



Australian Government

Australian Government Response
to the Royal Commission into
Institutional Responses to
Child Sexual Abuse



Australian Government Response

Part Four: Redress and Civil
Litigation Report

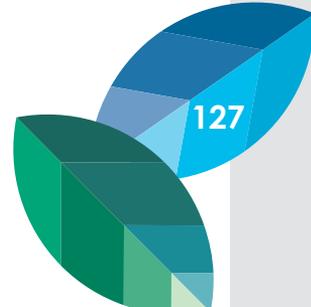




Part Four: Redress and Civil Litigation Report

No.	RECOMMENDATION	RESPONSE	STATUS
	The Australian Government is establishing the National Redress Scheme in response to the Royal Commission's recommendations regarding Redress.		
85	State and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.	Accept	The Commonwealth has taken action to remove limitation periods where it has jurisdiction to do so. On 4 May 2016, the former Attorney-General, Senator the Hon George Brandis, made a Legal Services Direction (Time barred child abuse claims - 4 May 2016) directing Commonwealth agencies not to plead a defence based on an expired limitation period.
86	State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.	Accept	See recommendation 85.
87	State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.	Noted	This recommendation is a matter for state and territory governments.
88	State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.	Accept	See recommendation 85.
89	State and territory governments should introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.	Noted	This recommendation is a matter for state and territory governments. The Australian Government is assessing whether relevant state and territory law applies effectively to the Commonwealth.

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90	<p>The non-delegable duty should apply to institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision or control of the institution in relation to the relevant facility or service:</p> <ol style="list-style-type: none"> residential facilities for children, including residential out-of-home care facilities and juvenile detention centres but not including foster care or kinship care day and boarding schools and early childhood education and care services, including long day care, family day care, outside school hours services and preschool programs disability services for children health services for children any other facility operated for profit which provides services for children that involve the facility having the care, supervision or control of children for a period of time but not including foster care or kinship care any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care. 	Noted	<p>This recommendation is a matter for state and territory governments.</p> <p>The Australian Government is assessing whether relevant state and territory law applies effectively to the Commonwealth.</p>
91	<p>Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The 'reverse onus' should be imposed on all institutions, including those institutions in respect of which we do not recommend a non-delegable duty be imposed.</p>	Noted	<p>This recommendation is a matter for state and territory governments.</p> <p>The Australian Government is assessing whether relevant state and territory law applies effectively to the Commonwealth.</p>



No.	RECOMMENDATION	RESPONSE	STATUS
92	For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.	Noted	This recommendation is a matter for state and territory governments. The Australian Government is assessing whether relevant state and territory law applies effectively to the Commonwealth.
93	State and territory governments should ensure that the non-delegable duty and the imposition of liability with a reverse onus of proof apply prospectively and not retrospectively.	Noted	This recommendation is a matter for state and territory governments.
94	State and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages in respect of institutional child sexual abuse where the institution is alleged to be an institution with which a property trust is associated, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings: a. the property trust is a proper defendant to the litigation b. any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust.	Noted	This recommendation is a matter for state and territory governments. The Australian Government is assessing whether relevant state and territory law applies effectively to the Commonwealth.
95	The Australian Government and state and territory governments should consider whether there are any unincorporated bodies that they fund directly or indirectly to provide children's services. If there are, they should consider requiring them to maintain insurance that covers their liability in respect of institutional child sexual abuse claims.	For further consideration	The Australian Government will consider this recommendation further in consultation with state and territory governments and unincorporated bodies to assess the most viable approach to give effect to this recommendation.
96	Government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse.	Accept	The Australian Government has developed Guiding Principles for Commonwealth entities when responding to civil claims concerning allegations of institutional child sexual abuse.
97	The guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims.	Accept	The Guiding Principles are designed to minimise potential re-traumatisation of claimants.

No.	RECOMMENDATION	RESPONSE	STATUS
98	The guidelines should include an obligation on the institution to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.	Accept	The Guiding Principles include the obligation to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.
99	Government and non-government institutions should publish the guidelines they adopt or otherwise make them available to claimants and their legal representatives.	Accept	The Guiding Principles in Guidance Note 13 are available on the Attorney-General's Department's website.

