



ASSOCIATION OF HEADS OF INDEPENDENT SCHOOLS OF AUSTRALIA

27 February 2015

The Hon. Justice Peter McClellan AM
Chair
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

Emailed to: redress@childabuseroyalcommission.gov.au

Dear Justice McClellan,

Consultation Paper on Redress and Civil Litigation

The Association of Heads of Independent Schools of Australia (AHISA) acknowledges the work of the Royal Commission in delivering justice and healing to survivors of sexual abuse and in preparing the way for improved policies and practices for regulators and institutions.

In particular, AHISA commends the work of the Royal Commission in researching and drawing together evidence of best practice in creating child safe environments.

Principles and guidelines

As a professional association of Heads of independent schools, AHISA is very interested in the material in the Commission's Consultation Paper that supports excellence in school leadership. The harm and abuse of children should not be tolerated, and all school leaders aspire to create safe schools.

We have already noted and shared with our members those portions of the Consultation Paper that set out principles and guidelines useful for schools to consider in reviewing their policies, procedures and codes of conduct in relation to child safety and protection. As schools and their leaders may be required to address past cases of abuse, we have also circulated those recommendations relating to apologies and the conduct of meetings with survivors.

We are also interested in the Royal Commission's projects that promise to improve practices relating to the creation of child safe environments and the prevention of sexual abuse, including research on:

- Child focused sexual abuse prevention programs
- Identification of promising practice for child safe organisations
- Pre-employment screening
- Identification and reporting of child sexual abuse
- Responses to the specific impacts of institutional child sexual abuse
- Points of best practice in mandatory reporting.

COLLEGIAL SUPPORT FOR EXCELLENCE IN SCHOOL LEADERSHIP

About AHISA

The primary object of AHISA is to optimise the opportunity for the education and welfare of Australia's young people through the maintenance of collegiality and high standards of professional practice and conduct amongst its members.

The membership of AHISA Ltd comprises principals of 420 independent schools with a collective enrolment of some 426,000 students, representing 11.7 per cent of total Australian school enrolments and 20 per cent of Australia's total Year 12 enrolment. One in every five Australian Year 12 students has gained part of their education at an AHISA member's school.

Almost a third of AHISA members lead schools with boarding facilities, collectively providing for over 15,000 boarding students. Some 85 per cent of members' schools have an early learning centre.

AHISA's members lead a collective workforce of 36,460 teachers and 17,870 support staff.

Direct personal response

Where there are past cases of sexual abuse in schools, it is often the Head who leads the school's direct personal response to survivors. This is particularly the case in independent schools where Heads have autonomous authority delegated by a school board or council and where the school itself has no systemic affiliation. In most independent schools, there is no system executive or government minister whom survivors might identify as significantly more senior or having greater authority than the Head or Chair of the school board or council. Most often in independent schools, it is the Head who is the public face of the school and who wields authority on behalf of the school board or council.

The Royal Commission states in its Consultation Paper that the 'direct personal response from the institution can be a very important step in providing redress for a survivor' (page 80). AHISA notes and supports the Royal Commission's principles for an effective direct personal response:

- Re-engagement between a survivor and institution should only occur if, and to the extent that, a survivor desires it
- Institutions should make clear what they are willing to offer and provide by way of direct personal response and they should ensure that they are able to provide what they offer
- At a minimum, all institutions should offer and provide on request by a survivor an apology; an opportunity to meet with a senior representative of the institution; and an assurance as to steps taken to protect against further abuse
- In offering direct personal response, institutions should try to be responsive to survivors' needs
- Direct personal response should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors

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- Institutions should welcome feedback from survivors about the direct personal response they offer and provide.

In its Interim Report, Volume 1, the Royal Commission notes that in handling a report of sexual abuse a school should 'ensure that the best interests of the known affected child, and other children potentially at risk, take priority over any perceived threat to the reputation of the institution or associated individuals' (page 65). AHISA supports this principle as it applies to current and former students, that is, AHISA believes this principle should also apply in responding to survivors.

