Tuart Place
Growing Strong Together

24 High Street
Fremantle WA 6160
08 6140 2380
Freecall 1800 619 795
admin@tuartplace.org
www.tuartplace.org

Senate Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

30 May 2018

Dear Senators,

Tuart Place welcomes this opportunity to contribute to the Senate Committee's Inquiry into the *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018*. Please find our submission attached.

Tuart Place is a resource service for adults who experienced out-of-home care during childhood. Operating on a participant-leadership model, we are an incorporated, independent charity. Our 1000+ clients (participants) include Forgotten Australians, former child migrants and the Stolen Generations, known collectively as care leavers. Half the members of Tuart Place's Board of Governance – *Forgotten Australians Coming Together (FACT) Inc* – are people with lived experience of out-of-home care. Over two thirds of current participants at Tuart Place have disclosed experiences of historical institutional child sexual abuse and almost 100% have disclosed other forms of child maltreatment.

This submission is in addition to Tuart Place's submission and supplementary submission to the Senate Inquiry into the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017*.

The following points are addressed in the present submission:

- 'Special assessment' of applicants with serious criminal convictions
- Exclusion of incarcerated survivors
- The one application only rule
- No specified minimum payment
- Indexation of previous relevant payments to account for inflation
- Lack of clarity regarding the proposed calculation of relevant prior payments
- Lack of clarity on the issue of peer abuse
- Exclusion of care leavers whose institutional maltreatment did not involve sexual abuse
- Assumption of the risk of large scale attempted fraud

Recommendations on these nine matters are provided on page 16.

The contact person for this submission is Tuart Place Director, Dr Philippa White.

Yours faithfully,

Dr Philippa White
Director,
Tuart Place

Mr Ron Love
Chairperson,
Forgotten Australians Coming Together (FACT) Inc.

'Special assessment' of applicants with serious criminal convictions

The Explanatory Memorandum for the National Redress Scheme (NRS) outlines a regime of 'special assessment' of applicants who have served long prison sentences, which is no less discriminatory to this cohort of survivors than the total exclusion policy proposed under the Commonwealth Redress Scheme (CRS), which attracted extensive public criticism and scrutiny from a Human Rights Committee.[1] The CRS criminal exclusion policy was identified as discriminatory, and ignorant of the connection between childhood abuse and later aberrant behaviours.[2]

While the CRS criminal exclusion policy was unacceptable, at least people knew where they stood. Under the NRS's 'special assessment' model, people who have incurred serious judicial penalties will not be sure if they are eligible for redress or not. Such survivors are likely to undergo the painful process of documenting their childhood sexual abuse in detail, only to have the application rejected on the basis of their bad character, by either the Operator of the scheme, or by a state attorney-general.

According to the NRS Explanatory Memorandum, the Operator must take several factors into account when determining whether a person with criminal convictions is entitled to redress, however the views of the attorney-general in the state where the abuse occurred will have more weight than other matters in determining individual survivors' eligibility for financial redress[3]; and the Operator must give greater weight to any advice given by this source[4] (the same source liable for paying redress). This model of assessment is antithetical to at least two of the Royal Commission's aims in recommending a national redress scheme: (1) achieving national consistency in providing redress for survivors across Australia; and (2) taking decision-making power away from entities responsible for paying financial redress.

If the goal is national consistency, survivors with criminal histories should be subject to uniform assessment protocols across the States. If the goal is taking away decision-making power from liable entities, there is a conflict of interest where the state is both the responsible entity and has the most say in whether an applicant receives payment. The Royal Commission found that state governments are "likely to face many claims for redress that concern abuse in government-run institutions", with Finity Consulting's estimation of claims against governments ranging from 26 to 41 per cent.[5] Presumably, state governments will share additional liability for sexual abuse of Wards of the State in non-government institutions and in placements arranged by a government authority.

The model of 'special assessment' will create considerable uncertainty about eligibility, and is likely to cause great distress among this group of potential applicants. Like the CRS criminal exclusion policy, the NRS regime of 'special assessment' will disproportionately adversely affect Aboriginal peoples, and is likely to cause further harm to some of the most disadvantaged and seriously abused survivors.

Recommendation: *Survivors who have served long sentences in prison should not be subject to 'special assessment' or treated any differently to other NRS applicants.*

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[1] Parliamentary Joint Committee on Human Rights (2018). *Human rights scrutiny report*, Report 2 of 2018, 13 February 2018. Commonwealth of Australia. p.83.

[2] Ogloff, J., Cutajar, M., Mann, E. & and Mullen, P. (2012) 'Child sexual abuse and subsequent offending and victimisation: A 45-year follow-up study' *Trends & Issues in Crime and Criminal Justice* No.440. Canberra: Australian Institute of Criminology. https://aic.gov.au/publications/tandi/tandi440 , accessed 2-2-18.

[3] National Redress Scheme Bill (2018). *Explanatory Memorandum*. The Parliament of the Commonwealth of Australia, House of Representatives p.118.

[4] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.54.

[5] Royal Commission into Institutional Responses to Child Sexual Abuse (2015). *Redress and Civil Litigation*. Commonwealth of Australia. Sydney, NSW. p.25.

Exclusion of incarcerated survivors

The NRS bill provides that a person will not be able to apply to the Scheme if they are in gaol,[6] which, like the 'special assessment' of people with criminal records, will also discriminate mainly against Aboriginal survivors, who are over-represented in the criminal justice system and are sentenced to custody at a higher rate than non-Aboriginal defendants.

The stated rationale for this policy is that:

> *This restriction is necessary as the Scheme will be unable to deliver appropriate Redress Support Services to incarcerated survivors, … [and] institutions may not be able to deliver an appropriate direct personal response to a survivor if that survivor is incarcerated.*[7]

It is unclear why a responsible institution could not send a representative to provide a personal response to a survivor in gaol. We have observed many positive outcomes in cases where survivors in prison have received face-to-face apologies from religious personnel. It is also instructive for past providers to see firsthand the aftermath of historic child abuse in their institutions.

Further, there is no reason why survivors should not have access to counselling services in gaol. What better time could there be for a person who has broken the law to be assisted to rehabilitate? Depending on the circumstances, some survivors may decide not to, or may be unable to proceed with an NRS application while they are in prison, however a survivor focussed scheme would offer this choice wherever possible.

One of the most effective ways to prevent people reoffending is to assist them to gain insight into the reasons for their offending and to make the link between childhood experiences and dysfunctional adult behaviours.[8] Assisting prisoners who have offended sexually to gain this insight is a key mechanism of child protection. The proposed exclusion of this group of applicants misses an important opportunity to assist in protecting children from future sexual abuse.

