

**PRIME MINISTER**  
**ATTORNEY-GENERAL**  
**MINISTER FOR FAMILIES, COMMUNITY  
SERVICES AND INDIGENOUS AFFAIRS**

**GOVERNMENT FORMALLY ESTABLISHES ROYAL COMMISSION**

On my advice, today the Governor-General has appointed a six-member Royal Commission into Institutional Responses to Child Sexual Abuse.

Child sexual abuse is an evil crime.

Anyone who has ever suffered child abuse deserves to have their voices heard and their claims investigated.

The Royal Commission will inquire into how institutions with a responsibility for children have managed and responded to allegations and instances of child sexual abuse and related matters.

It will investigate where systems have failed to protect children, and make recommendations on how to improve laws, policies and practices to prevent and better respond to child sexual abuse in institutions.

The Commissioners can look at any private, public or non-government organisation that is, or was in the past, involved with children, including government agencies, schools, sporting clubs, orphanages, foster care, and religious organisations.

This includes where they consider an organisation caring for a child is responsible for the abuse or for not responding appropriately, regardless of where or when the abuse took place.

The Commission will not specifically examine child sexual abuse outside organisations, such as in the family. However, any recommendations made by the Commissioners are likely to improve the response to child sexual abuse wherever it happens.

The Royal Commission will be led by Justice Peter McClellan AM. Justice McClellan currently holds one of the most senior judicial positions in New South Wales judiciary as the Chief Judge at Common Law of the Supreme Court of New South Wales.

Justice McClellan has an extensive legal career – including chairing the Sydney Water Inquiry and working on the Royal Commission into British Nuclear Tests in Australia.

Given the scope, scale and seriousness of this Royal Commission, we asked the Governor-General to appoint a further five Commissioners to support the inquiry.

We have carefully selected a panel of individuals that draws together the right experience and understanding for this incredibly important task.

Bob Atkinson, the former Queensland Police Commissioner, brings over 40 years of policing experience to the Royal Commission, including 12 years as Police Commissioner.

Justice Jennifer Coate served for 20 years as a magistrate and county court judge in Victoria, including for five years as the President of the Children's Court and most recently as the Victorian Coroner. Justice Coate has also now been appointed to the Family Court of Australia.

Robert Fitzgerald has served as a Commissioner in the Productivity Commission since 2004. He also has experience in commerce, law, public policy and community services, including as Community and Disability Services Commissioner and Deputy Ombudsman in New South Wales.

Professor Helen Milroy is a consultant psychiatrist with extensive experience in child and adolescent health, including the mental health impacts of child sexual assault, and is currently Winthrop Professor and Director of the Centre for Aboriginal Medical and Dental Health at the University of Western Australia.

Former Senator for Western Australia Andrew Murray brings tremendous experience as a legislator and member of landmark Senate inquiries into children's experiences in institutional care.

We have heard from survivors and their families that they want concrete changes in a reasonable timeframe. Many survivors have already waited a long time.

All Commissioners have been appointed for a period of three years and will begin their inquiry as soon as possible. The Commission will prepare an interim report by no later than 30 June 2014, so that governments and organisations can start taking action on the Commission's early findings and recommendations.

In this interim report, the Commissioners will also identify when their final report will be completed. The final reporting date has been set initially at the end of 2015, but this will be subject to advice from Commissioners in their interim report.

Child sexual abuse is a crime, and a terrible breach of the right of every child to grow up safe and happy.

Child sexual abuse is often associated with other forms of abuse including physical abuse, exploitation and neglect.

All have long-term effects on survivors and their families. There are also costs to the economy and society as a whole.

The Government has worked closely with stakeholders, receiving input from organisations representing survivors of child abuse, community and legal leaders, law enforcement, governments and religious organisations, to develop terms of reference that balance the real and legitimate perspectives of a range of stakeholders.

The Government will also introduce legislation into the Parliament to amend the Royal Commissions Act 1902 to allow evidence to be taken by a single or multiple Commissioners rather than requiring all Commissioners to be present. This will improve the efficiency of the evidence gathering process and avoid delaying the Commission's work.

We thank every individual and organisation who has provided input into the establishment of the Royal Commission and the terms of reference. We also acknowledge those who have campaigned for many years for a full and proper investigation into child sexual abuse in Australia.

This Government will do everything it can to make sure that what happened to children in the past is never allowed to happen again, and that survivors receive the support and justice they deserve.

