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

14 November 2018

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## 1. Opinion sought: our instructions

1.1 You have sought our opinion and comment on the following questions and matters.

- (a) First, you would like a review of Royal Commissions in general, which will consider the following:
  - (i) What is a Royal Commission, what is its status and what is its role in Australia's political and public life?
  - (ii) How it is appointed and governed?
  - (iii) What are its coercive and other powers?
  - (iv) What is the status of a Royal Commission's findings and recommendations? In particular, you would like an opinion on the admissibility of the findings and recommendations in court proceedings in Australia.
- (b) Secondly, a review of particular aspects of the Royal Commission into Institutional Responses to Child Sexual Abuse (**Royal Commission** or **Commission**). This will include:
  - (i) the basis of the selection of institutions for a case study;
  - (ii) whether the criterion used by the Commission to determine that Jehovah's Witnesses response to child sexual abuse was an "institutional" response, was fair or justified; and
  - (iii) the use of "private sessions".
- (c) Thirdly, a review of particular aspects of the findings and recommendations of the Final Report of the Royal Commission in relation to Jehovah Witnesses. This will include:
  - (i) (whether or not the criterion in 1.1 (b) (ii) was justified), whether the findings of the Commission based on the case files provided by Jehovah's Witnesses, were fair or justified; and
  - (ii) a consideration of the findings adverse to Jehovah's Witnesses based on "private sessions".
  - (iii) a consideration of:
    - (A) apparent factual errors and how such factual errors impacted on the Commission's findings;

- (B) whether, in addition to the private session material, the Commission failed to provide Jehovah's Witnesses with material upon which it made findings.
- (d) Fourthly, a consideration of the recommendations of the Commission and the response by the Commonwealth and State governments.

## PART ONE: Royal Commissions

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### 2. Royal Commissions

#### Background

- 2.1 Under the "Westminster" system of government in, among other countries, Australia, the United Kingdom, Canada and New Zealand, the executive arm of government can choose whether to investigate a particular matter of public concern either by the appointment of a departmental or ministerial inquiry, or by some form of inquiry outside of the government. Where for political or other reasons, the executive arm considers it appropriate to undertake an investigation into a controversial subject or to inquire into particular area of policy (or both) it is more likely to appoint an independent public inquiry<sup>1</sup>. A royal commission is one form of public inquiry.
- 2.2 The Australian Law Reform Commission (**ALRC**) has described royal commissions as "a form of non-judicial and non-administrative governmental investigation" and that they are "one of the oldest institutions of government"<sup>2</sup>. Their long history is accepted to date back to the commissioners despatched by William the Conqueror to all parts of England in the 11<sup>th</sup> century to verify the land holdings for inclusion in the Domesday Book.<sup>3</sup>
- 2.3 Royal commissions, as the name suggests, had their foundation in the exercise of the Crown's prerogative to appoint officials to perform duties on behalf of the Crown. However, under the Crown's common law power to issue a royal commission there was no inherent power to call witnesses and compel evidence. Such power had to be provided by legislation. Accordingly, when Australia became an independent nation one of the first acts passed by the new Commonwealth Parliament of Australia was the *Royal Commissions Act 1902* (**Royal Commissions Act** or **RCA**), which supplemented the Crown's power at common law. The RCA was enacted by the Australian Parliament under s51(xxxix)

of the *Australian Constitution*, which confers on the Australian Parliament the power to make laws for the peace, order, and good government of the Commonwealth with respect to matters incidental to the execution of powers vested in the legislature, executive or judicature<sup>4</sup>. Although the RCA was subject to a challenge on the basis it purported to authorise the Governor-General to establish Royal Commissions with coercive powers to inquire into matters beyond the legislative power of the Commonwealth, its constitutionality was subsequently confirmed by the High Court.<sup>5</sup>

- 2.4 The *Royal Commissions Act*, as amended over time, provides a royal commission with its now extensive and wide-reaching coercive powers and it is these powers that set a royal commission apart from other types of boards or inquiries established or appointed by the government.
- 2.5 Since the passing of the *Royal Commissions Act* there have been 136 royal commissions appointed by the Commonwealth Government, six of which, including the Royal Commission into Institutional Responses to Child Sexual Abuse, have been appointed since 2010. They have been described as being “the most prestigious of executive inquiries in Australia”<sup>6</sup>. In ALRC Report 111, into the operation of royal commissions and the provisions of the *Royal Commissions Act*,<sup>7</sup> the ALRC recommended that royal commissions should remain the “highest form of inquiry” into matters of substantial public interest and recommended that the description “Royal Commission” be kept. It explained:<sup>8</sup>

This is for two main reasons. First, the term ‘Royal Commission’ is very well-known, which means that it is a clear way to communicate to the public the extraordinary nature of such an inquiry. Secondly, the title ‘Royal Commission’ is helpful in that it indicates how the highest form of public inquiry is established - namely by the Governor-General of Australia. It is appropriate that the Australian head of state should continue to be responsible for establishing the highest form of public inquiry in Australia.

- 2.6 As commentators have noted, Australian governments (at both state and federal level) have been more inclined to favour royal commissions than governments of other Westminster countries.<sup>9</sup>

### **Appointment of a Royal Commission**

- 2.7 Section 1A of the RCA provides that the Governor-General of the Commonwealth of Australia<sup>10</sup> by “Letters Patent” (a legal document containing public directions from a monarch or the monarch’s representative which sets out the jurisdiction of the particular commission) may commission a person or persons to inquire into “any matter specified in the Letters Patent and which relates to or is connected with the peace, order and good government of the Commonwealth, or any public purpose or power of the Commonwealth”. In the context of royal commissions, Letters Patent are referred to as

the particular commission's Terms of Reference. Under s16A of the *Acts Interpretation Act* 1901 (Cth), a reference to the Governor-General is to be read as referring to the Governor-General acting with the advice of the Executive Council (which consists of all ministers of state and parliamentary secretaries).<sup>11</sup> In other words, a royal commission is appointed or commissioned by the Governor-General on advice of all his or her ministers.

- 2.8 Section 1A also provides that the Governor-General may issue "commissions, directed to such person or persons as he or she thinks fit". It has been the practice that commissioners are appointed from outside government and are frequently judges or retired judges. This practice enhances the perception of independence of the commission from the government of the day.<sup>12</sup>

### Coercive Powers of a Royal Commission

- 2.9 The principal coercive powers of a royal commission emanating from the RCA relate to information gathering. These powers,<sup>13</sup> in summary, permit a royal commission:

- (a) to summon witnesses (s2(1)(a));
- (b) to compel production of documents and the provision of information (s2(1)(b)), (2)); and
- (c) to require witnesses to answer questions under oath or affirmation (s 2(3)).

- 2.10 Failure to comply with any of these requirements, absent a 'reasonable excuse' (s3 (1B) and (5)), are offences under the RCA and attract penalties in the form of monetary fines and imprisonment.

- 2.11 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. In summary:

- (a) s2(5) requires the production of documents even if they are the subject of client legal privilege, subject to the provisions of s6AA. Under s6AA(1) a claim for legal privilege does not provide a reasonable excuse from production of a document unless a court has found the document to be privileged or a claim has been made before the member of the Commission who required production, and accepted by him or her as privileged (s6AA(2)). If accepted, then under s6AA(4), the document must be returned and disregarded for the purposes of any report;

- (b) s6A places limits on the privilege against self-incrimination. Under s6A it is not a reasonable excuse for a natural person to refuse to produce a document or answer a question on the ground it might incriminate the person or make him or her liable for a penalty. Under s6A(3), however, the section does not apply if the production of the document or the answer to the question may incriminate the person in relation to an offence with which he or she has already been charged and the matter has not “been finally dealt with by a court or otherwise disposed of”;
  - (c) s6DD provides that statements made under compulsion or documents produced under compulsion are not admissible in evidence in ‘any civil or criminal proceeding’ against the person making the statement or producing the document (unless it is a proceeding for an offence against the RCA).
- 2.12 The effect of ss6A and 6DD is that while direct use of the material is not permissible in civil or criminal proceedings, the evidence may be used in other indirect, or derivative, ways – for instance, as a basis for further investigations leading to other proceedings.
- 2.13 As a related matter, it should also be noted that under s6P of the RCA a royal commission may refer to the appropriate authorities any information, evidence or document relating to criminal or civil conduct. The power to refer such matters is also frequently specifically contained in the Terms of Reference of a commission.
- 2.14 S7 of the RCA affords protection to commissioners, legal practitioners (whether assisting or appearing) and witnesses involved with a royal commission, from any legal liability arising from their work with or participation in, a commission. The section confers upon participants in a royal commission the immunities enjoyed by participants in court proceedings at common law.

### **Important Features**

- 2.15 There are a number of important features to bear in mind when considering royal commissions, including:
- (a) 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;
  - (b) a royal commission is not 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;

- (c) although a royal commission that investigates and reports on responsibility for civil or criminal conduct cannot decide on the conduct, its investigation may lead to further investigations and to civil or criminal prosecution;
- (d) despite a royal commission being unable to make conclusive determinations of guilt and impose sentences, its examination of witnesses and its findings may well have very significant adverse consequences for people's and institutions' reputations;
- (e) a royal commission cannot implement its own recommendations;
- (f) although recommendations made by a royal commission may inform policy development and legislation, they do not automatically become law;
- (g) although independent of the executive arm, the executive dictates a royal commission's Terms of Reference and its duration;
- (h) while the primary function of a royal commission is to inquire into and report to the government, the executive, however, is not required, to implement the commission's recommendations.

#### **Accountability of Royal Commissions**

2.16 The reality is that although an investigative royal commission is not adversarial in the same way as litigation in the courts, and by its very nature is a 'fishing expedition'<sup>14</sup>, its wide coercive and investigatory powers permit a far more rigorous testing of evidence than is possible in the legal system. Accordingly, a commission is also expected to ensure that its procedures are fair and follow due process.<sup>15</sup>

2.17 The wide powers of a royal commission and their potential consequences and effects have, however, always been a cause of some concern. In 1984, Ronald Sackville<sup>16</sup> commented on amendments to the *Royal Commission Act* (as it then was) giving commissions greater power to fine witnesses and force them to give evidence (including self-incriminating evidence) stating that ".....the investigative royal commissions constitute a serious and continuing threat to civil liberties in Australia".<sup>17</sup> He also commented on the<sup>18</sup>,

...potential unfairness inherent in permitting royal commissions to make findings of criminal guilt on the basis of evidence that would be inadmissible before a court and by reference to a standard of proof that may be less stringent than that applied in criminal prosecutions.