Given that Australia's Royal Commissioners were willing to go into prisons to conduct private sessions, with 713 (10.4%) sessions being conducted in gaol,[9] it is hard to understand why the NRS would not also seek to support people in these circumstances.

Recommendation: *Survivors who are incarcerated should not be treated differently to other NRS applicants, except to accommodate the fact that they are in prison. If survivors in gaol want to submit applications, they should be assisted, wherever possible, to access the necessary support and receive a personal apology from the responsible institution(s).*

The one application only rule

The rule that applicants can submit only one application to the NRS is unnecessarily restrictive and is neither survivor-focussed nor trauma-informed. It can also be expected to cause great distress to survivors, particularly in cases where one of the institutions deemed responsible for providing redress is not a participating institution.

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[6] *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018*. First Reading. p.28. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r6101_first-reps/toc_pdf/18084b01.pdf;fileType=application%2Fpdf, accessed 20-5-18.

[7] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.119.

[8] Senate *Committee Hansard*, 16 February 2018, p. 29.

[9] Royal Commission into Institutional Responses to Child Sexual Abuse (2017). *Final Report*. Commonwealth of Australia. Sydney, NSW. p.23.

Consider the following quoted example of 'Person H', cited in the NRS Explanatory Memorandum:

> *"Person H suffered sexual abuse in two separate instances as a child. Person H makes an application to the Scheme, although only one of the responsible institutions is a participating institution. Person H is advised about the one application only rule (clause 20) that he may benefit from withdrawing his application, and re-submitting once the second responsible institution agrees to participate in the Scheme. Person H chooses to wait and withdraws his application. One year later, the second responsible institution agrees to participate in the Scheme. Person H contacts the Scheme and submits his application in relation to the two separate instances of abuse. Person H's application is valid as he withdrew his initial application in the year prior. Person H receives an offer in relation to both instances of abuse because both responsible institutions are participating in the Scheme and determined responsible for the abuse" (Clause 20, Example 3).* [10]

Fortunately, there is a happy ending for Person H in this example, although we wonder how he felt about withdrawing his NRS application and an uncertain wait for the second institution to opt in.

Consider a different potential outcome for Person H – let's call him Harry – who is, hypothetically, 84 years old and as a child was sexually abused in two institutions – a non-government Children's Home and a government-operated Receiving Centre. Harry was also physically abused in a state government foster placement. As in the cited example of Person H, the relevant State Government has opted in to the NRS, but the Children's Home has not. Despite being physically abused in the foster placement, where was hit violently about the head, bursting an ear drum, causing permanent hearing loss, Harry is not eligible to claim anything for this. He therefore proceeds with a claim for the sexual abuse at the Receiving Centre and Children's Home.

Detailing this abuse is embarrassing and traumatic for Harry, but he receives effective support and is satisfied with his final application, which he submits to the NRS. As in the example of Person H, after submitting his application, Harry receives a letter in the mail notifying him that the Children's Home has not opted in to the scheme. Harry learns of the 'one application only rule', and discovers that his only options are to withdraw his application, or be assessed for a half payment.

What should Harry do? He has always felt bitter about the abuse at the Children's Home, and now finds himself in a situation in which this institution has the power to cause him further harm. At the age of 84, Harry believes he is too old to pursue a civil claim, and thinks he might die before the Children's Home decides to opt in. Harry survives on an aged pension, and has nothing to leave his children and grand-children. He decides that something is better than nothing, and does not withdraw his NRS application.

Harry's application proceeds to the determination phase; he is deemed eligible; and receives an offer of payment for sexual abuse at the government Receiving Home. Harry knows the payment is about half what he should be offered, but he must accept or reject it, and can never re-apply. Harry decides to accept the offer, and three weeks later the Children's Home announces it will opt in to the Scheme. How do we think Harry feels now?

Recommendation: *Allow eligible applicants to receive payments relating to childhood abuse at any responsible participating institution; hold the application on file until (if) other responsible institution/s opt in to the scheme; in which case, reactivate the application to facilitate payment related to childhood abuse in newly signed-up institutions.*

[10] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.28.

No specified minimum payment

A combination of two elements in the NRS bill – (1) the absence of a minimum payment amount; and (2) the proposed indexation of prior relevant payments – create a 'perfect storm' of potential re-traumatisation for NRS applicants.

Having assisted more than 950 abuse survivors throughout a variety of redress processes, we have observed that there is something *deeply insulting* – and re-traumatising – about receiving an offer of payment as low as $5,000, or worse, $2,000 in relation to one's childhood abuse. Three Western Australian examples of harmfully low redress payments are discussed below.

Redress WA: The original minimum payment under this scheme for survivors of abuse and neglect in state-governed care was $10,000. In 2009, in a devastating breach of trust affecting more than 5,500 applicants, the terms of this scheme were radically changed – *after* everyone had submitted their forms. The maximum payment was reduced from $80,000 to $45,000 and the minimum payment halved, from $10,000 to $5,000. The amount of $5,000 was received by 859 applicants.[11] Ten years later, Redress WA survivors are still deeply aggrieved about the devaluing of their scheme and, with the return of a Labor State Government in 2017, have reignited a campaign to 'Make Redress Right' in Western Australia.

Stolen Wages: Similarly, the originally-proposed level of payment under WA's Stolen Wages Repatriation scheme was also $10,000, but was decreased before the scheme commenced in 2012, with all 1,276 applicants ultimately offered a flat 'common experience' payment of $2,000.[12] People who took part in (or missed out on) the Stolen Wages initiative have uniformly expressed negative views on this scheme, ranging from disappointment to absolute disgust. It has certainly not been helpful in assisting this cohort of Aboriginal people to believe that the present-day government is sorry that they were exploited and worked – sometimes for many years – without pay. In the years since the scheme, no one has indicated to us that they perceive this ex-gratia payment to be a genuine "expression of regret on behalf of the Western Australian State Government for past mistreatment experienced by eligible applicants",[13] as it was reportedly intended.

