ASCA Response to: Consultation Paper on the Establishment of the Royal Commission into Institutional Responses to Child Sexual Abuse

‘Any Royal Commission has to be very mindful that the parallel world of outwardly respectable and at times powerful abusers can be very close and international experience makes it very clear that such politically powerful individuals who have everything to lose by an open inquiry into the activities of their networks, can exert enormous power, to the point where they can markedly limit or even effectively destroy an investigation aimed at exposing their activities’.

Adjunct Professor Warwick Middleton MB BS, FRANZCP, MD
Member of ASCA Advisory Panel

“The Government proposes to ask the Royal Commission to identify what public and private organisations and institutions should do to prevent child sexual abuse from occurring in their midst; what should be done by organisations and institutions when allegations are raised; and what can be done by the relevant institutions, organisations and government agencies to alleviate the impact of abuse that has already occurred.”

As the national peak body for Australian adults traumatised and abused as children, Adults Surviving Child Abuse (ASCA) welcomes the National Royal Commission of Inquiry into child sexual assault within Australian religious, government and non-government organisations and institutions. We congratulate the government on its vision and commitment to protecting children, supporting victims and facilitating justice and accountability.

ASCA is keen to collaborate fully with government throughout this process in an ongoing way, providing the necessary advice and counsel as well as professional services and training as required. The recent Federal Parliamentary launch of ASCA’s Practice Guidelines for Treatment of Complex Trauma and Trauma-Informed Service Delivery attests to our capacity and credibility for so doing. Launched by the Hon Mark Butler MP, Minister for Mental Health and Ageing, Minister for Social Inclusion, Minister Assisting the Prime Minister on Mental Health Reform, these two sets of guidelines are widely endorsed both nationally and internationally by experts in the complex trauma field.

As a form of complex trauma which has pervasive effects both across the life cycle and inter-generationally, child sexual abuse involves many dimensions. It is thus essential that the Royal Commission can avail itself of ongoing access to expertise in the relevant areas. Comprised of diverse stakeholders including health professionals, clinicians and researchers as well as consumers and a highly credentialed Advisory Panel, ASCA is uniquely positioned to assist the Commission in the challenging tasks it will undertake.
Scope of Terms of Reference

The Royal Commission provides an unprecedented opportunity to investigate the systemic weaknesses and failures of institutions and organisations, both formal and informal, with respect to child sexual assault, past and present. Outcomes would be focussed in three key areas:

1. Child protection/prevention
2. Survivor health and well being
3. Justice and accountability

(N.B. These three areas are discussed later in this document with respect to considerations of process, and possible findings and recommendations.)

Accordingly, the Commission must be invested with the requisite powers to fully, comprehensively and transparently investigate all organisations and institutions which have a duty of care to children.

Its purpose would be to hear all allegations and instances of child sexual assault, past and present, and to investigate the processes, practices, policies, laws and systems, both formal and informal, which conspire to perpetuate the actual and potential sexual assault of Australian children and compound the trauma of victims.

This investigation needs to take place in the knowledge of the length of time it takes on average for survivors to come forward (often 2-3 decades and of course many never do). The length of time it takes for victims to recover and report is a key factor of which to be aware, and is consistent with current neurobiological research into the effects of overwhelming stress on the brain and body. The reality of protracted time periods has implications at a range of levels; for example consideration needs to be given to promotion of both early detection and more accessible affordable universal services to facilitate earlier recovery.

Diversity of institutions and practices to be investigated

It is our understanding that the Royal Commission would investigate and make findings in relation to

- Religious and non-religious institutions
- Government and non-government institutions including schools, hospitals, psychiatric facilities, scouts and sporting clubs
- Federal, State, local government departments
- Police, judicial and correctional systems, including the Family Court and prisons

The diversity of institutions to be investigated, and the varied practices and cultures which operate both formally and informally in relation to them, have important implications for the operation of the Commission. There must be capacity to explore the range of relevant variables, in the knowledge that ‘institutions’ comprise formal and informal dimensions, and that tacit, implicit ways of institutional
functioning will be as important to investigate as are explicitly articulated policies, procedures and mission statements.

