Royal Commission into institutional responses to child sexual abuse
Frequently asked questions

# Terms of Reference

## What will the Royal Commission look at?

The Commission will look at past and current child sexual abuse and related matters in organisations and institutions, and how institutions have responded to this abuse.

The Commissioners will investigate where institutions and systems have failed and what the best practice is in responding to child sexual abuse.

This includes the way that claims of abuse are reported and investigated, and where abuse has happened, how justice and support for victims is best achieved.

## What will the Royal Commission make recommendations on?

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.

## Will the Royal Commission recommend legislative changes?

While the Commissioners cannot change laws, they may make recommendations for legislative changes that would better protect children and improve responses to allegations of child sexual abuse.

## Will the Royal Commission look at barriers to seeking justice for victims?

Yes. The Commissioners will examine systemic barriers in laws, policies and practices to victims receiving justice and healing, including through redress and compensation from organisations, the investigation and prosecution of perpetrators, and support services.

The Commissioners have been asked to consider making recommendations on ways to remove these barriers.

## What types of organisations are covered?

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

This can include where the Commissioners consider an organisation caring for a child was 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.

## Is child sexual abuse within families included?

Child sexual abuse, wherever it occurs, is abhorrent. And it is crime.

But the scope of the Royal Commission's inquiry must be specific enough to make sure that the Commissioners can do a thorough investigation and make concrete recommendations in a reasonable timeframe.

The Commissioners have been asked to look at abuse in institutional contexts. This is abuse that occurs within organisations, or by members of organisations.

This Royal Commission will look at organisational and institutional responses to child sexual abuse, including where organisations have turned a blind eye to abuse or covered it up and the ways in which laws, policies and practices can change so that it doesn’t happen again.

Findings and recommendations of this Royal Commission—for example, in relation to encouraging the reporting of abuse in institutions—are likely to improve responses to all forms of child abuse in all contexts, including the family home.

## Are other forms of abuse such as physical abuse included?

The Government recognises that child sexual abuse often occurs alongside other forms of abuse such as physical abuse, exploitation and neglect.

That’s why the Commissioners have been asked to look at child sexual abuse and related matters. ‘Related matters’ means any other unlawful or improper treatment of children that is generally, or in a particular case, connected or associated with child sexual abuse.

This is likely to be the most far reaching of any Royal Commission in Australia.

Survivors have told the Government that they want to see reform in a reasonable timeframe, and many of them have already waited a long time for justice. Some survivors are ageing.

We need to make sure that the Commissioners can do a thorough investigation and make concrete recommendations in a reasonable timeframe.

We will rely on the Commissioners’ judgement to hear evidence they consider relevant and make appropriate findings and recommendations. The Government expects that the Commission’s recommendations will help victims of all forms of abuse as they seek justice, and better protect children in the future.

## Are children with disability and Indigenous children included?

Yes. The Commissioners will look at institutional responses to instances and allegations of child sexual abuse for all children, including children with disability and Indigenous children.

## How far back in time will the Commissioners take their inquiries?

No time limit has been placed on the matters the Commissioners can investigate.

## Who is a child or minor for the purposes of the Royal Commission?

A child in this Royal Commission is defined as in the Convention on the Rights of the Child of 20 November 1989 to be anyone below the aged of 18 years.

## Will the Royal Commission take account of other inquiries under way or past inquiries?

Yes. The Terms of Reference ask the Commissioners to look at ways for evidence and information to be shared from current and previous inquiries.

This means that the Royal Commission may have regard to evidence and findings of previous inquiries. People who have told their stories as part of other inquiries might not have to do so again.

.

# Handling of individual cases

## How will the Royal Commission handle individual cases where there is evidence of child sexual abuse?

A Royal Commission cannot prosecute individuals.

Child sexual abuse is a crime and should be reported to police.

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

If the Commissioners uncover behaviour they think might be illegal, they may refer it, and any evidence or information they receive, to law enforcement agencies to enable them to investigate and, where appropriate, prosecute as soon as possible.

## Will the Commissioners have investigative help, and how will the investigative unit work?

We know it is essential that victims who come forward with allegations of abuse have confidence that the criminal justice system is accessible to them and that support and action will be timely.

The Commissioners have been asked to establish an internal investigative unit within the Commission to ensure the timely referral and criminal investigation of allegations of child sexual abuse that come before the Commission, should victims seek such action.

## Will the Royal Commission affect current or future criminal or civil proceedings?

The Terms of Reference require that, in handling evidence about specific cases, the Commissioners take actions to avoid disrupting or prejudicing a current or future criminal prosecution or compensation case.

## Can victims give evidence to the Royal Commission if they have previously signed a settlement that includes a confidentiality provision?

The powers of the Royal Commission include the ability to compel witnesses to give evidence and to produce documents.  These powers operate regardless of private agreements.

If a witness is summoned to attend or appear before the Commission, they are required to attend and give any evidence sought, subject to the existence of a reasonable excuse.

