

Ms Kate Conners
NSW Department of Justice
Acting Deputy Secretary
Justice Strategy and Policy
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4 September 2017

Dear Ms Conners

Thank you for the opportunity to provide input into the NSW Government's response to the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. The NSW Government is to be congratulated for undertaking this consultation and the Alliance for Forgotten Australians (AFA) would be very pleased to participate in a future roundtable on these issues.

We have provided responses to some of the questions you have posed. In summary, AFA supports the thrust of the Royal Commission's recommendations and acknowledges that the Commission has done an outstanding job in ensuring that the voices of survivors has been heard. As you have noted, our responses should be read alongside AFA's submission to the Royal Commission's Consultation on Redress and Civil Litigation, March 2015.

Please contact my Executive Officer, Boris Kaspiev, on admin@forgottenaustralians.org.au phone 0419 854 980 if you would like further information.

Yours sincerely



Caroline Carroll OAM
Chair

Responses to discussion questions.

1. What kind of abuse should be covered by civil litigation reforms?

AFA has strongly argued that all forms of abuse should be covered, notwithstanding the Royal Commission's Letters Patent. AFA's Manifesto and redress framework (attached for your reference) include the following rationale:

In an institutional setting, all forms of abuse: sexual, physical, emotional and psychological are connected. The ability to differentiate one type of abuse from another is affected by many factors. These include intellectual capacity; sexual knowledge; understanding of consent; loss of identity and sense of family; the pre-existing experiences of the child and trauma of removal from family; and the child's knowledge and understanding of their body. Into adulthood, other factors will include the ability or opportunity to participate in healing; the levels of fear that are generated and carried internally as an adult; the experience of powerlessness which, for many, may take a lifetime to overcome. Any redress scheme needs to redefine this powerlessness into a process where individual perceptions and description of abuse does not discriminate, disadvantage or ignore the reality of being a victim or survivor. An inclusive redress scheme will give survivors the choice about the degree of disclosure they are comfortable to provide.

2. Should the definition used in the Limitation Amendment (Child Abuse) Act 2016 (NSW) be adopted, or should a different definition be used?

Although the definition in this act is acceptable, AFA agrees that while a consistent definition of child abuse may be useful for policy, policy contexts differ and without underpinning principles or values, definitions may at times be problematic.

3. Should the Royal Commission's recommendations for a new non-delegable duty be adopted?

Yes.

4. If the recommendation is adopted, which organisations should be subject to a new non-delegable duty of care?

All organisations which provide services to children as well as adults, including staff, volunteers, contractors, agents, and office holders.

7. Should the Royal Commission's recommendations to reverse the onus of proof in child abuse claims be adopted?

Yes.

13. Should the Royal Commission's recommendations to extend institutional liability to 'all persons associated with an institution' be adopted?

Yes.

14. If the recommendation is adopted, should the term 'associated with' be defined in legislation of decided on a case-by-case basis?

Case-by-case basis. Legislation is less likely to keep up with contemporary policy and administrative issues.

15. Should the range of persons 'associated with' an institution capture all of those referred to in the Royal Commission's recommendations?

Yes.

17. Should the Royal Commission's 'proper defendant' recommendation be adopted?

Yes.

18. Do the difficulties in identifying a proper defendant arise in respect of non-religious organisations?

To a lesser degree, but still likely given the complexity of some business arrangements.