Introduction

1. This is the second part of the Royal Commission’s 51st public hearing, which is concerned with the steps taken by Commonwealth, state and territory governments in response to the work of the Royal Commission.

2. The Royal Commission has held public hearings into 48 Commonwealth, state or territory agencies which amounts to about one third of all institutions examined in hearings. These hearings have considered the service delivery role of the governments as well as their role in regulation and oversight.
3. As at 31 December 2016, thirty five percent of those who attended a private session, reported child sexual abuse in an institution managed by a state, territory or Commonwealth government. As a result, the Royal Commission has undertaken significant work in relation to the past and current activities of government institutions.

4. Many of these activities will not be specifically examined in this hearing as they have been sufficiently dealt with in other forums by the Royal Commission. These include:

a. out-of-home care;

b. criminal justice;

c. juvenile justice;

d. state schools;

e. health;

f. disability;

g. complaints handling;

h. record keeping; and

i. information sharing.
Out-of-Home Care

5. Since the Royal Commission’s commencement, it has carried out substantial work relating to out-of-home care.

6. State and territory governments are responsible for funding, managing and overseeing out-of-home care placements, which are often the result of orders being made by a children’s court which transfer responsibility for the child from parents to the Minister or departmental head.

7. The Royal Commission’s work in relation to historical and contemporary out-of-home care has included private sessions, public hearings, research and public consultations.

8. As at 31 December 2016, over 2,200 people attending a private session have reported suffering child sexual abuse in out-of-home care.

9. That is about 40 percent of all those attending a private session. Two in five of these people reported about a government run out-of-home care institution.

10. The Royal Commission is empowered under section 6P of the Royal Commissions Act 1902 (Cth) to refer information that relates or may relate to contravention of a law to appropriate government law
enforcement authorities. As at 31 December 2016, the Royal Commission has made such referrals in respect of 361 individuals in relation to out-of-home care.

Public Hearings

11. The Royal Commission has held twelve public hearings which examined child sexual abuse in out-of-home care institutions, including orphanages and children’s homes run by or oversighted by Commonwealth, state and territory governments and those run by faith based organisations.

12. In most of these public hearings, the Royal Commission heard from a senior representative of the relevant Commonwealth, state or territory government. Generally, this representative provided evidence of the historic circumstances in which the abuse took place and evidence as to the current practices within the relevant jurisdiction.

13. In Case Study 24, the Royal Commission examined in detail the current policies and practices of agencies which provide out-of-home care. The primary purpose of the hearing was to understand how providers of out-of-home care seek to protect children from sexual abuse and how they respond when allegations of sexual abuse are raised.
14. In that Case Study, the Royal Commission heard from a variety of witnesses, including care givers and representatives of government oversight and monitoring bodies, such as the Children’s Guardians, Children’s Commissioners and Ombudsmen. Evidence was also provided by representatives of organisations that provide advocacy, support and therapeutic services to children in out-of-home care.

Public Consultations


16. Sixty three submissions were received from a variety of government, religious and community organisations as well as from academics and individuals.

17. On 16 April 2014, the Royal Commission held a roundtable which dealt with issues arising from Issues Paper 4. The roundtable had 21 participants and provided government and non-government representatives, advocacy groups, policy makers, academics and regulators with an opportunity to discuss key policy issues in out-of-home care.
18. In March 2016, the Royal Commission released a Consultation Paper entitled, *Institutional Responses to Child Sexual Abuse in Out-of-Home Care*, which focussed particularly upon issues which had emerged during the public hearing into Case Study 24.

19. A key focus of the Consultation Paper was the concern that inconsistencies between the states and territories out-of-home care systems may mean that children receive differing levels of protection, care and support depending on their circumstances and geographical location. One of the issues considered in this respect was the poor state of knowledge and data nationally in relation to the current incidence of child sexual abuse in out-of-home care. These data deficiencies will be specifically examined in this public hearing.

20. Other issues included screening and assessment of carers; harmful sexual behaviours by children in out-of-home care; and improving support for carers and children.

21. The Royal Commission received 57 submissions to the Consultation paper. Much of the information received will inform the out-of-home care volume of the Royal Commission’s final report.

*Research*
22. In addition to private sessions, public hearings, roundtables and public consultations, the Royal Commission has undertaken and commissioned research in relation to out-of-home care, covering topics such as:

a. a history of institutional care in Australia, including the role of government in the establishment of institutions for children;

b. a paper detailing Australian Government and Senate inquiries into institutions caring for children;

c. reviews on evaluations of out-of-home care practice and pre-employment screening practices for child related work that aim to prevent child sexual abuse; and

d. the continuing risk of child sexual abuse for young people in residential care.