Slater & Gordon class action: The third example of harmfully-low redress payments in WA involves a class action in the late 1990s against the Christian Brothers by law firm Slater & Gordon, under which the majority of approximately 240 participants received only $2,000. Higher level payments of $10,000 and $25,000 were received by a small number of claimants. Most of the men who took part in the class action have been clients of Tuart Place and/or its forerunner services, and over the years none has expressed anything other than negative views on it. Many have expressed significant bitterness about this particular process, with an enduring sense of having been 'cheated'.[14]

There are good reasons why redress schemes have minimum payments. With no minimum level in place, there is nothing to prevent NRS applicants receiving inappropriately low offers – for example $1.79 – which may seem ridiculous, but is almost certain to occur if the method of calculation in the Explanatory Memorandum is applied. Harmfully low payments such as this would threaten the integrity of the scheme and, as redress expert Stephen Winter points out: "if Australia's redress programs contain unjustified departures from standard normative frameworks, these departures may threaten their redressive status".[15]

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[11] Department for Communities (2013). *Redress WA Final Report*, Government of Western Australia, p.6.
[12] Department of Aboriginal Affairs (2013) *Annual Report 2012-13*, Government of Western Australia. p.6.
[13] Stolen Wages Repatriation Scheme WA (2012). Available at: https://www.findandconnect.gov.au/guide/wa/WE00788#tab1 accessed 20-5-18.
[14] Such views were also recorded by the Royal Commission into Institutional Responses to Child Sexual Abuse. See the *Consultation Paper on Redress and Civil Litigation* (2015). Commonwealth of Australia. p.201.
[15] Winter, S. (2009). Australia's ex-gratia redress. *Australian Indigenous Law Review*, Volume 13, Issue 1. p.50.

Inappropriately low redress payments constitute secondary abuse of survivors,[16] and convey a disrespectful, devaluing message that can leave people feeling worse than before. In recommending a $10,000 minimum for a redress scheme, the Royal Commission stated that:

> We are satisfied that $10,000 is an appropriate minimum payment. It is large enough to provide a tangible recognition of a person's experience as a survivor of institutional child sexual abuse while still ensuring that a larger relative proportion of total payments is not directed to those who have been less seriously affected by abuse. [17]

Recommendation: *To avoid causing further trauma and harm to survivors of institutional child sexual abuse, a minimum payment of $10,000 should be offered to eligible applicants whose assessed level of financial redress falls below this amount.*

Indexation of previous payments to account for inflation

As is the case with inappropriately low redress payments, the proposed upscaling of prior redress payments is contrary to the aims of the NRS to "recognise and alleviate the impact of past institutional child sexual abuse … and provide justice for the survivors of that abuse".[18]

From a psychological perspective, the process of monetising someone's childhood abuse is inherently fraught, and redress initiatives normally offer payments in broad 'bands' or categories in multiples of at least $1,000 and, more often, $10,000.[19] It would be bizarre, or even 'unseemly' to place an overly-precise value – for example, $1,302.98 – on a person's experience of childhood sexual abuse.

As Kathy Daly points out, "the meaning of a financial [redress] payment must be symbolic, and not tied to a market value meaning".[20] As a symbolic gesture, the amount is necessarily 'round' and, unsurprisingly, all the 'gross liability' examples cited in the NRS Explanatory Memorandum are in increments of $10,000. However, an alarming degree of precision is apparent in the calculation of institutional liability. For example, Step 5 of Subclause 30(2) provides that the reduction amount payable by an institution should be "rounded up if it is not a whole number of <u>*cents*</u>".[21]

One of the problems with applying the NRS's proposed formula of $(1.019)^n$ is that it will generate 'oddly precise' amounts of redress, and while such a high level of specificity may be normal and considered reasonable in a taxation or Centrelink assessment, it has no place in a redress scheme.

The primary problem with indexing redress payments however, is that these payments are not 'proper compensation', and upscaling is inappropriate when dealing with amounts that bear no direct relationship to the 'true value' of the damage, as is the case in civil claims. It is accepted that redress payments are significantly lower than common law damages, which makes upscaling particularly unfair.

Further, institutional liability for payment of damages is triggered at the time the abuse occurs, in some cases more than half a century ago. Much of the sexual abuse to be redressed under the NRS is decades old, but there is no counterbalance or provision for payment of interest backdated to the

[16] Day, F. (2002). *Putting together the pieces: recovering and rebuilding life after trauma*. Western Australia: Broadening Horizons. p.246.
[17] Royal Commission into Institutional Responses to Child Sexual Abuse (2015). *Redress and Civil Litigation Report*, Commonwealth of Australia. p.226.
[18] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.7.
[19] See Daly, K. (2014). *Redressing institutional abuse of children*. Basingstoke: Palgrave Macmillan. pp.228-9.
[20] Daly, K. (2014). *Op.cit*. p.196.
[21] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.34.

time of the abuse. Applicants will be required to accept the payment in lieu of claiming damages which would likely carry interest calculated at a significant sum.

The inequity of upscaling in the absence of an allowance for interest can be seen from a concrete example. In *'B' v Reineker* [2015] NSWSC 949, which considered a claim for damages for multiple sexual assaults committed by a school teacher against a pupil between 2001 and 2008, the Court awarded general damages for pain and suffering in the sum of $350,000 with $200,000 being in respect to the past. That sum carried interest at the then statutory rate of 4%. Calculated from July 2001 (the date of the first established act of sexual abuse) the amount of interest allowed was $60,000. The total amount of damages awarded was $1,228,000.

This example not only illustrates the inequity of upscaling in a redress scheme that is capped at $150,000 (already $50,000 lower than the recommended amount), it demonstrates the huge disparity between redress and 'proper compensation' payments. One of the prices for an applicant accepting a redress payment under the NRS is a full release of the responsible institution from all further liability. This is a significant benefit to the institutions responsible for the abuse – the amount of common law damages they could be liable for, together with interest and costs, would likely be many times greater than any redress payment.

Feedback from Tuart Place participants on this matter is that upscaling of past payments is mean-spirited, unfair, and clearly intended to cut costs for past provider institutions. Care leavers are recognised as a disadvantaged population cohort, with a series of inquiries and investigations over the last two decades identifying poorer socio-economic outcomes among this group.[22] Redress money received years ago is long gone - it has not been earning interest in high-yield offshore investment accounts.

A final comment on the issue of indexation is that it would be fundamentally and grossly unfair to upscale survivors' past payments without upscaling the scheme's payments at the same rate. One cannot imagine any rationale that might be used to justify such inequity.

Recommendation: *Prior relevant payments received by survivors should not be indexed for inflation. If indexation is applied to survivors' prior payments, then equivalent indexation must be applied to NRS payment levels over the next ten years.*

Lack of clarity regarding the proposed calculation of relevant prior payments

People whose childhood abuse occurred in state-governed welfare institutions were often moved between multiple placements in which they experienced many different types of abuse and neglect. It was not uncommon for a child committed to the care of the State as an infant to be moved between 15 or 20 different placements during 21 years of State Wardship (or 18 years after the age of majority was lowered in the early 1970s).[23]

Many thousands of care leavers across four Australian states – Queensland, Tasmania, South Australia and Western Australia – have already received redress payments paid in recognition of the myriad forms of maltreatment that were commonplace in institutional care last century, including child neglect and the various forms of active child abuse; while thousands more people in every State and Territory of Australia have participated in non-government redress processes recognising of all forms of child maltreatment, not just sexual abuse.

