

## **Submission on the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill**

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### **About the agency**

Anglicare WA is an incorporated not-for-profit organisation delivering a range of services to communities in 62 locations across Western Australia. Anglicare WA works together with people, their families and their communities to enhance their abilities to cope with the challenges of life and relationships. Anglicare WA's Vision is that "we live in a just and fair society in which all people thrive". As a leading not-for-profit organisation, Anglicare WA has an important role in building strong communities and families, supporting people to enhance their resilience and capacity to thrive. The work of the organisation is focused on delivering services that assist the most vulnerable people to participate fully in community life, by helping them to overcome relationship, housing and financial difficulties, and to access community support.

Anglicare WA services are underpinned by a principle of strong corporate governance that protects and enhances the interests of all stakeholders, staff, clients and the wider community. The core values of Inclusion, Trust, Compassion, Respect and Courage are embedded in all of the organisation's activities and decision-making, and all work is undertaken in a spirit of reconciliation between Aboriginal and non-Aboriginal Western Australians.

Anglicare WA has operated a Royal Commission Support Service (RCSS), funded by the Department of Social Services, since August 2013. In a little over 4 years this service has seen over 345 individuals, conducting 2,677 separate sessions overall. Whilst this is an average of about 8 sessions per client, some clients have had 100 contact sessions and some have only spoken to us once. The service has supported people across the vast state spanning Kununurra to Albany although of course the majority have been in the wider metropolitan area of Perth. Staff of the service have visited or spoken by phone to prisoners in almost every prison in the State.

Our commitment to sharing the Findings and Issues raised by the Royal Commission has resulted in our establishment of a communication network which has grown to over 425 service people and agencies. We have engaged with a number of these contacts in some detail, often hearing of their concerns for their clients. The results of our survey of those service people and agencies have shown that the RCSS has had a major impact on many services in WA.

Anglicare WA welcomes the Commonwealth Redress Scheme (CRS), its general principles and the expressed commitment that the Commonwealth Redress Scheme Operator is independent of all other institutions.

At the time of writing, it is unknown if Western Australia and the other States will participate in the Commonwealth Redress Scheme but the following comments could apply if the States and Territories accept the Bill as it currently stands.

## Key Issues of Concern

A number of issues about the Bill and its as yet unpublished associated rules are of particular concern to us:

1. Excluded victims of child sexual abuse, in particular, prisoners or offenders who might be excluded by Section 16 (3) and whatever Rules are then applied to it.
2. Communicating the Scheme and its particulars Section 18 (1 and 2) in easy to understand English – including what the alternative path might mean ie undertaking civil claims
3. The definition and scope of Counselling and Psychological services
4. Particular issues for applicants in remote locations and with poor literacy skills- Section 29 (2)
  - a. Access to documents of record, see also
  - b. Timelines for notices of determination, offers, internal review and other communications - Section 69
  - c. Making no response as evidence of rejecting the offer
  - d. Access to signatories for Statutory Declarations
  - e. Access to counselling
  - f. Obtaining good legal advice
5. Payment of outstanding debts once Redress is paid.

## Detailed Comments

### 1. Excluded victims of child sexual abuse, in particular, prisoners or offenders who might be excluded by Section 16 (3)

Although this issue is not in the Bill itself, The Hon Christian Porter MP did announce that anyone convicted of a child sex offence and those sentenced to prison terms of five years or more for serious crimes would be excluded from the Commonwealth Redress Scheme.

We will not go into complex arguments about cause and effect of offending behaviour but refer to the comprehensive analysis of the subject in the Royal Commission Final Report. In addition, the Final Report noted that 10.4 per cent of survivors were in prison at the time of their private session. They reported sexual abuse in a variety of settings; for instance many were sexually abused when placed in juvenile justice institutions for a variety of behaviours which would not today merit such placement. Having been placed there however, they often became enculturated into antisocial behaviours and a life of crime.

However, the considerable percentage of survivors who were in prison at the time of the Royal Commission would pale into insignificance if we were to consider the number of survivors who had, *at any time, served a prison sentence* meeting the stated criteria. Many would have a complex network of issues originating in their childhoods and including alcohol and drug dependency, issues with violence and aggressive and a sense of exclusion from general society which led to criminogenic behaviour. It should be noted that despite this, some of our clients have turned their lives around and have not been convicted of any crime for 30 or more years.

For such people to be punished yet again for youthful and trauma related expressions of anger and distress would be inimical to every sense of rehabilitation, equity and fairness.

