
EXECUTIVE SUMMARY

Jehovah's Witnesses in Australia and The Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse

14 November 2018

Introduction

On 14 November 2018 we provided to you our review and opinion on, among other matters, the findings and recommendations of the Royal Commission into the Institutional Responses to Child Sexual Abuse relating to Jehovah's Witnesses (**Review**).

Our Review was divided into four Parts, as follows:

- (a) Part One considered the history and powers of royal commissions in general.
- (b) Part Two considered particular aspects of the Royal Commission into the Institutional Responses to Child Sexual Abuse relevant to Jehovah's Witnesses (**Royal Commission** or **Commission**), including the Commission's Terms of Reference.
- (c) Part Three considered the Commission's findings and recommendations regarding Jehovah's Witnesses and the basis of such findings and recommendations.
- (d) Part Four considered the responses, as at 14 November 2018, of the Commonwealth and State Governments to the Final Report of the Commission.

You have asked us to provide an Executive Summary of our Review, with particular emphasis on Part Three.

1. **Executive Summary: history and powers royal commissions, and aspects of the Commission**
 - 1.1 Royal commissions have extensive and wide-reaching coercive powers, derived from the *Royal Commissions Act 1902* (**Royal Commissions Act** or **RCA**), which sets them apart from other types of boards or inquiries established or appointed by the government.
 - 1.2 The RCA also impinges on the common law and statutory privileges usually available in litigation before the courts. Most significantly, the RCA expressly deals with and limits the availability of 'client legal privilege' and privilege against self-incrimination.
 - 1.3 A royal commission is not bound by the rules of evidence and can receive hearsay and other evidence that would otherwise be inadmissible in criminal and civil proceedings.
 - 1.4 A royal commission is not, however, a court and does not have the authority or powers of a court. As such, a report of a royal commission - unlike a judgment of a court - does not

affect legal rights, although its examination of witnesses and its findings may well have very significant adverse consequences for the reputation of people and institutions.

- 1.5 An aggrieved individual or entity may seek judicial review by the court of a decision or finding of a royal commission on a number of possible grounds including, that a royal commission went outside its terms of reference, or that a commissioner was biased (or appeared biased), or because there has been a breach of a rule of procedural fairness.
- 1.6 The Royal Commission into Institutional Responses to Child Sexual has been, to date, Australia's longest running, and most expensive, public inquiry. The Australian Government committed over \$500m to ensure that the Royal Commission was able to fulfil its Terms of Reference.
- 1.7 The Terms of Reference of the Commission directed it to report on child sexual abuse in "institutional contexts". The Terms of Reference specifically excluded the Commission from examining child sexual abuse outside institutional contexts and expressly stated that an "institution" did "not include the family".
- 1.8 Prior to the Commission commencing its investigation the Royal Commissions Act was amended to create a process called "private sessions" to allow the Commission to hear from survivors. However, the amendments made clear that a "private session" was not a hearing of the Royal Commission and that a person who appeared at a private session was not a witness before the Commission nor considered to be giving evidence. The Commission did not require those participating in private sessions to take an oath or affirmation and they were not subject to cross-examination "but [they] were expected to tell the truth".
- 1.9 The Commission held 57 public hearings and 67 private hearings between September 2013 and March 2017. There were 444 public hearing days in total. The Commission also held 6,961 private sessions during which it heard from 6,875 survivors. In addition, it received 992 written accounts and reviewed 1,200,000 documents
- 1.10 On 15 December 2017, the Final Report of the Royal Commission, made up of 17 Volumes, plus a preface and an executive summary (**Final Report**), was delivered to the Governor-General and tabled in Parliament.
- 1.11 It is evident that the investigation into Jehovah's Witnesses formed a small part of the Commission's work in terms of the number of hearing days, witnesses called, private

sessions held and documents reviewed. As set out in paragraph 4.7 of our Review the Commission's investigation encompassed only 6 hearing days, 15 witnesses, 70 private sessions and 1,500 documents. It resulted in the publication of an interim report (**Case Study 29**) and a review report (**Case Study 54**) in addition to the Final Report (of which only Volume 16, Book 3, part D, chapter 15 pages 71-108 specifically concerned Jehovah's Witnesses).

1.12 As discussed in paragraphs 3.14 (and following) and Part 4 of our Review, the Commission in its "Final Report: Recommendations" made 409 recommendations. Of those, only 3 were directed specifically to Jehovah's Witnesses. In relation to those 3 recommendations, the response of each of the Federal, State and Territory Governments was "to note" the recommendations and comment that they were matters for the Jehovah's Witnesses to consider.

