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# WHY THE CAGED BIRD SINGS: ISSUES WITH THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE

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## INTRODUCTION

In 2013, the Aboriginal Legal Service of Western Australia (Inc) (ALSWA) received funding from the Federal Government to support the activities of the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIIRCSA). Since its inception, ALSWA has been a strong advocate for recognition of, and reparation for, the various state practices of forced removal of Aboriginal children into institutional care, which took place until the 1970s and came to be known as the Stolen Generations. Given the state policies in relation to the Stolen Generations, and the continued disproportionate number of Aboriginal children in out-of-home care,<sup>1</sup> it is a logical inference that Aboriginal people are disproportionately affected by institutional child sexual abuse. However, for a number of reasons, which will be discussed in this article, ALSWA is concerned that the extent of institutional child sexual abuse against Aboriginal children will be under-reported to the Commission.

## ALSWA'S INVOLVEMENT IN RCIIRCSA

ALSWA has one RCIIRCSA project officer, Suzanne Randall, whose position is funded by the Federal Attorney-General's Department. Ms Randall commenced work in November 2013 and is based at ALSWA's Perth head office; she also travels to regional areas from time-to-time. Ms Randall provides a facilitative role in working alongside the Commission by educating and liaising with the community and supporting people who want to share their story with the Commission. It would be advantageous and culturally appropriate to have both a male and female RCIIRCSA project officer at ALSWA. Ms Randall has stated, 'there should be another worker. I'm encountering difficulty with men coming forward. The men are saying: 'I want to talk to a man.'<sup>2</sup>

## REDRESS WA

The Western Australian ('WA'), Queensland, South Australian and Tasmanian governments established schemes to provide redress, by way of ex gratia payment, to people who suffered abuse while they were children in care. The WA scheme, *Redress WA*, commenced in May 2008 in order to acknowledge and apologise

to adults who, as children, were abused and/or neglected while they were in the care of the state.<sup>3</sup>

*Redress WA* was beset by a number of problems. ALSWA submitted over 1000 redress applications and participation in the scheme was traumatic for all involved. The primary issue that arose in WA was the strong sense of injustice over the change in compensation offered by the State Government and the fact that the quantum offered was extremely low. When the scheme was first announced, the maximum payment available under the scheme was \$80 000. However, when the number of applications and potential costs became apparent, the Government reduced the upper ceiling to \$45 000. Given this significant and unexpected change, combined with the fact that the amount was lower than what was potentially available under victim compensation schemes, and drastically lower than damages payable in a successful civil litigation matter, there was a sense of injustice in the community. Gulmina Mioceovich, Managing Solicitor of the Civil and Human Rights Unit at ALSWA during WA's redress scheme,<sup>4</sup> described it as 'a slap in the face...it was a complete betrayal of trust. It left a bitter taste in everyone's mouth from there onwards.'<sup>5</sup> From the Government's perspective, the reasons behind the somewhat arbitrary monetary figure were pragmatic, as there would be significant evidentiary problems with claims and there was a huge potential cost to the Government in providing large amounts of compensation.

Second, the time limits for making applications were insufficient. Applications for the scheme opened on 1 May 2008 and closed on 30 June 2009. People came forward for a number of years after the scheme ended. Third, there were eligibility issues, which led to some victims being excluded from the scheme. Fourth, there were many administrative difficulties such as confirming identities and records. Fifth, the application process was a harrowing experience for applicants with many telling their story (in considerable detail) for the first time.

From ALSWA's perspective, the biggest hurdle for the Commission in WA is the legacy of *Redress WA*. The scheme was flawed and

many victims felt that any attempt to recognise their suffering was cheapened by the Government's decision on compensation. Ms Miocevic stated: 'If redress hadn't happened, there would have been an avalanche of people coming forward to the Royal Commission.'<sup>6</sup> In this regard, the Commission has been told that there were 5917 applications made to *Redress WA* and 50 per cent of the applicants were Aboriginal.<sup>7</sup> In contrast, as reported by the Commission in its interim report, approximately 7 per cent of private session participants identified as Aboriginal or Torres Strait Islander and the Commission noted that this is significantly higher than the proportion of Aboriginal and Torres Strait Islander people in the general population (3 per cent).<sup>8</sup> While this is true, the proportion of Aboriginal applicants under *Redress WA* strongly suggests that the figure of 7 per cent is a considerable underestimate of the extent of institutional child sexual abuse experienced by Aboriginal people in WA.