Anglicare WA believes that singling out offenders would be a retrograde step at a time when institutions should be making amends to **all** child victims of sexual abuse in their services. What happens to the Redress payment once it has been made should be an entirely different question and will be addressed later in our submission.

Anglicare WA believes the Commonwealth Redress Scheme can only claim legitimacy if *all* victims of child sexual abuse in institutions are acknowledged and treated equally.

**2. Communicating the Scheme and its particulars Section 18 (1 and 2) in easy-to-understand English – including what the alternative path might mean ie undertaking civil claims.**

The Western Australian Redress Scheme ran for approximately three years (2008 to 2011) and the Royal Commission Support Services (RCSS) at Anglicare have run for over four years at this point. Staff at the RCSS have worked in both areas and have spoken to many hundreds of survivors during these seven years. It is very clear that the Redress WA processes, including advertising, application forms and telephone information lines distressed many clients. Anglicare WA would not like to see the same mistakes occurring again. For example, even with the extension of the WA Redress Scheme for an extra year, many people did not hear about it or misunderstood its scope or what it was offering - some Aboriginal clients believed the Scheme only referred to Stolen Generation people so did not apply if they were in foster care or school hostels. Others, in prisons, interstate or otherwise dealing with life issues, simply never heard about the Scheme.

Many people who have spoken to the RCSS remain angry to this day about their (largely misunderstood) expectation of the amount of money they might receive and feel duped about how funds were granted. Although this was a misunderstanding, the years of bitterness since have added to survivors' sense that they are still being victimised. They were often not aware of the funding matrix; or of the possibility of getting assistance in making their applications. Family tensions arose when members who applied by themselves often received less than others who had assistance in writing applications. In addition 'shame' prevented many applicants speaking about their sexual abuse and this may again prevent people applying unless documentation carefully explains how much detail is required.

Already the CRS is walking down the same pathway that the WA Scheme did – initially proposing a cap amount (in this case the Royal Commission proposed \$250,000) then almost halving it without debate (the cap amount in this Bill is \$150,000). This disappoints and angers individuals and support groups from the start and reinforces the “we don't matter” attitude which was so corrosive to applicants in the WA Scheme. In addition many people don't understand the “up to \$150,000” that is often quoted; they have no means of comparing their own abuse to that of others and they just see a lifetime of pain and suffering which they believe is largely due to State intervention in their family life.

The issue of whether the States “opt in” to the Scheme remains unresolved however **already, many people in Western Australia are expecting they will be eligible for the Commonwealth Redress Scheme so if WA does not enter into the Scheme, advertising needs to be undertaken to explain their exclusion.**

Most States are now amending their Statutes of Limitation which allow survivors to undertake civil law claims against their perpetrators and the institutions responsible for protecting them beyond the seven years which previously limited claims. This change now provides the option that survivors must consider – apply for the Commonwealth Redress Scheme or consider a lengthy civil claim but with the possibility that they receive more money. These will be complex questions especially for many aging or unwell survivors and their families. Applicants will now need to be plainly informed of the alternatives to applying for the Commonwealth Redress Scheme so that they really are making an informed choice about what is best for them. There does not currently appear to be a means of providing applicants with this information.

Adequately advertising the Commonwealth Redress Scheme once the Bill has been agreed to and it is clear which States are opting in, will be a major issue of equity. Many people no longer look to newspapers or leaflets for information. Only at the end of the RedressWA funding period did advertising on television take place and in fact cause a surge of applications.

While we understand that the processes outlined in the Bill are required to ensure the management of public and institutional funds, they are complex and will likely be outside the capacity of many people to manage in a timely way without assistance.

Without the employment of workers to assist people to complete their applications and to support them in making decisions about offers or requesting reviews, many people will not feel confident to apply.

### **3. The definition and scope of Counselling and Psychological Service**

Anglicare WA supports the offer of counselling and psychological services to survivors who have accepted an offer of redress and agrees that they should have a choice to maintain existing therapeutic relationships.

It is difficult to make comment on this section without seeing the rules that go along with Sections 47-49, but Anglicare WA notes the following issues of concern:

- The sexual abuse of a child in care is known to have long term consequences for that person, his or her relationships and parenting capacity; and their capacity to engage in work, with authorities and with education and technology. Much of the evidence to the Royal Commission spoke of survivors' grief over loss of culture, of ongoing trauma symptoms and of long term depression and anxiety. Counselling for the individual may only address some of these factors.
- For survivors to have the best chance of positive outcomes and even recovery, Anglicare WA submits that many survivors need services which can offer more "wrap around" care. This would include case management to liaise with and conduct warm referrals to health, housing, financial and family support services.
- In addition, the survivor needs opportunities to meet with their counsellor and their parents, siblings, partners and/or wider family so that the impact of trauma can be explained and helpful ways of managing trauma symptoms can be discussed.