23. The governments of the Commonwealth, states and territories have each addressed out-of-home care in their respective jurisdictions in the responses provided to the Royal Commission’s requests for information for this hearing. Those responses will be tendered into evidence in this public hearing.

Criminal Justice
24. The Royal Commission has undertaken extensive work on criminal justice responses to child sexual abuse. In addition to the criminal justice issues that have arisen in a number of public hearings examining particular institutions, two public hearings have been held to specifically to examine criminal justice responses.

25. The Royal Commission held 12 public and private roundtables with invited participants to discuss key issues in relation to criminal justice. All governments were involved in at least some of these roundtables, including through their police, prosecution and corrective services agencies.

26. The Royal Commission has also had a number of research projects focusing on criminal justice issues. Governments and government agencies have contributed to a number of those projects, including by providing information and data under notices to produce issued to them.

27. In September 2016, the Royal Commission published a Consultation Paper on Criminal Justice. The submissions received were the focus of Case Study 46.

**Juvenile Justice**
28. The Royal Commission has also examined the responses of a range of institutions where children have been sexually abused in juvenile detention environments.

29. As at 31 December 2016, attendees at 361 private sessions reported sexual abuse as children in juvenile justice institutions. This is 6% of all reports given at private sessions. As at the same date, the Royal Commission has made 95 referrals to police as a result of these private sessions.

Public hearings

30. Public hearings have been held into institutions such as Parramatta Girls, which was originally a reformatory; Bethcar Children’s Home, which was founded after a Local Magistrate started to commit some of the children that came before him to the care of a local family; and St Joseph’s Orphanage in Neerkol, whose residents were mostly “state wards” admitted under state government authority by either care or care and control orders.

31. The Royal Commission also considered juvenile detention in Case Study 30, which inquired into the Turana Youth Training Centre, the Winlaton Youth Training Centre, and the Baltara Reception Centre. These detention centres were state-run institutions in Victoria which held children removed from parental care.
**Inmate engagement**

32. As part of the Royal Commission’s inmate engagement strategy, Commissioners have met with a number of survivors in adult correctional centres across Australia who shared stories of their sexual abuse as children in juvenile justice centres.

**Consultations with Juvenile Justice Centres**

33. During October and November 2016, Commissioners attended juvenile justice centres in New South Wales, Western Australia and Queensland. They met with children and young people who had been detained as well as other staff and volunteers who worked at each centre, including welfare officers, medical staff, social workers and psychologists. The Commissioners and staff at the centres spoke about matters relating to children’s safety, children’s participation and empowerment, complaints handling, equity and diversity and advocacy and support.

**State Schools**

34. As at 31 December 2016, 463 private session attendees reported child sexual abuse at over 400 separate state run educational institutions. It is clear from this statistic that most of the government run institutions which were reported, were the subject of only one or
two allegations. These reports account for 8% of all reports given at private sessions.

35. As at the same date, the Royal Commission had made 140 referrals to police as a result of these private sessions.

Public hearing

36. In Case Study 45, the Royal Commission heard evidence regarding a number of allegations of child sexual abuse which occurred at private and public schools.

37. The treatment of problematic or harmful sexual behaviours in children, including the best practice school responses was the subject of evidence as was how to create child safe boarding environments for Aboriginal and Torres Strait Islander students.

38. During the second part of Case Study 45, the responses of a number of schools, including three public primary schools, to contemporary instances involving children with harmful sexual behaviours were examined.

39. There was a particular need for sensitivity in this case study, as not only were all of the students affected by the problematic or harmful behaviour vulnerable, but most were still minors and some were still
students at the relevant school. Accordingly, the schools were not named to avoid the risk of identifying the children.

Roundtable

40. In November 2015, the Royal Commission held a roundtable which brought together a number of parties with expertise in child protection in an educational setting. The roundtable examined three broad topics being:

a. making schools child safe;

b. regulation; and

c. oversight and accountability.

Issues Paper

41. In 2015, the Royal Commission released an Issues Paper entitled *Risk of Child Sexual Abuse in Schools* and sought submissions from interested parties, including the governments of the Commonwealth, states and territories, on a number of child protection topics.

Health

42. The Royal Commission has also examined institutional responses to child sexual abuse committed in health settings. As at 31 December last year, 165 attendees at a private session reported
child sexual abuse in a health setting. Two thirds of these reports concerned a public health setting. Overall, 2% of reports to a private session related to a public health setting.

43. As at the same date, the Royal Commission had made 95 referrals to police as a result of these private sessions.

Public hearing

44. In Case Study 27, the Royal Commission inquired into child sexual abuse in the context of medical consultations and the responses by regulatory agencies which investigate complaints against registered medical practitioners.