**SYDNEY**  
**11 JANUARY 2013**

**PRESS OFFICE (02) 6277 7744**  
**ATTORNEY-GENERAL'S OFFICE: 0409 945 476**  
**MINISTER MACKLIN'S OFFICE: 0417 066 818**

## **Attachment A**

### **Brief background on Royal Commissioners**

**Justice Peter McClellan AM** has most recently been the Chief Judge at Common Law of the Supreme Court of New South Wales. He was appointed to the position in 2005. Prior to this, he has held judicial and other appointments including Judge of the Supreme Court of New South Wales, Chief Judge of the Land and Environment Court of New South Wales, Chairman of the Sydney Water Inquiry and Assistant Commissioner at the Independent Commission Against Corruption. Justice McClellan was admitted to practice law in 1974 and appointed Queen's Counsel in 1985.

**Bob Atkinson APM** served as the Commissioner of the Queensland Police Service for 12 years from 2000 until his retirement in October 2012. In a 44 year career with the Queensland Police Service, he served throughout Queensland from Goondiwindi to Cairns. He was a detective for approximately 20 years and acted as the police prosecutor in various Magistrates Courts during this period. Commissioner Atkinson has extensive experience in change management, overseeing reforms after the Fitzgerald inquiry from 1990 and following the Public Sector Management Commission Review and Report Recommendations of the Queensland Police Service in 1993.

**Justice Jennifer Coate** has most recently been appointed a Judge of the Family Court of Australia. Prior to this, she has held a number of appointments including as Judge of the County Court of Victoria, State Coroner of Victoria, the inaugural President of the Children's Court of Victoria and Senior Magistrate and Magistrate of the Magistrate's Court of Victoria. During her time as President of the Children's Court of Victoria, Commissioner Coate oversaw the establishment of the Children's Koori Court. Commissioner Coate also has experience as a part-time Law Reform Commissioner, a solicitor in private practice, a solicitor for the Legal Aid Commission of Victoria and in policy and research for the Victorian Government.

**Robert Fitzgerald, AM** has served as a Commissioner in the Productivity Commission since 2004. In this capacity he convenes the Indigenous Disadvantage Working Group, which contributes to the biennial report on Overcoming Indigenous Disadvantage. Prior to his appointment to the Productivity Commission, Robert was the Community and Disability Services Commissioner and Deputy Ombudsman in New South Wales. Robert has a diverse background and extensive experience in commerce, law, public policy and community services, including extensive involvement in numerous not for profit agencies.

**Professor Helen Milroy** is a descendant of the Palyku people of the Pilbara region of Western Australia. She is currently a Consultant Child and Adolescent Psychiatrist and Winthrop Professor and Director for the Centre for Aboriginal

Medical and Dental Health at the University of Western Australia. Commissioner Milroy has been on state and national mental health advisory committees and boards with a particular focus on the wellbeing of children.

**Andrew Murray** is a Rhodes Scholar and former businessman who was a Senator for Western Australia from 1996 to 2008. Commissioner Murray is an advocate on issues surrounding institutionalised children and is currently a Patron of the Care Leavers Association of Australia and the Alliance for Forgotten Australians. His senate career focused on a variety of finance, economics and business issues; on accountability, governance and electoral reform; and on institutionalised children. His earlier business background includes roles as an executive and director in public and private corporations as well as owning and managing his own businesses. He has also chaired and been a member of a variety of community, business and political boards, committees and associations.



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Secretary to the Federal Executive Council

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

The Honourable Justice Peter David McClellan AM,

Mr Robert Atkinson,

The Honourable Justice Jennifer Ann Coate,

Mr Robert William Fitzgerald AM,

Dr Helen Mary Milroy, and

Mr Andrew James Marshall Murray

GREETING

WHEREAS all children deserve a safe and happy childhood.

AND Australia has undertaken international obligations to take all appropriate legislative, administrative, social and educational measures to protect children from sexual abuse and other forms of abuse, including measures for the prevention, identification, reporting, referral, investigation, treatment and follow up of incidents of child abuse.

AND all forms of child sexual abuse are a gross violation of a child's right to this protection and a crime under Australian law and may be accompanied by other unlawful or improper treatment of children, including physical assault, exploitation, deprivation and neglect.

AND child sexual abuse and other related unlawful or improper treatment of children have a long-term cost to individuals, the economy and society.