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In addition, for many Australians, the vagaries of a federal system of government are meaningless: people have day-to-day interactions with the "state" and do not readily distinguish between state and federal governments. This is even more cogent for people living in remote areas. Victims of institutional child sexual abuse are unlikely to differentiate between the levels of authority of state and federal governments.<sup>9</sup> When victims come forward to disclose a history of sexual abuse to the "state" as they did with *Redress WA* (and possibly before that with the *Bringing Them Home* report<sup>10</sup>), they believe they have informed the authorities. There is no logical reason for them to come forward again and experience the re-traumatisation of providing their story to a different government 'agency'.

### **AWARENESS OF RCIIRCSA IN THE COMMUNITY**

ALSWA staff members have observed a lack of awareness of the Commission in the Aboriginal community. Ms Randall is of the view that not enough Aboriginal people are coming forward and that this is due to a lack of knowledge of the Commission, how it works, its purpose and outcomes. Ms Randall is also concerned with a lack of ongoing consultation with ALSWA and

other stakeholders. For example, the Commission travelled to the Kimberley area in June 2014 to meet with Aboriginal people without notifying ALSWA.

Ms Randall states that there is a mistrust of governments generally and a perceived conflict of interest in that while the Commission is independent of the Federal Government, it is still a "government inquiry" that involves scrutiny of government institutions: 'You just can't go and organise a community forum and expect people to come in when they're threatened by those institutions. They have locked up their stories for many years.'<sup>11</sup>

In addition to the perceived conflict of interest, many of the service providers funded to provide social support service are religious organisations, further compounding the perception of conflict.<sup>12</sup> There are only three Aboriginal specific support services listed on the RCIIRCSA website for WA people. These are the Healing Foundation, the Kimberley Stolen Generation Aboriginal Corporation and the Yorgum Aboriginal Corporation. Further, some members of the community do not consider that the Commission will have any meaningful impact in terms of reducing institutional child sexual abuse because practices and processes have already changed and as one elder in the Kimberley said: 'the future is already better.'<sup>13</sup>

### **LACK OF COMPENSATION**

In the Commission's terms of reference, it is stated that the Commission is to have particular regard, among other things, to:

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, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.<sup>14</sup>

ALSWA's experience in assisting clients with over 1000 applications to *Redress WA* means that the organisation has first-hand knowledge of the highly traumatising experience of coming forward and providing an account of childhood sexual abuse. The purposes of the Commission include empowering victims, bringing stories of institutional childhood sexual abuse out in the open and recommending changes for a better future. However, many of our clients do not see any benefit in coming forward; particularly when there is no monetary compensation on offer and given that they have already suffered emotionally through the *Redress WA* experience. Although the Commission is examining redress and other compensation schemes with a view to making recommendations around financial compensation, recommendations that may be made in the future are too remote for clients to be encouraged to tell or retell their story.

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## TERMS OF REFERENCE DO NOT INCLUDE PHYSICAL ABUSE

The Commission does not directly address the issue of physical abuse in state institutions. Its terms of reference broadly require it to 'inquire into institutional responses to allegations and incidents of child sexual abuse and related matters'.<sup>15</sup> The phrase 'related matters' is defined as 'any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse'.<sup>16</sup> Therefore, while there is some scope for inquiring into non-sexual forms of abuse, this appears to be limited to where that other abuse is connected to child sexual abuse. Therefore, an allegation of institutional child abuse that is solely of a physical nature does not fall within the ambit of the Commission's inquiry. This is concerning because from our experience with *Redress WA* applications, it was clear that:

Physical abuse in state institutions, including child labour, was common, excessive, and of a serious nature.

Physical abuse left a lifetime of trauma for victims that cannot be assessed quantitatively as a less serious or a less important issue for the Australian Government to investigate.

