

# Office of Defence Special Counsel



**Australian Government**

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**Department of Defence**



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Defence Special Counsel  
Defence Legal



# Office of Defence Special Counsel

## Tasks assigned by DL Executive

- Contamination on Defence Estate & Surrounds
- Marrangaroo Training Area Fire - 2013
- Civil Claims / Historical Sexual and Physical Abuse
- Royal Commission – Institutional Responses



**Report of the Review of  
allegations of sexual and  
other  
abuse in Defence**

Dr Gary A Rumble  
Ms Melanie McKean  
Professor Dennis Pearce AO

October 2011



Royal Commission into  
Institutional Responses to  
Child Sexual Abuse



## THE SCOPE OF RC INQUIRY

<b>Private sessions</b>	<b>6,961</b>
<b>Written accounts</b>	<b>992</b>
<b>Calls</b>	<b>39,700</b>
<b>Referrals to authorities</b>	<b>2,252</b>
<b>Published research reports</b>	<b>59</b>
<b>Roundtables</b>	<b>35</b>
<b>Submissions Received</b>	<b>1,423</b>
<b>Public hearings</b>	<b>57</b>
<b>Hearing Days</b>	<b>444</b>
<b>Witnesses</b>	<b>1,302</b>
<b>Documents Reviewed</b>	<b>1.2m</b>



# Royal Commission Report

## 17 Volumes

- **Preface and executive summary** – includes a summary of each volume and a complete list of all recommendations.
- **Volume 1 Our inquiry** – introduces the Final Report and describes the establishment, scope and operations of the Royal Commission.
- **Volume 2 Nature and cause** – describes what the Royal Commission learned about the nature and cause of child sexual abuse in institutional contexts.
- **Volume 3 Impacts** – explains the impacts of child sexual abuse in institutional contexts on survivors and often their family members, friends, and entire communities.
- **Volume 4 Identifying and disclosing child sexual abuse** – describes what we learned about survivors’ experiences of disclosing child sexual abuse.
- **Volume 5 Private sessions** – describes survivors’ experiences of child sexual abuse as told to Commissioners during private sessions.
- **Volume 6 Making institutions child safe** – outlines a national strategy for child sexual abuse prevention and proposes child safe standards including how institutions may implement them.



- **Volume 7** Improving institutional responding and reporting – looks at institutions’ responses to complaints of child sexual abuse and how they report these matters to external government authorities.
- **Volume 8** Recordkeeping and information sharing – examines the records, recordkeeping and information sharing of institutions that care for or provide services to children.
- **Volume 9** Advocacy, support and therapeutic treatment services – looks at what we learned about survivors’ needs in terms of advocacy, support and treatment and offers recommendations for improving service systems to better respond to survivors’ needs.
- **Volume 10** Children with harmful sexual behaviours – examines what we learned about institutional responses to children with harmful sexual behaviours.



- **Volume 11 Historical residential institutions** – describes what we learned about survivors’ experiences of, and institutional responses to child sexual abuse in residential institutions, pre-1990.
- **Volume 12 Contemporary out-of-home care** – examines what we learned about institutional responses to child sexual abuse in contemporary out-of-home care.
- **Volume 13 Schools** – describes what we learned about institutional responses to child sexual abuse in schools.
- **Volume 14 Sport, recreation, arts, culture, community and hobby groups** – looks at what we learned about institutional responses to child sexual abuse in sport and recreation contexts.



- **Volume 15 Contemporary detention environments** – reviews what we learned about institutional responses to child sexual abuse in contemporary detention environments.
- **Volume 16 Religious institutions** – examines what we learned about institutional responses to child sexual abuse in religious institutions.
- **Volume 17 Beyond the Royal Commission** – describes the impact and legacy of the Royal Commission and discusses monitoring and reporting on the implementation of our recommendations.



**The Royal Commission also made recommendations in three previously published reports:**

- **Working With Children Checks (2015)**
- **Redress and civil litigation (2015)**
- **Criminal justice (2017)**



## Making institutions safer for children

Recommendations in Volumes 6 to 8 set out ways communities, institutions, governments and individuals can make institutions safer for children. They focus on ways that institutions can better prevent, identify, respond to and report child sexual abuse. These recommendations cover:

- approaches to community-wide prevention
- 10 Child Safe Standards to make institutions safer and ensure children's best interests are central to their operation
- strengthening children's safety online and improving the way institutions respond to online abuse
- improving the way institutions respond to and report matters relating to child sexual abuse
- strengthening recordkeeping practices and information sharing.



- 1 Child safety is embedded in institutional leadership, governance and culture.
- 2 Children participate in decisions affecting them and are taken seriously.
- 3 Families and communities are informed and involved.
- 4 Equity is upheld and diverse needs are taken into account.
- 5 People working with children are suitable and supported.
- 6 Processes to respond to complaints of child sexual abuse are child focused.
- 7 Staff are equipped with the knowledge, skills and awareness to keep children safe through ongoing education and training.
- 8 Physical and online environments minimise the opportunity for abuse to occur.
- 9 Implementation of the Child Safe Standards is continuously reviewed and improved.
- 10 Policies and procedures document how the institution is child safe.