AND public and private institutions, including child-care, cultural, educational, religious, sporting and other institutions, provide important services and support for children and their families that are beneficial to children's development.

AND it is important that claims of systemic failures by institutions in relation to allegations and incidents of child sexual abuse and any related unlawful or improper treatment of children be fully explored, and that best practice is identified so that it may be followed in the future both to protect against the occurrence of child sexual abuse and to respond appropriately when any allegations and incidents of child sexual abuse occur, including holding perpetrators to account and providing justice to victims.

AND it is important that those affected by child sexual abuse can share their experiences to assist with healing and to inform the development of strategies and reforms that your inquiry will seek to identify.

AND noting that, without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual abuse and related matters outside institutional contexts, but that any recommendations you make are likely to improve the response to all forms of child sexual abuse in all contexts.

AND all Australian Governments have expressed their support for, and undertaken to cooperate with, your inquiry.

NOW THEREFORE We do, by these Our Letters Patent issued in Our name by Our Governor-General of the Commonwealth of Australia on the advice of the Federal Executive Council and under the Constitution of the Commonwealth of Australia, the *Royal Commissions Act 1902* and every other enabling power, appoint you to be a Commission of inquiry, and require and authorise you, to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters, and in particular, without limiting the scope of your inquiry, the following matters:

- (a) what institutions and governments should do to better protect children against child sexual abuse and related matters in institutional contexts in the future;
- (b) what institutions and governments should do to achieve best practice in encouraging the reporting of, and responding to reports or information about, allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- (c) what should be done to eliminate or reduce impediments that currently exist for responding appropriately to child sexual abuse and related matters in institutional contexts, including addressing failures in, and impediments to, reporting, investigating and responding to allegations and incidents of abuse;

- (d) what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services.

AND We direct you to make any recommendations arising out of your inquiry that you consider appropriate, including recommendations about any policy, legislative, administrative or structural reforms.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to have regard to the following matters:

- (e) the experience of people directly or indirectly affected by child sexual abuse and related matters in institutional contexts, and the provision of opportunities for them to share their experiences in appropriate ways while recognising that many of them will be severely traumatised or will have special support needs;
- (f) the need to focus your inquiry and recommendations on systemic issues, recognising nevertheless that you will be informed by individual cases and may need to make referrals to appropriate authorities in individual cases;
- (g) the adequacy and appropriateness of the responses by institutions, and their officials, to reports and information about allegations, incidents or risks of child sexual abuse and related matters in institutional contexts;
- (h) changes to laws, policies, practices and systems that have improved over time the ability of institutions and governments to better protect against and respond to child sexual abuse and related matters in institutional contexts.

AND We further declare that you are not required by these Our Letters Patent to inquire, or to continue to inquire, into a particular matter to the extent that you are satisfied that the matter has been, is being, or will be, sufficiently and appropriately dealt with by another inquiry or investigation or a criminal or civil proceeding.

AND, without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, We direct you, for the purposes of your inquiry and recommendations, to consider the following matters, and We authorise you to take (or refrain from taking) any action that you consider appropriate arising out of your consideration:

- (i) the need to establish mechanisms to facilitate the timely communication of information, or the furnishing of evidence, documents or things, in accordance with section 6P of the *Royal Commissions Act 1902* or any other relevant law, including, for example, for the purpose of enabling the timely investigation and prosecution of offences;
- (j) the need to establish investigation units to support your inquiry;
- (k) the need to ensure that evidence that may be received by you that identifies particular individuals as having been involved in child sexual abuse or related matters is dealt with in a way that does not prejudice current or future criminal or civil proceedings or other contemporaneous inquiries;
- (l) the need to establish appropriate arrangements in relation to current and previous inquiries, in Australia and elsewhere, for evidence and information to be shared with you in ways consistent with relevant obligations so that the work of those inquiries, including, with any necessary consents, the testimony of witnesses, can be taken into account by you in a way that avoids unnecessary duplication, improves efficiency and avoids unnecessary trauma to witnesses;
- (m) the need to ensure that institutions and other parties are given a sufficient opportunity to respond to requests and requirements for information, documents and things, including, for example, having regard to any need to obtain archived material.

AND We appoint you, the Honourable Justice Peter David McClellan AM, to be the Chair of the Commission.

