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Senate Community Affairs Legislation Committee
Parliament House
Canberra ACT 2600

30 January 2018

Dear Senators,

Tuart Place welcomes this opportunity to contribute to the Senate Committee's Inquiry into the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017* and related bill. 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.

Approximately 75% of current participants at Tuart Place have disclosed experiences of historical institutional child sexual abuse and almost 100% have disclosed physical abuse, emotional abuse and/or neglect. Key issues on the topic of redress are reported on pages 1-4 of Tuart Place's most recent biannual newsletter, *The Tuart Times*, available at www.tuartplace.org/wp-content/uploads/2018/01/Tuart-Times-no-15.-Feb-2018.pdf

The matters raised in this submission are:

1) The announcement of a redress scheme that is largely unfunded – implications for a vulnerable population;
2) The exclusion from the Commonwealth Redress Scheme of survivors of non-sexual abuse;
3) The exclusion from the Commonwealth Redress Scheme of people sentenced to a prison term of five years or more, or convicted of a sex offence.

We would be pleased to meet with the Committee to discuss these matters and any other issues raised by the Inquiry. The contact person for this submission is Tuart Place Director Dr Philippa White

Yours faithfully,

Dr Philippa White
Director,
Tuart Place

Mr Ron Love
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1) The announcement of a redress scheme that is largely unfunded: Implications for a vulnerable population

Tuart Place commends the Federal Government for responding to the recommendation by the Royal Commission into Institutional Responses to Child Sexual Abuse for an Australia-wide redress scheme. The Commission found that a nationally consistent, independently administrated scheme for survivors of institutional child abuse would be an optimal device for achieving fairness and equity.

However, the announcement of a redress scheme, prior to securing funding agreements with those expected to pay most of the financial settlements is proving problematic.

While it seems possible that the 'premature' announcement of a Commonwealth Redress Scheme (CRS) may have been a mechanism to exert public pressure on past providers to opt in to the scheme, there is an inherent risk in such a manoeuvre, and the potential to cause secondary harm to a vulnerable population of survivors.

We know of no international precedent for taking this course of action in relation to a redress scheme, and in other countries in which redress schemes for survivors of institutional child abuse have operated, such as Canada, Sweden and the Republic of Ireland, funding arrangements have been in place prior to the implementation of a scheme.

Since the announcement of the CRS in November 2016, Tuart Place has received a steady stream of inquiries from care leavers who clearly believe it is a matter of *when*, not *if* they will receive a payment through the Commonwealth's new scheme. This is perhaps unsurprising, given the positive tone of reporting and affirmatively-framed quotes reported in much of the public commentary on this issue. We are aware of not only care leavers, but other organisations and workers who are also under the impression that Commonwealth redress payments are an imminent certainty for West Australian survivors of institutional abuse.

Most concerning are the reports of survivors taking out extra credit cards, borrowing money, and making financial promises based on a belief that they will be receiving a Commonwealth redress payment in the near future. While this may seem imprudent, it is also understandable, given the confusing media coverage and importance of 'reading the fine print' – not an easy task for care leavers whose compromised literacy skills reflect childhoods in which schooling was disrupted and/or provided in an environment of trauma and abuse.

Given that none of the responsible entities has so far opted in to the CRS, and at least one state government past provider has categorically refused to join, it seems increasingly likely that the CRS will not achieve the goal of national consistency, and that Australian survivors of institutional abuse will be left in a situation that is less equitable than before.

The real misfortune of this outcome is the raising of unrealistic expectations among a vulnerable population of care leavers and other abuse survivors. The raising of false hope among abuse survivors constitutes a form of systemic secondary harm that is specific to redress schemes and other institutional responses to child abuse. For West Australian abuse survivors who endured the 'broken promise' of *Redress WA*[1], there may well be a sense of *déjà vu.*

[1] The *Redress WA* scheme operated between 2008 and 2011. In 2009, after 5,917 applications had been received, the payment levels for this scheme were almost halved, causing widespread distress among applicants.