There appears to have been either a great deal more physical abuse or a great deal more reported physical abuse than sexual abuse. Bearing in mind that shame around physical abuse is generally far less than that around sexual abuse; clients have been more forthcoming in providing evidence of this form of child abuse. Ms Randall states: 'The extent of the physical abuse in the institutions was excessive and it's something that people are more comfortable to speak about whereas people are more ashamed about coming forward for sexual abuse.'<sup>17</sup>

## TARGET AREAS

The Commission's contact with Aboriginal people in WA seems insufficient. To ALSWA's knowledge, the Commission's Assessment and Intake Team has only visited parts of the Kimberley to date. The Commission has also held public hearings in Perth but no Aboriginal people were involved in these hearings. The Commission's interim report recognises that certain vulnerable groups, such as Aboriginal people and incarcerated people, may not be forthcoming in terms of disclosing child sexual abuse. It states that the Commission needs time to raise awareness of its work and 'for people and communities to develop confidence and trust in the Royal Commission'.<sup>18</sup> The Commission has sought an extension of time in which to report until the end of 2017 and this is designed, in part, to enable additional private sessions; in particular, for Aboriginal people, prisoners and other vulnerable groups.<sup>19</sup> In regard to prisoners, the interim report comments that the Commission is working with the correctional services

commissioners in each jurisdiction to manage the process of speaking with prisoners and a pilot process has begun in New South Wales. At the end of July 2014, it is expected that this process will be extended to other states.<sup>20</sup> It is hoped that the Commission will liaise with relevant Aboriginal stakeholders and organisations (including ALSWA) to facilitate input from Aboriginal prisoners and Aboriginal people from other regional and remote areas such as the Pilbara and the South-West. As noted above, the excessively high proportion of Aboriginal *Redress WA* applicants suggests that there is greater scope to obtain evidence and data in relation to the true extent of institutional child sexual abuse experienced by Aboriginal people in WA institutions.

## CONCLUSION

The intersectionality of Aboriginal disadvantage is most importantly understood by the historical failure of state institutions to keep Aboriginal children safe from child sexual abuse. Continuing problems of substance abuse; over-incarceration and over-representation in the criminal justice system; the Stolen Generations; family violence and housing crises are given context by the cycles of neglect and abuse in state institutions. It cannot be overstated how deeply and profoundly child sexual abuse has affected Aboriginal children in institutions. To date, the Commission has done important work, but our concern is it will only scratch the surface when looking at the issue for the Aboriginal peoples of WA. Peter Collins, the Director of Legal Services at ALSWA, states: 'My concern is that when the Royal Commission releases its findings, the disproportionate impact of child sexual abuse on Aboriginal peoples in WA will not be highlighted.'<sup>21</sup>

As it is likely to be the definitive voice on the history of institutional child sexual abuse in Australia, it would be a great injustice if the disproportionate impact on the Aboriginal peoples in WA was not part of this narrative.

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1 Department of Child Protection and Family Support, Government of Western Australia, *Annual Report 2012-2013* (2013) 9.

2 Interview with Suzanne Randall (Perth, 11 July 2014).

3 Department of Communities, Government of Western Australia, *Annual Report 2010-2011* (2011) 45.



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- 4 Now in private practice.
- 5 Interview with Gulmina Miocevic (Perth, 8 July 2014).
- 6 Ibid.
- 7 Transcript of Proceedings, *Public hearing into Christian Brothers Institutions in WA: Case Study 11* (Royal Commission into Institutional Responses to Child Sexual Abuses, Transcript Day WA17, 2 May 2014) 1978; <<http://www.childabuseroyalcommission.gov.au/case-study/e7ba58da-609c-4854-aa74-c8992ec75d3c/case-study-11,-april-2014,-perth>>.
- 8 Commonwealth, Royal Commission into Institutional Responses to Child Sexual Abuse ('RCIIRCSA'), *Interim Report* (2014) vol 1, 113.
- 9 Interview with Gulmina Miocevic (Perth, 8 July 2014).
- 10 Human Rights and Equal Opportunity Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, (1997).
- 11 Interview with Suzanne Randall (Perth, 11 July 2014).
- 12 Transcript of Proceedings, *Public hearing into Christian Brothers Institutions in WA: Case Study 11* (Royal Commission into Institutional Responses to Child Sexual Abuses, Transcript Day WA17, 2 May 2014); <<http://www.childabuseroyalcommission.gov.au/case-study/e7ba58da-609c-4854-aa74-c8992ec75d3c/case-study-11,-april-2014,-perth>>.
- 13 Interview with Suzanne Randall (Perth, 20 June 2014).
- 14 RCIIRCSA, *Terms of Reference* (11 January 2013) <<http://www.childabuseroyalcommission.gov.au/about-us/terms-of-reference>>.
- 15 Ibid.
- 16 Ibid.
- 17 Interview with Suzanne Randall (Perth, 11 July 2014).
- 18 RCIIRCSA, above n 8, 197.
- 19 Ibid 198.
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