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[22] Fernandez, E., Lee, J.-S., Blunden, H., McNamara, P., Kovacs, S. and Cornefert, P.-A. (2016). *No Child Should Grow Up Like This: Identifying Long Term Outcomes of Forgotten Australians, Child Migrants and the Stolen Generations*, Kensington: University of New South Wales (p.191)

[23] Prior to 1970 the age of majority (and age of release from State Wardship) across Australia was 21 years. Between 1970 and 1974, the age of majority was reduced to 18 years by each of the States and Territories.

Many NRS applicants will therefore have complicated institutional backgrounds and complex histories of redress. To consider some real-world implications for NRS applicants, we return to the example of hypothetical Harry, who has a relatively simple placement history involving only three different institutional settings, and a comparatively straightforward experience of redress, involving only one prior redress payment of $45,000 received eight years ago under the state government's Redress WA scheme.

Harry's Notice of Assessment from Redress WA states that his financial offer was made in respect of the following experiences, and the impact on his life:

- Physical abuse, emotional abuse, sexual abuse, neglect, and denial of education during eight years residency at a non-government Children's Home;
- Physical abuse, emotional abuse, sexual abuse and solitary confinement during six months' residency at a government Receiving Centre; and
- Physical abuse and medical neglect over three years in a foster placement where Harry did not suffer sexual abuse, but had his ears boxed, bursting an ear drum and causing him permanent hearing loss in one ear.

Harry feels aggrieved that his permanent hearing loss will not be recognised under the NRS, however he prepares a claim for the sexual abuse at the other two placements, which is assessed at the combined 'gross liability' amount of $50,000 – with both institutions deemed equally responsible. As only one institution (the government Receiving Centre) has opted in to the NRS, Harry is eligible to receive only $25,000.

How will Harry's 2010 Redress WA payment affect his $25,000 assessment under the NRS? No information is provided in the Explanatory Memorandum about the proposed methodology for extracting the experience and impact of child sexual abuse from previous redress settlements paid in recognition of multiple forms of abuse and neglect, and it is not clear how amounts payable under the NRS will be calculated.

It seems reasonable to assume that because sexual abuse was just one of the many forms of child maltreatment on which Harry's redress payment was based, and because this prior payment included the injury he suffered in a foster placement where he 'only' suffered physical abuse and a burst ear drum, that the Operator's assessment of 'relevant prior payment' for Harry's sexual abuse will be a fraction of the amount he received from Redress WA.

In a case like Harry's, it seems possible that a proportion – for example 32% – of his Redress WA payment (scaled up for eight years' inflation) might be deducted as a 'relevant prior payment'. If so, Harry's offer from the NRS is calculated at $8,411.20.

Unfortunately, the assumption that only a proportion of Harry's prior payment will be deducted is not supported by the provisions of the NRS Explanatory Memorandum, in which there is no mention of excluding the non-sexual abuse component of previous redress payments. Indeed, there are several indicators that the entire quantum of previous redress payments may be deducted from NRS payments, including the following:

- A 'relevant prior payment' is defined in the Explanatory Memorandum as an amount "that was paid by the responsible institution in relation to abuse for which the institution is responsible".[24]
- In each of the example calculations, the total amount of previous redress and ex-gratia payments (upscaled for inflation) is deducted from the institutions' liability.

[24] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.34.

- Examples of prior payments that will not be deducted from applicants' payments do not include the non-sexual abuse component of prior redress payments.[25]
- The draft CRS bill identifies a method for calculating payments whereby "any payment that was paid by the institution to the person in relation to the sexual abuse, *or related non sexual abuse…*"[26] is deducted from the amount owed to that person.

It could be inferred from the above provisions that any previous payment made by any institution in relation to *any* abuse could be fully deducted from the gross liability of those institutions.

However, perhaps in cases such as Harry's, in which a previous assessment manifestly includes redress for maltreatment in an institution where he was not sexually abused, the Operator may choose not to deduct the entire amount of prior redress. The formula for calculating recovery amounts might then be drawn from methods of assessment such as those used in civil litigation. For example, the *Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 (WA)* provides that:

> amounts paid under an agreement are taken to relate to the child sexual abuse the subject of the cause of action to the extent of 50% if the agreement: (a) does not relate solely to that child sexual abuse; and (b) does not expressly deal with the extent to which the agreement and amounts paid under it relate to that child sexual abuse.[27]

The problem with using this kind of formula is that the notices of assessment provided by redress schemes and in non-legislated agreements almost *never* specify the extent to which the settlement relates to sexual abuse.

This leaves survivors in a weak position. If previous assessments have not specified the exact proportion of payment relating to sexual abuse (which they almost never do), it seems possible that an amount such as 50 per cent might be deducted, regardless of whether sexual abuse constituted 'half the harm'.

In the example of Harry, if half his Redress WA payment were to be deducted (even without upscaling), he will receive nothing.

If <u>all</u> of Harry's Redress WA payment were to be deducted, the 'reduction amount' will have a negative dollar value. We are reassured, however, by the NRS provision that assessed liability '*may be nil but not less than nil*',[28] so (even allowing for inflation) Harry won't end up owing money to an institution in relation to his own abuse.

In the interests of justice, it is essential that the Operator's assessment of 'relevant prior payments' does not include any part of a previous redress settlement that is not specifically and manifestly identified as being related to sexual abuse, and, as recommended by the Royal Commission, "any uncertainty as to whether a payment already received related to the same abuse for which the survivor seeks a monetary payment through redress should be resolved in the survivor's favour".[29]

Recommendation: *Further detail should be released on the proposed formula for assessing prior payments. It is essential that the calculation of 'relevant prior payments' does not include any part of*

[25] Senate Community Affairs Legislation Committee (2018). *Report of Senate Inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017*. Commonwealth Senate of Australia. p.63.
[26] *Commonwealth Redress Scheme Bill 2017*. Australia. p.28. [emphasis added].
[27] Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017 (WA). p.17.
[28] For example, Step 6 of Example 2 for Clause 30, NRS Explanatory Memorandum. p.36.
[29] Royal Commission (2015). *Redress and Civil Litigation*. *Op.cit*. p.25.

a previous redress payment that is not specifically related to sexual abuse, unless the non-sexual abuse is demonstrably related to the sexual abuse, and is specifically redressed in the NRS payment.

Lack of clarity on the issue of peer abuse

Sexual abuse by fellow residents is known to have been rife in closed residential settings last century. Just over 16 per cent of 6,875 attendees at Royal Commission private sessions (nearly one in six) disclosed sexual abuse by another child. Of these, 87 per cent said the offender was another boy.[30] Not surprisingly, a higher proportion of peer abuse (42%) was reported in the 2016 *Long term outcomes for Forgotten Australians* (LOFA) study, because it focussed solely on care leavers.[31] These data are consistent with our own understandings, gained from various Inquiries and non-government redress processes, and from assisting in the preparation of more than 800 applications for the Redress WA scheme, in which disclosures of peer abuse among boys are commonplace.