Mechanisms for so doing would potentially include an independent external audit and reporting of how these procedures are actually carried out in practice, not just the ‘paper trail’ (i.e. examination of the effectiveness of corporate governance of the institutions and of Government oversight of these bodies).

Given the pervasiveness of child sexual abuse (which is at odds with the dominant discourse of the equality of all citizens) it will be particularly important to address the covert and assumed cultural practices of institutions which violate formal expressions of equality (including those enshrined in policy) and which will vary from institution to institution.

It is important that the Commission consult widely with experts in all fields relevant to the institutions and organisations under review, as well as with agencies involved in child protection, survivor health and wellbeing, policing, and the judicial system.

Format of testimony

The Commission must also hear public testimony relevant to the Terms of Reference. The testimony of survivors will of course be crucial. But it must be heard in the knowledge that some people will be able to speak publically; some people will need support to speak; some will wish to give private testimony and may wish this to be de-identified in any published reports; and; some may wish to give testimony by video/CCTV. It is important to establish that no survivor will be compelled to provide testimony against their will (a concern expressed to us by some survivors).

As the process of investigation has the potential to re-traumatise victims who live daily with the effects of their abuse, particular care must be taken to balance the need to investigate to acquire the necessary knowledge base with justice for victims and survivor health and wellbeing. Accordingly, while it will be optional as to whether victims choose to access them, safeguards need to be implemented, in relation to the provision of experiential testimony of abuse at every level at which victims engage with the Commission.

The voices of family members will also be pivotal, as well as representation of silent voices – those lost to suicide as well as those unable to come forward. The voices of prisoners, the homeless and welfare dependent, those from ATSI and CALD communities, and others experiencing the compounded disadvantage of the lived experience of child sexual assault should also be actively encouraged to offer their testimony. In this context, too, ASCA is able to assist with the various challenges this will involve. Some of the voices of those who are unable to come forward could potentially be represented by/via other stakeholders (including GP’s, mental health practitioners, lawyers and the police).

The testimony of whistleblowers, as well as those subject to suppression orders, confidentiality agreements and secrecy clauses will be very important. But its delivery will be dependent upon protections and indemnities established by the Commission, and communication of same prior to commencement of the Commission.
It is imperative that any person, body or group wanting to come forward to provide testimony is fully informed of every step and aspect of the process. They should be supported not only to prepare their submission, but during the process of, and subsequent to, provision of testimony.

The Commission should have the power to summon witnesses and hear testimony under oath, to subpoena and examine documents, and to compel the provision of evidence and relevant internal documents, including the power to seize such material.

Form of the Royal Commission

While the Royal Commission has been called by the Commonwealth, the active cooperation of all States is needed. This is especially important given the role of the States in the areas of child protection and criminal justice, with reference to issues of compensation and the investigation of criminal matters.

Federal-State cooperation would entail the sharing of testimony and data from prior and ongoing inquiries in other jurisdictions, avoiding duplication while enabling the required reach. Similarly, the capacity to access information from governments at all levels, and to investigate matters within all jurisdictions will necessitate Federal/State collaboration (with logistics of such collaboration to be negotiated).

Number and qualifications of Commissioner/s

It is imperative that the Commissioner/s and officers of the Commission have expertise across diverse disciplines. This includes, but is not limited to, the law, policing, judicial system, child protection, and those qualified to advise on the impacts of institutionalised abuse (e.g. trauma informed psychologists, psychiatrists, counsellors and social workers). Given both the required breadth of expertise, and the heavy demands incurred by the role, appointment of a number of Commissioners is both warranted and strongly recommended.

All personnel involved in the Commission should receive trauma informed training. This is needed both to ensure adequate understanding of the dynamics of traumatic stress and its impacts, and to minimise possibilities of re-traumatisation for those involved in the process of the Commission. ASCA recommends that a trauma-informed advisory committee including ‘training’ staff be embedded into the commission. ASCA is also available on an ongoing basis both to deliver this training and to advise and inform in this regard.