45. The States of New South Wales and Victoria have informed the Royal Commission of steps taken in their jurisdictions in response to the issues raised and findings made in Case Study 27. That information will be tendered in evidence in this hearing.

Disability

Public Hearing

46. The first stage of the public hearing in Case Study 41 was concerned with the responses of three disability service providers to allegations of sexual abuse of children within their care. The Royal
Commission heard evidence of the experiences of survivors with disability, and from their parents and carers.

47. The hearing took place at a time when the Australian Government was implementing the National Disability Insurance Scheme. A key purpose of the public hearing was to examine the safeguarding of children within the structure of the Scheme.

48. The NDIS National Quality and Safeguarding Framework was established by the Council of Australian Governments on 3 February 2017. It includes a national registrar to ensure service provider quality assurance. A NDIS complaints commissioner has been established under the Framework.

**Roundtable**

49. The Royal Commission also held a roundtable in relation to sexual abuse of children with disabilities in September 2015. That roundtable brought together stakeholders to assist the Royal Commission to understand issues of concern for children with disabilities who were victims and survivors of child sexual abuse in institutions. Discussion focussed on the NDIS and other themes such as the prevention of abuse, community awareness, child safe organisations, criminal justice and regulation and oversight.
Research papers

50. The Royal Commission has commissioned three research reports which have highlighted the issue of safeguarding children with disability from institutional sexual abuse. The first was published in February 2016: *Feeling Safe, Being Safe: What is important to children and young people with disability and high support needs about safety in institutional settings?* The second was published in July 2016: *Service and Support Needs of Specific Population Groups that have Experienced Child Sexual Abuse*. The third was published in November 2016: *Disability and Child Sexual Abuse in Institutional Contexts*.

Complaints handling frameworks

51. On 21 March 2016, the Royal Commission published a Consultation Paper entitled *Best Practice Principles in Responding to Complaints of Child Sexual Abuse in Institutional Contexts*. Submissions were invited on issues such as possible best practice principles and what should be included in an institution’s complaints handling policy.

52. Thirty nine submissions were received from governments, institutions, survivor advocacy and support groups, religious
institutions, disability peak bodies, academics and other interested
parties.

53. Drawing upon the case studies, private sessions, submissions and
available research, the Royal Commission identified six best
practice principles in the Consultation Paper that should underpin
an institution’s response to complaints of child sexual abuse.

54. These matters will be considered in the Royal Commission’s final
report.

Recordkeeping

55. The Royal Commission has identified that poor recordkeeping is a
systemic issue which affects the response of many institutions to
allegations and instances of child sexual abuse. Poor record keeping
has been a feature of almost all of the case studies examined by the
Royal Commission in public hearings.

Roundtable

56. In June 2015 the Royal Commission held a roundtable to further
understand and identify current issues around and limitations of
institutions’ recordkeeping practices. The roundtable focused
specifically on survivors’ needs, and the challenges they face in
relation to their records, and the recordkeeping obligations and
practices of institutions, including the limitations of those practices, and any barriers to implementing better practices.

**Consultation Paper**

57. On 2 September 2016 the Royal Commission released a consultation paper, *Records and Recordkeeping Practices* in which five key principles were proposed to help institutions implement comprehensive record management systems, promote child safety and institutional accountability.

58. The Royal Commission received over 40 submissions, including from the governments of the Commonwealth and various states and territories.

**Information sharing**

59. In its case studies, the Royal Commission has heard of many examples where relevant information was not shared, or was not shared in a timely and effective manner.

**Research**

60. In May 2016, the Royal Commission published a research report it commissioned: *A Study into the Legislative – and Related Key Policy and Operational – Frameworks for Sharing Information Relating to Child Sexual Abuse in Institutional Contexts*. This report
highlights the tension between the rights of children to protection from sexual abuse and the right to privacy for individuals and the complexities and differences between the laws of the different jurisdictions.

61. The report concluded that many of these problems may be addressed by the adoption of a consistent set of privacy principles.

Discussion Paper

62. The Royal Commission published a discussion paper in December 2016 on some of its key proposed reforms in information sharing. It has been distributed to targeted stakeholders including state, territory and Commonwealth governments.

Structure of this next part of the hearing

63. Over the next three days, six panels of witnesses will be convened to give evidence in relation to the following six topics:

a. first, the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse, which the Commonwealth announced on 4 November 2016;

b. secondly, the recommendations concerning civil litigation made by the Royal Commission in its report on Redress and Civil Litigation which was published in September 2015;
c. thirdly, the recommendations made by the Royal Commission in its August 2015 report on *Working with Children Checks*;

d. fourthly, the question of a nationally consistent reportable conduct schemes and mandatory reporting requirements;

e. fifthly, the question of a nationally consistent approach to data collection in relation to child sexual abuse in out-of-home care; and

f. finally, the question of nationally consistent approaches to child safe standards.

