

## **ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**

### ***CASE STUDY 17: THE RETTA DIXON HOME***

#### **SUBMISSION (# 4) ON BEHALF OF REVEREND TREVOR LEGGOTT, GENERAL DIRECTOR OF AIM (AUSTRALIAN INDIGENOUS MINISTRIES PTY LTD) REGARDING CONSULTATION PAPER RELEASED BY ROYAL COMMISSION IN JANUARY 2015 IN RELATION TO REDRESS AND CIVIL LITIGATION**

1. The consultation paper released by the Royal Commission regarding the topic specified above has been carefully perused.
2. AIM supports, both in principle and in practice, the establishment and implementation of a National Redress scheme to attend to the matter of compensation for victims of sexual abuse sustained in institutions that are the subject of this Royal Commission. It is submitted that a National Redress Scheme should, if implemented, be led by the Commonwealth government. It is further submitted that in terms of the structure of any such scheme, the Commonwealth government should have regard to such schemes that are already in existence in Ireland, Canada and Tasmania. Further, it is submitted that a Board should be established to administer the scheme, consider claims and award monetary compensation.<sup>1</sup> In addition, the Board in determining claims must be satisfied that there was a "reasonable likelihood" that the abuse occurred. Moreover, the Board must have regard to whether legal redress has been or is being pursued by victims and must take that into account in assessing the appropriate redress for any victims of abuse. AIM submits that the processes established in assessing any such claims ought to be non-adversarial and informal.
3. Reverend Leggott, on behalf of AIM, submits, in principle, that a National Redress scheme, if established, should be implemented in consultation with all State and Territory governments throughout Australia.
4. It is submitted that in relation to Case Study 17, there is a particular reason for the Commonwealth government to be involved in a Redress scheme given that the overall policy that governed the transfer of the victims to Retta Dixon Home (up until July 1978) was that of the Commonwealth government. Moreover, the Commonwealth government accepted at the Royal Commission hearing into Case study 17 that it was the guardian of the children at Retta Dixon Home<sup>2</sup> and that it had a

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<sup>1</sup> See page 55 of Royal Commission Consultation paper (January 2015). This refers, inter alia to the recommendations of a 2004 Senate Community Affairs Reference committee.

<sup>2</sup>Up until July 1978, which was when self-government was achieved by the Northern Territory

general responsibility to all children in the home, including, in particular for their care, welfare, education and advancement (until self government in July 1978).<sup>3</sup>

5. In relation, relevantly, to Case study 17, a National Redress Scheme, if implemented, should be the subject, inter alia, of consultation with the government of the Northern Territory and AIM both in regard to the legislative structure of any such scheme and the means by which its objectives ought to be achieved. It is noted that a Northern Territory Statutory compensation scheme already exists for the victims of crime<sup>4</sup>, and that, subject to the two year time limit being overcome, such a scheme could potentially deal, at least in part, with the provision of financial compensation for the victims of Retta Dixon Home. It is submitted that given the existence of this scheme alone, that Commonwealth-NT government consultation in this regard, is imperative.
6. It is submitted that given the relatively small and restricted<sup>5</sup> financial resources of AIM that it is significantly curtailed for reasons that have been enunciated in previous submissions to the Royal Commission, both in writing and orally, in its ability to deliver financial redress. Nevertheless, it has said that it will do so and has specified the means of so doing.<sup>6</sup> However, it is submitted that the Commonwealth and Northern Territory governments would be in a position to easily accommodate and deal with any further financial redress, if it was required.
7. As regards Counselling for victims this is accommodated in the NT Government existing services<sup>7</sup> and has been dealt with in previous submissions on behalf of Reverend Leggott and in the National Apology issued by him<sup>8</sup>.
8. It is submitted that all civil litigation, and in particular, a proposed class action against any institution or institutions and any individual arising out of Case Study 17 should be deferred pending the delivery of the findings of this Royal Commission into Case Study 17 and, in addition, the recommendations of the Royal Commission regarding the question of

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<sup>3</sup> Transcript of Royal Commission hearing re Case Study 17: p C4994.

<sup>4</sup> See Statement of Greg Shanahan (STAT.0337.001.0001), Chief Executive, Department of Attorney-General and Justice, paragraphs 12-25

<sup>5</sup> It has also previously been noted by AIM that a substantial number of AIM's real estate assets are subject to conditions that place significant restrictions upon sale.

<sup>6</sup> See written submission (paragraphs 1-7) of Mark Thomas, Counsel for Reverend Leggott, dated 30 November 2014. (SUBM.1017.004.0023)

<sup>7</sup> See Mr Shanahan's statement, op cit, paragraphs 26-32

<sup>8</sup> see written submission by Mark Thomas, counsel for Rev Leggott, dated 12 November 2014, paragraph 53; also National Apology issued by Reverend Leggott on behalf of AIM (STAT.0330.003.0011)

whether a National Redress Scheme is to be implemented, and if so, how this is to occur. It is submitted that it is in the long term interests of the victims of Retta Dixon Home, AIM and both the Commonwealth and NT governments that these matters be resolved expeditiously, and that any civil litigation, if it is to be implemented at this point, (that is, prior to the findings specified above), will be counter-productive. It is submitted that any civil litigation at this point may well be prolonged and costly (as discussed in the Civil Litigation section of the Consultation Paper)<sup>9</sup> and also offers, because of the ambiguities and uncertainties in the law in this area<sup>10</sup>, (in particular, the legal bases for institutional liability) no guarantee of success to those on whose behalf the litigation was initiated. It is noted, in particular, that the law in relation to vicarious liability and non-delegable liability of an institution, is, in relation to matters of this type, due to, inter alia, the High Court decision in *New South Wales v Lepore*<sup>11</sup> particularly uncertain. Hence, AIM submits that a Commonwealth led Redress Scheme is, practically, the prudent way to approach Redress in relation to the victims of Case Study 17.

9. It should be emphasised, finally, that AIM remains earnestly concerned in the outcomes and recommendations of this Royal Commission, both generally and in relation, specifically, to Case Study 17. To this end Reverend Leggott on behalf of AIM states that AIM remains keen to take part in any and all consultative processes that bear upon the question of the nature of Redress, both generally and in relation, in particular, to Case Study 17.

Mark Thomas

Barrister  
John Toohey Chambers  
Darwin  
Counsel for the Reverend Trevor Leggott

Signed

Dated 9 March 2015.

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<sup>9</sup> See page 196-231 of the Consultation Paper

<sup>10</sup> See page 207-224 of the Consultation Paper

<sup>11</sup> (2003) 212 CLR 511