



27 July 2015

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

Dear Hon Justice McClellan

Allegations of child sex abuse at the Nauru Regional Processing Centre

We write to request the Royal Commission into Institutional Responses to Child Sex Abuse (Commission) to investigate the response of the Commonwealth and its Australian contractors to allegations of child sex abuse at the Nauru Regional Processing Centre (Centre).

We are aware that this issue has previously been raised with you by Senator Hanson-Young and that you informed her by letter dated 7 May 2015 of the Commission's view that 'it cannot investigate events that occur within another country'.

With respect, we consider that the Commission can and should investigate the following matters connected to allegations of child abuse at the Centre:

1. The actions of Commonwealth employees at the Centre;
2. The actions of contractors engaged by the Commonwealth at the Centre;
3. The role and responsibility of the Commonwealth for child abuse occurring within the centre; and
4. The response of the Commonwealth to reports of child abuse occurring within the Centre.

The Commission can investigate

The attached Memorandum of Advice, dated 14 July 2015 and prepared by Kristin Walker SC and Simona Gory, explains the basis for our view that the Commission has jurisdiction to investigate the matters set out at 1-4 above. In summary:

- It is settled that the *Royal Commission Act 1902* (Cth) authorises the Commonwealth to establish commissions of inquiry into extraterritorial matters, so long as the inquiry is for a purpose of government and 'is connected with the peace, order, and good government of the Commonwealth, or any public purpose or any power of the Commonwealth'. Investigating the Commonwealth's response to allegations of child sex abuse clearly falls within the scope of that power.
- The Commission's broad terms of reference (as set out in the Letters Patent) indicate that the executive intended only to limit the Commission by the specific and focused remit of 'institutional responses to child sex abuse'. The terms do not impose any additional jurisdictional limitation

beyond that imposed by legislature or the common law. Moreover, the focus on the 'institutional response' makes it clear that it is not the geographic location of child abuse which is important but the Australian institution's response to it. We therefore consider that it would be contrary to the terms of reference, when viewed in context, if the scope of the Commission's inquiry were limited to investigating the response of Australian institutions only to abuse that occurred within Australian territory.

The response of the Commonwealth to allegations of abuse at the Centre has the nexus with Australia required to bring it within the Commission's remit. This is because the Commonwealth and its Australian contractors exercise a significant degree of control over the Centre. The fact that the Government of Nauru shares some or all of the responsibility for governing and managing the Centre does not prevent the Commission from investigating the responsibility and response of the Commonwealth or its employees or contractors. For these reasons, and as explained in more detail in the attached advice, while there may be territorial limits on the Commission's coercive powers, there is otherwise no jurisdictional obstacle to the Commission investigating the Commonwealth and its Australian contractors' responsibility for, and response to, allegations of child sex abuse at the Centre.

The Commission should investigate

The Commission is the only body in Australia with the jurisdiction, power, expertise, independence and authority to sufficiently and appropriately investigate the sexual abuse of children detained on Nauru and recommend reforms that prevent future abuse.

The Commission has previously indicated that it may consider institutional responses to child abuse in immigration detention centres within Australia. The response of Australian institutions to alleged child abuse in the Centre is arguably more appropriate for investigation by the Commission, particularly given:

- As a result of Australian law and policy, since August 2012 children have been being sent to immigration detention on Nauru while their refugee claims are processed. By August 2014 there were 222 children detained on Nauru after being sent there by Australia. Over 80 children remain in detention on Nauru, many for prolonged periods;
- Australian law and policy continues to require any child arriving in Australia by boat without authority to be removed to Nauru as soon as reasonably practicable;
- The Commonwealth funds and effectively controls the immigration detention centre on Nauru;
- There have been numerous reports of child sexual abuse perpetrated by staff and other detainees at the Nauru immigration detention centre.
- The location of the centre in Nauru means much of the scrutiny and oversight on Australian detention environments is not applied to the Centre;
- Worse, there is significant evidence of Australian laws, policies and practices that restrict scrutiny and oversight that might otherwise prevent institutional child abuse on Nauru; and
- The alleged child abuse is ongoing.

While the Commission is limited by its terms from inquiring into 'a particular matter to the extent that [the Commissioners] are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation', there is no other inquiry or investigation that has or will sufficiently and appropriately deal with this issue. We attach a Schedule setting out some key limitations of related investigations which are either underway or have been completed.

The Commission is performing vital work to identify and recommend changes to laws, policies, practices and systems to better prevent and respond to institutional child sexual abuse. Through its investigations, the Commission has developed extraordinary expertise and understanding of this issue, including, but not limited to, the extent to which child abuse is capable of sustained perpetration when secrecy and a lack of transparency exists at the early stage of allegations of abuse occurring. In the current context, the Centre has now been operating for three years. In light of existing policy by the current Federal Government, supported by the Opposition, the Centre is likely to continue to operate for an extended period of time. We urge the Commission to conduct the open and transparent investigations required in order to generate recommendations vital, lasting changes to prevent future child sexual abuse.

If the Commission fails to investigate this issue, it will leave a substantial gap in the framework for the protection of children and in the Commission's fulfilment of its comprehensive terms and purpose.

We would welcome the opportunity to meet with the Commission to discuss any aspect of this letter or the attached legal advice.

Yours sincerely

Hugh de Kretser
Executive Director
Human Rights Law Centre
Tel: 03 8636 4420

Marc Purcell
Executive Director
Australian Council for
International Development
Tel: 02 6281 1816

Dr Cassandra Goldie
CEO
Australian Council of Social
Service
Tel: 02 9310 6200

CC:

- Justice Jennifer Coate
- Commissioner Bob Akkinson AO APM
- Commissioner Robert Fitzgerald AM
- Commissioner Helen Milroy
- Commissioner Andrew Murray

About us

The Human Rights Law Centre (HRLC) protects and promotes human rights in Australia and in Australian activities overseas through an integrated, strategic combination of legal action, advocacy, research and capacity building. The HRLC is an independent, not-for-profit, non-government organisation.

The Australian Council for International Development (ACFID) unites Australia's non-government aid and international development organisations to strengthen their collective impact against poverty. Founded in 1965, ACFID currently has 133 members and 13 affiliates operating in more than 100 developing countries.

The Australian Council of Social Service (ACOSS) is the peak body of the community services and welfare sector and the national voice for the needs of people affected by poverty and inequality. Its vision is for a fair, inclusive and sustainable Australia where all individuals and communities can participate in and benefit from social and economic life.