**Redress**

64. The Royal Commission’s report on redress and civil litigation was released on 14 September 2015.

65. The Royal Commission recommended that in order to provide redress under the most effective structure for ensuring justice for survivors, the Australian Government should establish a single national redress scheme.

66. It was further recommended that, should it be willing to establish a single national redress scheme, the Australian Government should establish a national redress advisory council to advise all participating
governments on the establishment and operation of the redress scheme.

67. In May 2016 the Commonwealth established the Redress Taskforce to consider the Royal Commission’s recommendations.

68. On 4 November 2016, the Minister for Social Services, Christian Porter, announced the establishment of a Commonwealth Redress Scheme. In that announcement Minister Porter said that ‘any state, any territory, any church, any charity, who has responsibility in this area will be able to opt-in to the scheme’. Institutions would opt-in on the basis that they fund the cost of their own eligible redress claims.

69. Whether each of the states and territories intend to opt into the scheme is expected to be the subject of evidence in this hearing.

**Civil Litigation**

70. The recommendations made by the Commissioners in relation to civil litigation focused on four topics: limitation periods, the duty of institutions, identifying a proper defendant and model litigant principles for managing litigation concerning civil claims for institutional child sexual abuse.

71. Limitation periods are the time limits within which legal proceedings must be commenced.
72. The Royal Commission recommended that state and territory governments introduce legislation to remove any limitation period applying to a claim of damages brought by a person where that claim is founded on the personal injury of a person resulting from the sexual abuse of the person in an institutional context when the person is or was a child.

73. The Royal Commission recommended that state and territory governments introduce legislation imposing a non-delegable duty on certain institutions for institutional child sexual abuse. The recommendations specified the classes of institutions to which the duty should apply and to whom the duty should be owed.

74. A further recommendation was that irrespective of the imposition of a non-delegable duty, state and territory governments introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. This ‘reverse onus’ should be imposed on all institutions.

75. The Commissioners have heard on many occasions that survivors have had difficulties in identifying a proper defendant to sue because of the structure of a religious body. These difficulties arise whenever an institution holds its assets in a manner that makes them
unavailable in a civil action. For example, where a religious body holds its assets in a trust.

76. The Royal Commission recommended that state and territory governments introduce legislation with the effect that funds be made available if the proper defendant has insufficient assets to meet any liability arising from the proceedings.

77. The Royal Commission also recommended that all governments consider imposing, on any unincorporated bodies they fund to provide children's services, a requirement for them to maintain insurance that covers their liability in respect of child sexual abuse claims.

78. Australian courts recognise that governments are expected to act as model litigants during the conduct of litigation. The Commonwealth and most states and territories have adopted written model litigant policies.

79. The Commissioners reported that they considered that these model litigant rules are unlikely to sufficiently recognise the particular features of claims in relation to child sexual abuse in an institutional context.
80. It was recommended that government and non-government institutions that receive, or expect to receive claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse. These guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims. The Royal Commission recommended that the guidelines include an obligation on the institution to assist claimants and their legal representatives to identify the proper defendant.

**Working with Children Checks**

81. Working with Children Checks aim to prevent people from working or volunteering with children if records indicate that they may pose an unacceptable level of risk to children.

82. Pre-employment screening of this type commenced in Australia in the year 2000 in New South Wales. Since then, every jurisdiction has established some form of Working with Children Checks scheme.

83. In its report, the Royal Commission identified a number of weaknesses with the current approaches: each of the eight Working with Children Checks schemes operates independently of the others; the schemes are inconsistent, complex and there is unnecessary duplication across the schemes; the schemes are not integrated; and
there is inadequate information sharing and monitoring of Working with Children Checks cardholders.

84. In the Working with Children Checks report the Commissioners stated that:

“these problems are not new and have been recognised by governments for some time. We believe that the absence of any action to fix these problems is a significant and inexcusable failure on the part of governments.”

85. The Royal Commission recommended a national model for Working with Children Checks, by introducing consistent standards that would apply in all jurisdictions, and establishing a centralised Working with Children Checks database to facilitate information sharing across state and territory borders.

86. The Royal Commission made a number of recommendations to be implemented within 12 months of the publication of its report, including that state and territory governments amend their respective Working with Children Checks laws to incorporate the recommended standards.

87. The evidence is expected to be that, at present, each Australian state and territory retains its own Working with Children Checks scheme and that no centralised database exists.
88. It is expected that the representatives of the Commonwealth, states and territories will give evidence as to the current status of the Working with Children Checks standards and national database.

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