Courts have declined to regard a confidentiality obligation as a reasonable excuse. Witnesses who attend and give evidence as required will also have protections from a range of liabilities that might otherwise arise from giving that evidence.

If the Commission considers that it is warranted, it can take evidence or prepare its report in a way that protects the identity and confidentiality of the witness.

**What should I do if I have reported my abuse to the police and have a case or legal proceedings under way?**

The Royal Commission is not a prosecuting body or intended to replace the proper law enforcement processes for criminal activity. You should continue to deal with the relevant law enforcement agency with your case.

* 1. The Royal Commission will have the power to require witnesses to attend and to provide evidence.
	2. The Commission will be mindful, however, of the need to avoid prejudicing other court proceedings and this is an issue that has been taken into account in framing the terms of reference.
	3. The Government is confident that the Commission will be able to put in place procedures and processes to ensure that its gathering of evidence is carefully managed and any potential to prejudice other proceedings is avoided.

**Gathering evidence**

**What powers will the Royal Commission have to gather evidence?**

The Royal Commission is established under Commonwealth and State legislation and has broad powers to gather information and assist it in its inquiries.

The Royal Commission has the power to:

* summons witnesses to appear before it and require them to answer questions under oath or affirmation, and
* summons witnesses to produce a document or other material piece of evidence.

If summoned, there are very few grounds on which a person can refuse to give evidence to a Royal Commission.

Failure to comply with a summons issued by a Royal Commission may result in an individual receiving a fine or in some circumstances imprisonment.

In some circumstances a search warrant and/or arrest warrant might be issued if a person fails to comply with a summons.

It is an offence to intentionally provide false or misleading evidence to a Royal Commission or by intentionally insulting or disturbing it.

**Will the Royal Commission listen to personal stories?**

Yes. Personal stories from people affected by child sexual abuse in institutions—including survivors and employees or volunteers—will be critical to the Commissioners getting a full picture of the extent and nature of child sexual abuse, and of how claims and instances of child sexual abuse were handled.

**How and where will the Royal Commission hear stories?**

It will be a matter for Commissioners to determine how evidence is gathered.

However, the Terms of Reference require that evidence must be gathered in a way that supports survivors in dealing with any trauma that might arise from discussing their abuse.

The Commissioners must also make sure that people with special needs—for example a disability or language barriers—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.

It is also important that people living in regional and remote areas have access to the Royal Commission and are given the opportunity to participate. A key decision for the Commissioners early in the establishment of the Royal Commission will be how best to engage and consult people in remote and regional areas.

**What support services will be available for people who participate in the Royal Commission?**

For many people taking part in the Royal Commission will not be easy, and telling their story will open up old wounds. But survivors will be supported. The Government already funds specialist services who are dedicated to the needs of survivors of abuse.

We will make sure these services have the resources they need to stand beside survivors in the community as they participate in the inquiry process.

We know that these are the services that are known and trusted by survivors of child sexual abuse.

We will also make sure that the Royal Commission has the resources it needs to run its own services to support witnesses.

**How can I be involved in the Royal Commission?**

The Commissioners will seek submissions from the public and will have the power to call witnesses and take evidence.

You can provide your details on **1800 099 340** so that the Commissioners can contact you once they start their work.

**Commissioners**

**Who are the Commissioners, and why them?**

The Royal Commission will be led by Justice Peter McClellan AM, a Supreme Court Judge from New South Wales who brings a wealth of experience as a Judge and as an inquirer.

Justice McClellan has been the Chief Judge at Common Law of the Supreme Court of New South Wales since 2005.

He has also been 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.

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 twenty years as a magistrate and county court judge in Victoria, including five years as President of the Children’s Court and five years 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 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 Director of the Centre for Aboriginal Medical and Dental Health at the University of Western Australia and a Consultant Child and Adolescent Psychiatrist with the Specialist Aboriginal Mental Health Service. She brings extensive experience in child and adolescent mental health and Aboriginal health and mental health.

Former Senator for Western Australia Andrew Murray brings tremendous experience as a legislator and as a campaigner for those who have spent time in institutional care as children. Mr Murray was a Senator for Western Australia from 1996 to 2008.

For more information on the Commissioners, go to [www.childabuseroyalcommission.gov.au](http://www.childabuseroyalcommission.gov.au)

**Timing**

**When will the Royal Commission start its work?**

The Royal Commission will start work as soon as possible.

**How long will the Royal Commission take and will there be interim reports?**

The Commissioners 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 identify when their final report will be completed. The Terms of Reference will set an end date for the Royal Commission of 31 December 2015, but this date will be subject to the advice of the Commissioners in their interim report. Under the Terms of Reference, the Prime Minister can extend the final reporting date.

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

**More information**

For more information call 1800 099 340 or go to [www.childabuseroyalcommission.gov.au](http://www.childabuseroyalcommission.gov.au) which also contains a list of support services available in each state and territory.

If you are concerned about a child being abused, you should report it to police or to your state or territory child protection agency. In some circumstances, failure to report suspected incidents of abuse could give rise to criminal liability.