

Sensitive: Legal

Our ref. 13028466

6 March 2017

Mr Tony Giugni
 Solicitor Assisting
 Royal Commission into Institutional Responses to Child Sexual Abuse
 GPO Box 5283
 SYDNEY NSW 2001

Australian Government Solicitor
 4 National Circuit, Barton ACT 2600
 Locked Bag 35, Kingston ACT 2604
 T 02 6253 7000 DX 5678 Canberra
 www.ags.gov.au

Canberra
 Sydney
 Melbourne
 Brisbane
 Perth
 Adelaide
 Hobart
 Darwin

BY EMAIL

Dear Tony

Case study 51: Commonwealth responses: update

1. As you are aware, the Commonwealth is appearing before the Royal Commission during the week commencing 6 March 2017 as part of Case Study 51. We have 2 brief updates on the subjects of civil litigation and working with children checks.

CIVIL LITIGATION

2. We would like to draw the Royal Commission's attention to the Commonwealth's recent work in developing a guidance note on responding to child sexual abuse claims. The guidance note, when finalised, will be part of the series of guidance notes issued and published by the Office of Legal Services Coordination (OLSC) within the Attorney-General's Department in connection with the *Legal Services Directions 2005*.

Role of the OLSC and guidance notes

3. The purpose of OLSC is to ensure Commonwealth agencies receive consistent and well-coordinated legal services that are of a high standard, uphold the public interest and are sensitive to the Commonwealth context. OLSC administers the *Legal Services Directions 2005* which outline the obligations of Commonwealth agencies in a number of areas, including in the conduct of litigation. It has issued guidance notes to support Commonwealth agencies in understanding their obligations under the Directions.

Draft Guidance Note 13

4. In response to the Royal Commission's recommendation 96 regarding the need for specific guidelines for government when responding to child sexual abuse claims, OLSC has developed the attached draft guidance note. Examples from the NSW and Victorian state governments have informed the development of the guidance note.

Sensitive: Legal

21249742

Sensitive: Legal
CONFIDENTIAL

Australian Government Solicitor

5. The draft guidance note states the fundamental principle that Commonwealth entities must be mindful of potential trauma that survivors of child sexual abuse may experience during the claims and litigation processes. The purpose of the guidance note is to ensure consistency in claims and litigation processes and take into account sensitivities in handling claims by survivors of child sexual abuse.
6. In handling claims, Commonwealth entities are urged to resolve claims as quickly as possible, support claimants in accessing support and information, communicate regularly with claimants and comply with existing obligations to report serious indictable offences to law enforcement.
7. Commonwealth entities should consider alternative dispute resolution options to facilitate early settlement, consider resolution without requiring a formal statement of claim, assist claimants in identifying proper defendants, consider non-monetary forms of redress in addition to monetary redress and consider the nature of the claim before using confidentiality clauses.
8. When handling and resolving claims involving institutional child sexual abuse, the Commonwealth expect that entities will have regard to the guidance note, the model litigant obligation set out in the *Legal Services Direction 2005* as well as the *Legal Services Direction 2016 (time-barred child abuse claims)*. The latter prevents Commonwealth entities from pleading a defence based on an expired limitation period or opposing an application for extension of time in relation to injuries suffered from alleged child sexual abuse.
9. The draft guidance note is close to finalisation and is attached. Consultation with the Attorney-General and interested Commonwealth agencies is underway.
10. The Commonwealth witness on civil litigation, Mr Iain Anderson, will be able to speak to this document should counsel assisting wish to tender it during the hearing. We would be happy for it to be shared with other parties with leave to appear ahead of this part of the hearing.

WORKING WITH CHILDREN CHECKS

11. On 2 March 2017, the Secretary of the Department of the Prime Minister and Cabinet, Martin Parkinson PSM, wrote to all Commonwealth Secretaries in relation to recommendation 3(c) of the Royal Commission's Report on Working with Children Checks. Secretary Parkinson expressed that he is working to ensure his Department and portfolio bodies complied with the recommendation and requested all Commonwealth Secretaries do the same.
12. Further, Secretary Parkinson requested a written update by 30 June 2017 on progress made towards meeting the Royal Commission's recommendation 3(c), along with an outline of their child safe policies.

Sensitive: Legal
21249742

Sensitive: Legal
CONFIDENTIAL

Australian Government Solicitor

13. Secretary Parkinson's letter is attached. Again, we would be happy for it to be shared with other parties with leave to appear ahead of this part of the hearing.

Yours sincerely



Justin Davidson
Senior Executive Lawyer
T 02 6253 7240
justin.davidson@ags.gov.au

Sensitive: Legal
21249742