



PUBLIC HEARING INTO REDRESS AND CIVIL LITIGATION

Case study 25

The Hon Justice Peter McClellan AM

Chair, Royal Commission into institutional Responses to Child

Sexual Abuse

In January this year, we released the Royal Commission's Consultation Paper on Redress and Civil Litigation. The purpose of this public hearing - the 25th public hearing of the Royal Commission - is to enable invited persons and institutions to speak to the written submissions they have made to the Consultation Paper.

Our Terms of Reference require us to make recommendations in relation to 'ensuring justice for victims through the provision of redress by institutions'.

Many institutions have acknowledged that their previous response to survivors has been inadequate. Many survivors have a pressing need for assistance, including effective and just redress. As I indicated when we released the Consultation Paper, it is for these reasons that the Commissioners accepted

that we should consider the issue of redress and make final recommendations in relation to it as soon as possible.

When releasing the Consultation Paper, I also noted that a reading of our Terms of Reference indicates that there is agreement amongst all governments, both the Commonwealth and the states, that 'justice for victims' requires appropriate redress. Our discussions with institutions confirm that every major institution also accepts that effective redress is required if victims are to receive justice.

I also noted that, when considering the requirement for justice through redress, it is inevitable that the opportunity provided by the civil law for a victim to recover compensatory damages must be examined. That is, civil litigation and any reforms to it must be considered at the same time as redress.

Consultation process

The issues involved in redress and civil litigation are complex. The Royal Commission has undertaken an extensive program of consultation to ensure that we obtain and understand the views of those affected. We have published

issues papers on: civil litigation; redress schemes; statutory victims of crime compensation schemes; and Towards Healing. We have also held a coordinated program of roundtables involving governments, institutions, survivors and others. This consultation program provided us with considerable assistance in developing the Consultation Paper.

Our work on redress and civil litigation has also been informed by the Royal Commission's work in private sessions and public hearings.

Commissioners have now spoken with more than 3,200 survivors in private sessions. Each private session reveals a unique personal story of betrayal of a child's trust with, for many, life-long consequences. Many survivors speak of losing their childhood. Others speak of losing the benefits which come from a stable family and the rewards which come from personal and career achievements.

Many survivors also speak of the experiences they have had in seeking redress or pursuing civil litigation and of what they think would best help them to heal and live a productive and fulfilled life. These private sessions have helped us to understand many survivors' views of redress and civil litigation processes as

they have operated to date, and many survivors' views of how they could be changed to better achieve 'justice for victims'.

Evidence has been given about redress and compensation in many of our public hearings. Some of our public hearings have had a substantial focus on these issues. Case Studies in relation to the North Coast Children's Home, the Catholic Church's response to Mr John Ellis, and the Christian Brothers examined aspects of civil litigation in detail. The Case Studies relating to Mr John Ellis and the Christian Brothers also examined aspects of existing redress schemes, as did Case Studies in relation to Towards Healing, the Salvation Army, and the Melbourne Response. Case Studies in relation to The Parramatta Girls' Training School and The Institution for Girls in Hay, the Retta Dixon Home, and Bethcar Children's Home also examined circumstances where no redress was offered.

The Consultation Paper we released in January was informed by the public hearings and private sessions, and by the consultation program.

We have received considerable input from many interested persons in response to the Consultation Paper. We have received formal submissions

from over 250 organisations and individuals, and we have received comments through the online form from approximately 100 organisations and individuals.

On behalf of the Commissions I express our appreciation to all of those who took time to give us their views and participate in our consultation program.

We are grateful for all of their contributions.

We also greatly appreciate the contributions of all those who will speak at this public hearing, and the time they are giving in accepting the Royal

Commission's invitation to speak. We have not summonsed anyone to appear at this hearing, and all those who speak will be doing so voluntarily. We appreciate their willingness to assist us in our work.

This public hearing, and all of the responses we received to the Consultation Paper, will assist us in forming our final views and making our final report on redress and civil litigation, which we intend to do in the middle of this year.

Invitations to speak

It is regrettable but inevitable that we could not invite everyone who has made a submission to speak at this public hearing. We could not invite even all of

those who expressed a particular wish to speak. The approach we took to selecting who should speak is designed to ensure that those listening to the public hearing would hear: from governments, whose views are significant in assessing possible options for redress, including structure and funding; from survivor advocacy and support groups, who between them represent many survivors and broader groups of Forgotten Australians and Former Child Migrants; from groups who represent members of the Stolen Generations, and from organisations who have particular expertise in issues of importance to Aboriginal and Torres Strait Islander survivors; from a number of the largest faith-based institutions; and from other institutions that provide services to children.