2.18 In 1994, Dr Janet Ranley observed<sup>19</sup> that royal commissions are armed with coercive powers which,

....enable commissions to unearth hidden evidence, but also have a significant and sometimes intrusive impact on the affairs of governments and individuals. The balancing of the need for such power against the need for protection against its excessive and unfair use raises major legal and policy issues.



2.19 In 2006, Scott Passer noted (citing Sackville),<sup>20</sup> commented:

Royal commissions draw their conclusions not on the basis of reasonable doubt and admissible evidence, but on the balance of probabilities and the acceptance of hearsay evidence. At the same time, royal commission can protect evidence and witnesses from defamation law and possible retaliations.

2.20 In 2009 in its review of the *Royal Commissions Act*, the ALRC described the coercive powers of royal commissions to call witnesses and require the production of documents “controversial”, given that commissions are established by the executive and are not courts.<sup>21</sup> Nevertheless, the ALRC recommendations recognised that coercive powers were required to ensure that royal commissions had access to all information necessary to make informed findings and recommendations<sup>22</sup>. The ALRC, however, recognised that it was essential that such powers should be exercised only where justified and that they should “only impinge on the rights of individuals in a proportionate and justifiable manner” and that such coercive powers should be “complemented by appropriate rights and protections”.<sup>23</sup>

2.21 The ALRC considered that the existing “accountability mechanisms” are sufficient. It considered that as a royal commission is established by the executive it is accountable ultimately to Parliament. Of more immediate practicality, some decisions of a royal commission are subject to ‘judicial review’, described broadly as ‘the function or capacity of courts to provide remedies to people adversely affected by unlawful government action’.<sup>24</sup> Judicial review has been described by Dr Ranley as “perhaps the most effective check”<sup>25</sup> on a commission and allows an aggrieved individual or entity to seek review by the court 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 the principle of procedural fairness.

2.22 A finding of a royal commission may also be challenged on failure to afford procedural fairness<sup>26</sup>. For instance, a finding may be challenged if it was not based on “some material that tends logically to show the existence of facts consistent with the finding” and that any reasoning is “supportive of the finding and not logically self-contradictory”. A finding may also be challenged on the basis that any person who is or will be adversely affected by the finding, must be made aware of the potential finding and not deprived of “the opportunity to adduce additional material of probative value that had it been placed before the decision-maker, *might* have deterred him from making the finding”. It is important to bear in mind that an “adverse finding” in this context does not extend to “any finding of disputed fact, or any criticism of a party, or the exposure of evidence or material which might reflect badly on a person”.<sup>27</sup>

2.23 In summary, although commentators have raised concerns about the powers of royal commissions, the reality is that the trend in Australia - as witnessed by the several amendments to the RCA since 1980 - has been to expand the powers to ensure that a commission is able to fulfil its mandate, even if that impacts on the protections and privileges usually afforded to individuals in criminal or civil proceedings in the courts.

2.24 The ALRC considered<sup>28</sup> that the function of royal commissions is to discover the truth, without the evidential or procedural limitations that apply to court. This is because,

...the purpose of Royal Commissions is not to determine legal rights, but rather to find facts and make recommendations to the executive arm of government.....Royal Commissions are established only where a particular area of public concern has been identified for which the usual investigations and proceedings would not suffice.

## PART TWO: The Royal Commission into Institutional Responses to Child Sexual Abuse

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### 3. The Royal Commission into Institutional Responses to Child Sexual Abuse

#### Background and Terms of Reference

- 3.1 On 11 January 2013, the Governor-General of the Commonwealth of Australia issued Letters Patent (ie the Terms of Reference), appointing six Commissioners,<sup>29</sup> setting out the scope of the inquiry and requiring the Commission to submit its Final Report by 31 December 2015. On 30 June 2014, the Royal Commission issued its Interim Report and on 2 September 2015 the Australian Government announced its decision to extend the Royal Commission until December 2017. On 15 December 2017, the Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse, made up of 17 Volumes, plus a preface and an executive summary, was delivered to the Governor-General and tabled in Parliament.<sup>30</sup>
- 3.2 The Royal Commission 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<sup>31</sup> (although the Royal Commission in its Final Report estimated its total expenditure to be \$342.3 million).<sup>32</sup>
- 3.3 The Royal Commission held 57 public hearings and 67 private hearings between September 2013 and March 2017. There were 444 public hearing days in total. The Royal Commission also held 6,961 private sessions during which it heard from 6,875 survivors.<sup>33</sup> In addition, it received 992 written accounts.
- 3.4 The scope of the inquiry by the Royal Commission, as set out in its Terms of Reference, is widely known. Importantly, the Terms of Reference of the Royal 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 (emphasis added):

*AND noting that without diminishing its criminality or seriousness, your inquiry will not specifically examine the issue of child sexual and related matters outside institutional contexts...*

- (a) The term "Institution" is defined (emphasis added):

*institution* means any public or private body, agency, association, club, institution, organisation or other entity or group of entities (whether incorporated or unincorporated), and however described, and:

- i. includes, for example, an entity or group of entities.....that provides, or at any time provided, activities, facilities, programs or services of any kind that provide means through which adults have conduct with children, including through their families; and
- ii **does not include the family.**

(b) “Institutional contexts”, in turn, is defined:

*institutional context*: child sexual abuse happens in an institutional context if, for example:

- i it happens on premises of an institution, where activities of an institution take place, or in connection with the activities of an institution; or
- ii it is engaged in by an official of an institution in circumstances (including circumstances involving settings not directly controlled by the institution) where you consider that the institution has, or its activities have, created, facilitated, increased, or in any way contributed to, (whether by act or omission) the risk of child sexual abuse or the circumstances or conditions giving rise to that risk; or
- iii it happens in any other circumstances where you consider that an institution is, or should be treated as being, responsible for adults having contact with children.

(c) “related matters” is defined as follows

**related matters** means any unlawful or improper treatment of children that is, either generally or in any particular instance, connected or associated with child sexual abuse

3.5 We comment further on the Terms of Reference below.

### **Selection of Religious “institutions” for Case Studies**

3.6 The Royal Commission summarised the factors that led it to select institutions for Case Studies in Volume 1 of the Final Report.<sup>34</sup> The criteria applied included the need to ensure that the hearings reflected a “national approach and covered diverse institutions”. In selecting institutions, as the Commission explained, it looked at factors such as whether,

- we had received a large number of allegations about a particular institution or group of institutions
- witnesses (both survivors and institutional staff) and documents were available
- the case study highlighted systemic issues

3.7 The Royal Commission considered a “key factor” was the number of allegations received from “a particular institution or type of institution”. Given that “58.6 per cent of the survivors attending private sessions reported abuse” in religious institutions, “it was plain that hearings were needed to examine the responses” of such institutions.”

### **Private Sessions: Amendment of the *Royal Commissions Act 1902 (Cth)***

3.8 One of the most significant matters that occurred prior to the Royal Commission commencing its investigation was the amendment of the *Royal Commissions Act* to create a process called “private sessions” to allow the Royal Commission to hear from survivors<sup>35</sup>. The amendments to the Act provided, in summary and among other matters, that,

- (a) a private session was not a hearing of the Royal Commission (s 6OC (2));
- (b) a person who appeared at a private session was not a witness before the Royal Commission nor considered to be giving evidence (s 6OC (1)); and
- (c) the information obtained could only be included in a report or recommendation if either it is also given as evidence or produced under summons or the information is de-identified (s6OJ).

3.9 The Commission did not require those participating in private sessions to take an oath or affirmation and were not subject to cross-examination “but [they] were expected to tell the truth”.

3.10 Despite these limitations, the Royal Commission considered private sessions to be significant and important, reporting,<sup>36</sup>

..... the information provided in private sessions has informed our work and has been extensively cited in our reports.

3.11 The Royal Commission considered:<sup>37</sup>

The information gathered by the Royal Commission during private sessions is one of the richest and most extensive sources of information about child sexual abuse in institutional contexts that exists today. It has been used to inform all aspects of the Royal Commission’s work.

3.12 As we discuss in greater detail below, of 4,029 survivors attending private sessions who reported abuse in religious institutions, only 70 or 1.7 percent were, on the Commission’s figures, referable to Jehovah’s Witnesses.

### **Standard of proof**

3.13 In reaching their findings, the Commissioners applied the civil standard of proof.<sup>38</sup> As the Report notes, the standard required the Commissioners’ ‘reasonable satisfaction’ as to the particular fact in question, in accordance with the principles discussed by Dixon J in *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362-3:

it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal ... the nature of the issue necessarily affects the process by which reasonable satisfaction is attained.

### Recommendations regarding Religious Institutions and Jehovah’s Witnesses

3.14 In its Final Report Recommendations, the Royal Commission made 409 Recommendations. Of those:

- (a) only 3 recommendations were directed specifically to Jehovah’s Witnesses (Recommendations 16.27 -16.29);<sup>39</sup> and
- (b) 28 were directed specifically to “all religious Institutions” (Recommendations 16.31 – 16.58).

3.15 On 13 June 2018 the Australian Government tabled its response to the Commission. Of the three recommendations directed specifically to Jehovah’s Witnesses, the Australian Government response was to “Note” each recommendation and under the heading “STATUS” to comment as follows.<sup>40</sup>

NO	RECOMMENDATION	RESPONSE	STATUS
16.27	The Jehovah’s Witness organisation should abandon its application of the two-witness rule in cases involving complaints of child sexual abuse.	Noted	These recommendations are a matter for the Jehovah’s Witness organisation in Australia.  The Australian Government expects all institutions to act consistently and effectively to protect children from sexual abuse.  The Australian Government encourages all institutions to act consistently with the National Principles for Child Safe Institutions
16.28	The Jehovah’s Witness organisation should revise its policies so that women are involved in processes related to investigating and determining allegations of child sexual abuse.	Noted	
16.29	The Jehovah’s Witness organisation should no longer require its members to shun those who disassociate from the organisation in cases where the reason for disassociation is related to a person being a victim of child sexual abuse.	Noted	

3.16 It is apparent from this response that the Australian Government does not consider it appropriate to interfere with Jehovah’s Witnesses’ policies and procedures based on religious beliefs and practices – although there is a clear expectation and encouragement that they will act to protect children.

3.17 We comment further on the Commonwealth Government’s response to the Commission’s recommendations (and the response of the State and Territory Governments) in Part 4 below.

