

Royal Commission into Institutional Responses to Child Sexual Abuse
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By email: solicitor@childabuseroyalcommission.gov.au

17 March 2014

To Whom It May Concern,

Submission to the Royal Commission Issues Paper 5: Civil Litigation

The Australian Psychological Society (APS) welcomes the opportunity to respond to Issues Paper 5 that addresses the effectiveness of current civil litigation processes. The APS strongly supports the development of processes that minimise the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a civil litigation or redress process.

Given the primarily legal nature of Issues Paper 5, it is beyond the scope and expertise of the APS to address the specific terms of reference in this inquiry. Therefore, in this letter the APS focuses on the psychological aspects of redress likely to be relevant to the actions that could be taken by institutions and governments to address or alleviate the impact of child sexual abuse in institutional contexts.

In general, the APS supports the rights of victims/survivors of institutional child abuse to seek redress. While research into the role of redress remains limited, there is anecdotal evidence that the redress process can assist survivors to recover and provide a sense of closure. Despite the potential value of redress programs, the APS is concerned that such programs may also have the potential to re-traumatise individuals who may have to relive their painful stories.

There is evidence that the experience of complainants following disclosure and interaction with the legal system is often highly

unsatisfactory. Some have suggested that this experience is itself traumatising (Colton, Vanstone & Walby, 2002). Others have noted that complainants sometimes report that the process of giving evidence and being subjected to cross-examination can constitute a secondary form of abuse (Cashmore & Shackel, 2013). Psychological research indicates that negative reactions to disclosure of abuse are common, constitute secondary traumatisation (or re-traumatisation) and are associated with poorer adult psychological outcomes (Ullman, 2007). Negative reactions include not being believed, being blamed and judged, or punished and not supported, all of which can compound the impact of the original abuse and further increase the risk of psychological distress including increased symptoms of post-traumatic stress disorder (PTSD) (Astbury, 2013). Particularly in an institutional setting, negative reactions or non-responses by parents or respected members of society have been described as re-traumatising (Madigan & Gamble, 1991).

Given the potential for reliving one's story to be distressing and potentially re-traumatising to the victim/survivor, this has important implications for the civil litigation process. Systems of redress must ensure that their processes and procedures do not inadvertently expose complainants to further harm.

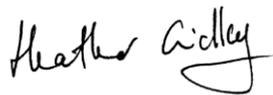
There are a number of factors that appear to make the redress process potentially challenging and possibly raise the likelihood of the experience being distressing to the complainant. These factors include the wide range of individual differences in the experience and impact of abuse, the long time lapse that often occurs between an abuse event and its disclosure, and the difficulty determining a causal link between the experience of abuse and any possible long term impact of abuse. Some victim/survivors may not have reported an injury, and some complainants may not have a physical or psychological injury as a result of an historical episode of abuse at the time of litigation. These types of complexities are inherent to any mechanism of redress and need to be carefully considered in order to minimise the likelihood of the process itself causing harm to the victim/survivor.

In raising the psychological issues relevant to the process of civil litigation, the APS supports the Commission's attempts to define systems and processes that minimise their impact on victim/survivors and protect them from additional harm. Consideration should be given to alternatives to the court system, including the potential for practices and processes within institutions to better manage allegations of abuse. Clearly relevant for all of these matters is to consider how victims may be empowered beyond the helplessness that was part of their traumatic experience.

The APS has made a commitment to support the work of the Commission, and as such we would be happy to provide further comment about the matters raised in this letter. In particular, the APS can provide the Royal Commission with further expertise on the matter of re-traumatisation of victims of sexual abuse, such as unanticipated triggers for traumatic memories, vigorous cross-examination, remote witness facilities, taped evidence, support people, and debriefing, as well as the kinds of redress that might be considered appropriate in particular contexts.

For further information please contact me on 03 8662 3300.

Yours sincerely,



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References

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Appendix

About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing more than 21,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing.

This submission has been developed through the cross-collaboration of two teams at the APS: Professional Practice and Psychology in the Public Interest.

- The Professional Practice team develops guidelines and standards for practitioners, provides support to APS members, and liaises with community groups and other professional organisations whose work may impact upon the psychology profession.
- Psychology in the Public Interest is the section of the APS dedicated to the application and communication of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.