

6 September 2017

Mr Paul McKnight
Executive Director
Justice Strategy and Policy
Department of Justice
GPO Box 6
Sydney NSW 2001

Dear Mr McKnight

Consultation in relation to the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

Thank you for the opportunity to comment on the NSW Government consultation on the civil litigation recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Although Legal Aid NSW will not make a detailed submission in response to the Consultation Paper, we do wish to note our broad support for the Royal Commission's recommendations. We consider that if implemented, the recommendations would increase the accountability of institutions for child abuse, and address some of the barriers that abuse survivors face in bringing successful civil claims for compensation.

In response to the first preliminary issue raised in the Consultation Paper, Legal Aid NSW supports a broad definition of child abuse. As the Consultation Paper notes, different types of child abuse can result in equally severe trauma for survivors, and often occur simultaneously. Limiting the scope of the reforms to child sexual abuse may give rise to difficulties in practice, and may be perceived as unfair by some survivors and the community.

We consider the definition of child abuse in the *Limitation Amendment (Child Abuse) Act 2016* to be appropriate, as it incorporates sexual abuse, serious physical abuse, and related abuse. We also see merit in having consistency in the definition of child abuse adopted, where possible.

In response to Issue A, we note that the Royal Commission recommended that a non-delegable duty of care should be imposed on a range of organisations, including residential facilities for children. Question 4 of the Consultation Paper asks if the non-delegable duty of care should only be imposed on institutions which operate for profit. In 2016, 36 of the 41 residential care facilities in New South Wales were run by not-for-profit agencies. Generally,

Legal Aid NSW considers that the non-delegable duty of care should be imposed on all residential facilities for children, both for-profit and not-for-profit, to ensure the widest protection for children in residential care.

Should you have any queries regarding these comments please do not hesitate to contact Robyn Gilbert, Law Reform Solicitor either by email on Robyn.Gilbert@legalaid.nsw.gov.au or by phone 02 9213 5207.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Brendan Thomas', with a stylized, cursive script.

Brendan Thomas
Chief Executive Officer