Government and non-government entities alike have struggled to deal with the issue of peer abuse in relation to redress. Institutions have tended to find themselves 'less responsible' if the abuser was a child, not an 'official' of the institution (ie. employee, officer, agent or volunteer). However, particularly in cases where the abuse occurred in residential care settings, there was an obvious, non-delegable duty of care for the institution to ensure that children were not abused – by anyone – and an institution is vicariously liable for abuse suffered by children in its care.

It was not uncommon for boys to 'act out' sexually abusive behaviours they learned from adults at the institution, and this cycle of offending behaviour served to perpetuate and normalise the abuse of younger/smaller/more vulnerable children. Institutions had an obligation to ensure that children were properly supervised and that residents did not bully or abuse their peers.

It is not clear how peer abuse will be assessed in the NRS, as none of the examples in the Explanatory Memorandum refers to peer abuse. The issue of *whether the abuser was an official of the institution*, is cited as a circumstance that "might be relevant in determining whether a participating institution is responsible for the abuse".[32]

Other provisions suggest that peer abuse might be considered within the scope of the scheme, for example: responsibility for day-to-day care and custody, legal guardianship and placement of the child are identified as relevant circumstances for determining institutional liability.

However, a rule-making power proposed for the Commonwealth scheme, if applied in the NRS, provides a potential 'escape clause' in which:

> *institutions are not found responsible for abuse that occurred in circumstances where it would be unreasonable to hold the institution responsible ... For example, where child sexual abuse was perpetrated by another child and the institution could not have foreseen this abuse occurring and could not be considered to have mismanaged the situation*.[33]

If institutions are permitted to argue that they 'could not have foreseen' the abuse occurring, survivors of institutional peer abuse may find that no one is deemed responsible for their claim. Similar concerns were raised by the Parliamentary Joint Committee on Human Rights, regarding the possible exercise of this rule-making power in a manner that relieves perpetrators of personal responsibility.[34]

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[30] Royal Commission into Institutional Responses to Child Sexual Abuse (2017). *Final Report: Volume 10*. p.27.
[31] Fernandez et al. (2016), *Op.cit.* p.10.
[32] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.114.
[33] Commonwealth Redress Scheme Bill (2017). *Explanatory Memorandum*. p.16.
[34] Parliamentary Joint Committee on Human Rights (2018). *Human rights scrutiny report*, Report 2 of 2018, 13 February 2018. Commonwealth of Australia. p.85.

Recommendation: *In cases where a child was a Ward of the State, or the abuse occurred while he or she was 'in the care of' an institution, peer sexual abuse should always be deemed the responsibility of that institution.*

Assumption of the risk of large scale attempted fraud

A number of provisions in the NRS Explanatory Memorandum indicate a belief that large numbers of people - even 'organised groups' - might intentionally fabricate experiences of child sexual abuse to claim money under the scheme, including the following rationale for imposing a civil penalty on applicants providing 'false or misleading information':

> *This civil penalty is justified to ensure that Scheme is adequately protected against the risk of fraudulent applications. Large volumes of false claims from organised groups could overwhelm the Scheme's resources and delay the processing of legitimate applications*.[35]

The fear of fraud also informs the stated rationale for not releasing an assessment matrix:

> *The reason for omitting detailed guidelines is to mitigate the risk of fraudulent applications. Providing for detailed guidelines would enable people to understand how payments are attributed and calculated, and risks the possibility of fraudulent or enhanced applications designed to receive the maximum redress payment under the Scheme being submitted*.[36]

The fear of fraud similarly informs the justification for amending the *Freedom of Information Act 1982* to allow protected information to be treated differently under the NRS; [37] and to justify the exclusion of survivors who are not Australian citizens or permanent residents.

The proposed exclusion of overseas applicants has come under the scrutiny of a Human Rights Committee, which noted that restricting eligibility on the basis of nationality or national origin is discriminatory, citing the Royal Commission's view that there is "no need for any citizenship, residency or other requirements".[38] In response to criticism on this issue the Minister states that:

> *Verification of identity documents for non-citizens and non-permanent residents would be very difficult. Opening the Scheme to all people overseas could result in organised overseas groups lodging false claims in attempts to defraud the Scheme, which could overwhelm the Scheme's resources and delay the processing of legitimate applications.*

The claim that *verification of identity documents for non-citizens and non-permanent residents would be very difficult* seems questionable, given that verification of identity across international borders is commonplace in modern times. Furthermore, while verification of identity is essential, the most significant documents will be held within Australia, and will involve evidence of the claimant's contact with the institution where the abuse occurred.

To justify his claim that opening the Scheme to people overseas could result in *organised overseas groups lodging false claims in attempts to defraud the Scheme*, the Minister states that:

> *Past examples of fraud highlight this as a key concern; for example, flood relief payments after the 2011 Queensland floods identified a number of fraudulent applications. These*

[35] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.31.
[36] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.38.
[37] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.4.
[38] Parliamentary Joint Committee on Human Rights (2018). *Op.cit.* pp.74-78.

> *restrictions on eligibility for the Scheme are necessary to achieving the legitimate aims of ensuring the Scheme receives public support and protecting against large scale fraud*.[39]

The reliance on an unspecified *number of fraudulent claims for flood relief payments after the 2011 Queensland floods* is disrespectful to survivors of child sexual abuse; it is inappropriate to apply in this context; and it provides insufficient justification for claiming that a large number of people, or 'organised groups', are likely to:

- fraudulently allege childhood sexual abuse;
- falsely identify and name offenders;
- make up details of the time, location, circumstances and particulars of the abuse;
- document these untrue allegations in a redress application form alongside a considerable amount of other personal information, for example, siblings' and parents' names;
- sign a statutory declaration verifying the fabricated allegations of abuse; and
- submit this fraudulent claim to a scheme administered by the Federal Government, knowing that 'protected' personal information will be shared with a range of stakeholders, including the responsible institution, the police, and any other 'persons and for such purposes as the Operator determines'.[40]

We are not aware of any existing redress schemes for abuse survivors—within Australia or internationally—in which 'large numbers of people' (let alone *organised groups*) have intentionally sought to defraud these initiatives for financial gain. On the contrary, there are many documented instances in which ill-founded fears of fraudulent redress claims have proven to be baseless. [41, 42, 43]

Such findings are consistent with our direct observations of redress processes over many years, in which it is not at all uncommon for survivors *not* to disclose sexual abuse (or the most embarrassing, extreme instances of abuse) until after the process is over. Many Redress WA applicants could not bring themselves to disclose the full extent of their childhood abuse until after the scheme closed and, frustratingly, the same dynamic occurs in the non-government redress processes.

