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**Submission re Terms of Reference for Royal Commission into Abuse**

26 November 2012

Thank you for the opportunity to make a submission on the proposed terms of reference and structure of the recently announced Commonwealth Royal Commission into child sexual abuse.

Over the past two years my office has been working with advocacy groups, victims and survivors of abuse and their families to address the crime of child sexual abuse including the need for a Royal Commission. For these people and these groups the announcement of the Commonwealth Royal Commission has been extraordinarily heart-warming and I place on record my appreciation of the government taking this step. The move will hopefully lead to historic, and much needed, reform.

Please find attached the principles that my office would be urging the government adopt for the terms of reference, structure and reporting dates for the Royal Commission. In establishing these principles we have consulted with a range of stakeholders and put them forward as a basis to build the broadest possible consensus for the ongoing work of the Royal Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Shoebridge', written in a cursive style.

David Shoebridge  
Greens MLC and Justice Spokesperson



# Royal Commission – Terms of Reference Greens NSW Submission

**26 November 2012**

**A. Scope of Inquiry**

1. The abuse that is the subject of the inquiry should be limited to child sexual abuse.
2. The focus of the inquiry is to be abuse in and by religious organisations, state organisations and other non-government organisations.
3. The Commission must allow for individual victims and survivors of abuse to give their accounts of their history and the abuse they suffered.
4. The Commission must also allow for the families and supporters of victims and survivors, who are often secondary victims of the abuse, to be heard.
5. The Commission must contain a well resourced investigative arm(s) with skilled and experienced police investigators and legal staff, to review institutional responses and failures, and to consider where appropriate the criminal culpability of individuals. To ensure that, where appropriate, criminal investigations are facilitated, the Commission must have memorandums of understanding with State and Federal Police authorities on the sharing of evidence and the delivering of briefs of evidence for prosecution.
6. The Commission must consider the failures of institutions to protect children in their care together with the failure of institutions that were charged with pro-actively ensuring the welfare of children including the Courts, the police, child welfare agencies and religious and not-for-profit organisations.
7. The Commission must investigate legal barriers affecting the ability of victims to seek redress. This must include:
  - (a) The legal identity of defendants and ensuring that liability is not avoided by trust structures and/or the use of unincorporated associations;
  - (b) The 'Ellis Defence' and its use by religious and non-religious organisations;
  - (c) The law relating to vicarious liability of employers including defences used by religious organisations denying such liability for the acts of members of religious orders;



- (d) The prejudice occasioned to victims of child sexual abuse by statute of limitations laws; and
  - (e) The establishment of a non-adversarial system for compensation and redress.
8. The Commission must consider reforms of the criminal justice system to ensure that victims of abuse are not re-traumatised through the criminal trial process.
  9. The Commission must investigate and report on the costs of abuse that have been, and are being, borne by victims, their families and supporters as well as State and Federal governments.
  10. The Commission must consider best practice educative models for both adults and children that work to protect children from abuse in the future.

#### **B. Structure and process of the Commission**

11. In order to facilitate both an environment for victims, survivors, supporters and family members to tell the truth of their experience and for a more forensic investigative function to be undertaken (see 3, 4 and 5 above), consideration should be given to the Irish model adopted in the Lafloy/Ryan Commission.
12. Given the complexity of the differing State and Territory child welfare, criminal and other legal structures and the need for a broad geographic reach for the Commission that consideration be given to:
  - (a) Appointing a Commonwealth Commissioner(s) in each State and Territory; and
  - (b) A Commissioner(s) with overall responsibility for the running of the Commission and national issues.
13. Regardless of structure the Commission must be supported by either joint State and Federal Commissioner appointments or appropriate referrals of power by State governments to ensure all necessary jurisdiction and powers for the Commission.
14. Consideration must be given to the appointment of Commissioners with broader relevant experience including psychiatric/psychologist experience as well as a Commissioner(s) who is Aboriginal or Torres Straighter Islander.



15. There must be support given to victims, survivors, supporters and family members in the form of legal advice as well as counselling "in" and counselling "out" when appearing before or giving evidence to the Commission.
16. There must be clear guidance given to any potential witness who has entered into a Deed containing confidentiality terms that such a Deed will be no hindrance to them giving evidence or making a submission to the Commission.

**C. Timetable for Reporting**

17. There should be no arbitrary final report date for the Commission.
18. There must be clearly established interim reporting dates to allow for interim recommendations on any legal or other changes considered necessary or appropriate by the Commission.