

9 March 2015



The Secretariat
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
SYDNEY NSW 2001

UNIVERSITY OF
NEW SOUTH WALES
KINGSFORD
LEGAL CENTRE

By email: redress@childabuseroyalcommission.gov.au

Dear Madam/Sir,

Consultation Paper on Redress and Civil Litigation

Kingsford Legal Centre (KLC) welcomes the opportunity to respond to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Redress and Civil Litigation.

Kingsford Legal Centre

KLC is a community legal centre that has been providing legal advice and advocacy to people in need of legal assistance in the Randwick and Botany Local Government Areas since 1981. KLC provides general advice on a wide range of legal issues, including child sexual abuse, and undertakes casework for many clients who, without our assistance, would be unable to afford a lawyer.

KLC also has a specialist employment law service, a specialist discrimination law service (NSW wide) and an Aboriginal Access Program. KLC undertakes law reform and policy work in areas where the operation and effectiveness of the law could be improved.

Our clients have extensive experience in institutional care and are victims of sexual assault. We have had extensive contact with members of the Stolen Generation and acted in the Stolen Generation cases.

People who have undergone extreme trauma as a consequence of abuse during their childhood years may be least likely to engage a lawyer and pursue a civil case. The discrepancy between the number of successfully litigated matters in Australian courts, and the overwhelming response of survivors giving evidence to the Commission indicates that civil litigation has failed as a way of providing redress, rehabilitation, restitution and justice for survivors.

We believe any redress scheme established should be

Although not opposed to the establishment of

bring prosecutions, particularly in child sexual assault matters, more than 20 years after the offence. In these cases, however, the relevant legislation may arbitrarily rule out civil claims.

In light of this, KLC believes that time limits in all cases of child sexual assault should be removed across Australia. If a time limit is to remain in place, we believe that the existing exceptions regarding mental incapacity should be expanded or amended to include the impacts of sexual abuse including, trauma, shame, or fear.

Duty of institutions

Laws, including on vicarious liability, need to be reformed to prevent institutions blocking litigation and hiding their assets. In some instances, it has been difficult to commence litigation against religious and non-government institutions on the basis of vicarious liability. Such institutions may have assets held in charitable trusts and/or may be structured in such a way that it is difficult ascertain which part of the organisation should be liable.

Model litigant approaches

16: Guidelines for Government Agencies responding to Civil Claims for Child Sexual Abuse. We submit that non-Government institutions should adopt these model litigant guidelines.

There should be clear rules, guidelines and/or regulations around how settlement negotiations are conducted so as to minimise the possibility of re-traumatising the survivor.

We thank the Commission for its ongoing invaluable work and wish you every success in your future investigations.

Yours Sincerely,
KINGSFORD LEGAL CENTRE



Emma Golledge
Acting Director



Katherine Boyle
Solicitor