AND We declare that you are a relevant Commission for the purposes of sections 4 and 5 of the *Royal Commissions Act 1902*.

AND We declare that you are authorised to conduct your inquiry into any matter under these Our Letters Patent in combination with any inquiry into the same matter, or a matter related to that matter, that you are directed or authorised to conduct by any Commission, or under any order or appointment, made by any of Our Governors of the States or by the Government of any of Our Territories.

AND We declare that in these Our Letters Patent:

***child*** means a child within the meaning of the Convention on the Rights of the Child of 20 November 1989.

***government*** means the Government of the Commonwealth or of a State or Territory, and includes any non-government institution that undertakes, or has undertaken, activities on behalf of a government.

***institution*** means any public or private body, agency, association, club, institution, organisation or other entity or group of entities of any kind (whether incorporated or unincorporated), and however described, and:

- (i) includes, for example, an entity or group of entities (including an entity or group of entities that no longer exists) that provides, or has at any time provided, activities, facilities, programs or services of any kind that provide the means through which adults have contact with children, including through their families; and
- (ii) does not include the family.

***institutional context***: child sexual abuse happens in an ***institutional context*** if, for example:

- (i) it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or
- (ii) it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- (iii) it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

***law*** means a law of the Commonwealth or of a State or Territory.

**official**, of an institution, includes:

- (i) any representative (however described) of the institution or a related entity; and
- (ii) any member, officer, employee, associate, contractor or volunteer (however described) of the institution or a related entity; and
- (iii) any person, or any member, officer, employee, associate, contractor or volunteer (however described) of a body or other entity, who provides services to, or for, the institution or a related entity; and
- (iv) any other person who you consider is, or should be treated as if the person were, an official of the institution.

**related matters** means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse.

AND We:

- (n) require you to begin your inquiry as soon as practicable, and
- (o) require you to make your inquiry as expeditiously as possible; and
- (p) require you to submit to Our Governor-General:
  - (i) first and as soon as possible, and in any event not later than 30 June 2014 (or such later date as Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation), an initial report of the results of your inquiry, the recommendations for early consideration you may consider appropriate to make in this initial report, and your recommendation for the date, not later than 31 December 2015, to be fixed for the submission of your final report; and
  - (ii) then and as soon as possible, and in any event not later than the date Our Prime Minister may, by notice in the *Gazette*, fix on your recommendation, your final report of the results of your inquiry and your recommendations; and
- (q) authorise you to submit to Our Governor-General any additional interim reports that you consider appropriate.

IN WITNESS, We have caused these Our Letters to be made Patent.

WITNESS Quentin Bryce, Governor-General of the  
Commonwealth of Australia.

Dated 2013

By Her Excellency's Command

Governor-General

Prime Minister



## **Royal Commission into Institutional Responses to Child Sexual Abuse**

### **Explaining the Letters Patent and Terms of Reference**

This document explains the Letters Patent and Terms of Reference for the Royal Commission into Institutional Responses to Child Sexual Abuse.

The 'Letters Patent' is the legal document from the Governor-General that gives instructions to the Commissioners about the scope of the inquiry and what the Commissioners should investigate and make recommendations on. The Letters Patent also formally appoint the Commissioners.

The full Letters Patent document is available at [www.childabuseroyalcommission.gov.au](http://www.childabuseroyalcommission.gov.au).

This explanation document should not be taken to in any way replace the Letters Patent document, or to have any legal standing.

#### **Why the Royal Commission has been set up**

Child sexual abuse is a crime, and a terrible breach of the right of every child to grow up safe and happy.

Child sexual abuse is often associated with other forms of abuse including physical abuse, exploitation, and neglect.

All have long-term effects on survivors and their families. There are also costs to the economy and society as a whole.

Australia has committed at an international level to do everything it can to protect children from all forms of abuse. This includes taking action to help prevent child abuse from happening and, when child abuse does happen, to help ensure that cases are identified, reported, investigated, and followed up.

It is recognised that public, non-government and private organisations provide important services and support to help children and their families.

These include childcare, cultural, educational, religious, sporting and other organisations, which play an important role in helping children to grow up safe and happy.

But it is important that laws, rules and practices are in place to ensure organisations protect children against the risk of sexual abuse and that claims of abuse and the impacts of abuse are appropriately responded to.

It is important that this inquiry explore claims of systemic failures by institutions to protect children from sexual abuse and related matters.