2. Executive Review: The Royal Commission and Jehovah's Witnesses, findings and conclusions

Set out below is the summary of the principal findings and conclusions contained in our Review of the Commission's Investigation into Jehovah's Witnesses and its ensuing reports. We have indicated in the text or in () at the end of a paragraph, where the material matters are located in our Review.

2.1 It is apparent from our Review that Jehovah's Witnesses and the Commission shared common goals, namely, to ensure, as far as it is possible, that children are kept safe from predatory sexual behaviour (Review 5.1).

2.2 Whereas the Royal Commission's approach was secular and focused on the response of institutions to the crime of child sexual abuse, the approach of Jehovah's Witnesses is religious, and their response focuses on the gross sin of child sexual abuse (Review 5.2 and following).

2.3 Despite the differences in approach a number of the issues that initially concerned the Commission regarding Jehovah's Witnesses' policies, ceased to be issues by the time of the Final Report (Review 5.46 and following).

2.4 At the suggestion of the Commission, Jehovah's Witnesses codified into one document "Child Safeguarding Policy of Jehovah's Witness in Australia (**Child Safeguarding Policy**),

its policies on child sexual abuse in Australia and the procedures to be followed when allegations are received (Review 5.48).

- 2.5 The Child Safeguarding Policy was welcomed by the Commission, but the Commission remained critical of what it perceived were the reporting policies (Review 5.49 and following).
- 2.6 The Royal Commission's fundamental criticism of Jehovah's Witnesses was that their religious beliefs and their concentration on the sin of child abuse led to a failure to investigate properly or adequately and a failure to report abuse or allegations of abuse to the police or other civil authorities which could then respond appropriately (Review 5.4 and following).
- 2.7 The Commission's dissection of the religious beliefs of Jehovah's Witnesses which led to the conclusion that Jehovah's Witnesses' religious beliefs were causative of the inadequate response to child sexual abuse, failed to discriminate between religious beliefs (and the obligations imposed by such beliefs) and the requirements of secular law (Review 5.7).
- 2.8 If there had been mandatory requirements in place over the period examined by the Commission, then the examination of Jehovah's Witnesses' religious beliefs - and of such topics as the so-called "two-witness rule", the principle of male headship, the sanctions of reproof and disfellowshipping, and the practice of "shunning" - would have been irrelevant to the Commission's investigation of alleged perpetrators of child sexual abuse (Review 5.8).
- 2.9 The evidence before the Commission disclosed that Jehovah's Witnesses obey the law pertaining to child sexual abuse and where reporting of child sexual abuse is mandated, congregation elders will report even in those cases where there is insufficient Scriptural evidence to take congregation action (Review 5.9).
- 2.10 The Commission's criticism of Jehovah's Witnesses Bible-based religious beliefs and practices was misplaced and should have been directed - as indeed the Commission does at length elsewhere in the Final report - to the lack of uniform mandatory reporting laws (Review 5.10).
- 2.11 For the reasons set out in detail at Review paragraphs 5.18 and following, we consider a large part of the Commission's investigation into and evidence led about Jehovah's

Witnesses, which related to child sexual abuse within families of members of Jehovah's Witnesses, was outside the Commission's Terms.

2.12 In our opinion the Commission's rejection of what the Commission itself termed were two "key submissions" made by Jehovah's Witnesses led the Commission to conflate impermissibly, and contrary to its Terms of Reference, familial and institutional sexual abuse. Those two submissions, as quoted by the Commission in its Case Study 29 Report were in the following terms (Review 5.20):

(a) The first key submission.

Familial child sexual abuse is not institutional sexual abuse, as has been acknowledged by the Commission. Similarly, it is self-evident that when child sexual abuse occurs outside the 'institutional' contexts as defined, the response to it does not fall within the Terms of Reference of this Commission

The Commission proceeds on the basis that when an allegation of familial sexual abuse becomes known to an elder and is subsequently Scripturally investigated by congregation elders, it ceases to be familial sexual abuse and becomes institutional sexual abuse. This conflation of familial and institutional sexual abuse does not accord with the Terms of Reference.

(b) The second key submission.

A further significant submission made on behalf of the Watchtower & Ors was that the Jehovah's Witness organisation does not sponsor or operate 'crèches, schools, orphanages, Sunday Schools, hospitals, sports clubs, day-care centres, youth groups, or any other activities which separate children from their parents'. Therefore, it submits that the institutional settings that might present the greatest risk to the safety of children are not present within the Jehovah's Witness organisation and '[t]here can be no safer "institution" than one that does not present opportunities for predatory behaviour'.

2.13 The incorporation of familial abuse into the Commission's investigation of Jehovah's Witnesses was pivotal to the ensuing findings in Case Study 29 and the Final Report (Review 5.26).