## Part 3: The Royal Commission and Jehovah's Witnesses

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### 4. The Royal Commission and Jehovah's Witnesses: background

4.1 On 28 November 2016 *Report of Case Study 29: The response of the Jehovah's Witnesses and Watchtower Bible and Tract Society of Australia Ltd to allegation of child sexual abuse (Case Study 29)* was tabled in the Australian Parliament.<sup>41</sup> *Case Study 54: Institutional review the Jehovah's Witnesses* was not required to be tabled (**Case Study 54**).<sup>42</sup> As referred to above the 17 volume Final Report was tabled in Parliament on 15 December 2017.

4.2 The Volume of the Final Report directly relevant to Jehovah's Witnesses is Volume 16, Religious Institutions, and in particular, Book 3, part D, chapter 15 pages 71 -108 and to a lesser extent Book 1. Other volumes, relating to the response of religious institutions are also tangentially relevant.

4.3 In Case Study 29 which took place in July 2015, the Royal Commission examined,<sup>43</sup>

- the experiences of two survivors of child sexual abuse in the Jehovah's Witnesses organisation and the response of the organisation to the survivors' complaints; and
- the systems, policies and procedures in place in the Jehovah's Witnesses organisation for raising and responding to allegations of child sexual abuse and for the prevention of child sexual abuse within the organisation.

4.4 The scope and purpose of Case Study 29 was<sup>44</sup> to inquire into (emphasis added),

- a. The experience of survivors of child sexual abuse **within the church of the Jehovah's Witnesses** (the Jehovah's Witness Church) in Australia.
- b. The responses of the Jehovah's Witnesses Church and its corporation, the Watchtower Bible and Tract Society of Australia Ltd (Watchtower Australia), to allegations, reports or complaints of child sexual abuse **within the Church**.
- c. The systems, policies and procedures in place within the Jehovah's Witnesses Church and Watchtower Australia for raising and responding to allegations of or concerns about child sexual abuse **within the Church**.
- d. The systems, policies and procedures in place in the Jehovah's Witnesses Church and Watchtower Australia to prevent child sexual abuse **within the Church**.
- e. Any related matters

4.5 The purpose of Case Study 54, which took place some a year and a half later, in March 2017 was, according to the Royal Commission, to provide Jehovah's Witnesses with an opportunity<sup>45</sup> to "inform us of its current policies and procedures in relation to child

protection and child safe standards, including responding to allegations of child sexual abuse”.

4.6 In addition to the evidence put forward in the public hearing of Case Study 29 and the review in Case Study 54, there were two further sources<sup>46</sup> that the Commission reported provided it with “some understanding” of the “nature and extent of child sexual abuse occurring in the [sic] Jehovah’s Witnesses”. These sources were the ‘private sessions’ where it heard from 70 people and the 1,006 case files produced by the organisation prior to Case Study 29.

4.7 When considering the Royal Commission as a whole, it is evident, as summarised in the following table, that the investigation into Jehovah’s Witnesses formed a relatively small part of the Commission’s investigation and work in terms of the number of hearing days, witnesses called, private sessions held and documents reviewed.<sup>47</sup>

	Royal Commission	Jehovah’s Witnesses (Case Study 29: and Case Study 54)	Percentage of total
Public hearings	57	2	
Public hearing days	444	6	1.35
Witnesses	1,302	15	1.15
Private sessions (all)	6,875	70	1.0
Private sessions (religious institutions)	4,029	70	1.7
Documents reviewed	1,200,000	5,000	0.04

4.8 The Royal Commission’s findings as against Jehovah’s Witnesses were based on publicly available evidence comprising:

- (a) oral and written evidence in the public hearings of:
  - (i) two survivors of historical child sexual abuse that took place in the 1980s and 1990s – neither of whom were cross-examined;
  - (ii) the evidence of the elders, and a former elder, of Jehovah’s Witnesses who dealt with the investigations and the evidence of a former policeman who was, together with three of the elders, involved in the subsequent criminal conviction of one of the two abusers;
  - (iii) three elders from the Australian Branch Office and a member of the Governing Body of Jehovah’s Witnesses who gave evidence of historical and contemporary policies and procedures, and an expert called by Jehovah’s Witnesses;
  - (iv) the documentary evidence tendered; and



- (b) the documentary material which Jehovah’s Witnesses produced under Notices to Produce issued by the Commission.

4.9 As is apparent from the Final Report and statements of Counsel Assisting the findings were also based on the oral testimony and documentary material to which Jehovah’s Witnesses had no access, consisting of (as far as it is possible to determine from the Final Report),

- (a) the accounts of the 70 survivors in private sessions and the narratives obtained; and
- (b) 1,165 items of correspondence received by the Royal Commission since 2015 in relation to Jehovah’s Witnesses. It is relevant to note that Counsel Assisting in Case Study 54 stated<sup>48</sup> that the correspondence was “overwhelmingly critical” of “Jehovah’s Witnesses’ institutional response to child sexual abuse”.

4.10 The evidence provided by Jehovah’s Witnesses, which was summarised in detailed submissions in relation to Case Study 29 and in one further joint statement and documents provided to the Commission for Case Study 54, is as set out in the following table.

4.11 The table summarises the principal material that the Commission had before it when considering its findings and recommendations.

Case Study 29	Document	Identifier
09 November 2015	Submissions on Behalf of Watchtower Bible Tract Society of Australia and Ors	SUBM1029.001.0001
07 July 2016	Further Submissions on Behalf of Watchtower Bible Tract Society of Australia and Ors	SUBM1029.003.0001
<b>Case study 54</b>		
03 January 2017	Watchtower Bible Tract Society of Australia – Response to Royal Commission letter dated 4 November 2017 + attachments <ul style="list-style-type: none"> <li>• Letter from Watchtower Australia to all Bodies of Elders regarding Protecting Minors from abuse dated 01 August 2016</li> <li>• Child Protection Guidelines for Branch Office Service Desk</li> </ul>	WAT.0024.001.0016 Exhibit 54-001  WAT.0024.001.0001  WAT.0024.001.006
24 February 2017	Joint Statement of Terrence O’Brien and Rodney Spinks	STAT.1320.001.0001 Exhibit 54-001
03 July 2017	Child Safeguarding Policy of Jehovah’s Witnesses in Australia	WAT.026.001.0001 Exhibit 54-001

## 5. The Investigation of Jehovah's Witnesses

### Preliminary comments

- 5.1 The starting point for a review of the Royal Commission's findings is the observation that Jehovah's Witnesses and the Royal Commission shared common goals, namely to ensure, as far as it is possible, that children are kept safe, that the occurrence of child sexual abuse is minimised and when it occurs it is appropriately investigated, and the child protected.
- 5.2 The tension between the Royal Commission and Jehovah's Witnesses was how to achieve these goals. The tension arose out of the fundamental difference in the approach taken by each party to child sexual abuse. 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 was religious, and their response focused on the gross sin of child sexual abuse. As disclosed by the evidence and in submission,<sup>49</sup> although Jehovah's Witnesses considered child sexual abuse a heinous crime as well as a "gross" sin, Jehovah's Witnesses did not (and do not) purport to offer an alternative to a police investigation or investigation by other civil authorities.
- 5.3 Many of the criticisms of Jehovah's Witnesses were as a consequence of the inherent conflict in the differing approaches - which was expressed by Jehovah's Witnesses in the following terms.<sup>50</sup>

When two universes of discourse co-exist, they can sometimes overlap but they do not necessarily share the same concerns, objectives, or means by which to achieve their ends. The appearance of Jehovah's Witnesses before the Royal Commission demonstrated something of the truth of the proposition. Jehovah's Witnesses sought to assist the Commission by explaining what they believe to be the appropriate way to deal with the sin of child sexual abuse. The Royal Commission, by contrast, is entrusted with, amongst other things, the responsibility for determining what institutions and governments do and should do, to better protect children, and not comparing religious approaches to dealing with sin.

- 5.4 The Royal Commission's underlying criticism of Jehovah's Witnesses was not that Jehovah's Witnesses did not investigate and respond to allegations of child sexual abuse, but that the response was "inadequate" and that there were a number "of fundamental problems" with Jehovah's Witnesses' response. These fundamental problems were, in the Commission's opinion, caused by "scriptural literalism: the belief that the bible is the inspired word of God". As the Commission concluded.<sup>51</sup>

We consider that the application of inflexible, scripture-based policies and practices, which are inappropriate and unsuitable for application in cases of child sexual abuse, is a central contributor to the inadequate institutional responses to allegations of child sexual abuse by the Jehovah's Witness organisation.

- 5.5 The Commission also considered<sup>52</sup> “the Jehovah’s Witnesses organisation” to be a “closed institutional environment” that isolated children from their peers and discouraged the reporting of abuse to external, civil authorities. The Commission concluded.<sup>53</sup>

The Jehovah’s Witness organisation addresses child sexual abuse in accordance with scriptural direction, relying on a literal interpretation of the Bible and 1st century principles to set practice policy and procedure. These include the two-witness rule, the principle of male headship, the sanctions of reproof and disfellowshipping, and the practice of shunning. We consider that as long as the Jehovah’s Witness organisation continues to apply these practices in its response to allegations of child sexual abuse, it will remain an organisation that fails to protect children and does not respond adequately to child sexual abuse.

- 5.6 The fundamental criticism of Jehovah’s Witnesses was that their beliefs and concentration on the sin of child abuse led to a failure by Jehovah’s Witnesses to investigate properly or to report the abuse or allegation to the police or other civil authorities which could then respond appropriately.
- 5.7 The Commission’s dissection of the religious beliefs of Jehovah’s Witnesses leading to this conclusion - that Jehovah’s Witnesses religious beliefs are causative of an inadequate response to child sexual abuse - fails to discriminate between religious belief (and the requirements imposed by such belief) and the requirements of secular law. It also fails to have regard to the fundamental right of freedom of religion of Jehovah’s Witnesses, as protected by s116 of the Constitution of Australia.
- 5.8 Whether or not the Commission’s assessment and understanding of Jehovah’s Witnesses beliefs and policies are, in fact, correct – and no doubt opinions will differ as to that - is materially irrelevant. This is because in Australia, it is the Commonwealth and State legislative bodies that dictate society’s response to child sexual abuse and the obligations of each person when confronted with an allegation of child sexual abuse. In particular, whether or not child sexual abuse must be reported to the police and or other civil authorities - and consequently dealt with by them - is ultimately a matter of legislation. If there had been mandatory requirements in place over the period examined by the Commission, then the examination of 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 be irrelevant to any secular investigation and prosecution of alleged perpetrators of child sexual abuse. It would also allow Jehovah’s Witnesses to follow their beliefs and conduct such Bible-based judicial investigation into allegations of the gross sin of child sexual abuse in accordance to their religious beliefs. As the member of the Governing Body remarked during Case Study 29 (in the context of reporting to authorities where people were at risk), “it would certainly be a lot easier if we had mandatory laws....”.<sup>54</sup>

- 5.9 The confusion that arises as a result of applying secular demands to religious beliefs can be illustrated by the Commission's Recommendations. For example, the Commission Recommendation 16.21 is that,

*"The Jehovah's Witness organisation should abandon its application of the two-witness rule in cases involving complaints of child sexual abuse."*

The evidence before the Commission was that the requirement for two witnesses in a scriptural investigation of complaints of abuse is fundamental to Jehovah's Witnesses - as it is based on Scriptural requirements found in the Mosaic Law and reiterated by Jesus Christ and the Apostle Paul.<sup>55</sup> However, as was stated at the Royal Commission on several occasions and in submissions,<sup>56</sup> Jehovah's Witnesses will always 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.

