Royal Commission into Institutional Responses to Child Sexual Abuse

Case Study: Case Study 21, Yoga Ashram

Witness: Mr Terry O'Connell
Director, Real Justice Australia.

1. Terry O'Connell provided a statement to the Royal Commission dated the 7/11/2014. Initially summoned to produce the documents, Mr O'Connell was also summoned to appear before the Royal Commission. On Friday the 5th December we were informed that he was no longer required to give evidence before the Royal Commission. Counsel Assisting stated to Mr O'Connell's legal representative that they intended to rely upon Mr O'Connell's extensive statements and Annexure and that there was no intention to adversely mention Mr O'Connell in their submissions.

2. We note that Mr Terry O'Connell has not been directly adversely mentioned in any of the findings of Counsels Submissions.

3. Never the less, from page 160 at paragraph 466, mention has been made of Mr O'Connell in a number of paragraphs of the Submissions provided to the Royal Commission by Counsel Assisting.

4. Additionally, adverse findings have been made in relation to the contemporary response by the Ashram (2014). Such findings indirectly reflect upon Mr Terry O'Connell.

5. Advice and Services Provided to the Task Force/Ashram

5.1 Terry O'Connell

At paragraph 466 of Counsel's submissions it is noted that in recognition that the Ashram Task Force did not have sufficient expertise to deal with matters involving child sexual abuse the Task Force engaged Terry O'Connell from Real Justice Australia to provide guidance and advice formulating the Ashram's response.

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1 Submissions of Counsel Assisting the Royal Commission, Case Study 21.
2 Paragraphs 466, 467, 474, 475, 476, 477, 478, 481, 483, 485, 492, 493.
Terry O’Connell is a Director of Real Justice Australia. Real Justice is an international non-profit organisation, with its headquarters in Pennsylvania USA. This organisation promotes Restorative Justice processes. This organisation provides developmental training for professionals such as teacher and counsellors.

Terry O’Connell is recognised as being at the forefront of expanding the boundaries of restorative practices for serious crime. As such he regularly attends to organisations on a consultancy basis including police services in Australia, United Kingdom and North America. In 2000 Terry O’Connell was recognised as a member of the Order of Australia for his work in introducing community conferencing in juvenile crime. He was awarded an Honorary Doctorate from the Australian Catholic University in 2008 for his pioneer work in Restorative Justice. Terry O’Connell has extensive experience in working with victims of child sexual assault and provided the Royal Commission with a number of case studies reflecting that experience and the success of the Restorative Justice processes. Terry O’Connell has extensive experience in training professionals in restorative practice techniques.

5.2 **Restorative Justice**

Restorative Justice has been described since 1991 as providing a forum whereby "those most directly affected by a crime come together to determine what needs to be done to repair the harm and prevent reoccurrence." Sound restorative facilitation relies upon the use of restorative questions to create conditions from the free exchange of deep emotions with those who matter the most. The spectrum of restorative processes help to address the needs of victims which are not being met; particularly the impact of shame and vulnerability which often becomes an impediment to relationships.

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4 Ex21-0026, Statement of Terry O’Connell at 16.1 Appendix H
5 Ex21-0026, Statement of Terry O’Connell at paragraphs 19 - 40.
7 Ex21-0026, Statement of Terry O’Connell at paragraph 42 and 43
A victim’s needs should not be presumed and a victim may be unable initially to articulate their needs. Restorative practice allows for engagement, listening and discovery.

The embracing of Restorative Justice by the wider community reflects the persistence of Restorative Justice luminaries such as Howard Zehr, pronouncing that the time had come to “change the lenses” and take a fresh look at how justice was dispensed. Zehr further argued that criminal acts are more than a violation of a criminal code and that “Crime represents a violation of the human relationship.” This relationship is created in some instances at the time of the offence. This theory shifted the focus from proceedings between the State and the Offender to a process that had at its core a shared interest by the parties affected by the crime to repair the harm.

Restorative Justice relies upon an acknowledgement of guilt, and is utilised as a diversionary regime, at times in conjunction with or at the conclusion of existing court process.

Forms of Restorative Justice have been utilised by every Criminal Jurisdiction in Australia. Exemplifying this are the legislated use of Victim Impact Statements, Circle Sentencing, Forum Sentencing conducted by Corrective Services in NSW (violent and serious offences) and Youth Conferencing referred by the Children’s Courts in NSW.

Restorative Justice dialogue has made some mention of the Re-integrative shaming theory of John Braithwaite. In the context of a Restorative Justice forum those accountable can be brought to the realisation of the impact of the crime on victims and their significant others after hearing of the victim’s experience. Restorative processes are designed to humanise the offence, personalising its consequences.

