

14 April 2020

Committee Secretariat
Joint Select Committee on Implementation of the National Redress Scheme

By email only: redress@aph.gov.au

Dear Colleagues,

Implementation of the National Redress Scheme

I refer to evidence given to the Committee by Lisa Flynn and Katrina Stouppos on 30 March 2020.

Upon considering some questions received during our evidence, we would like to make the following further observations for the Committees consideration:

Greater transparency in decision making

Making the Assessment Framework Guidelines publically available would improve transparency in decision making. It would allow applicants to consider the Guidelines prior to making their application allowing a more complete or better quality application to be submitted. It would allow applicants to better engage with the review process because they will appreciate what is required in order to receive the payment for the most extreme and egregious abuse for example. Deciding applications for redress according to criteria which are not made publically available is inconsistent with a transparent, predictable and survivor-focused scheme.

We suggest reasons be given for decisions to allow survivors of child sexual abuse to better understand their outcome. Reasons should also be provided where an institution has been found to not be responsible for child sexual abuse by the scheme. Presently no explanation is provided where the scheme has decided an institution is not responsible for abuse.

Providing reasons for decisions would allow legal advisors to assist survivors to assess their options including whether to request a review, accept or decline an offer or to explore other avenues for compensation. Providing reasons for decisions should demonstrate consistency in the outcomes being offered and consequently might improve perceptions by survivors or their representatives of justice being done.

We assume that decision-makers have regard to each criteria in the legislation, rules and guidelines when reaching a decision about the individual circumstances of an applicant's abuse. We see no reason why that reasoning should not be made available to an applicant.

Uncertainty about the possible outcome, amongst other things, may be a deterrent to those considering making an application for redress.

Participation in the scheme

In a circular fashion, if an institution has not opted in to participate in the scheme, a survivor may not provide an application for redress to the scheme and unfortunately unless an application is made to the scheme, the scheme will not ask an institution to opt in. This result is unfair to applicants and imposes a burden on survivors of abuse to act first rather than the culpable institution. We suggest a comprehensive, broad reaching communications campaign encourage all institutions who have interactions with children to opt in to participate in the scheme. Even where no report of abuse has yet been received.

Institutions might be incentivized to do the right thing and join by allowing a grace period of perhaps 12 months after a report of abuse is received before charity status is lost. That is, an institution has 12 months from the time an application is received to join the scheme and thereafter charity status ought to be lost. This would require amendments to allow institutions to join post 30 June 2020.

We confirm our views that institutions who refuse or otherwise fail to join the national redress scheme by 30 June 2020 should be stripped of charitable status. This should include those institutions who have been named in an application to the National Redress Scheme (prior to 30 June 2020) or a report of abuse to the Royal Commission. We see no reason this should not commence on 1 July 2020 as these institutions have had sufficient notice.

We suggest that for all applications for redress where one responsible institution is participating and another is not, that the sole participating institution be considered entirely responsible for the abuse. It is unfair to abuse survivors to have their maximum payment approximately halved because only one of the institutions responsible for their abuse has opted in to participate. Many of these survivors have had their applications on hold for many months waiting for an institution to opt in.

We suggest any institution who has commenced the process of opting into the scheme prior to 30 June 2020 but where the process has not yet been finalised should be permitted to participate in the scheme assuming the application is later approved.

We suggest the Redress Scheme be permitted to continue indefinitely instead of being limited to 10 years operation. If the decision to extend the operation of the scheme is made, institutions should be allowed an extended period of time to opt in.

Covid 19

We represent several survivors who wish to make an application to the scheme but who are unable to complete a statutory declaration without leaving their home or coming into close contact with other people.

No one is able to say how long social distancing requirements may continue or how long vulnerable members of the community will be encouraged to self-isolate. This will be particularly disadvantageous to those in high risk circumstances including those of advanced age or with other health conditions. These vulnerable people, who are also survivors of abuse, will be unable to pursue their applications for redress for an indeterminate time and during that time, remain in a state of uncertainty and distress.



We suggest the scheme be permitted to accept applications for redress from applicants who have not yet completed a statutory declaration on the basis a duly executed statutory declaration will follow in due course. We have requested the Scheme agree to accept applications without a statutory declaration however at the time of writing we have not yet received a response. Guidance from the Committee to the Scheme on this issue to allow survivors to make applications would be appreciated.

Should the committee have any further questions, please do not hesitate to ask.

Yours faithfully,

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SHINE LAWYERS	