The great majority of people do not want to identify themselves as victims of child sexual abuse, and some will never fully disclose their abuse. Professionals and academics working in this area have come to understand the many psychological and social barriers to disclosing childhood sexual abuse, as the Royal Commission also found during the course of its work. These widely-acknowledged phenomena include:

- Non-disclosure, denial and non-reporting
- Delayed disclosure, delayed reporting, avoiding talking about the abuse
- Minimising of the abuse and lack of understanding of the impacts of the abuse
- Blaming of self and taking unwarranted responsibility for the abuse
- **Fear of not being believed**.[44]

Given these factors, the emphasis on potential fraud is ironic, unjustified, and most unhelpful to survivors. The numerous provisions in the NRS justified with an assumption of widespread attempted fraud are not consistent with practice knowledge or research findings and, in its present form, the NRS bill does not meet the Human Rights principle of *Proportionality* (explained with the

[39] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.117.
[40] National Redress Scheme Bill (2018). *Explanatory Memorandum*. p.64.
[41] Kendrick, A. & Hawthorn, M. (2015). Dilemmas of Care: Social Work and Historic Abuse, in *Apologies and the Legacy of Children in 'Care': International Perspectives*. Basingstoke: Palgrave Macmillan. p.179.
[42] Murray, S. (2015). *Supporting Adult care-leavers: International good practice*. Bristol: Policy Press. p.95.
[43] Daly, K. (2014). *Op cit*. p.268.
[44] Royal Commission into Institutional Responses to Child Sexual Abuse (2017). *Final Report: Preface and Executive summary*. p.82.

expression 'don't use a sledgehammer to crack a nut').[45] With the terms *fraud[ulent]* and *false [claims/ and misleading information*] appearing 24 times in the Explanatory Memorandum, it seems a very large sledgehammer has been used to crack a small number of likely nuts.

A fundamentally mistrustful approach to redress applicants will perpetuate misguided beliefs and feed negative, unwarranted stereotypes. Further, as Wall and Tarczon observe:

> The perception that false allegations of sexual assault are common has negative consequences for victims of sexual assault and society more generally by perpetuating victims' fear of being disbelieved or being blamed for the assault. This reduces the likelihood of reporting.[46]

While it will be necessary for the NRS to take reasonable steps to verify the identity of claimants and validate recollections of abuse, the fundamental message conveyed to survivors must include acceptance of the extensive body of evidence on historical institutional child abuse (as reported by the Royal Commission and the three major national inquiries into out-of-home care) and the implementation of the NRS as a tangible symbol of the nation's sincere apology to survivors.

The assumption of large scale attempted fraud that permeates the NRS bill is not trauma informed, nor survivor focussed, and is disrespectful to survivors. The focus should be on finding ways to assist survivors to feel safe enough to fully disclose their abuse, not implementing mechanisms that convey a message that they will be suspected of fraud.

Recommendation*: Materials used to promote the scheme, including advertisements, guidelines and information for applicants, as well as the NRS application form itself should convey an understanding that it is difficult for survivors to disclose abuse, and reassurance that they will be supported through this process with respect and compassion. Seek input from survivors on the wording of any proposed warning in the NRS application form regarding penalties for 'false claims'.*

Exclusion of care leavers whose institutional maltreatment did not involve sexual abuse

The final point addressed in this submission was also covered in Tuart Place's submissions to the Senate's Inquiry into the Commonwealth redress bill, in January and February 2018,[47, 48] in which we argued for an inclusive model of redress recognising the different forms of abuse and neglect experienced by children in government-operated residential welfare settings last century.

It is now accepted that the NRS does not intend to provide any form of redress to survivors whose institutional maltreatment did not include direct sexual abuse. Firmly locked out of the national scheme, this cohort of care leavers—the 'Forgotten Australians', members of the Stolen Generations, and former child migrants from the UK and Malta—now faces a choice: either give up or continue striving for appropriate redress. Although they are now dying at an ever-increasing rate, it appears some care leavers will never give up—they will literally *fight to the death* – for justice and recognition.

Meanwhile, the various advocacy groups across the States and Territories are responding to survivors in different circumstances, with varying demographics, divergent histories of redress, and inconsistent options for civil action. For example, in states such as NSW and Victoria, where the

[45] http://eqhria.scottishhumanrights.com/eqhriatrainingproportionality.html
[46] Wall, W. & Tarczon, C. (2013). *True or false? The contested terrain of false allegations*. ACSSA Research Summary. November 2013. Available at: https://aifs.gov.au/publications/true-or-false-contested-terrain-false-allegations/export, accessed 22-5-18.
[47] https://www.aph.gov.au/DocumentStore.ashx?id=4fc1eae1-2301-4000-815d-52c872ce7e12&subId=563001
[48] https://www.aph.gov.au/DocumentStore.ashx?id=0a863cb1-462e-42db-9d09-bcf92afa8ba2&subId=563001

removal of limitation periods includes both physical and sexual abuse, survivors will have more options to seek common law damages than those in WA and Queensland, where legislative reform on child abuse only removes the limitation period for sexual abuse claims.

Care leavers in four Australian States have already been exposed to inclusive redress schemes covering all forms of child maltreatment, however in WA they also experienced large scale secondary harm during the process (the 'special case' of redress in Western Australia is outlined in Appendix I).

Because the national redress scheme is an Australia-wide initiative designed to provide uniformity and impose a consistent framework of redress across the States, it will be difficult for this one-size-fits-all framework to accommodate the unique histories of redress across different jurisdictions, particularly WA.

Existing inequities will be exacerbated by the inability of the NRS to respond in any way to the many abuse survivors who were beaten, starved and/or denied an education during their time in state care but were not abused sexually. These are the circumstances of an estimated 2,438 (46%) of the 5,302 care leavers who took part in Redress WA,[49] meaning that only about half the survivors of this scheme will be eligible for the NRS. For those who are still alive, exclusion from the new, highly-publicised scheme with its own high-profile apology by the Prime Minister will be a bitter pill to swallow.

Frank Golding describes this as a 'hierarchy of suffering' as an 'unintended consequence' of Australia's sexual abuse-only Royal Commission, which has generated a redress scheme that does not accommodate the circumstances of care leavers whose childhood maltreatment did not include sexual abuse.[50]

The Federal Government's decision not to broaden the NRS to cover all forms of abuse means that a significant part of Australia's shameful history of institutional child abuse will remain unaddressed. Each of the State Governments will now need to consider the circumstances of care leavers who will be left out of the NRS. It would be helpful for the states to reiterate previous formal acknowledgements of systemic child maltreatment in historic 'welfare' contexts—in which sexual abuse was just one of the many ways in which children were harmed.