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10 Part 5 of the Young Offenders Act 1997 (NSW).
5.3 **The Task Force**

Considering that the Ashram leadership in 2013 and 2014 were unexpectedly having to come to terms with the harm done to Ashram victims (much of it originating many years before) it is not unsurprising that they set up a task force to work together on a response.

Terry O'Connell was not a member of the Task Force but acted as an advisor on the matters that related to his specialisation (Restorative Justice). As such it is submitted that the engagement by the Ashram Task Force of Terry O'Connell to guide and assist them with their response was eminently sensible and in securing one of the leading Australian experts in the field underlies the seriousness with which the Task Force approached the circumstances they had found them self in.

5.4 **Mr O'Connell advised the Ashram against making an Apology during the Ashram 40th Celebrations.**

It was the task force view that it was wrong to celebrate the successes of Ashram at the 40th anniversary without acknowledging the abuse of previous years. At paragraph 467 of Counsel Assisting Submissions it is noted that Mr O'Connell advised the Task Force against making an apology during its 40th celebrations. Terry O'Connell accepted that the making of an apology before listening to the victims was well intentioned; however, misguided. He was concerned that an apology at this stage would be misinterpreted by victims. An apology without empathic engagement and acknowledgement of the victims experiences would not necessarily be interpreted as sincere, perhaps tokenistic and in all likelihood simply as the Ashram leadership trying to feel good about themselves.

Terry O'Connell suggested that in such circumstances that it would be more appropriate to have an Acknowledgement Ceremony. Mr O'Connell does not
refer to the Restorative Forum on Easter Sunday as "A Healing Session."
This title chosen for whatever reason, by Counsel Assisting to reflect the
nature of the forum is not accurate.  

5.5 Easter Sunday Forum

Mr O'Connell agreed to facilitate a forum on Easter Sunday for everyone who
wanted to be part of the process including victims and their families.  

This forum to be facilitated by Terry O'Connell was preceded by the meeting
on Thursday April the 3rd by Terry O'Connell and the Ashram leadership
group.  Restorative Practice was discussed and Terry O'Connell suggested
that it is necessary to listen and ask questions (preferably restorative
questions) of victims. Widening the circle further Terry O'Connell also
conducted a session about restorative practices with a larger group of Ashram
members on Good Friday the 18th April 2014. This included a group of older
and more experienced Ashram group members as well as the leadership
group. This was preparatory for the Easter Sunday Forum and one of its
purposes was to widen the circle of people engaging in open discussion about
the abuses of the past.  

Mr O'Connell arrived at the forum after lunch and saw that there was
approximately 150 people sitting on the floor. He explained the purposes of
the forum to those present. He facilitated a significant number of speakers.
Some victims and victim's advocates spoke and asked questions. This part of
the forum lasted 3 hours. When the group returned they were asked to form
about 10 groups. About 50 minutes were allowed for the groups to address
questions such as "What suggestions did they have to move forward?" and
"How could victims and their families be best supported?"

Mr O'Connell and others regard the forum as a success because:

- The history of the abuse and its impact on so many was out in the
  open before the members of the Ashram for the first time;

17 Counsel Assisting Submissions at 474 SUBM.0021.001.0163
18 Ex21-0026, Statement of Terry O'Connell at 52
19 Ex21-0026, Statement of Terry O'Connell at 55 and 56
20 Ex21-0031, Statement of Fiona Steiner STAT.0415.001.0013 at 64
Those present began to get some sense of the impact of the abuse on victims and their families,

It was an opportunity to vent painful emotions in a supportive environment,

Victims and their families had been acknowledged (particularly those who had made themselves known).

The forum provided a new beginning for the Ashram community not just the leadership to take some responsibility for healing.

Fiona Steiner noted that she could not judge if the forum was what the victims of abuse needed but it did a lot to help the Ashram be open about the abuse and showed the Ashram was prepared to work on cultural change.

Helen Cushing stated that she felt the forum was a success. The victims who attended were accepting of the Ashram approach. A positive relationship was being built. She acknowledge Terry O'Connell's significant skills.

### 5.6 Ongoing assistance by Terry O’Connell to the Mangrove Management Committee Task Force

Leading on from the Easter Sunday Acknowledgement Ceremony the Ashram Working Party was keen to build on the public conversation and acknowledgement of abuse. As such Terry O'Connell attended a meeting of this group on the 9th of May 2014.

At paragraph 480 of Counsels Submissions it is submitted that the Task Force was dismantled as "it’s members considered its’ objectives met." This paragraph, whether purposeful or not, leaves an impression to the reader that somehow the Ashram leadership and community considered matters in relation to the abuse of children dealt with to finality after the Easter Sunday forum. This is a false impression and clearly not supported by the nature of the Easter Sunday forum and it focus on future support, the establishment of

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21 Ex21-0026, Statement of Terry O’Connell at 56
22 Ex21-0031, Statement of Fiona Steiner STAT.0415.001.0014
23 Ex21 - 0031, Statement of Helen Cushing at 49 STAT.0414.001.0014
a management committee and the continued offering of contact and provision of services to those suffering from abuse.