2) The exclusion from the Commonwealth Redress Scheme of survivors of non-sexual abuse

It is not surprising that the model of redress proposed in the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017* is limited to sexual abuse, given its origins in the recommendations of a Royal Commission limited to this one kind of abuse. The sole focus on sexual abuse in the Royal Commission's Terms of Reference can be understood as an outcome of key events leading to its establishment, such as the highly publicised experiences of victims of clergy abuse in parish settings and private schools. However, while a redress scheme for only sexual abuse might be an adequate response to this cohort of survivors, it is unsuitable for people who experienced child abuse in 'welfare' residential settings while in the care of the state.

The Federal Government has formally recognised the particular circumstances of people whose childhood abuse occurred while they were in state care. For example, the specific harms experienced by members of the Stolen Generations, the Forgotten Australians, and former child migrants from the UK and Malta have been acknowledged via mechanisms such as national apologies, and the categorisation of care leavers as a *Diverse Needs Group* for the purposes of aged care. Through processes such as the Senate and National Inquiries, Australian care leavers have been encouraged to develop a collective identity, further entrenched by initiatives such as Find & Connect, Bringing them Home, Child Migrants Trust, CLAN and other support services for care leavers, such as Tuart Place.

The recognition of care leavers through the above-mentioned mechanisms suggests that the state has a greater responsibility to redress abuse that occurred while a child was *in the care of the state*. However, not all care leavers were sexually abused as children and some of the most serious grievances relate to other forms of institutional abuse and neglect. Physical violence and brutality, cruelty and humiliation, solitary confinement, denial of education, lack of food, inadequate clothing, insufficient bedding, medical experimentation, excessive, unpaid child labour, poor recordkeeping practices, and neglect in all its different forms, have not been found to be less harmful to children than sexual abuse, especially when endured in combination, in closed institutional settings.

As noted in Tuart Place's submission to Royal Commission Issues Paper 10[2], the spectrums of harm experienced by survivors are amplified in cases where child abuse occurred in closed residential institutional settings, whereas children living at home with family of origin generally had access to a greater range of potential protections from the types of abuse and neglect mentioned above.

Australian redress expert Kathy Daly comments on the assumption that 'sexual abuse is the worst abuse of all' referring to reports by survivors of abuse in closed institutional settings for whom sexual abuse was 'the least of their worries'. Daly asks, "Why are some wrongs against children … thought to be 'more wrong' than others?" [3]. While the impacts of child abuse are potentially devastating – in any setting – survivors of abuse in 'open' and 'closed' settings have different clinical treatment needs and redress needs. Daly points out that conflating these two groups survivors ignores the specific attributes of historical institutional abuse and makes it harder for survivors to receive fair redress.

The elevation of sexual abuse through institutional responses such as the recent Royal Commission and the CRS seems destined to create unhelpful divisions and potential hierarchies among care leavers. Having been encouraged to form a collective identity, it seems illogical and unjust for only some members of this group to be deemed eligible for redress.

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[2] Tuart Place. *Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse on Issues Paper 10: Advocacy and Support and Therapeutic Treatment Services.* (November 2015). p.3. https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/Issues%20Paper%2010%20-%20Submission%20-%20110%20Tuart%20Place.pdf accessed 26-1-18.

[3] Daly, K. (2014). *Redressing institutional abuse of children*. Basingstoke: Palgrave Macmillan. (pp.20-21)

3) The exclusion from the CRS of people sentenced to a prison term of five years or more, or convicted of a sex offence

The third matter addressed in this submission is the intended exclusion from the CRS of people who have been convicted of a sex offence, or sentenced to a prison term of five years or more. This provision does not appear in the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017* or the related bill, but has been reported in news media, including an article in *The Australian* newspaper [4], and two ABC News reports [5] [6]. Given the publication of these uncontested reports, it is presumed that this exclusionary provision will form part of the 'Commonwealth Redress Scheme Rules' relating to applicants' eligibility.

Having serious concerns about this announcement, Tuart Place sought feedback from members of the *International Network on Studies of Inquiries into Child Abuse* (the 'Inquiry Network'), an international community of experts on inquiries and redress for historical child abuse in out-of-home care. We asked Inquiry Network members what they thought of the Australian idea, and whether anyone knew of a precedent for excluding categories of applicants based on criteria such as criminal history. Our question was presented objectively, in neutral terms, and did not disclose a point of view or express an opinion.