It is also critical that mechanisms and resources are available for Commissioner/s, officers of the Commission to regularly debrief after the hearing and recording of testimony. In this context, professional counselling support should also be available, to minimise the well-documented risks of vicarious traumatisation.

Duration and reporting arrangements

The Commission would need to be adequately resourced to ensure that everyone who wants to be heard (within Terms of Reference), will be heard i.e. no one coming forward to provide testimony should
be turned away. Adequate resourcing, appointment of more than one Commissioner and concurrent hearings across jurisdictions would help ensure that the process is not unnecessarily protracted. A minimum period of two to three years is advisable although it is acknowledged that the timeframe may extend past that period.

Regardless of duration, it is recommended that interim findings be announced as they are collated and recommended initiatives implemented where, and as soon as, possible. This would include prompt reporting of alleged crimes to the police and commencement of any criminal justice proceedings in response to evidence, implementation of institutional child protection initiatives readily identified to help protect children during the term of the Commission, and adequate provision for victim/survivor therapeutic support during and subsequent to the Commission of inquiry, (i.e., as required for survivor health and wellbeing, and as per previous advice).

On conclusion of the Inquiry process, it is imperative that the Commission not only make recommendations, but establish mechanisms for their prompt and complete implementation across an agreed timeline. Implementation of all recommendations should be subject to a monitoring process to ensure full compliance within the timeframe. Inherent within this would be mechanisms by which non-compliance would be addressed to ensure institutional accountability with the recommendations. Accordingly, it is envisaged that this would entail both regular public reporting of outcomes, and ongoing review as required.

1. Prevention/child protection considerations

Process - findings:

The Commission should have a mandate to review systems, processes, policies and procedures, formal and informal, currently and previously in place in institutions as defined by the Terms of Reference. These would be mapped to past and present practice, and reviewed in light of allegations and substantiations of child sexual assault within each institution/organisation. Identification of the absence of formal procedures, both past and present, would be correspondingly important, and attentiveness to informal practices sustaining child abuse (both alongside and in lieu of formal mechanisms) should be ongoing.

It would be important to analyse the systemic factors contributing to weaknesses and failures in these institutions or organisations which meant/mean that children were/are not protected and were/are sexually abused or witness/ed such abuse. It is important to note that child sexual abuse often occurs concurrently with other forms of abuse, including but not limited to emotional abuse, physical abuse as well as neglect, and that the concurrence of these abuses compounds the trauma of victims as does the witnessing of abuse by others.

Factors under consideration should include not only perpetrator and victim factors but those related to hierarchical, institutional and bystander accountability.

The Commission would need to focus on establishment of the circumstances which allow/ed sexual abuse to occur and to continue to occur. This would include failure to respond to disclosure, and/or to
investigate, document and report suspicion or knowledge of harm or risk of harm (‘sins of omission’) to police or child protection authorities.

In addition, the Commission should review overt and covert factors which contribute to systemic breakdown of child protection processes. Critical in this context would be additional focus on cultural factors inherent within, and specific to, each individual organisation and institution which inhibit reporting or acting on knowledge or suspicion of child sexual assault to the appropriate authorities, either internal or external.

Organisational and institutional structural and administrative flaws which limit personal and hierarchical accountability, and the various points at which systems fail children, would need to be identified. Also critical would be identification of systemic policies and practices which prioritise institutions and their officers/clergy over the safety and welfare of children, and by which perpetrators have been protected in a diversity of ways.

Methods by which the disclosures of victims have been discounted and not acted upon, and by which persons reporting allegations and knowledge of crimes have been silenced and ostracised, should be identified. So, too, should deficiencies in the care and support of survivors (e.g. recourse to ‘time-limited’ claims) and formal and informal factors which lead to re-traumatisation of victims and families in the process of their attempts to seek validation, accountability and justice.