We have also invited a number of people with expertise in counselling and psychological care to speak on a panel during this hearing. We were also able to include an organisation that advocates for children in out of home care, a number of legal organisations, the Insurance Council of Australia and some individuals who have had particular involvement in the operation of redress schemes.

There are many views and interests that need to be explored in this hearing. However, every submission responding to the Consultation Paper will be considered by the Royal Commission in developing our final report on redress and civil litigation. Unless they raise confidentiality or procedural fairness issues, all submissions will be published on the Royal Commission's website. Any interested person will be able to read any of these submissions, regardless of whether the organisation that made the submission is speaking at this public hearing.

Governments

As I have said, we are concerned to hear the views of governments. The Consultation Paper particularly sought governments' views on a number of issues, including support for a single national redress scheme or state and territory-led schemes in which non-government institutions would also participate. The Consultation Paper also sought governments' views on options for improving the provision of counselling and psychological care for survivors, and options for funding a redress scheme.

We received written submissions from the Commonwealth, New South Wales, Victoria, Western Australia, South Australia, Tasmania and the Northern

Territory. We did not receive written submissions from Queensland or the Australian Capital Territory.

We invited each government to speak at this public hearing, including those governments that did not make written submissions. Victoria, South Australia and Tasmania have accepted our invitation, and we will hear from each of them over the next three days. The other six governments declined our invitation to speak.

The Consultation Paper discussed the strong support for a single national redress scheme expressed by many survivor advocacy and support groups and by many institutions. The Consultation Paper concluded that ‘the ideal position for survivors would be a single national redress scheme led by the Australian government and with the participation of state and territory governments and non-government institutions.’ However, the Consultation Paper also noted that ‘the ideal position will be difficult to reach if the Australian Government does not favour it or if the state and territory governments do not favour it.’

Submissions from state and territory governments have expressed a range of views, from support for participating in negotiations for a national scheme to

opposition to a national scheme and unwillingness to participate in a state scheme with non-government organisations. As I said, we will hear further from three state governments during this public hearing.

The Commonwealth has not accepted our invitation to speak at this public hearing. Its written submission is published on the Royal Commission's website.

It seems clear from the Commonwealth's submission that it does not support a single national redress scheme. Its submission refers to a number of concerns that it has about the complexity, time and resources that would be required to establish a national scheme, and the potential overlap with or duplication of state and territory schemes. It suggests that the time required to negotiate a national scheme would be frustrating to survivors and would undermine community confidence in the outcomes of the Royal Commission's work.

It also seems clear from the Commonwealth's submission that it does not support an expansion of the public provision of counselling and psychological care for survivors, other than through improving survivors' awareness of existing services and their confidence in those services.

Finally, in relation to funding arrangements, the Commonwealth submits that the Royal Commission should make recommendations that institutions must accept the legal, financial and moral responsibility for failing to protect children. The Commonwealth does not see itself as having a role as 'funder of last resort', and suggests that such a role would not be necessary if the redress scheme were designed to take account of the solvency of institutions and the resources available to them when the maximum payment available to any given claimant is set. These issues need further exploration.

The Commissioners are disappointed that, while our Terms of Reference suggest that the need for effective redress has been accepted by all governments, the structural approach that is overwhelmingly supported by survivor advocacy and support groups and many institutions as being most likely to ensure a just, fair and consistent outcome for all victims wherever they may have suffered abuse is not presently supported by the Commonwealth. That said, we welcome the Commonwealth's view that institutions must accept the legal, financial and moral responsibility for failing to protect children. This will of course extend to the Commonwealth accepting responsibility for any children who were not protected while in the care of the Commonwealth Government.

Conduct of the hearing

It will be apparent that all six Commissioners are sitting for this public hearing.

All Commissioners were involved in finalising the Consultation Paper, and we

are all are responsible for determining the Royal Commission's

recommendations on these issues. It is important that all Commissioners have

the opportunity to hear oral submissions from, and ask questions of, those

invited to speak at this public hearing.

This hearing will operate a little differently from our previous public hearings.

Apart from the panel on counselling and psychological care, each of the

organisations or individuals speaking have been told that they will have ten

minutes to speak to their written submissions without interruption - and they

will be told when their ten minutes are up, if necessary. There will then be

some ten minutes for those speaking to respond to questions asked by

Commissioners and Counsel Assisting.