Responses received from members of the Inquiry Network in Germany, Switzerland, Norway, Northern Ireland, the Republic of Ireland, New Zealand (x2), Scotland (x2), Sweden (x2), and Australian academics in Queensland and Victoria were unanimously opposed to the idea of excluding redress applicants on the basis of criminal history.

Dr Stephen Winter of the University of Auckland is an expert in the areas of justice, rights and democracy, particularly state wrongdoing and its redress. Dr Winter wrote:

> "I would think it is a bad idea. There are many reasons to have a redress scheme, but it would require a very good argument to demonstrate why actions that occurred subsequent to someone suffering abuse would disqualify them from receiving compensation for having been abused. …[G]iven the well-trodden path between abuse-in-care and other forms of institutionalisation, including imprisonment, most redress programmes have a significant 'caseload' of prisoners. While this poses logistical challenges, these are not insuperable and the prospect of financial redress may be an asset in rehabilitation." [7]

Other Inquiry Network experts described the idea as 'very sad'; 'shameful'; intuitively wrong'; 'a disgrace'; 'a totally political decision'; 'double punishment of victims'; and 'demonstrating a lack of appreciation of the legacies of victimisation'.

Researcher Samina Karim of Strathclyde University in Scotland is currently reviewing redress schemes around the world and has not, to date, encountered any that exclude offenders. She wrote:

> "…having undertaken doctoral research with victims/survivors of abuse in care, some of whom later became part of the criminal justice system, it became quite evident that the legacy of the abuse had a significant impact on their life trajectory. Therefore, to exclude individuals due to offending behaviour

[4] "States face $4bn abuse redress pressure", *The Australian*, J. Ferguson. 11-12-17, p.5.
[5] "Child sex abuse redress scheme to cap payments at $150,000 and exclude some criminals", *ABC News*, 26-10-17. http://www.abc.net.au/news/2017-10-26/sex-offenders-to-be-excluded-from-child-abuse-redress-scheme/9087256, accessed 26-1-17
[6] "Royal commission: Decision to block redress for some prisoners put under microscope", *ABC News*, 16-12-17. http://www.abc.net.au/news/2017-12-16/royal-commission-government-criticised-for-blocking-jail-redress/9264970, accessed 26-1-17
[7] S. Winter, "Excluding offenders from financial redress". Email to Inquiry Network, 15-11-17.

> would essentially add to the impact of abuse and extend its legacy, reinforcing the exercise of power in limiting ways - towards those who have already suffered." [8]

Research by Tuart Place has uncovered one compensation scheme for victims of sexual assault in which payment can be refused to people with a criminal record. While it is not a redress scheme, a similar dynamic is apparent in the conduct of the UK Criminal Injuries Compensation Authority (CICA), which can reject claims from sexual assault victims if they have a criminal conviction.

Recent publicity following media exposure of this controversial practice has led to criticism of CICA from a range of stakeholders, including UK Shadow Justice Secretary Richard Burgon, who states that refusing money on this basis "…appears to be another example of victim-blaming [and that] victims of serious sexual offences should not be punished in this way…" [9]

Professor of Criminal Justice at Nottingham Trent University Jonathon Doak also comments on this feature of CICA's scheme, noting that "such a restrictive approach does not seem to be grounded in any solid rationale, other than to safeguard the State's own economic and political ends" [10].

It is difficult to imagine this kind of character test being applied to other victim cohorts, however the CRS criminal exclusion policy might set a precedent for denying financial assistance to other population groups. For example, should primary producers who have criminal records be deemed ineligible for the *Drought Relief Assistance Scheme*? Did victims of the Bali bombings have to obtain a Police Clearance to receive an *Australian Victim of Terrorism Overseas Payment*? Were the people who lost their homes in the 'Black Saturday' bushfires denied relief under the *Australian Government Disaster Recovery Payment* scheme if they had spent time in jail? The 'preposterousness' of these examples serves to illustrate the indefensibility of applying such a policy to survivors of child sexual abuse.

Anecdotal evidence of the precedent-setting power of the CRS criminal exclusion policy has already come to light in Western Australia, and has been cited in relation to civil compensation for survivors of historic child sexual abuse in WA.