- 5.10 The Commission's criticism of Jehovah's Witnesses Bible-based religious beliefs and practices is misplaced and should rather be directed – as indeed the Commission does at length elsewhere - to the lack of uniform mandatory reporting laws. We comment further on this aspect below.

#### **Failure to consider the historical context**

- 5.11 A substantial proportion of the Case Study 29, together with the ensuing Report of that Case Study and the volumes of the Final Report referring to Jehovah's Witnesses, concerned the response of Jehovah's Witnesses to incidents that occurred in the 1980s and to the policies and procedures in place in the 1980s and 1990s (when the incidents were investigated). Similarly, a significant proportion of the 1,006 case files produced by Jehovah's Witnesses relate to historical incidents or allegations of child sexual abuse.
- 5.12 The Commission did not seek to investigate more contemporary examples of the operation of Jehovah's Witnesses' policies and procedures. Although it is of course speculative, such examples may well have painted an entirely different picture of the effectiveness of Jehovah's Witnesses' policies and procedures. As it was, the Commission considered it appropriate for the three elders from the Australian Branch Office and the member of the Governing Body to assist the Commission in understanding the contemporary policies and procedures. Such evidence does not, of course, have the same probative value or impact as evidence of the policies and procedures working in a scriptural investigation of an actual allegation.

- 5.13 In examining the experiences of the two survivors relating to abuse in the 1980s, and the subsequent response of Jehovah’s Witnesses, the Commission highlighted a number of failures of the policies and procedures in dealing with the allegations in each particular case. The elders who were involved in these events in the 1980s and 1990s and the elders from the Australian Branch office who gave evidence did not shy away from the evidence of apparent deficiencies in the investigations, the failure to follow procedures and the impact on the survivors. We note that no criticism was made of any of Jehovah’s Witnesses involved with each case as to their integrity or truthfulness.
- 5.14 There is however, a distinction to be made between the procedures and policies that should be followed in any incident and the actual implementation of those procedures and policies. The failure in particular instances to follow the policies and procedures does not mean that that they are inappropriate in a scriptural investigation of sin. Further, to make adverse findings about the efficacy of Jehovah’s Witnesses’ procedures and policies based on an examination of two incidents in the 1980s and 1990s is, in our view, fraught with the obvious danger as to whether the two cases can be taken to be representative (we comment further on this aspect in section 6).
- 5.15 The Commission paid little regard or appeared on our assessment to give no weight to the historical context in which the incidents occurred. In Case Study 29 Jehovah’s Witnesses made the Submissions (footnotes in original included as endnotes):
- 6.1 The attitudes, values and beliefs surrounding child sexual abuse 27 to 33 years ago in the criminal justice system were quite different then to the way they are now.<sup>57</sup> In the 1980’s, a female complainant might have or would have had her allegations investigated by male detectives, most likely have a male prosecution counsel, be cross-examined by male defence counsel, give evidence in public before a jury comprising men and women, all of whom would be strangers and, given the requirement of proving guilt beyond a reasonable doubt, sometimes see a perpetrator walk free from the courtroom. Until the law changed, it used to be a requirement that evidence given by a child complainant always required corroboration and juries were warned not to act upon their evidence unless it was corroborated.<sup>58</sup>
- 6.2 The point is that, in the last 27 years the criminal justice system has come to understand that the way in which it dealt with sexual abuse cases could have resulted in further trauma to victims. It would be unfair to judge what occurred in the cases of BCB and BCG in light of contemporary attitudes, values, and beliefs, when 27 years ago the secular authorities either offered or delivered no better response.<sup>59</sup>
- 5.16 As a case in point, the Commission was highly critical of the application of the so-called “two-witness rule” to the two 1980<sup>60</sup> cases examined. That criticism did not refer to the submissions<sup>61</sup> relating to the development of law in comparable areas, which were to the following effect. First, Jehovah’s Witnesses submitted that although the “two-witness rule” was a Scriptural rule of evidence (and should be seen in that context), it nevertheless

reflected what had been until recently the common law's requirement for corroboration in matters involving sexual assault and child witnesses. Secondly, the submissions noted while all jurisdictions<sup>62</sup> have abolished the requirement that a judge must warn a jury that it is dangerous to act on uncorroborated evidence in sexual complaint matters or on the evidence of a child, those provisions *do not prohibit* a warning that it would be dangerous to convict without corroborated evidence.

- 5.17 In our view, a fair and balanced assessment of the "two-witness" rule required the Commission to have regard not only to its Scriptural context and purpose but also to the historical context in which its application was being assessed. At the very least, the Commission should have considered whether the Scriptural requirement of corroboration in the 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.

#### **Institutional and familial child sexual abuse**

- 5.18 The Commission appears to have applied different criteria to Jehovah's Witnesses compared to other institutions in determining its investigation into Jehovah's Witnesses was within its Terms of Reference. As noted above, familial child sexual abuse was specifically excluded from the Terms of Reference which encompassed the investigation of child sexual abuse in institutions or institutional contexts.
- 5.19 There are three issues to consider. First, the Commission acknowledged that Jehovah's Witnesses' approach to child sexual abuse was different to "other religious organisations" in that Jehovah's Witnesses engaged and responded to *familial and non-familial* child sexual abuse. As the Commission observed, Jehovah's Witnesses approach,<sup>63</sup>

...differs from other religious organisations, which we found largely limit their engagement with, and response to, allegations of child sexual abuse to those against people who hold or held positions of authority in the organisation

Secondly, the Commission accepted the evidence<sup>64</sup> that Jehovah's Witnesses do not have or run the institutional settings in which abuse typically occurs, namely Jehovah's Witnesses do not sponsor or operate creches, schools, orphanages, Sunday Schools, hospitals, sports clubs, day care centres, youth groups or any other activities which separate children from their parents. Thirdly, in contrast to other institutions (and, in particular to other religious institutions) the Commission's focus in its investigation of Jehovah's Witnesses was neither on the perpetrators of the abuse (and whether the perpetrators were officials of the institution or held positions of authority or leadership), nor on where the abuse occurred and whether it occurred in an institutional setting.

5.20 In Case Study 29 Report the Commission rejected what it termed were two “key submissions” made on behalf of Jehovah’s Witnesses which, if accepted, would have taken much of the Commission’s investigation into Jehovah’s Witnesses outside its Terms of Reference. Those submissions as quoted by the Commission were as follows (footnotes omitted),<sup>65</sup>

(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’.

5.21 In Case Study 29 Report (at p76), the Commission gave two reasons for rejecting Jehovah’s Witnesses’ first key submission (that abuse within families was not within the Commission’s Terms). The first reason was that the two complaints the subject of the hearing related to abuse by officials of the Jehovah’s Witnesses, which abuse was reported to the “Jehovah Witness organisation” [sic] as members of the faith were encouraged to do, and to which the organisation responded by investigating. It is not clear to us how two cases that involved abuse by officials of the faith (and thus fell within the definition of “institutional context”), provided a basis for the Commission asserting cases of familial abuse also fell within its mandate. Secondly, the Commission asserted that in circumstances where Jehovah’s Witnesses had “since at least the 1950s .....systematically recorded allegations of child sexual abuse regardless of whether or not the allegations concerned familial or non-familial abuse”, the *response* of Jehovah’s Witnesses was an institutional response. As the Commission concluded (at p76):

This case study examined the way that the Jehovah’s Witness organisation has responded to allegations of child sexual abuse and how it has managed the risk of child sexual abuse that those allegations should bring to the organisation’s attention

5.22 In the Final Report, the Commission again quoted the first key submission (incorrectly attributing it to a Joint Statement by elders) and, without elaboration on its reasoning, stated that<sup>66</sup> “we did not, and still do not, accept that the child sexual abuse revealed in

our Jehovah's Witnesses case study has no connection with the activities of the Jehovah Witnesses organisation". This conclusion is expressed in various ways at several points in the Final Report, for instance:

(a) In the section on Private sessions.<sup>67</sup>

Where complaints about child sexual abuse by family members or by other religious perpetrators in family homes were reported to and handled by the Jehovah's Witnesses this fell within our Terms of Reference because of the institutional response.

(b) In the Commission's Conclusions.<sup>68</sup>

While the Jehovah's Witnesses organisation's files captured allegations of both familial and non-familial abuse, there was an institutional response to both types of allegations and we therefore considered both types to fall within our Terms of Reference.

5.23 In Case Study Report 29 the Commission rejected the second "key submission" (that sexual abuse that occurs outside institutional contexts was not within the Terms of Reference), for the following reason(p76):

We do not agree with this submission. In our view, the fact that the Jehovah's Witness organisation does not provide these types of services is not relevant to the Royal Commission's consideration of the way that the organisation responds to allegations, incidents or the risk of child sexual abuse. The Royal Commission's Terms of Reference require us to consider such matters and other 'related matters in institutional contexts'. The definitions in the Terms of Reference of both 'institution' and 'institutional context' are not exhaustive and, in our view, they encompass the institution of the Jehovah's Witness organisation and its activities.

5.24 There was no specific reference to this submission in the Final Report.

5.25 The rejection of both submissions by the Commission in Case Report 29 was not challenged by Jehovah's Witnesses in the courts. 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.

5.26 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. We also note that it appears contrary to the original scope of the Case Study that plainly sets out in paragraphs a-d, that the Commission's inquiry concerned child sexual abuse "within the Jehovah Witness Church" (sic) not child sexual abuse within the families of people who happened to be members of Jehovah's Witnesses. The scope as set out in those subparagraphs, and consistent with the Terms of Reference, does not encompass an investigation into members of the faith of Jehovah's Witnesses.