The inquiry should identify what can be done in the future to better prevent and respond to child sexual abuse, including holding perpetrators to account and providing justice to victims.

People who have been affected by child sexual abuse will be able to share their experiences with the inquiry if they want to, to assist with healing and to inform the Commissioners' recommendations.

The Australian and State and Territory Governments have committed at the most recent Council of Australian Governments meeting to support this inquiry, and giving it their full cooperation.

## **What the Royal Commission will investigate**

The Commissioners will examine past and current child sexual abuse in organisations and may make findings and recommendations on:

- how organisations with a responsibility for children have managed and responded to claims of sexual abuse and other forms of abuse and neglect associated with child sexual abuse
- whether organisations have done enough to respond to child sexual abuse when it has happened
- what organisations can do to better protect children under their care
- what organisations should do to identify child sexual abuse and encourage people to report it
- how organisations should respond when they find out information that suggests that sexual abuse of children under their responsibility is happening, or has happened in the past
- what the barriers and failures have been to reporting, investigating and dealing with cases of child sexual abuse in organisations, and how these barriers can be removed in the future
- what organisations should do to support survivors where child sexual abuse does occur
- what organisations should do to ensure victims receive justice, including through redress by organisations, and investigation and prosecution of perpetrators.

The Commissioners can make any recommendations that they think will help improve the way things are done in the future or help existing survivors.

This includes looking at laws, as well as the policies, rules and structure of organisations.

## **What the Royal Commission will cover**

The Royal Commission is focused on child sexual abuse within organisations and institutions.

The Commission will also look at matters related to child sexual abuse. This means any unlawful or improper treatment of children that is connected or associated with child sexual abuse generally, or in a particular case.

This recognises that other forms of abuse including physical abuse and neglect often happen with sexual abuse, and if connected they can be examined by the Commission.

The Commissioners can look at any public or private organisation that is, or was in the past, involved with children, including non-government organisations and government agencies (including police and justice), schools, sporting clubs, orphanages, foster care, and religious organisations.

This includes where they consider an organisation caring for a child is responsible for the abuse or for not responding appropriately, regardless of where or when the abuse took place.

The Commission will not specifically examine child sexual abuse outside organisations, such as in the family. However, any recommendations made by the Commissioners are likely to improve the response to child sexual abuse wherever it happens.

## **How the Commissioners will conduct their inquiry**

To carry out the inquiry, the Commissioners will:

- consider the experiences of people affected by child sexual abuse in organisations
- look at archives, records and documents and consider submissions and statements from public, non-government and private organisations
- look at the laws, as well as policies and practices of institutions, organisations and governments to prevent and respond to child sexual abuse
- take into account the findings, recommendations, and information from past and existing inquiries, where appropriate. This can include drawing on the stories of witnesses from other inquiries (with their consent).

The Commissioners will make sure that people telling their stories have appropriate support in dealing with any trauma that might come up from discussing their abuse.

The Commissioners will also make sure that people with special needs can participate fully in the inquiry. For example, this could include interpreters for people who speak a language other than English, assistance for people with disabilities, and help preparing submissions for people who need assistance with reading and writing.

The Commission will make sure that organisations are given enough time to search and respond to requests for documents and records.

## **Handling of individual cases**

The Royal Commission cannot prosecute individuals.

The Commission can refer individual cases to relevant law enforcement bodies, such as police, for investigation and, where appropriate, prosecution in a timely fashion.

The Commissioners will consider appropriate mechanisms for how the Commission might inquire into and investigate particular cases, including past cases, as appropriate.

Mechanisms might include examining archives and records and working with relevant law enforcement bodies such as police.

This includes establishing investigative units to support their inquiry.

In handling evidence about specific cases, the Commissioners will take care not to do anything that could disrupt a current or future criminal prosecution or compensation case.

## **Timing and reporting**

The Commissioners will begin their inquiry as soon as possible.

The Commission will prepare an interim report by 30 June 2014 so that governments and organisations can start taking action on the Commission's early findings and recommendations.

In this interim report, the Commissioners will identify when their final report will be completed. The Terms of Reference will set an end date for the Royal Commission of 2015, but this date will be subject to the advice of the Commissioners in their interim report.

The Prime Minister can extend the final reporting date which has happened in previous Commissions.

The Commissioners will also be able to provide other interim reports throughout the life of the Royal Commission as appropriate.