Recommendation: *The Federal Government should encourage each of the States and Territories to reiterate their previous public apologies for the abuse and neglect suffered by Forgotten Australians, members of the Stolen Generations, and (where relevant) former child migrants, in recognition that not all will not benefit from the NRS. These State-level announcements should coincide with the Prime Minister's forthcoming national apology to survivors of institutional child sexual abuse, and be accompanied by a statement of intent regarding each State's plans regarding redress for care leavers who are not eligible for the NRS.*

Conclusion

This submission has addressed key areas of concern in the NRS bill and makes nine recommendations for reform of the draft legislation, listed on page 16. In concluding this submission, we wish to express broader concerns about the general lack of specificity and detail in the Explanatory Memorandum; the absence of important provisions in the legislation; and the minimal amount of information provided on the NRS webpage. We are particularly concerned that

[49] Pearson, E. Minty, D. & Portelli, J. (2015). *Institutional Child Sexual Abuse: The Role & Impact of Redress*. Seminar Presentation, Actuaries Institute, Adelaide: 8-10 November 2015. p.7.
[50] Golding, F. (2018). *Redress for all forms of abuse*. 19 March 2018. Available at: http://frankgolding.com/redress-for-all-forms-of-abuse/ accessed 25-5-18.

no information has been provided about the type of therapeutic and legal support that will be available to survivors during the preparation of applications. All the examples cited in the Explanatory Memorandum start from the point at which an application is received.

Survivors will need good quality professional support during the application process if this scheme is to not only alleviate their hurt, but avoid causing them further harm. As mentioned above, a presumed risk of widespread attempted fraud is ironic because the real problem is precisely the opposite: survivors will struggle to disclose the full extent of their childhood abuse and may not feel able to talk about the very worst incidents of sexual abuse. They will need skilled professional support to prepare applications that convey anything like what happened to them, and to identify and document the impacts of the abuse. They will need access to funded psychological assessments, and appropriate legal advice throughout the various stages of the process. Many care leavers and some other abuse survivors have impaired literacy skills and this must be accommodated with sensitivity and care by those who assist.

We acknowledge the Federal Government has taken on a very difficult task, and we commend it for doing so. There are clearly good intentions behind this initiative, and a genuine wish to help survivors. Unfortunately, large bureaucracies are poorly equipped to deal with human emotions, and have difficulty developing trauma-sensitive processes that might, for example, address the power imbalance that underpins child sexual abuse. The large machinery of Government is familiar with systems that deal with people *en masse*, and is likely to apply methods that may be appropriate in the context of taxation returns or Centrelink payments, but which are traumatising to survivors of child sexual abuse, and have no place in a redress scheme.

The inability of the national scheme to adequately address the abuse and neglect of the Stolen Generations, Forgotten Australians and former child migrants who were not sexually abused has already, inadvertently, caused harm among a very disadvantaged population group.

The extent of this harm is yet to be fully understood, as there is widespread misunderstanding about the NRS and many survivors still don't realise they may not be eligible, and/or will receive nothing from this scheme.

Some of the problems caused by exclusion from the NRS will, eventually, 'go away' and care leavers waiting for redress often express the view that 'they are just waiting for us to die'. However, secondarily harming people through redress – either by excluding them or doing it badly – is a risky business. While those who experienced direct harm from processes such as Redress WA, or those who felt injured by exclusion from the national scheme, will eventually pass away, the public stain of their betrayal will linger on.

Responsibility now returns, once again, to each of the States to appropriately address the aftermath of multi-faceted institutional abuse in their own jurisdictions, and to consider the implications of excluding a key population of abuse survivors from the forthcoming national process of recognition and redress.

Care leavers have been waiting a long time for the kind of redress recommended in a string of national inquiries into historic institutional abuse of children in Australia. The response so far has been nowhere near adequate.

Recommendations

1.) 'Special assessment' of applicants with serious criminal convictions
Survivors who have served long sentences in prison should not be subject to 'special assessment' or treated any differently to other NRS applicants.

2.) Exclusion of incarcerated survivors
Survivors who are incarcerated should not be treated differently to other NRS applicants, except to accommodate the fact that they are in prison. If survivors in gaol want to submit applications, they should be assisted, wherever possible, to access the necessary support and receive a personal apology from the responsible institution(s).

3.) The one application only rule
Allow eligible applicants to receive payments relating to childhood abuse at any responsible participating institution; hold the application on file until (if) other responsible institution/s opt in to the scheme; in which case, reactivate the application to facilitate payment related to childhood abuse in newly signed-up institutions.

4.) No specified minimum payment
To avoid causing further trauma and harm to survivors of institutional child sexual abuse, a minimum payment of $10,000 should be offered to eligible applicants whose assessed level of financial redress falls below this amount.

5.) Indexation of previous redress payments to account for inflation
Prior relevant payments received by survivors should not be indexed for inflation. If indexation is applied to survivors' prior payments, then equivalent indexation must be applied to NRS payment levels over the next ten years.

6.) Lack of clarity regarding the proposed calculation of relevant prior payments
Further detail should be released on the proposed formula for assessing prior payments. It is essential that the calculation of 'relevant prior payments' does not include any part of a previous redress payment that is not specifically related to sexual abuse, unless the non-sexual abuse is demonstrably related to the sexual abuse, and is specifically redressed in the NRS payment.

7.) Lack of clarity on the issue of peer abuse
In cases where a child was a Ward of the State, or the abuse occurred while he or she was 'in the care of' an institution, peer sexual abuse should always be deemed the responsibility of that institution.

8.) Assumption of the risk of large scale attempted fraud
Materials used to promote the scheme, including advertisements, guidelines and information for applicants, as well as the NRS application form itself should convey an understanding that it is difficult for survivors to disclose abuse, and reassurance that they will be supported through this process with respect and compassion. Seek input from survivors on the wording of any proposed warning in the NRS application form regarding penalties for 'false claims'.

9.) Exclusion of care leavers whose institutional maltreatment did not involve sexual abuse
The Federal Government should encourage each of the States and Territories to reiterate their previous public apologies for the abuse and neglect suffered by Forgotten Australians, members of the Stolen Generations, and (where relevant) former child migrants, in recognition that not all will not benefit from the NRS. These State-level announcements should coincide with the Prime Minister's forthcoming national apology to survivors of institutional child sexual abuse, and be accompanied by a statement of intent regarding each State's plans regarding redress for care leavers who are not eligible for the NRS.