## Familial abuse outside Terms of Reference

- 5.27 We consider a large part of the Commission's investigation into, and evidence led about, Jehovah's Witnesses relating to child sexual abuse within families, was in fact outside the Commission's Terms. Our reasons are as follows:
- (a) the definition of "institution" in the Terms of Reference specifically excludes in subparagraph (ii) the family ("does not include the family"). It is, accordingly, clear, regardless of what it does encompass the term "institution" does not encompass the family;
  - (b) the Terms of Reference enjoin the Commission from examining child sexual abuse and related matters outside "institutional contexts" ("your inquiry will not specifically examine the issue of child sexual abuse outside institutional contexts");
  - (c) the Terms of Reference require the Commission to examine "child sexual abuse and related matters in institutional contexts" (as set out in subparagraphs a, b, c, d, e, g and h of the Terms);
  - (d) "related matters" is defined to mean, in summary, unlawful or improper treatment of children that is connected or associated with child sexual abuse, and is referable only to institutional contexts ("*related matters* in institutional contexts") (our emphasis);
  - (e) The meaning of "Institutional context" is illustrated by reference to three examples ("child sexual abuse happens in an institutional context if, for example"). The first example refers to the abuse which, in summary, occurs on the premises of an institution or is connected to activities of the institution; the second refers to the perpetrator of the abuse being an official of an institution; and the third refers to "other circumstances" where the Commission considers "that an institution is, or should be treated as being, *responsible for adults having contact with children*" (emphasis added). Put simply, the faith of Jehovah's Witnesses is not responsible for adult family members having contact their children. None of the examples is referable to familial sexual abuse.
- 5.28 Other than stating that the definitions are "not exhaustive" the Commission is silent on how the definitions "institution" and "institutional context" encompass abuse that occurs in a family.
- 5.29 In an Australian legal context, a Court will look at the plain and ordinary meaning of the words of an instrument in construing its meaning. Here, it is uncontroversial that the expression "institution" excludes, in terms, the family. Thus, in construing "institutional context", regard must be had to the specific exclusion in the definition of "institution". This construction of the plain meaning of the words is supported by application of

“ejusdem generis” (literally “of the same kind”) rule of construction - which, in summary, states that when in an instrument “general words follow particular or specific words, the general words may be restricted to the same kind of things (genus) that preceded them”.<sup>69</sup> In other words, the three examples of what “institutional context” means, and the general words used within them such as “other circumstances” must be restricted to the same kind of things (genus) referred to in the term “institution”. They do not widen the meaning of the term - but rather are restricted by what the term “institution” encompasses - and that “does not include the family”.

- 5.30 In our opinion, 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 find that an examination of child sexual abuse in families is beyond the scope of the Commission’s mandate. Further, we consider that a court would find that whether or not Jehovah’s Witnesses can be considered to be an institution is irrelevant in determining whether or not the Commission has a mandate to examine child sexual abuse within families.

#### **Consequences of the Commission holding that familial abuse is within the Terms of Reference**

- 5.31 Nevertheless, 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 where abuse commonly occurs typical of religious institutions.
- 5.32 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 as being within its Terms. In other words, it treated the significant number of cases of familial abuse recorded in the case files as being within its ambit. In this respect, the submission made on behalf of Jehovah’s Witnesses in Case Study 29<sup>70</sup> has some force (footnote in original included as endnote).

As the historical data collected by ..... Jehovah’s Witnesses over the last 65 years demonstrates, 956 of the 1,006 case files relate to familial child sexual abuse or abuse that did not happen in an institutional context. Further, an analysis of the data demonstrates that in 902 of the 1,006 cases,<sup>71</sup> the alleged abuse was not perpetrated by an “official” of the religion of Jehovah’s Witnesses, did not take place on the institution’s premises and did not take place in circumstances where Jehovah’s Witnesses were responsible for adults having contact with children. Thus, most of the 1,006 case files involved allegations made against rank and file members (parishioners) who held no position of authority within the religion of Jehovah’s Witnesses at the time of the alleged abuse, and some of the allegations involved individuals who were not even members of the religion.

- 5.33 Had the Commission applied the same criteria to identify “an institutional response to child sexual abuse” for Jehovah’s Witnesses as it did for other institutions, that is to say, 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 in the 65 years in which Jehovah’s Witnesses had kept records only about 11 percent of the case files were been relevant. This is because, based on the Commission’s own analysis, only 108 files,<sup>72</sup> related to people who were in authority ie “were elders or ministerial servants at the time of the first instance of abuse”. We comment further on the Commission’s data analysis of the case files below.
- 5.34 The different criteria applied by the Commission lead to the conclusion that that there was an inherent unfairness in the Commission’s investigation of Jehovah’s Witnesses.
- 5.35 The different treatment is also highlighted by the Commission’s analysis of the information and narratives from its private sessions. It reported all of the 70 survivors’ narratives that related to abuse within Jehovah’s Witnesses, fell into the category of survivors who were abused “in places of worship or during religious activities.”<sup>73</sup> However, for Jehovah’s Witnesses the Commission considered “religious activities” to include circumstances where the sexual abuse occurred “in family homes” and where it was perpetrated by a “religious family member”. As the Commission reported in defining “religious activities”:<sup>74</sup>

We also heard from some survivors about experiencing child sexual abuse in family homes, in some cases perpetrated by people in religious ministry and in other cases perpetrated by **religious family members**. **This sexual abuse was considered to be within our Terms of Reference when it was reported to and handled by the relevant religious institution.**

(Emphasis added)

Significantly, the Commission found that,<sup>75</sup> “most of the perpetrators in this category “were adult males who were people in religious ministry”.

- 5.36 The Commission’s finding that there was, in its view, an institutional response to what it acknowledged was familial abuse, does not dispose of the question of Jehovah’s Witnesses liability or responsibility (outside the religious consequence of the gross sin) for the perpetrator of familial abuse. As we have already made clear, the Commission is not a court of law and cannot determine legal rights and liabilities.

#### **Failure to give weight to Evidence**

- 5.37 There is also an issue as to whether in coming to its conclusions the Commission fairly assessed or considered the material that Jehovah’s Witnesses presented to the Commission. For instance, two significant and damaging criticisms of Jehovah’s Witnesses were that they did not understand child sexual abuse and that they did not properly

consider the potential danger to children of predatory sexual behaviour. These criticisms were manifested in statements such as Jehovah's Witnesses demonstrated "a serious lack of understanding.....about the nature of child sexual abuse"<sup>76</sup> and "we found that children were not adequately protected from the risk of child sexual abuse".<sup>77</sup>

5.38 In our view, in making these findings, 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 - which were designed to educate Jehovah's Witnesses and the wider public on how to protect children from child sexual abuse and which warned against the "insidious crime and sin of child sexual abuse".<sup>78</sup>

5.39 The Jehovah's Witnesses submitted<sup>79</sup> that these materials had been widely disseminated "since at least the 1970s" and that:

These educational materials reveal a depth of understanding of the context in which child sexual abuse can occur, the need for parents to be alert to its possibility, and how parents can protect their children from sexual abuse. In addition, these materials explicitly state that the religion will not protect the wrong-doer from prosecution and imprisonment for the crime of child abuse.

5.40 On our review, it does not appear that there was any discussion or consideration of the relevance of this material by the Commission in coming to the views expressed in the Final Report.

#### **Evidence as to prevalence of abuse**

5.41 On our review 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. Of the 5 key factors the Commission reported as being relevant to a decision to examine a religious institution, the fourth<sup>80</sup> is in the following terms and is relevant to Jehovah's Witnesses.

We aimed to highlight a broad range of systemic issues in religious institutions relating to both the nature of the abuse and the institutional responses. In some cases, **despite hearing a small number of allegations in private sessions, we decided to hold case studies to highlight systemic issues arising in particular religious institutions. This was the case for the Jehovah's Witnesses** and for particular Pentecostal churches and Jewish institutions

(emphasis added).

5.42 The concession that only a "relatively small number of allegations" were made against Jehovah's Witnesses in private sessions (although evident from the percentage figures set out in various Tables in the Final Report) is not repeated in terms anywhere else in the Report. The finding is not referred to Volume 16 Book 3. To the contrary, the Commission there suggests<sup>81</sup> that private session information most likely "under-represents abuse"

due to the “self-selection” of the group and reticence of survivors to come forward. The Commission further asserts that the relative size of Jehovah’s Witnesses in Australia, including the extent to which it encourages or organises religious activities involving children, may have affected the number of allegations of child sexual abuse made in relation to the organisation with the consequence

**It has not been possible for us to quantify the extent to which the Jehovah’s Witness organisation has provided services to children over time, or the number of children who have had contact with the organisation.** In the absence of this information, it is not possible to estimate the incidence or prevalence of child sexual abuse within the Jehovah’s Witnesses.

(emphasis added)

- 5.43 This conclusion appears, in fact, to be contrary to the Commission’s acceptance of the evidence that Jehovah’s Witnesses did not have the institutional settings that provide “services to children”. Even if it had not accepted that evidence, it is not clear why the Commission felt that it was not possible to quantify the extent to which the Jehovah’s Witnesses “provided services to children over time” given the evidence before it, its wide-ranging investigation and its coercive powers. In any event, the implied conclusion that the incidence of abuse cannot be quantified is contrary to the Commission’s finding that for the last 65 years Jehovah’s Witnesses have “systematically documented” incidents and allegations of familial and non-familial child sexual abuse.
- 5.44 It is reasonable to conclude that the Commission’s finding arising from its Private Sessions that there were a “relatively small number of allegations” made against Jehovah’s Witnesses, is more accurate. It is also apparent from the Commission’s own data analysis that a significant number of those allegations reported in the private sessions concerned familial abuse (see point 6 below).
- 5.45 We also observe that the Commission’s conclusion in the Final Report<sup>82</sup> that its inquiry “revealed a disturbingly high number of incidents of child sexual abuse” in Jehovah’s Witnesses, is contrary to what it found to be the case in the private sessions and, in any event, is misleading. This is because as we have noted in paragraphs above, this conclusion is based on the 1,006 case files, the vast majority of which concerned and recorded familial child sexual abuse.

#### **Matters of agreement between Commission and Jehovah’s Witnesses**

- 5.46 Despite the differences in approach referred to above, it is clear from our review that a number of the issues that initially concerned the Commission, ceased to be issues by the time of the Final Report. In the course of the public hearing of Case Study 29, the Commission raised concerns as to what the Commission perceived to be a lack of clarity

regarding policies relating to the rights of victims reporting abuse to the authorities, whether a victim had to confront an abuser and the availability of people of either gender to support a victim during an investigation.

5.47 Although Jehovah's Witnesses considered the procedures to be followed to be clearly documented, at the suggestion of the Commission, Jehovah's Witnesses codified into one document its policies on child sexual abuse in Australia and the procedures to be followed when allegations are received.