**Priorities – recommendations:**

- Development, implementation and monitoring of policies, procedures and standards for protecting children within institutions – which are informed by national and international best practice
- Protocols and strategies for open and transparent systems within all organisations and institutions which have a duty of care to children
- Embedding of values and principles which affirm rights of children in all institutional and organisational settings, and which respect developmental needs and well-being. While all children are potentially at risk, certain groups e.g. disabled, Indigenous, CALD are at increased risk of abuse
- Training and provision of information for all staff, managers and, volunteers in institutions with duty of care to children around child protection and reporting, including information regarding referral networks and coordination of systems of care
- Sharing of information within and between institutions and across jurisdictions
- Capacity to liaise with international bodies and to access and draw on relevant international experience regarding inquiries of this nature (ASCA able to co-ordinate in this capacity)
- Public awareness/education programs including availability of trauma-informed training for a diversity of professionals
• Child protection programs in all schools – informed by experts and consistent across jurisdictions

• Consistency of State Child Protection laws including review and consistency of mandatory reporting provisions, policy re sex offenders - programs and registers

• Consistency in data collection across jurisdictions

• Accurate reporting of child protection data across jurisdictions and institutions including monitoring of outcomes of implementation of recommendations

2. **Survivor health and wellbeing**

**Process regarding the obtaining of testimony from survivors:**

The process of gathering testimony from survivors needs to be **respectful, fair and trauma-informed**. *All those involved in the process of the Inquiry* (including administrative staff, those providing information and those hearing and recording testimony) **need to receive education and training around complex trauma, and its impacts on mental and physical health as well as on social functioning, with particular attention to the sensitivities and vulnerabilities of survivors.** As noted previously, ASCA is available to provide this training.

It is important to remain aware that while potentially daunting to all parties, the inquiry is likely to be **particularly daunting for survivors.** This is because survivors are often *fearful of authority figures,* as a hallmark of child sexual abuse is that it occurs *in situations in which there is an inherent power imbalance.* For this reason, every attempt should be made to *share power* in this process of inquiry, in order to *facilitate trust, mutual respect and collaboration.* Comprehensive information should also be made available *about every aspect of the process of gaining testimony* (e.g. what to expect, format of Commission, likely duration and outcome/s). **At no time should survivors be forced to tell their stories or provide particular testimony unless they choose to do so.**

Should a survivor choose to speak out, s/he should be provided with a **safe supportive environment** *(both physical and emotional)*, in which they are *listened to empathically and in which their experience is validated.* They should be given the *choice* as to whether to testify publicly or privately “in camera”, and offered expert counselling and/or therapeutic or peer support *during the process as well as in an ongoing way afterwards.* The Commission and its officers also need to be informed about, and sensitive to, potential ways in which cultural, religious, ethnic and gender diversity may impact on all processes pertaining to the inquiry.
**Survivor health and wellbeing during and following the Royal Commission:**

The health and wellbeing (quality of life) for survivors and their families, including children, must be a key focus of the Commission both during its time of operation and after its cessation. This will necessitate the provision of informed therapeutic support, including peer support for survivors and those who support them (e.g. family members and friends).

Consideration must also be given to hearing the testimony of families who have lost survivors to suicide, and to their particular needs for trauma informed support.

The provision of Helplines with the expertise, capacity and accessibility to appropriately support adult survivors of complex trauma is crucial. This is in the lead up to the Commission, for the term of the Commission, and in an ongoing way pursuant to the Commission. The risks of support lines staffed by volunteers or those without the requisite skills and training cannot be over-emphasised.

ASCA acknowledges the initial short term funding support in this regard and wishes to work with government to expand its 1300 service including referral pathways. 1300 657 380 is a unique national service, the delivery of which is grounded in research from ASCA’s Practice Guidelines. Previously self-funded, the expansion of this line with funding commensurate to the infrastructure, recruitment and training needs is an urgent priority.

Over the last two decades research has established a substantive evidence base in relation to the trauma of child sexual assault. Yet in Australia many survivors struggle to access affordable trauma-specific services delivered by health professionals with clinical expertise in complex trauma. A huge gap still exists between evidence about the effects of trauma on individuals and possibilities for recovery, as well as in the treatment and service responses which enable sustained recovery.