Similarly, this same false impression is also left to the reader by the reference by Counsel Assisting to the email read to the Commission by APK. Undoubtedly the email reflected the emotions and views held by APK. As such her views and emotional reaction to the Ashram’s response to the abuse are important. However, the email also incorrectly states the nature of the forum (as singing Kirtan around a fire pit) and the outcome of the forum (doing nothing to create lasting change or heal etc). This is not surprising considering APK was not present at the forum and had limited opportunity to build any trust of the Ashram or Terry O’Connell. The misrepresentation; however, is left to stand by Counsel Assisting, because there has been a failure to refer to the email by APK in the context of the communications she would go on to have with the Ashram. There is no reference to the Ashram’s email in response to APK’s email, explaining their position and most importantly explaining that the Easter Sunday forum was not the end of their response.

24 Ex21-0026, Statement of Terry O’Connell at 57
25 Submissions from Counsel Assisting at 480, SUBM.0021.001.0166
26 EX 21-0001, IND.0173.001.0044_R
5.7 **Survivor Pack**

At the meeting with the Working Group on the 9th of May, 2014 Terry O'Connell agreed to discuss the draft document of what would become the Survivor Support Pack. Terry O'Connell viewed this as a logical extension to the Easter Sunday forum. A draft document was circulated for input and comment. Terry O'Connell's input was largely about offering his services to work with victims and their families. The Ashram would pay for this and it was to be in the understanding that it was strictly confidential.27

Terry O'Connell's contribution to the Survivor Pack was described as:

"Real Justice makes reference to a service primarily focused on three main aspirations:

- *Help you change the internal narrative in relation to the horror of your experience,*
- *Help you focus on and where possible, repair the relationships that are primary in your life,*
- *Help you restore balance and peace in your life.*28

The restorative practice service offered, particularly had some focus on repairing the relationships in the lives of those who had been abused.

In circumstances where children were left to the care of an institution by parents as a result of a philosophical frame work of denial of familial intimacy, emotional connection and parental nourishment it could be expected that the trauma experienced by those abused would be compounded. It is submitted that an institution's response in the circumstances that did not provide some focus on the repair of those relationships would be short sighted and open to criticism. Although not an evidentiary focus of the Royal Commission or indeed the Submissions of Counsel Assisting, this philosophical frame work that required parents to step aside from parenting their own children is a highly relevant factor which distinguishes this case study from many others. It

27 EX 21 -0026 Statement of Terry O'Connell at paragraph 57
28 EX 21 -0026 Statement of Terry O'Connell at paragraph 57
is our submission that it was a lost opportunity to the Royal Commission not to hear *viva voce* from the many parents affected by the abuse of their children left in the hands of the Ashram.

In relation to the duration of Mr O’Connell’s provision of services to the survivors of Ashram abuse the 12 month limitation was viewed as a starting point. In discussions with the Ashram Committee Terry O’Connell had the sense that that the duration would be influenced by the needs of the victims.  

The focus of the Real Justice service is to assist the victims and their families:

- Make sense of their lives,
- identify what is most important to them in what is happening,
- identify what needs to change and what their part will be in that process,
- importantly what is needed that will help build and sustain healthy relationships.  

At the time of writing his statement four victims had taken up the service. Mr O’Connell is working confidentially with a number of victims and a family member as of today’s date. Mr O’Connell has identified a shared need to reconnect with family. Regrettably this issue of parental links to the Ashram was never explored by the Royal Commission.

It is submitted that it is too early to measure the success of the services provided by Real Justice as Restorative Justice practice very rarely results in a quick fix. Additionally it is submitted that the following factors have some bearing on the take up of the service:

- That the service was provided in the shadow of a Royal Commission hearing. The Commission provided an alternative opportunity to be heard and published and in as much some promise of justice.
- Even though the service was to be confidential, some victims may view Terry O’Connell as too close to the Ashram.

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29 Ex21-0026, Statement of Terry O’Connell at paragraph 59
30 Ex21-0026, Statement of Terry O’Connell at paragraph 60
Some victims are at the stage of their journey where anything offered by the Ashram will be viewed negatively. This may be more so prior to the conclusion of the Royal Commission.

6. Available Findings

Counsel Assisting submitted that the Royal Commission should accept the response of Sarah Tetlow in relation to the "Ashram's response in 2014". We do not agree with this submission.