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

### **Case Study 40, June, August 2016, Sydney**

The scope and purpose of the public hearing is to inquire into:

1. The experiences of survivors of child sexual abuse of the following institutions operated by the Australian Defence Force (ADF):
  - a. HMAS Leeuwin in the period 1960 to 1980
  - b. The Army Apprentice School Balcombe in the period 1970 to 1980, and
  - c. ADF Cadets in the period 2000 to present.
2. The systems, policies, practices and procedures of the ADF and the ADF Cadets to prevent child sexual abuse, and raising and responding to concerns and complaints about child sexual abuse, in the above listed institutions.



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

### Case Study 51, March 2017, Sydney

#### **The scope and purpose of the public hearing is to inquire into:**

- The current policies and procedures of Commonwealth, State and Territory governments in relation to child protection and child-safe standards, including responding to allegations of child sexual abuse.
- Factors that may have contributed to the occurrence of child sexual abuse at Commonwealth, State and Territory institutions.
- Factors that may have affected the institutional response of Commonwealth, State and Territory governments to child sexual abuse.
- The responses of Commonwealth, State and Territory governments to relevant case study report(s) and other Royal Commission reports.
- Any related matters.



Defence Minister Stephen Smith has delivered a parliamentary apology to victims of abuse within the Australian Defence Force (ADF), describing the behaviour as unacceptable and a betrayal of trust.

In delivering the statement, Mr Smith paid tribute to the sacrifices ADF members were willing to make in service of their country, and expressed regret that some had suffered "shameful" treatment at the hands of their colleagues.

"To those men and women in the Australian Defence Force or the Department of Defence who have suffered sexual or other forms of abuse,

**on behalf of the Government I say sorry,"**

Mr Smith told Parliament.

"You should never have experienced this abuse.

**Again, I say sorry.**

"Our words today, and our actions and commitment into the future, will ensure that the apology given today in this house... will never have to be repeated."



## Defence Force Vice Chief apologises to child sexual abuse victims

Defence Force Vice Chief Raymond Griggs has apologised to victims of child sexual abuse within the organisation while testifying at a royal commission.

**“People and systems have failed you and they have put others at risk and that is simply not good enough.”**

**“I am deeply sorry for what happened to you.**

No one who pulls on the uniform of this country and **no child who is under our care should ever have had happen to them what has happened to you.**”



**Legal Services Direction**  
*Judiciary Act 1903*

I, GEORGE BRANDIS, Attorney-General, acting under subsection 55ZF(1) of the *Judiciary Act 1903* and paragraphs 8.1 and 8.2 of the *Legal Services Directions 2005*, and in my capacity as First Law Officer of the Commonwealth give the following approval and direction:

***Direction to Commonwealth agencies***

6. I direct that Commonwealth agencies **are not to plead a defence to a time-barred child abuse claim** based on the expiry of an applicable limitation period in relation to that claim.
7. I direct that Commonwealth agencies are **not to oppose an application for an extension of a limitation period in relation to a time-barred child abuse claim.**

4 May 2016



# Commonwealth redress scheme for survivors of institutional child sexual abuse

Friday 4 November 2016

Joint media release

Attorney-General - Leader of the Government in Senate - Senator The Hon George Brandis QC  
Minister for Social Services - The Hon Christian Porter MP

The Turnbull Government is today announcing a **Commonwealth Redress Scheme for survivors of institutional child sexual abuse** and is inviting states, territories and other non-government institutions to join in the Commonwealth scheme to deliver redress to the survivors of these wrongs.

"Today's announcement is delivering on the Coalition's commitment to **strive to ensure redress is provided for survivors of institutional child sexual abuse across Australia by the responsible institutions,**" Minister for Social Services, Christian Porter, said.

The Government **acknowledges** that survivors of institutional child sexual abuse were abandoned and betrayed by many institutions, including governments, churches and charities.



The Commonwealth scheme is expected to be established by 2018 and will offer a direct personal response for those survivors who seek it, options to receive **psychological counselling and a monetary payment (comprising a maximum payment of \$150,000) to acknowledge the wrongdoing** inflicted upon them.

The Government will also establish an **independent advisory council** bringing together a broad group of specialists, including survivor groups, legal and psychological experts, to provide advice on the implementation of the scheme.

Importantly, the Government is taking strong action to prevent child sexual abuse in the future, working with state and territory governments, law enforcement agencies, the community sector and researchers to keep children safe.



## LEGAL ISSUES

- **Choice of law – the place of the tort**
- **Limitations of Actions**
- **The proper “Defendant”**
- **Vicarious Liability**
- **Cross-links – DART, Royal Commission**
- **Statutory Entitlements – SRC, MRC**
- **National Redress Scheme**

