

The Hon John Rau MP



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Senator the Hon Slade Brockman
Committee Chair
Senate Standing Committee on Community Affairs Legislation Committee
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Parliament House
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By email to: community.affairs.sen@aph.gov.au

**Government
of South Australia**

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Minister for Planning
Minister for Industrial Relations
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Dear Senator Brockman

I refer to your email of 19 December 2017 to the Premier of South Australia inviting his written submission to the Senate Standing Committee on Community Affairs Legislation Committee as part of its inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (the Bills).

South Australia has its own history in establishing a state-based redress scheme. We are currently the only state operating our own *ex gratia* compensation scheme for survivors of child sexual abuse in state care. The South Australian Government established the *ex gratia* scheme for the benefit of victims of child sexual abuse while in state care following the 2008 report of the South Australian Children in State Care Commission of Inquiry (the Mullighan Inquiry).

The Mullighan Inquiry provided a forum where the stories of survivors of abuse in state care could be told, investigated and recorded. This was considered by many survivors to be the most important element of the government response, allowing them to tell the stories of their abuse, for those stories to be respectfully heard, and for them to recast their experience as survivors and not as victims.

The establishment of the *ex gratia* scheme was one of a series of responses to the demands expressed by survivors of child sexual abuse in state care as part of the Mullighan Inquiry. Those responses included support services to deal with trauma and loss associated with the abuse, the removal of legislation to prevent criminal prosecution for historical child abuse, and the establishment of a police unit dedicated to pursuing historical prosecutions. A public apology was issued in the Parliament which provided closure for many survivors.

For some survivors, the payment of money was an important part of the healing process, and hence the *ex gratia* scheme was established. The scheme, which operates pursuant to the *Victims of Crime Act 2001*, remains open, allowing eligible applicants access to payments of up to \$50,000, as an informal alternative to litigation. In addition, the South Australian

Government supports post-care services to survivors of abuse in state care including counselling and financial advice.

For those survivors seeking full compensation for their loss, their rights can be pursued at common law. The South Australian Government has formally adopted a policy to deal with child sexual abuse common law claims compassionately, with the aim of settling claims before they reach court. No such claims against the South Australian Government have proceeded to trial.

The ongoing existence of the South Australian *ex gratia* scheme for victims of child abuse while in state care, along with the compassionate approach taken by the South Australian Government to civil law claims made by victims of abuse in state care, places it in a different position to other jurisdictions in considering full participation in the national scheme. The South Australian government maintains that the national scheme should not interfere with settlements already achieved by the South Australian *ex gratia* scheme or as a result of common law claims.

The Bills are limited to the establishment of a national redress scheme for the benefit only of victims of child sexual abuse within Commonwealth institutions, and as such, are of limited relevance to the South Australian Government at present.

However, I understand it to be the Federal Government's intention to either amend or replace the Bills so as to provide for a national scheme in which both State and private institutions can also choose to participate. In the event that those amending or replacement Bills are not separately referred to the Committee, I would like to provide the Committee with the South Australian Government's position on the national scheme as part of the Committee's present inquiry.

The South Australian Government supports the establishment of a national redress scheme. The findings and recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse have highlighted the devastating and ongoing impact of such abuse on survivors, and the ineffectiveness of traditional legal mechanisms in addressing that impact in many cases. For those survivors, a national scheme will provide access to a monetary payment in recognition of the wrong suffered, and access to counselling, without the burden of pursuing the responsible parties via litigation.

The South Australian Government continues to actively participate in planning meetings with the Federal, territorial and other state governments for the purpose of designing the proposed national scheme for the benefit of such survivors. Many aspects of the proposed scheme's operation are yet to be settled. We have in particular been able to provide the Federal Department for Social Services information on lessons learned from our experiences.

Given the approach taken in South Australia and our recent history as outlined above, neither the State of South Australia nor any other state government entity will be a participating entity for the purposes of the national Scheme. As such, the State will not be contributing (either financially or otherwise) towards the delivery of any element of redress under the national scheme, nor contributing to or underwriting the national scheme's administration or operation.

However, if any non-government institution operating in South Australia does wish to join the national scheme as a participating entity, the South Australian Government intends to facilitate this to the extent that it can. This includes continuing to work with the Federal Government and other jurisdictions in designing the national Scheme so as to:

- (i) allow for participation by any willing institution falling within the scope of the national scheme, and
- (ii) ensure the parallel operation of South Australia's *ex gratia* scheme with the national scheme in a way which does not re-traumatise survivors.

I look forward to considering the report prepared by the Committee as a result of its inquiry in this context.

Yours sincerely

John Rau
Deputy Premier
Attorney-General
Minister for Child Protection Reform