With reference to the Available Findings at F31 and F32, the "Ashram’s response in 2014" was framed by the Counsel Assisting in the all encompassing verbal parenthesis of, "impulsive, at times hostile, and at times defensive and that it included mistakes and errors of judgment". This grab bag of conclusions is then applied to 6 available findings which had been suggested to the witness Sarah Tetlow in examination. What conclusions apply to which findings is indeterminable. This lack of forensic specificity is further distorted by the reliance of conclusions obtained under examination from a person who as an Accountant/CEO has no expertise or experience in dealing with victims of sexual abuse. Furthermore the witness had little if anything to do with the architects of the Restorative Justice Forum or the Survivor Support Pack.

Furthermore the Royal Commission, chose not to explore these issues with any of the Ashram Committee, or indeed Terry O’Connell, who were the architects of the Easter Sunday Forum and Survivor Support Pack or who had had dealings with the Ashram Survivors. These witnesses were far better placed to provide additional information and respond to the issues raised by victims. Counsel Assisting has made little reference in Submissions to the Royal Commission about the written evidence of Terry O’Connell or the Ashram members who made up the Institutions response in 2014.

This approach is inexplicable, perhaps based upon a misunderstanding of what the Survivor Support Pack and Easter Sunday Forum had to offer it leaves a perception of a lack of fairness. It is not in our respectful submission conducive to the engagement by professionals such as Terry O’Connell with the Royal Commission, to
work towards a better future for victims affected by Institutional Responses to systemic child sexual assault.

6.1 **Establishing the Needs of Victims**

Counsel Assisting has suggested that the Royal Commission should accept that the Survivor Support Pack did not meet the complex needs of survivors of abuse.\(^{33}\)

Counsel Assisting has never established what the "needs" of each victim of abuse might be. How then can it be suggested that those (undetermined) needs have not been met, all or in part.

Questioning by MS Brady (on behalf of Mr Terry O'Connell), soliciting from APL what might better meet her needs, was disallowed and not regarded as helpful by the Commissioner on the basis that the witness had already read a fulsome statement.\(^{34}\)

There is a presumption by the Royal Commission that a need is met by providing a forum for the survivor to tell their story unchallenged and unfettered by the rules of Evidence. This telling of the story will not necessarily identify the needs of a victim. A skilled practitioner relying on their expertise in dealing with victims of abuse can facilitate that process for a victim and their family. It is one of the cornerstones of Restorative Practice.

The Survivors Support Pack offered that service to the Ashram Survivors.

While the Real Justice Service may not have been taken up by a number of Victim's or perhaps even understood as to what it offered, the Service has met the needs of sexual assault victims in the past. The Royal Commission was referred to a number of examples where this has been the case. Additionally Ashram survivors have utilised the service.

The use of the Survivor Support Pack to reach out to the Ashram survivors of abuse was necessary, even as an interim measure. It provided a measure of support if the Victims could trust the Ashram sufficiently to engage.

\(^{33}\) Submissions of Counsel Assisting the Royal Commission Case Study No 21 at p193 F31 (I).

\(^{34}\) Royal Commission Transcript 3/12/2014 at 10948 point 37 - 45.
Counsel Assisting suggests no findings as to what other services, apart from Counselling, Legal and Restorative the Ashram Task Force had not made available to meet the Victims needs.

Financial Compensation became a focal point at the Royal Commission. Sometimes the provision of financial compensation can meet some of the needs of a victim. It is our submission that it should not be used as a broad brush or quick fix. It can amount to “symbolic reparation.”

7. Conclusion

For those at the Ashram with the responsibility for dealing with the Ashram survivors, a process which started well before the Royal Commission hearing, the experience has been challenging and at times overwhelming. It is our submission that the Ashram’s decision to celebrate its 40th Anniversary was a catalyst for the survivors outpourings and understandable outrage.

The Ashram should be urged by the Royal Commission to continue to reach out to the survivors of abuse, beyond the broader issue of compensation in a way that provides support for the victims, their families and the Ashram.

We submit that the Case Study 21, Ashram Royal Commission Reference has provided positive benefits particularly for the Ashram children. Being given the opportunity to tell their stories and be publicly believed, acknowledged and supported was very important for them, (personally, emotionally, psychologically and spiritually).

In not offering the families of Ashram victims an opportunity to be publicly heard we submit that the Royal Commission missed a fundamental opportunity to help victims and their families.

In not publicly exploring the reasoning behind the Ashram’s decisions in relation to the Easter Sunday Forum and the Survivor Support Pack the Royal Commission missed the opportunity to explore more comprehensively the parameters of what might be available to meet the “complex needs” of victims.

In not searching for a greater understanding of the Survivor's needs the Counsel Assisting has merely laid the foundation for criticism of the Ashrams recent response and surrendered the opportunity to explore an understanding of what is
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going to help the survivors and their loved ones live healthier lives beyond the Royal Commission process itself.

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35 Ex21-0026, Statement of Terry O’Connell at paragraph at 39.