5.48 The document "*Child Safeguarding Policy of Jehovah's Witness in Australia (Child Safeguarding Policy)*" was made available to all congregations and as the Commission summarised,<sup>83</sup> the *Child Safeguarding Policy* set out, among other matters,

that victims have the right to report to civil authorities, that victims never be required to confront the abuser and that victims have the right to a confidant of either gender to provide them with moral support when meeting with elders.

5.49 A further significant area of concern to the Commission was the circumstances in which Jehovah's Witnesses reported sexual abuse to the authorities.

5.50 While the Commission "welcome[d]" that the procedures in the *Child Safeguarding Policy* required,<sup>84</sup>

.....elders who learn of a case of child sexual abuse in which the child may still be at risk of harm to immediately report to the police or other appropriate authorities,

the Commission was critical of Jehovah's Witnesses' position that, subject to this circumstance, child sexual abuse was only reported where there were mandatory requirements to do so. The Commission considered this position to "contribute to the organisation's poor institutional response".

5.51 The criticism appears to be misplaced. As the Royal Commission itself recognised in order to achieve the Commission's preferred position that<sup>85</sup> "any person who knows or suspects that a child is being or has been sexually abused in an institutional context should report the abuse to the police", legislative change is necessary. One of the Commission's recommendations (recommendation33) was, accordingly, that each state and territory introduce a criminal offence of a failure to report.

5.52 The Jehovah's Witnesses' evidence,<sup>86</sup> there is little doubt that such an approach would be welcomed by Jehovah's Witnesses.

5.53 As we have referred to above, in an environment where reporting of an allegation of child sexual abuse is mandatory, the principal criticism of Jehovah's Witnesses "that it dealt with allegations of child sexual abuse in accordance with internal, scripture-based disciplinary policies and procedures"<sup>87</sup> would be rendered entirely otiose. In such circumstances, the secular authorities would have the onus and responsibility of investigating the allegation, allowing Jehovah's Witnesses to investigate the sin in accordance with their beliefs, provided that such investigation did not interfere with the police investigations.

## **6. Private Sessions, Case Files and public hearings**

6.1 It is evident that the principal driving force for the Case Study of Jehovah's Witnesses was the perceived "systemic issues" that, in the Commission's opinion, emerged from the private sessions, from the case files produced to the Commission and from the hearing. Although we have commented on each of these areas in section 5, in this section we set out additional observations and comment on the probative value of the findings based on the three sources.

6.2 In this context it is important to keep firmly in mind that a Royal Commission is not a court and its findings in themselves will have no probative value in any ensuing civil or criminal proceeding in Australia.

### **Private Sessions**

6.3 The Royal Commission reports at several places in the Final Report that as at 31 May 2017, of the 4,029 survivors who attended private sessions concerning child sexual abuse in religious institutions, only 70 survivors reported abuse in relation to Jehovah's Witnesses.

6.4 The Commission also notes that the "quantitative and qualitative information from private sessions" was extensively "used throughout [the Commission's] report in a de-identified manner (as required by the RCA)."<sup>88</sup>

6.5 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. The reasons include:

- (a) the terms of RCA (summarised in Part 2 above) which expressly state that a private session does not constitute a hearing of the Royal Commission and that an attendee is not a witness nor could be considered to be giving evidence;
- (b) the disclaimer at the end of each “narrative” (found on the Commission’s website), which reflects the terms of the RCA and is set out in bold and is in the following terms,

**Disclaimer: This is the story of a person who spoke with a Commissioner during a private session of the Royal Commission into Institutional Responses to Child Sexual Abuse. Real names of individuals have not been used, except of public figures in a public context. The information the person provided was not evidence, the person was not a witness, and did not need to take an oath or affirmation, although they were expected to tell the truth. Nothing in this story is a finding of the Royal Commission and any views expressed are those of the person, not of the Commissioners**

- (c) the information obtained by the Royal Commission from private sessions was untested by anyone outside the Commission.

6.6 None of the narratives relating to private sessions was provided to Jehovah’s Witnesses or their legal advisors during the course of the Commission’s investigation or prior to the publication of the Final Report.

6.7 In addition, in conducting our review it appeared to us that there were anomalies that may impact on the reliability of the purely statistical findings relating to Jehovah’s Witnesses based on private sessions. By way of example, on the Commission’s analysis of the 70 survivors,<sup>89</sup> 65 survivors (being 92.9 per cent) identified “the role of the perpetrator”. The Royal Commission reports that,

Of these 26.2 percent told us about abuse by family members.....13.8 per cent told us about abuse by volunteers, 9.2 percent by lay leaders, and 9.2 percent] told us about abuse by other adults who attended the institution

6.8 The Report is silent as to the role of the perpetrator of the remaining 27 survivors [41.5%]. Not only does the analysis, on its face, appear incomplete, but also the descriptions “lay leaders” and “volunteers” are not descriptions used by Jehovah’s Witnesses, nor do they appear to be used by the Commission anywhere else in the Final Report to describe positions within Jehovah’s Witnesses.

**Jehovah’s Witnesses- Case Files**

6.9 As we have noted, the Commission’s analysis of the 1,006 case files relating to allegations of child sexual abuse which Jehovah’s Witnesses had recorded since the 1950s was used throughout both the Case Study 29 Report and Final Report to support a number of findings.<sup>90</sup>



- 6.10 In the Case Study 29 Report, the Commission asserts that its analysis of the 1,006 files and produced data which was “for the most part uncontested” by Jehovah’s Witnesses.<sup>91</sup> In the Final Report, the Commission also asserts that its analysis of the files and the data produced was “mostly uncontested”.<sup>92</sup>
- 6.11 Our review indicates that these assertions are, in a number of respects, incorrect and the Commission’s analysis was subject to a number of objections. Based on the evidence before the Commission, it is apparent that the Commission’s analysis of the files was provided to Jehovah’s Witnesses two days before the commencement of Case Study 29 for comment. In the time available Jehovah’s Witnesses reviewed the data concentrating on “non-familial cases and allegations against those who were elders and ministerial servants at the time of abuse” on the assumption that ‘officials’ of Jehovah’s Witnesses were of “most importance to the Commission”.<sup>93</sup>
- 6.12 As a result of this limited review, corrections were made by the Commission, the most significant of which resulted in the number of alleged perpetrators holding the position of elder or ministerial servant in the previous 65 years, being adjusted down by the Commission from 135 to 108 (or 104 on Jehovah’s Witnesses’ figures – there was disagreement about 4). As to the remaining areas Jehovah’s Witnesses informed the Commission that it did not have time to assess those areas but “it was happy to provide further analyses, but we will need further time to do so, if requested”. It appears the Commission did not make any such request.<sup>94</sup>
- 6.13 Our review also indicates that submissions were made to the Commission in Case Study 29 in relation to the accuracy of the analysis and whether the data came within the Terms of Reference. Some of these submissions were briefly summarized by the Commission in Case Study Report 29 but were then summarily dismissed in the following terms,<sup>95</sup>
- We do not find it necessary to comment on these submissions. The numbers tell their own story. Most of these matters are dealt with elsewhere in this report.
- 6.14 The contest between the Commission and Jehovah’s Witnesses in relation to whether the Commission’s Inquiry should include familial child sexual abuse, had the consequence that Commission’s data analysis and findings in the Final Report had no regard to Jehovah’s Witnesses’ submissions<sup>96</sup> that
- (a) the data analysis conflated familial child sexual abuse and institutional abuse and failed to point out that 902 case files did not involve allegations against officials of Jehovah’s Witnesses;

- (b) the statistics demonstrated that in the past 65 years prior to Commission there have been 50 cases of institutional child sexual abuse, that where the perpetrator was an official of Jehovah's Witnesses– or 104 cases if the familial abuse by elders and ministerial servants were included;
- (c) in the immediate past 10 years prior to the Commission, 8,507 elders and 7,438 ministerial servants had served in the faith in Australia. In that time, allegations of non-familial child sexual abuse, which was alleged to have occurred during that period, had been made against 2 elders and 3 ministerial servants. Each allegation was handled by the secular authorities.<sup>97</sup>

6.15 Despite the Commission's findings as to the scope of its Terms of Reference, we consider that the Final Report should have referred to some or all of the above points. The failure to refer directly to the cases of familial abuse led to an unfair and distorted view of the extent of child sexual abuse within an institutional context.

6.16 On the Commission's own analysis, 161 perpetrators of child sexual abuse referred to in Jehovah's Witnesses were convicted of child sexual abuse. In Case Study Report 29, the Commission also referred to Jehovah's Witnesses limited review of the Commission's data analysis that demonstrated that 383 alleged perpetrators had been dealt with by the police.<sup>98</sup> The Commission, however, asserted that given the search parameters used in Jehovah's Witnesses review, "some of the 383 identified cases may have contained reference to but not had the involvement of the authorities" - the veracity could have been, but was not, checked by the Commission who had possession of the files. In any event the principal point that the Commission made was that in relation to the 161 convictions and the 383 possible referrals there was,<sup>99</sup>

No evidence before the Commission that the Jehovah Witnesses organisation either had or did not have a role or any involvement in bringing to the attention of any secular authorities any complaint of child sexual abuse that was investigated by the secular authorities.

6.17 In the final Report, the Commission was more direct:<sup>100</sup>

We found no evidence of the Jehovah's Witnesses organisation reporting allegations of child sexual abuse to police or other authorities.

6.18 It appears to us principal issue and question before the Commission was whether or not incidents of child sexual abuse had been brought to the attention of secular authorities. The answer to that question is self-evident in relation to the 161 convicted perpetrators and in all probability in relation to the vast majority of the possible 383 incidents, the same answer should be given. If the abuse has been reported (as Jehovah's Witnesses files record), then it is largely beside the point, and arguably irrelevant, whether or not "the Jehovah's Witnesses organisation" made the disclosure.

- 6.19 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 the presentation of such data. As it is, it is questionable whether proper regard was had by the Commission when coming to its findings to Jehovah's Witnesses Submissions regarding the case files.
- 6.20 One further consequence of the Commission's treating the 1,006 case files as being incidents and allegations of child sexual abuse within the institution of Jehovah's Witnesses, is that the impression is also unfairly and prejudicially conveyed that all the referrals to the police related to officials of Jehovah's Witnesses.
- 6.21 The Commission reported that as a result of its Inquiry, it had made 1,129 referrals to the police relating to religious institutions. Of those "551 related to Jehovah's witnesses". The Commission acknowledged that these referrals were only made possible due the records kept over the last 65 years. The Commission reported that in determining whether to make a referral it applied the following criteria. First it considered whether the perpetrator was alive; secondly, it considered whether the survivor wished to report the incident; and thirdly, regardless of the survivor's wishes, a referral was made if there was a prospective risk to the child.
- 6.22 There is no indication within the Final Report as to how those criteria were applied to the 551 people "related to Jehovah's witnesses" referred to the police. Further there is no indication as to the position of the alleged perpetrator in the matters referred, though it is a reasonable to assume, for the reasons set out above, that most referrals would related to familial abuse.
- 6.23 In our opinion, the Commission should have provided further details as to the people referred and the circumstances of the abuse – at the very least it should have provided details as to proportion of cases involved familial abuse, as to when the alleged incidents occurred and whether there was any involvement of an official of Jehovah's Witnesses.