- Whilst Anglicare WA supports empowering survivors to remain with existing counsellors or make their own choices about whom they see, it will be helpful if survivors can access accreditation details for their preferred counsellor and if the counsellor is required to provide information about their therapeutic approach and expected outcomes. The survivor should always have the right to change counsellors if they feel they are not getting what they want;
- It is worth noting that in regional and remote locations choice is not always an option so the CRS should consider ways to fund and make available online counselling services.

#### **4. Particular issues for applicants in remote locations and with poor literacy skills- Section 29 (2)**

Many people (both Aboriginal and non-Aboriginal) who missed out on the Redress WA Scheme were living in remote and regional Western Australia where information takes a long time to seep through and where mail services are slower than in cities.

Regional and remote residents may also have particular issues as below:

- a. Access to documents of record. When people tried to access their records for Redress WA there were sometimes delays of six months or more in obtaining them from Government agencies and other institutions. This often made clients anxious and confused and slowed down their applications.
- b. If the Operator requests information (as per Section 69) or survivors receive notices of determination or offers, or want to request an internal review or accept offers, decline them or appeal decisions (as per Sections 37-39), 14 days will be entirely insufficient to allow for mail services to the regions and remote communities in Western Australia from say, Sydney or Melbourne and back again.
- c. For this reason also there is a risk that it may appear that survivors are declining the offer (by doing nothing as per Section 36 and Section 41(2)) when in fact they are at the mercy of the mail system. We would argue that failure to respond is insufficient evidence that survivors have seen the documents and are making an active decision. Anglicare WA proposes that declining an Offer must be made in writing or at the least verbally to a reliable witness.
- d. Section 29 (3) requires that information included in the application needs to be verified by Statutory Declaration. Access to independent people who can sign Statutory Declarations in remote communities may be limited and survivors may be reluctant to approach their closest signatory because of confidentiality issues. Time must be allowed for other arrangements to be made.
- e. Access to counselling may be difficult in remote and regional Australia. As is noted above in Point 3, access to suitably qualified, independent counsellors who are perceived as being confidential may be very limited. Even if innovative options such as voice-over- internet

counselling are available, people still need a private room in which to undertake the counselling, something many remote communities may lack.

- f. Section 37 (g) also requires that applicants are given access to legal services to obtain legal advice about accepting an offer. Once again this may be extremely difficult to obtain in remote and regional Australia – especially within time constraints and with some guarantee of confidentiality.

Overall, the above points are aimed at providing equity of service and outcome for remote and regional people who are so often faced with structural and practical disadvantages.

#### **5. Payment of outstanding debts once Redress is paid.**

Sections 45 and 46 of the Bill may not be sufficient explanation to cover many circumstances where survivors accept a payment and are then potentially open to outstanding liabilities, for example Criminal Injuries Compensation, Child Support Agency, HECS and other debts are complex areas that applicants will need to consider and about which they will need clear and specific advice.

They may also need financial counselling *prior* to making applications or, at the very least, once a payment is about to be made so they can understand what they may then be liable for. We understand payments won't be income tested for Centrelink purposes *as long as* people know to tell this information to Centrelink in a timely way. However we also know that many clients struggle to deal with complex matters, financial issues and negotiating with people in positions of authority. We also understand that the money cannot be garnisheed immediately after payment but it is unclear for how long this constraint will be in place.

#### **6. Conclusion**

The Commonwealth Redress Scheme will be a considerable undertaking and will start to demonstrate good faith in the findings of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Commonwealth Government will win admiration and respect if it can avoid some of the difficulties experienced by previous schemes. Anglicare WA believes that the Commonwealth must allow all survivors of Institutional Child Sexual Abuse to apply for redress and to be considered equally as a survivor. It must take account of the levels of distress experienced by survivors and the ways this distress impacts on education, cognitive and technological skills and ability to deal with authorities. A trauma informed approach will be essential in working with survivors to help them access this Scheme.

In addition the Bill must take account of the implications of practical matters such as how to inform all survivors of the Scheme, how long mail takes to reach remote communities and whether survivors in the regions and remote communities can seek independent advice. Finally, it would be a terrible shame if survivors obtained some financial redress only to have it garnisheed without any choice, for other purposes.