APPENDIX I

Western Australia's ex-gratia redress: A case study in unresolved issues

Western Australia has a complicated history of redress that sets it apart from the other States. Our care leaver demographics are also unique, with a large, geographically diverse population of Aboriginal care leavers who are members or descendants of the Stolen Generations, and a far greater number of former child migrants than any other State.[51]

Western Australia also has an inglorious history of redress, including a problematic class action in the late 1990s which adversely affected hundreds of Christian Brothers' ex-residents; and the ill-fated Redress WA scheme (2008-12), which caused secondary harm to more than 5,000 care leavers. Aboriginal people have been particularly badly affected – they comprised 51 per cent of Redress WA applicants and endured the notorious Stolen Wages Reparation Scheme (2012). It was further revealed during Royal Commission hearings that the quantum of child abuse settlements in non-government redress programs in WA has generally been lower than in the Eastern states, reportedly due to a lack of insurance cover for some major past providers in this State. Accordingly, a large number of Western Australian care leavers have been left feeling cheated.

In the last 12 months an additional barrier to justice has emerged for WA care leavers whose institutional maltreatment did not include direct sexual abuse. While the removal of limitation periods for child abuse actions in NSW and Victoria has included both sexual and physical abuse, the impending reforms in WA's *Civil Liability and Limitation (Child Sexual Abuse Actions) Bill 2017* will only remove the limitation period for claims of sexual abuse.

These combined factors have left care leavers in WA arguably 'worse off' than those in most other jurisdictions. In particular, large scale secondary abuse during the Redress WA program has created a unique situation requiring specific remedial action. This situation reflects a wider phenomenon and increasing awareness of the harm redress initiatives can cause. These days, past providers are not only apologising and providing redress for historic abuse, they also apologise and provide redress for secondary abuse inflicted during the institution's previous response/s. Redress WA is just a larger scale example of a harmful response creating a need for further apology and remedial redress.

Redress WA survivors are driving a campaign to *Make Redress Right*, seeking formal recognition of the systemic wrong they experienced in 2009 and – as a matter of urgency – reinstatement of the original payment levels under which they fulfilled their obligations to the scheme. These survivors are heartened by the response from the WA State Government so far. They have cause to hope because the Labor parliamentarians who spoke most vehemently against the Redress WA payment cuts nine years ago are now in government and hold the key positions of State Treasurer, Attorney-General and Premier, while others are now Ministers and Cabinet members in the current State Government.

The following excerpts are drawn from speeches by WA Labor parliamentarians in the Legislative Assembly and Council between 11 August 2009 and 15 August 2012, and are published in Hansard:

- ***The Honourable (now Premier) Mark McGowan*** said: "The government has a continuing responsibility to those people, and for the behaviours and the outcomes that were forced upon them when they were defenceless children. The government makes the choices about what it will do, and it has made that choice, and it needs to be held accountable for that."

[51] Australia. Parliament. Senate. Community Affairs References Committee (2001). *Lost Innocents: Report on child migration*. Canberra: Senate Community Affairs References Committee Secretariat. p.69.

- ***The Honourable (now Attorney-General) John Quigley*** said: "I quietly ask the Premier to reflect upon which message this cut sends to the most vulnerable sections of our society, and to contemplate the prospect of this government's reputation being cut a little shorter by this decision … I make a plea to the Premier to bear in mind that the measure of our worth as a society is how we deal with the most vulnerable and that this is not a huge sum of money … I make the plea for the full amount of compensation to be restored."

- ***The Honourable (now Treasurer) Ben Wyatt*** said: "When everybody here has moved on and we are no longer members of Parliament, future Parliaments could have proudly acknowledged the fact that here in Western Australia we confronted this stain on our history … I call on the WA state government to reverse its decision which saw the compensation scheme payment reduced from $80,000 to $45,000, and to reopen the scheme to be used for future claims."

- ***The Honourable (now Minister) Alannah MacTiernan*** said: "These are people who were wards of the state and whom the state failed at the most vulnerable time of their lives, and for the state to come in now and almost halve that payment is indeed a great insult and is indeed a great injury. What we are doing with this decision is adding to that distress and adding to the very strong belief held by these victims that their pain is not being properly understood."

- ***The Honourable (now Minister) Peter Tinley*** said: "Once again, those who were abused had the opportunity to look towards their government for leadership and to close off their sorrow, allowing them to move on in some sort of harmony, and they were dudded again."

- ***The Honourable (now Minister) Sue Ellery*** said: "…those I have met with are people who felt betrayed and terribly, terribly hurt by the decision and who saw it as a continuation of the abuse. These people felt that they had told more of their story than they had ever told before and that that was another layer of the betrayal. They felt that they had opened up fully—many for the very first time—about the abuse that had happened to them, and they felt that it was a terrible betrayal that they were treated so badly."

- ***The Honourable (now Minister) Bill Johnston*** said: "The first betrayal by the state of Western Australia for these applicants was in their childhood. Now this is the second betrayal when not just the former Labor government, but also the current Liberal government encouraged them to re-open the hurt that they had suffered and apply through the Redress process for compensation payments."

- ***The Honourable (now Minister) Paul Papalia*** said: "This is an opportunity [to] demonstrate, as has been pleaded for on behalf of the people we are talking about, that the Western Australian state cares about them more than it did when they were subjected to these horrendous crimes so long ago. Please let us show that the state cares."

It is no wonder that care leavers in Western Australia are so hopeful that the WA Labor State Government—now back in power—will seek to undo some of the secondary harm suffered by Redress WA survivors, and will follow through with undertakings they made in 2009.

Many Redress WA survivors are pinning their hopes on the Honourable Ben Wyatt—now State Treasurer and Minister for Aboriginal Affairs. They recall Minister Wyatt's powerful speeches in parliament in which he demonstrated a deep understanding and compassion for redress applicants, and voiced strong opposition to the Barnett government's decision to halve the payments:

> *"I think the Premier knows that the decision he and his minister made in July 2009 will become a defining issue for this government. This government will not be able to escape this issue over the next couple of years. I dare say that if the Premier thinks fairly and thinks hard and wants a fair and reasonable outcome for applicants of payments under Redress WA, he will find that extra $80 million … Members should understand we are talking about $80 million to finally wipe the shame of this issue away from the government of Western Australia. I say that in terms of government—not Labor, not National and not Liberal. The fact is this is a stain on the government of Western Australia. This is an opportunity for us to properly, fairly and adequately address what has been a shameful, shameful chapter in Western Australia's history*".[52]

The survivors of Redress WA are trusting that, nine years after the event, people still feel the same way, and that Labor parliamentarians who spoke so strongly in 2009 will now take practical action to 'Make Redress Right' in WA.

[52] WA. Parliamentary Debates. Legislative Assembly. 22 September 2010. http://parliament.wa.gov.au/Hansard/hansard.nsf/0/d6fcede5f8675bb5482577a8002e918d/$FILE/A38+S1+20100922+p7139b-7158a.pdf , accessed 23-5-18.