The ASCA Practice Guidelines for Treatment of Complex Trauma and Trauma Informed Care and Service Delivery are informed by this research. They fill the long overdue gap in knowledge, understanding and practice. Both internationally endorsed and launched by the Federal government as recently as last month, their current availability is now extremely fortuitous for the work of the Commission, and they await implementation.

Trauma is often solely characterised as a one-off event. Yet repeated extreme interpersonal trauma resulting from adverse childhood events (‘complex’ trauma) such as child sexual abuse is not only more common, but far more prevalent than currently acknowledged.

The effects of complex (cumulative, underlying) trauma, notably child sexual abuse are pervasive. If unresolved, they negatively impact mental and physical health across the lifespan as well as intergenerationally. *The most recent neurobiological research supports the finding that unrecognised and untreated complex trauma is not just ‘an individual misfortune’ but a major public health problem.*

The costs of unrecognised and untreated complex trauma are enormous. This is not only in terms
of reduced quality of life, life expectancy and lost productivity, but in `significant increases in the utilization of medical, correctional, social, and mental health services’.

Currently in Australia:

- complex trauma and its effects is often unrecognised, misdiagnosed and unaddressed
- people impacted by trauma present to multiple services over a long period of time; care is fragmented with poor referral and follow-up pathways
- a `merry go round’ of unintegrated care risks re-traumatisation and compounding of unrecognised trauma
- escalation and entrenchment of symptoms is psychologically, financially and systemically costly

Research shows that the impacts of even severe early trauma such as child sexual assault can be resolved, and their negative intergenerational effects can be intercepted. People can and do recover and their children can do well. But for this to occur, mental health and human service delivery need to reflect the current research insights.

As noted in the opening paragraphs, ASCA’s Practice Guidelines for Treatment of Complex Trauma and Trauma Informed Care and Service Delivery set the standards for both clinical treatment of trauma as well as for workers and organisations who have contact with people who experience unresolved trauma. These standards are particularly pertinent as the Terms of Reference for the Royal Commission are considered, and will be consistently important as the Commission gets underway.

ASCA is able to work with government to see the principles established by substantive research inform survivor support, both during the course of the Commission and into the future. This is with respect to ASCA’s own service delivery, as well as workforce training to increase the capacity of the trained workforce. Given the national and international acclaim the Practice Guidelines are receiving, the value of our advisory role in these regards is clear

As flagged previously, it is imperative for support to be provided in the process of (1) preparing submissions, (2) provision of testimony, and (3) follow-up for all survivors, families of survivors and relevant stakeholders. This will necessitate the availability of trained therapeutic practitioners and services in the provision of reliable information and counselling support at all points of the process of the Commission.

**Priorities - recommendations:**

- Development of affordable accessible universal services for Australians who experience complex trauma as a result of child sexual assault
  - with the integration of vision and research into practice
- Engagement of an array of services and professions to achieve a paradigm cultural shift in mental health and human service delivery the need for which is substantiated by the most recent research findings in adjacent disciplines
- Incorporation of specialised knowledge, workforce education and training, and collaboration between consumers, carers, policymakers, and service providers.
- National training programs for systemic quality improvement, cultural reorientation and workforce development.

- Acknowledgement of harm and suffering for individuals, families, communities as a result of child sexual assault occurring within institutions and organisations including intergenerational impacts
- Accountability for that harm
  - Validation, acknowledgement and apology – official, meaningful and public
  - Provision of ongoing informed counselling/therapy by institutions and organisations with pathways to recovery for health and wellbeing
  - Sharing and provision of information by police, agencies, hospitals and practitioners – access to referral pathways for survivors, information, helplines
  - Provision of ongoing information/education for survivors and family members
  - Establishment of redress programs – financial and other compensation related to particular institutions
    - Information for survivors to enable informed choices about possibilities for redress
    - Power sharing between victims and those offering redress
    - Access to counselling and support throughout process of negotiation
  - Establishment of permanent record of harms done within institutions/organisations
  - Establishment of memorials – particular institutions/organisations
  - Stripping of honours for sustained findings in disciplinary and court processes.