#### **Evidence of the two Survivors in Case Study 29**

- 6.24 As we have commented upon above, in the public hearings, the policies and procedures of Jehovah's Witnesses were examined in both a historical context, principally through the experiences of two survivors of sexual abuse in the 1980s and 1990s, and in a contemporary context through the evidence of three elders from the Australian branch office and one member of the Governing Body of Jehovah's Witnesses.

- 6.25 We understand that although the Practice Guideline 1 issued by the Royal Commission permitted cross-examination, 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.
- 6.26 The result of that decision is that the uncontested evidence of the two survivors formed the basis of, or supported, many of the adverse findings of the Commission regarding the historical procedures and policies of Jehovah's Witnesses - in particular, in relation to the scriptural investigation undertaken by elders, the treatment of perpetrators and the protection of victims.
- 6.27 Although there is little to be gained by speculating whether or not the evidence of the survivors would have been any different following cross-examination, it remains the case that it was not the subject of any scrutiny.
- 6.28 As indicated above, a further point is that as the public evidence was restricted to two survivors, a question arises as to whether the evidence can be considered to be representative of the experiences of the survivors documented in the 1,006 case files. It is reasonable to assume that the Commission selected the two survivors in order to focus on the "problematic" policies and procedures that the Commission wished to highlight. Although the Commission's position is that the evidence of the two survivors is also supported by the information obtained from the private sessions, there are, as we have commented, also questions as to the reliability of that information.
- 6.29 As to the status of the evidence and findings arising from the public hearings concerning Jehovah's Witnesses, it is to be remembered the Commission's conclusions are not founded on the basis of reasonable doubt and admissible evidence but on the balance of probabilities and the acceptance of hearsay evidence.
- 6.30 Further, 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.

## Part 4: The recommendations of the Commission and the responses of the Commonwealth and State Governments

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### **7. Response to the Recommendations of the Commission**

- 7.1 The Royal Commission made 409 recommendations in total, which were made in the following Reports:<sup>101</sup>
- (a) the Final Report (2017) contained 189 recommendations.
  - (b) the Working with Children Checks Report (2015) contained 36 recommendations.
  - (c) the Redress and Civil litigation report (2015) contained 99 recommendations
  - (d) The Criminal Justice Report (2017) contained 85 recommendations.
- 7.2 In relation to Religious Institutions, the Royal Commission made 58 recommendations in total. In turn, these were broken down into recommendations directed on the one hand to all religious institutions (28 in total), and on the other, recommendations directed to particular religious institutions.
- 7.3 As can be seen from the summary of responses set out in the tables below, the Federal, State and Territory Governments, all considered that that the Commission's recommendations directed to religious institutions were a matter for response by particular institution and/or were outside the particular government's scope.
- 7.4 The Federal Government also stated that it expected each institution, in summary, to protect children and to act consistently with the National Principles for Child Safe Institutions.
- 7.5 The Federal Government's response to the recommendations directed to all religious institutions was as follows.

RECOMMENDATION	RESPONSE	STATUS
16.31 -16.58	Noted	<p>These recommendations are a matter for religious institutions.</p> <p>The Australian Government expects all institutions to act consistently and effectively to protect children from sexual abuse.</p> <p>The Australian Government encourages all institutions to act consistently with the National Principles for Child Safe Institutions</p>

7.6 In essence the Federal Government’s response was identical to the response given to the 3 recommendations directed solely to Jehovah’s Witnesses referred in Part 2. Similarly, in relation to the 28 recommendations directed specifically to “all religious institutions in Australia”<sup>102</sup> the Federal Government “Noted” each recommendation and gave the same Status response.

7.7 The State and Territory Governments of Australia responded in similar terms to all recommendations directed to religious institutions generally and Jehovah’s Witnesses in particular, as follows,

State and Territory Governments Responses to Recommendations directed to (a) Jehovah’s Witnesses Recommendations (16.27 -16.29) (b) All religious institutions (16.31 – 61. 58)		
State Government	RESPONSE	STATUS/ discussion
New South Wales	Noted	For religious institutions to respond <sup>103</sup>
Victoria	Noted	Responsibility did not sit with the Victorian Government. Volume 16 makes 58 recommendations directed at religious institutions - which are matters for religious institutions <sup>104</sup>
Queensland	Noted	The Queensland government encourages religious institutions to consider and respond to the Royal Commission’s Recommendations <sup>105</sup>
Western Australia	Noted	The 58 Recommendations are for religious institutions specifically <sup>106</sup>
South Australia	Noted	Recommendations are the responsibility of religious institutions and are outside the scope of the Government of South Australia’s response to the Final Report <sup>107</sup>
Tasmania	-	Recommendations will be addressed by religious organisations <sup>108</sup>
Australian Capital Territory	Noted	The ACT government notes this recommendation is a matter for the Jehovah’s Witnesses Organisation <sup>109</sup>
Northern Territory	Noted	These recommendations are the responsibility of Religious Institutions. <sup>110</sup>

### Beyond the Commission

7.8 In relation to ‘institutions’ (which include ‘religious institutions’) the Australian Government referred to its “expectation”<sup>111</sup> that each institution will respond to each of the Commission’s recommendations which affect it and will indicate “what action they will

take in response to them and will report on their implementation of relevant recommendations annually in December.

The Australian Government expects all institutions to act consistently and effectively to protect children from sexual abuse. The Australian Government expects all institutions to:

- respond to each of the Royal Commission's recommendations
- indicate what action they will take in response to them
- report on their implementation of recommendations annually. Where institutions decide not to accept the Royal Commission's recommendations, they should state so and why.
- The Australian Government encourages all institutions to act consistently with the National Principles for Child Safe Institutions

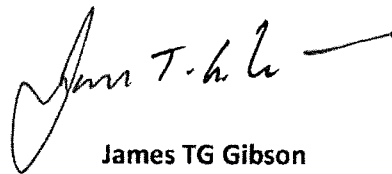
7.9 We assume that Jehovah's Witnesses are attending to this expectation.

7.10 While beyond the scope of this review, we also note that a number of state and territory governments have introduced or are in the process of introducing or are considering, new "Failure to Report" child sexual abuse laws and new "Failure to Protect" children laws.