2.14 In our opinion, had a challenge been made to a Court, it is reasonable to conclude that an Australian Court, applying the plain and ordinary meaning of the words and defined terms used in the Terms of Reference and applying conventional rules of construction, would have found that an examination of child sexual abuse in families of people who also happened to be members of Jehovah's Witnesses, was beyond the scope of the Commission's mandate (Review 5.30).

2.15 We understand that while Jehovah's Witnesses did not agree with the Commission's reasons, they did not wish to exacerbate the trauma of either of the survivors or of their own witnesses and did not consider that their interests would be advanced by such a

challenge - which would only have added to the damaging publicity surrounding the Commission (Review 5.25).

- 2.16 As a consequence of its finding, the Commission considered that it had carte blanche to inquire into allegations of child sexual abuse regardless of whether or not the alleged perpetrator was an official of Jehovah's Witnesses or a parent or family member of the congregation and despite its acknowledgement Jehovah's Witnesses did not have the institutional settings typical of religious institutions where abuse commonly occurs (Review 5.31).
- 2.17 One of the consequences of the Commission's including familial abuse (in the context of Jehovah's Witnesses) as being within its Terms of Reference, was that it treated every one of the 1,006 case files produced by Jehovah's Witnesses, which spanned the previous 65 years, as being within its Terms (Review 5.32).
- 2.18 Had the Commission applied the same criteria to identify "an institutional response to child sexual abuse" to Jehovah's Witnesses as it did for other institutions, by reference to the position of the perpetrator within the institution (usually one of authority) and the institutional setting of the abuse (such as a school), then the case files produced by Jehovah's Witnesses disclosed that in the previous 65 years there had been 50 cases of institutional child sexual abuse where the perpetrator was an official of Jehovah's Witnesses – or 104 cases if the familial abuse by elders and ministerial servants were included (Review 5.33 and following and 6.14 and following).
- 2.19 In our view, even allowing for the Commission's interpretation of the scope of its Terms of Reference, a more balanced and fair approach should have been adopted by the Commission to its presentation of the case file data. As it is, it is questionable whether proper regard was had by the Commission when coming to its findings on its analysis of the data, to Jehovah's Witnesses' Submissions regarding the case files (Review 6.19 and following).
- 2.20 The different criteria applied by the Commission leads to the conclusion that that there was an inherent unfairness in the Commission's investigation of Jehovah's Witnesses (Review 5.34).
- 2.21 As discussed at Review paragraphs 5.37 and following, in making findings that Jehovah's Witnesses did not understand child sexual abuse and did not properly consider the potential danger to children of predatory sexual behaviour, the Commission chose to give

little or insufficient weight to the evidence of the education provided to parents or to the journals, pamphlets and literature published and disseminated (over many decades) by Jehovah's Witnesses in hard copy and more recently on the jw.org website.

- 2.22 As discussed in Review paragraphs 5.41 and following, there appear to be inconsistent findings in the Final Report as to the prevalence of child sexual abuse within Jehovah's Witnesses as found by the Commission.
- 2.23 Although the information obtained by the Commission in the private sessions clearly assisted the policy objectives of the Commission's Terms of Reference, there are significant difficulties in relying on any findings based on private sessions (Review s 6.3).
- 2.24 As noted in our Review (5.11 and following and 6.24 and following), a substantial proportion of the Case Study 29, concerned the experiences of two Jehovah's Witnesses who were sexual abused in the 1980s and to the policies and procedures in place in the 1980s and 1990s (when the incidents were investigated).
- 2.25 Jehovah's Witnesses chose not to cross-examine either witness. We understand that the decision was taken as Jehovah's Witnesses did not wish to exacerbate any trauma they suffered both as a result of their experiences and which may arise from further questioning.
- 2.26 In our assessment the Commission paid little regard or appeared to give no weight to the historical context in which the two incidents investigated occurred. At the very least, the Commission should have considered whether the Scriptural requirement of corroboration in the so called "two-witness rule", was comparable to what the police and the courts required at a similar historical period as that being examined in the two cases (Review 5.15 and following).
- 2.27 Although the findings and recommendations may lead to other investigations by other civil authorities, the Commission's findings are not determinative and cannot be relied upon in any subsequent civil or criminal proceedings. Finally, we note that whatever the worth of the Commission's findings they are based on its investigation of Jehovah's Witnesses in the Australian context (Review 6.30).


David Bennett AC, QC

5 Wentworth Chambers
11 February 2019


James TG Gibson

5 Wentworth Chambers

Liability limited by a scheme approved under Professional Standards Legislation