former Child Migrants Oral History Project for which over 200 oral history interviews were recorded.¹³

Recently, the inquiry in Western Australia into allegations of sexual abuse at St Andrews Hostel and related organisations uncovered how systemic failures and inaction on the part of individuals and organisations created an environment in which perpetrators were able to continue abusing children over a period of years (from c.1975 to c.1990). The inquiry's report, *St Andrew's Hostel Katanning: How the system and society failed our children* (2012)¹⁴ documents in detail 20 unsuccessful attempts by victims, other hostel residents, parents and teachers to disclose the abuse to authorities.

¹⁰ See <http://www.childabusecommission.ie/index.html>

¹¹ The 2007 report is available here: <http://www.scotland.gov.uk/Publications/2007/11/20104729/0>

¹² Executive Summary, 'Forgotten Australians report', p.xv.

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/report/index.htm

¹³ See "'You can't forget things like that": Forgotten Australians and Former Child Migrants Oral History Project', National Library of Australia (2012).

¹⁴ See <http://www.publicsector.wa.gov.au/public-administration/sector-performance-and-oversight/reviews-investigations-and-special-inquiries/special-inquiries/st-andrews-hostel-inquiry>.

The report also highlights the importance of records:

Locating and examining pertinent documentary evidence was critical in identifying lines of inquiry, and in supporting, clarifying or challenging the evidence and recollections of witnesses. These records also provided context in relation to the environment at various hostels, community values and attitudes, and the government policies and processes which applied at the material time (p.15).

In our work on the Find & Connect Web Resource, we have learned that the emotional toll of telling one's story to an inquiry cannot be underestimated. People should not feel compelled to have to tell their stories to several different inquiries, and should know that their stories are seen as relevant evidence beyond the life of a particular inquiry.

"It has taken me much effort to document this story, and many times I have had to stop, cry, and regain myself, to offer this insight as a positive gesture to raise awareness and consciousness for people to read, study and consider as a testimony of this era, and to support all the other testimonies submitted to this inquiry."¹⁵

Support for survivors

It is extremely important that appropriate support is readily available for those survivors who tell their stories to this Commission, and for anyone who experiences distress in response to the Royal Commission and the increased prominence given to accounts of child sexual abuse. We urge the government to consult with the organisations already providing support to survivors of child abuse, including those representing people who grew up in institutional care, and to learn from the wisdom and experience of these support services.

We recommend that a telephone support helpline be established as soon as possible, to provide assistance with making submissions, as well as support and counselling for those who require it. We urge the government to keep this helpline in operation beyond the life of the Royal Commission, for those requiring continuing support. Any telephone support service needs to be sufficiently staffed by trained officers so that people are not being held in a long queue or fail to receive a call-back. Also, to increase accessibility of this helpline it needs to be a 1800 number.

The commission should also consider other ways of seeking contributions and providing support to people wishing to tell their stories to this Royal Commission. Although child abuse is not just an 'historical phenomenon', in past Australian inquiries, younger people who have experienced out-of-home care have been significantly under-represented. The Commission should actively seek the input of younger people, and consider using social media to reach young people. It should also offer flexibility in the ways that people can make a submission.

¹⁵ Extract from Submission 369, Inquiry into Institutional Care. This and other submissions are available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/inst_care/submissions/sublist.htm

The prominent media coverage of child sexual abuse because of the Royal Commission carries the risk of traumatisation and distress for many people. We recommend that prior to the beginning of the Commission, training is provided for the media in how to report in a way to minimise the risk of (re)traumatising survivors. We also note that survivors and their families are not the only people at risk of traumatisation when the topic of child sexual abuse is openly discussed. All staff employed by the Royal Commission, and journalists and other media officers working in this space, need to be aware of the risks of vicarious trauma and post-traumatic stress disorder (PTSD) and be aware of pathways for self-care and support.¹⁶

Building a public knowledge space

All indications are that the Royal Commission will be lengthy and wide ranging, involving large numbers of people working across multiple jurisdictions, investigating many different institutions from different time periods and operational contexts, producing large quantities of documentation, and running for many years. As noted above, we also note the Government's acknowledgement that there is already a large body of work from past inquiries in Australia, including reports, submissions and policy responses.

Managing this level of complexity through time is a significant challenge. Therefore, we recommend a structured online public knowledge space be developed. This public knowledge space should be conceptually similar to the Find & Connect Web Resource (and other similar resources), using the same standards of description and evidence-based practice to systematically and uniformly map the context and events which led to the Commission being announced, and the key components of the Royal Commission as it happens. This would include (but not be limited to) key people, organisations, events, submissions, places, reports, publications, existing evidence sets, documentary and archival collections, legislation, and more.

As with the Find & Connect Web Resource, a Royal Commission public knowledge space should be publicly accessible and citable for the whole community, here in Australia and overseas. It should also be standards-based, to ensure the information it contains can be maintained throughout the Commission and beyond; and to ensure it forms part of national information infrastructure such as the National Library of Australia's Trove.

The benefits of this include:

- Commissioner/s, government employees, journalists and the general public will all have access to a shared, authoritative source of information on the Royal Commission;
- information will be developed and preserved in a structured, sustainable way, supporting interoperability with other systems and integration with other information infrastructure;

¹⁶ Recently we have seen a photographer for a Melbourne newspaper suffering from PTSD after covering the anniversary of the 2002 Bali bombings, and suing her employer for damages, <http://www.abc.net.au/news/2012-11-19/former-age-photographer-sues-over-job-trauma/4380042?section=vic>

- the public knowledge space will support other records, information and knowledge management activities required as part of the Commission;
- government websites, communication and other activities will all be able to refer to a single shared, authoritative context; and,
- the utilisation of existing investments such as the Find & Connect Web Resource.

The public knowledge space as proposed here would not be designed to replace a Royal Commission website. The two would complement each other, the latter focusing on the immediate activities of the Commission, its self-representation, news, current events and more without needing to manage the complex history of the Commission and the development of its social and historical context over time.

Conclusion

We welcome the Australian Government's decision to hold a Royal Commission into Institutional Responses to Child Sexual Abuse, and the opportunity to comment on this consultation paper.

We are happy to expand on the importance of records, what we have learnt from the past and others, and the need for support for survivors. Evidence from our work on the Find & Connect Web Resource strongly supports the notion that building a public knowledge space will help to more effectively communicate and enhance the work of the Royal Commission.

In recognition of the importance of open government, we are happy for this submission to be made public.

26 November 2012