In particular, AHISA notes the principle that direct personal response should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors. The Consultation Paper makes clear that insensitive handling of direct contact by survivors risks adding to their hurt. Given that in independent schools it is Heads who are likely to lead a direct personal response should their school discover past cases of abuse, AHISA is currently investigating ways it may support its members to access relevant information about the nature and impact of child sexual abuse and the needs of survivors, as well as best practice conduct of a direct personal response.

Gaining specialist knowledge to lead a direct personal response in the case of sexual abuse of past students is not a general expectation of school leaders. The opportunity for training may also come only after a survivor has made initial contact. AHISA believes it is important for information, including principles, guidelines and examples, to be collated in a publicly available online manual accessible anytime, anywhere. AHISA would assist the Commission in promoting such a document to its members and create a permanent link in its own online 'knowledge bank' for members. Similarly, AHISA members would value an easily accessible document setting out information on and best practice strategies for the prevention of sexual abuse.

Civil litigation

The majority of AHISA members lead schools with a religious affiliation; Heads therefore must exercise spiritual leadership as well as educational leadership. Even in schools without a religious affiliation, it is incumbent upon successful school leaders to personally adhere to, promote and practise the values their schools wish to impart to students. At the same time, Heads are responsible for the school's financial wellbeing, which is directly linked to the quality of educational provision for present and future students.

Independent schools receive only partial funding from governments; it is individual families who must cover, through fees, a significant portion of the school's recurrent costs and almost all of its capital costs. Most independent schools fund capital development through borrowings, the cost of which is reflected in the school's fees. The fiduciary obligations of schools therefore also demand absolute integrity and moral engagement on the part of school leaders.

There can sometimes be a tension between human values and institutional values, which leaders must resolve. For example, a school may be advised to avoid or limit its apology to a survivor on the grounds an apology could be deemed an admission of legal liability, or the school might be advised to adopt a defence based on limitation periods. This tension is evident in Section 10 of the Consultation Paper, where the Royal Commission discusses evidence given to it by defendants in civil cases and their lawyers, who indicated that litigation ‘should have been handled differently’ (page 229).

Changes in community attitudes and a better understanding of the trauma of sexual abuse are making it increasingly easier for human and spiritual values to prevail in responses to survivors of sexual abuse and in child protection more generally. However, AHISA agrees that institutions that receive civil claims for institutional child sexual abuse may benefit ‘from adopting more specific guidelines for responding to claims for compensation in relation to allegations of child sexual abuse’ (page 232), for the reasons identified by the Royal Commission:

Such guidelines would be of assistance to institutions in instructing their external lawyers on the approach they wish to take to these claims and the principles that they wish their external legal advice to be based on. They could assist both institutions and their lawyers in avoiding unnecessarily adversarial approaches in favour of more cooperative and effective approaches.

The Royal Commission notes that it may not be possible for non-government institutions to adopt model litigant principles. It is possible, however, that an outcome of the Royal Commission will be a more visible community standard in the treatment of survivors, that will help guide both law makers and institutions brought to account under the law.

Safe schools

AHISA members support and enact the guiding principles of the National Safe Schools Framework, that Australian schools:

- Affirm the rights of all members of the school community to feel safe and be safe at school
- Acknowledge that being safe and supported at school is essential for student wellbeing and effective learning
- Accept responsibility for developing and sustaining safe and supportive learning and teaching communities that also fulfil the school’s child protection responsibilities
- Encourage the active participation of all school community members in developing and maintaining a safe school community where diversity is valued
- Actively support young people to develop understanding and skills to keep themselves and others safe
- Commit to developing a safe school community through a whole-school and evidence-based approach.



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AHISA recognises that its members, as leaders of school communities, have unique responsibilities and opportunities to promote the welfare and protection of the children in their care. We would hope to assist the work of the Royal Commission by promoting among our members outcomes of the Commission's research into best practice in child safety and protection and in leadership of direct responses from schools where past students have suffered sexual abuse.

AHISA would welcome further inquiry on any of the above comments.

Yours sincerely,

Phillip Heath

AHISA National Chair 2013-15
Head of Barker College, Hornsby, NSW

Further inquiries may be addressed to AHISA's Chief Executive, Geoff Ryan, telephone (02) 6247 7300; email ceo@ahisa.edu.au.