- Community responses – rebuilding of particular communities including establishment of community-based programs, review of programs which work and funding for same in diversity of communities
- Commitment to raising public awareness of institutionalised child abuse
- Substantive investment in comprehensive research into best practice for responding to the long-term impacts of child sexual assault (complex trauma)
3. Justice and accountability

Process:

The Commission needs to focus on the institutional and cultural processes, both formal and informal, which have prevented and continue to prevent prompt reporting of knowledge or suspicion of child sexual assault. Correspondingly, focus needs to be on accountability for these crimes, with respect to both those who perpetrate them and individuals and institutions complicit in covering them up, and whose actions or systems limit the pursuit and achievement of justice.

It must investigate all devices utilised by systems and institutions which silence child and adult victims, which protect perpetrators and institutions and which block pathways to claims and justice.

During the term of the Commission, capacity must exist to refer alleged crimes to police for investigation and pursuit through the criminal justice process as they arise, rather than waiting until the Commission has concluded. This applies both to those who directly perpetrated the crimes and those who colluded with them either through inaction or intent.

Integral to this would be an examination of institutions which have legal protections in place which deny victims justice, compensation, redress and due legal process, coupled with the use of legal mechanisms to obstruct claims. Organisations need to be accountable for crimes of child sexual assault in terms of policy, action and monitoring.

Priorities - recommendations:

- Prompt referral to police of all cases needing investigation for criminal prosecution – includes (1) - alleged perpetrators (2) - those complicit in not reporting and/or covering up crimes and/or hiding or destroying evidence in institutions and/or (3) - institutions themselves during and subsequent to term of Commission

- Identification of past and current blocks, overt and covert, to police investigations of allegations, and implementation of investigatory processes and procedural change to address same

- Identification of tacit institutional internal processes, including the destruction of evidence, which currently protect staff and/or warn or otherwise protect offenders from investigation

- Reporting regarding the outcomes of police investigations during the term of the Commission, as well as those of subsequent prosecutions in the form of supplementary reports. These will further inform the evidence base related to institutional child sexual abuse
• Reporting regarding the way disclosure by children, bystanders, family members, staff and hierarchy have been handled/are being handled by institutions. This should include documentation of systemic patterns, both formal and informal, of denial, minimisation, silencing, ostracism and punitive responses, recommendations for policy and procedures, and implementation of recommendations to address these issues in the future.

• Reporting regarding past and current failures in systems with respect to around the recording and maintaining of appropriate records regarding allegations and instances of abuse with recommendations and processes of implementation to address same.

• Ready availability and distribution of comprehensive information for victims about legal options including the criminal justice process and civil claims including that related to trauma aware legal services.

• Trauma informed legal processes which keep victims informed re duration and possible outcomes; provision of choice re private areas for hearing of testimonies, CCTV, videotaped evidence and particular recommendations for children; avoidance and minimisation of duplication and multiple interactions in the seeking of testimony, provision of court support; access to professional counselling/therapeutic support during and following legal process; financial support for family members to attend court process.

• Recommendations regarding confidentiality agreements, secrecy clauses, suppression orders and addressing same in terms of potential blocks to justice.

• Review of Statutes of Limitations which vary from State to State, suppression orders, confidentiality agreements and secrecy clauses.

• Trauma informed training for all lawyers, judges, officers of court and police.

• Law reform consistent with the recommendations derived.

This document was prepared on behalf of ASCA by Dr. Cathy Kezelman, ASCA President and Pam Stavropoulos, PhD, Consultant in Clinical Research in consultation with a diversity of stakeholders including consumers, practitioners, academics, lawyers and Advisory Panel members.

For further information please contact Dr. Cathy Kezelman ASCA President; ckezelman@asca.org.au or 0425 812 197.