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14 November 2018

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## End Notes

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- <sup>1</sup> The Westminster approach contrasts with other political systems where the investigative and policy advisory functions of the independent public inquiry are more likely to be carried out by agencies or committees inside government
- <sup>2</sup> Australian Law Reform Commission, *Making Inquiries: A New Statutory Framework* Report 111, 2009 p39, at [1.1], citing L Hallett, *Royal Commissions and Boards of Inquiry: Some Legal and Procedural Aspects* (1982), 16..
- <sup>3</sup> ALRC 111, 2009 p 51 at [2.2] citing R Sackville, 'Law Reform Agencies and Royal Commissions: Toiling in the Same Field' in B Opeskin and D Weisbrot (eds), *The Promise of Law Reform* (2005) 274, pp277-8
- <sup>4</sup> ALRC 111, 2009 p92, at [5.2] fn 2.
- <sup>5</sup> ALRC 111, 2009 p 66 at [3.3]-[35] and fn 11 *Lockwood v Commonwealth* (1954) 90 CLR 177, 184;
- <sup>6</sup> T Sherman "Executive Inquiries in Australia, Proposals for Reform" (Law and Policy Paper no 8) (1997) ANU, Centre for Public Law, p6.
- <sup>7</sup> One of its key recommendations was that the RCA be amended to establish two tiers of public inquiry. While the ALRC Report was tabled in Parliament in February 2010, it is yet to be implemented.
- <sup>8</sup> ALRC 111, 2009 p31 at [5.69]
- <sup>9</sup> S Prasser and H Tracey (eds) "Royal Commissions and Public Inquiries - Practice and Potential: Other Countries' Inquiries", (2014) p296
- <sup>10</sup> The Governor-General is appointed by the Queen on advice from the Prime Minister and is the Queen's representative in Australia
- <sup>11</sup> Australian Constitution s64.
- <sup>12</sup> ALRC Report 111, p67 at [3.10].
- <sup>13</sup> See in particular, *Royal Commissions Act* (1902), Part 2 ss2, 4 and 6.
- <sup>14</sup> ALRC Report 111 p252 [11.5], citing *Ross v Costigan* (1982) 59 FLR 18.
- <sup>15</sup> S Prasser and H Tracey (eds) "Royal Commissions and Public Inquiries - Practice and Potential - Living up to their potential" (2014) p391.
- <sup>16</sup> Ronald Sackville AO is an acting judge of the Court of Appeal of the Supreme Court of New South Wales and a former judge of the Federal Court of Australia. The article was written when he was Professor of Law at the University of New South Wales and Chairman of the NSW Law Reform Commission.
- <sup>17</sup> R Sackville "Royal Commissions in Australia: What price truth?" (1984) *Current affairs Bulletin* 60 (12) p11.
- <sup>18</sup> R Sackville "Royal Commissions in Australia: What price truth?" (1984) *Current affairs Bulletin* 60 (12) p11.
- <sup>19</sup> J Ransley, 'The Powers of Royal Commissions and Controls Over Them' in P Weller (ed) *Royal Commissions and the Making of Public Policy* (1994) p22.
- <sup>20</sup> S Prasser, "Royal Commissions and Public Inquiries in Australia (2006) Butterworths, [8.5].
- <sup>21</sup> ACLR Report 111, 2009 p253 [11.6] citing Ranley n19 above.
- <sup>22</sup> ACLR Report 111, 2009 p255 [11.16].
- <sup>23</sup> ACLR Report 111, 2009 p255 [11.17].
- <sup>24</sup> ACLR Report 111, 2009 p356 [14.3] citing fn 1, Administrative Review Council, *The Scope of Judicial Review*, Report No 47 (2006), [1].
- <sup>25</sup> J Ransley, 'The Powers of Royal Commissions and Controls Over Them' in P Weller (ed) *Royal Commissions and the Making of Public Policy* (1994) 22, p27.
- <sup>26</sup> *McMahon v Air New Zealand Ltd* [1984] AC 808 pp820-821.
- <sup>27</sup> ACLR Report 111, 2009 p377 [15.26] citing Royal Commission into the Productivity in the Building Industry in NSW (1992) Vol 7, p129
- <sup>28</sup> ACLR Report 111, 2009 p446 [17.53].
- <sup>29</sup> As this Royal Commission was established under Commonwealth legislation and legislation in each state.
- <sup>30</sup> Australian Government Response, Fact Sheet 13 June 2018, Vol 5 Private Sessions p16.
- <sup>31</sup> Australian Government Response, Fact Sheet 13 June 2018.
- <sup>32</sup> Final Report Vol 1, Our Inquiry section 3.5.4, p58.
- <sup>33</sup> Final Report Vol 1, Our Inquiry section 3.2, p24; A Brief Guide to the Final Report, issued by the Royal Commission (undated) pp2 and 4.
- <sup>34</sup> Final Report Vol 1, Our Inquiry section 3.2.2, pp32-33.
- <sup>35</sup> Final Report Vol 1, Our Inquiry section 3.1.1, Private Sessions p26; Vol 5 Private Sessions 2.1 Overview p33.
- <sup>36</sup> Final Report Vol 1, Our Inquiry section 3.1.1, Private Sessions p32.
- <sup>37</sup> Final Report Vol 5, Private sessions 2.4 Managing Private Session Information p47.
- <sup>38</sup> Final Report Vol 1, Our Inquiry section 3.2.2, Public Hearings; Standard of Proof p40.
- <sup>39</sup> Final Report, Recommendations p55.
- <sup>40</sup> Australian Government Response Part One: Final Report Response p60.
- <sup>41</sup> Final Report Vol 1, Our Inquiry, Appendix D p216;-
- <sup>42</sup> Final Report Vol 1, Our Inquiry, Appendix C p196.
- <sup>43</sup> Case Study 29 Report, p6; Final Report Vol 16 Book 3 Chapter 15 Jehovah's Witnesses section 15 p71.
- <sup>44</sup> Case Study 29 Report, p6.
- <sup>45</sup> Final Report, Vol 16 Book 3 Chapter 15, Jehovah's Witnesses, section 15 p71.
- <sup>46</sup> Final Report, Vol 16 Book 3 Chapter 15, Jehovah's Witnesses, section 15.2, Private Sessions & data about the Jehovah's Witnesses p77.
- <sup>47</sup> See A Brief Guide to the Final Report, 2017: <https://www.childabuseroyalcommission.gov.au/>
- <sup>48</sup> *Case Study 54: Institutional review the Jehovah's Witnesses*: Counsel Assisting opening D259, T26494.12.
- <sup>49</sup> Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2017, SUBM1029.003.0001 at [1.1], [1.5]
- <sup>50</sup> Submissions on Behalf of Watchtower Bible Tract Society of Australia, 9 November 2015, SUBM1029.001.0001 at [3.14].
- <sup>51</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.4, Contributing Factors in the Jehovah's Witnesses, p100.
- <sup>52</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witnesses, p107.
- <sup>53</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witnesses, p108.
- <sup>54</sup> Transcript of G W Jackson, T15967:14-22 (Day 155).
- <sup>55</sup> See Deuteronomy 19:15, Matthew 18:16 and 1 Timothy 5:19.
- <sup>56</sup> Submissions on Behalf of Watchtower Bible Tract Society of Australia, 9 November 2015, SUBM1029.001.0001 eg, at [3.6], [9.333]; Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2017, SUBM1029.003.0001 at [1.1]-[1.5]
- <sup>57</sup> These are matters of public record and were part of the impetus for changing the way in which the criminal justice system dealt with sexual abuse cases.
- <sup>58</sup> See, e.g. *B v The Queen* (1992) 175 CLR 599.



- <sup>59</sup> See e.g. Royal Commission Interim Report Vol 2 at page 5 concerning the "Criminal Justice System".
- <sup>60</sup> The two incidents occurred in the 1980s, although in one case the elders learnt of the allegation in the 1990s and undertook an investigation
- <sup>61</sup> Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2017, SUBM1029.003.0001 at [2.56-2.57]
- <sup>62</sup> ALRC Report 114, 2010, Section 28 - *Warnings about unreliable evidence and Corroboration*.
- <sup>63</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.2.2, Data provided by the organisation p80.
- <sup>64</sup> Report of Case Study No 29: p 76 see also Exhibit 29-0024, First statement of T J O'Brien, 10 September 2015 STAT.0592.001.0001\_R at 0014\_R at [67]; see also Exhibit 54-0001, Joint Statement of Terrence O'Brien and Rodney Spinks, STAT.1320.001.0003 at [13]: Counsel Assisting the Royal Commission Case Study 59 D259, T26493.43.
- <sup>65</sup> Case Study 29, Section 9, Key Submissions made by the Watchtower & Ors, p 76
- <sup>66</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.2.2, Data provided by the organisation p79
- <sup>67</sup> Final Report, Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, section 15.2.1, Private sessions about the Jehovah's Witnesses, p78.
- <sup>68</sup> Final Report, Vol 16 Book 3 Chapter 15, Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witnesses, p107
- <sup>69</sup> Halsbury's law of Australia at [140-640]; see also *Visy Paper Pty Ltd v Glass Granulates Pty Ltd*, [2014] NSWSC 1387 at [32]-[49]
- <sup>70</sup> Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2016, SUBM1029.003.0001 at [2.18]
- <sup>71</sup> Or 956, if the 50 cases of familial abuse by an elder or ministerial servant are included.
- <sup>72</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses section 15.2.2, Data provided by the organisation p79.
- <sup>73</sup> Final Report, Vol 16 Book 1, Chapter 15 Part C, Common context where child sexual abuse occurred in religious institutions, Table 16.10. p351
- <sup>74</sup> Final Report, Vol 16 Book 1, Chapter 15, Part A, Introduction, Places, of worship, religious activities and recreational activities p22.
- <sup>75</sup> Final Report, Vol 16 Book 1, Chapter 15, Part A, Introduction, Places, of worship, religious activities and recreational activities p22.
- <sup>76</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses section 15.3.2, Risk management, p94.
- <sup>77</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses section 15.4, Contributing Factors in the Jehovah's Witnesses, p99 (referring to Case Study 29 p77).
- <sup>78</sup> Submissions on Behalf of Watchtower Bible Tract Society of Australia, 9 November 2015, SUBM1029.001.0001 at [5.5]: and see fn 19; Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2016, SUBM1029.003.0001 at [2.7] see fn 12, at 2.47 see fn 43; Joint Statement of Terrence O'Brien and Rodney Spinks, WAT.026.001.0001, Exhibit 54-001, p10 [35-36].
- <sup>79</sup> Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2016, SUBM1029.003.0001 at [2.47].
- <sup>80</sup> Final Report, Vol 16 Book 1, Chapter 15 Jehovah's Witnesses, section 1.3.2, How we decided which religious institutions to examine in case studies, p96.
- <sup>81</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.2, Private Sessions, p77.
- <sup>82</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witnesses, p107
- <sup>83</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.3.2, Reporting to civil authorities, p83 and p97.
- <sup>84</sup> Final Report, Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witnesses, p108.
- <sup>85</sup> Final Report, Recommendations p100.
- <sup>86</sup> Transcript of G W Jackson, T15967:14-22 (Day 155).
- <sup>87</sup> Final Report Vol 16 Book 3, Chapter 15 Jehovah's Witnesses section 15, Conclusions about the Jehovah's Witnesses, p107.
- <sup>88</sup> Final Report Vol 1 Our Inquiry, section 3.1.1, Experiences of Attendees p30; section 2.5.5, Protecting information p60.
- <sup>89</sup> Final Report Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.2.1 Private sessions about the Jehovah's Witnesses pp77-78.
- <sup>90</sup> Final Report Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.2.2 Data Provided by the Organisation p78.
- <sup>91</sup> Case Study 29, Section 6, Historical Data, p58.
- <sup>92</sup> Final Report Vol 16 Book 3 Chapter 15 Jehovah's Witnesses, 15.2.2 Data provided by the organisation p78
- <sup>93</sup> Case Study 29, Exhibit 29-0021, WAT.0018.001.0001-3.
- <sup>94</sup> Case Study 29, Exhibit 29-0021, WAT.0018.001.0002.
- <sup>95</sup> Case Study 29 Report, section 6.1, Historical Data p59.
- <sup>96</sup> Further Submissions on Behalf of Watchtower Bible Tract Society of Australia 7 July 2017, SUBM1029.003.0001 at [6.4]-[6.8]
- <sup>97</sup> Case Study 29, Exhibit 29-0021, WAT.0018.001.0005\_R at [Table 3].
- <sup>98</sup> Report of Case Study No 29, section [6.3] External Reporting of the child sexual abuse to authorities, p60
- <sup>99</sup> Report of Case Study No 29, section [6.3] External Reporting of the child sexual abuse to authorities, p60
- <sup>100</sup> Final Report Vol 16 Book 3, Chapter 15 Jehovah's Witnesses, section 15.5, Conclusions about the Jehovah's Witness Organisation p107.
- <sup>101</sup> See Royal Commission into Institutional Responses to Child Sexual Abuse website
- <sup>102</sup> Final Report, Recommendations p56.
- <sup>103</sup> NSW Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse June 2108, p41-45
- <sup>104</sup> Victorian Government Response to the Royal Commission into Institutional Responses to Child Sexual Abuse, July 2018, pp7,13
- <sup>105</sup> Queensland Government response to the Royal Commission into Institutional Responses to Child Sexual Abuse, June 2018 pp60-64
- <sup>106</sup> Western Australian Government Six-Month Response To Recommendations Of The Royal Commission Into Institutional Responses To Child Sexual Abuse pp 40-43
- <sup>107</sup> Government of South Australia's response to the Final Report of Royal Commission into Institutional Responses to Child Sex Abuse, June 2018 p92 -101
- <sup>108</sup> Tasmanian Government Response Royal Commission into Institutional Responses to Child Sexual Abuse, June 2018 p2
- <sup>109</sup> The ACT Government Response (part 2) To the Royal Commission into Institutional Responses to Child Sexual Abuse, June 2018
- <sup>110</sup> Northern Territory Government Initial Response To The Recommendations of the Royal Commission Into Institutional Responses into Child Sexual Abuse June 2018, p28
- <sup>111</sup> Australian Government Response Fact Sheet 13 June 2018; Role of Institutions [www.ag.gov.au/carcresponse](http://www.ag.gov.au/carcresponse).