A CRS criminal exclusion policy may also be unhelpful in wider terms, as countries such as Northern Ireland, Scotland, England and Wales – currently planning their own redress schemes for victims of historical institutional abuse – are watching and actively learning from the Australian experience. Although Australia's Royal Commission did not recommend denying offenders financial redress, and in fact conducted 713 (10.4%) of its private sessions with survivors in prison [11], the presence of a 'criminal exclusion' rule as a legislative instrument of the Australian Government's CRS may engender it with some perceived credibility.

Apart from the potential for substantial cost savings, it is difficult to imagine any rationale for a policy that selectively includes or excludes applicants on the basis of aberrant adult behaviour. To date, the only rationale for this policy provided in media coverage has been the concept of *integrity*, as applied in the following statement by a journalist in *The Australian* newspaper:

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[8] S. Karim," Excluding offenders from financial redress". Email to Inquiry Network, 15-11-17.
[9] "Hundreds of sex assault victims refused compensation due to criminal convictions", *The Independent Online*. Angerholm, H. 27-10-17 http://www.independent.co.uk/news/uk/crime/sex-assault-victims-refused-compensation-criminal-convictions-a8012011.html accessed 26-1-18
[10] Doak. J. (2008). *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties*. Bloomsbury Publishing, Hart Publishing, Portland. p.229.
[11] Australia. Royal Commission into Institutional Responses to Child Sexual Abuse (2017). Final Report. Sydney, NSW. p.23. https://www.childabuseroyalcommission.gov.au/final-report , accessed 26-1-18.

> "…To protect the scheme's integrity, a key condition will be that sex offenders and anyone convicted of a crime with a sentence of five years or more will be excluded from financial compensation…" [12]

Concerningly, the notion that a criminal exclusion policy will *protect the scheme's integrity* is reported in this article as an 'objective fact', not as a quotation attributed to a third-party source.

Given the absence of a feasible rationale for this exclusion policy, and definitions of *integrity* as (1) *the quality of being honest and having strong moral principles*, and (2) *the state of being whole and undivided* [13], the use of this word seems ironic. The stated purpose of the CRS is to provide redress to survivors of institutional child abuse and it is difficult to see how the *integrity* of the scheme could be harmed by the provision of redress to survivors who have incurred serious judicial penalties, particularly when childhood abuse is likely to have been a factor in adult offending behaviours.

While a CRS criminal exclusion policy may not breach Australian anti-discrimination laws, it has the hallmarks of discrimination against a minority group within which the members have a higher than average level of socio-economic disadvantage; a higher proportion of Aboriginal members; and are some of the most seriously abused and seriously affected survivors of institutional child abuse in Australia.

To some degree, Australia's reputation is at stake as other countries watch and learn from our inquiries and recent Royal Commission. The proposed criminal exclusion policy is inimical to Australia's reputation as the 'land of the fair go', and, more importantly, as a world leader in responding to historical institutional child abuse. It is anticipated that other jurisdictions would simply disregard this idea as inappropriate and fundamentally unfair.

Recommendations

In respect of the three matters raised in this submission, Tuart Place recommends the following:

1) Regarding the announcement of a redress scheme that is largely unfunded and the raising of apparently unrealistic expectations among vulnerable survivor populations, we recommend that the Commonwealth publicly announces a non-negotiable deadline for 'opt in or opt out' by past providers and that clear, unambiguous information about the implications of the outcome of this process is publicly disseminated to a wide audience.

2) Regarding the exclusion of non-sexual abuse survivors from the CRS, we recommend that the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017* is amended to include all forms of abuse and neglect experienced by children in institutional settings.

3) Regarding the proposed exclusion from the CRS of people convicted of a sex offence or sentenced to a prison term of five years or more, we recommend that this measure is not included as a legislative instrument in the Rules pertaining to the *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017*.

   We further recommend that the CRS Assessment Matrix incorporates a mechanism for identifying potential links between the applicant's childhood abuse and any subsequent aberrant behaviours, including criminal offending behaviours, and that the identification of probable links or causative factors serves to increase the amount payable to that applicant.

[12] "States face $4bn abuse redress pressure", *The Australian*, J. Ferguson. 11-12-17, p.5.
[13] Dictionary.com. https://www.google.com.au/search?q=Dictionary, accessed 26-1-18