

19 March 2018

By email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Community Affairs Legislation Committee

**Inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill**

We wish to thank the Community Affairs Legislation Committee (the Committee) for inviting NATSILS to give evidence at the public hearing in Melbourne on Tuesday 6 March 2018.

We thank the Committee for their questions. We would like to provide additional dot points in response to a question asked by Senator Rachel Siewert in relation to how a redress exclusion clause might impact specifically on Aboriginal and Torres Strait Islander people.

We wish to reiterate that:

- Imposing an exclusion of this nature would also risk causing further trauma to survivors of child sexual abuse, who as a result of being deemed ineligible are likely to feel as though their experiences of abuse have been invalidated, excused or dismissed.
- The current exclusion clause will unfairly target survivors of institutional child sexual abuse who may come into contact with the justice system as a result of sustained, complex trauma.
- Each applicant's right to Redress should be dealt with on a case to case basis to ensure that no survivor of institutional child sexual abuse is unfairly excluded from receiving redress.

In addition to the response provided on the day, we wish to note the following examples of how even the public discussion of a potential exclusion clause may impact Aboriginal and Torres Strait Islander people.

**1) There will certainly be a high percentage of possible Aboriginal and Torres Strait Islander claimants requiring assistance and any exclusion will almost certainly have a significant impact on their willingness to come forward**

The Royal Commission estimated that there will be a potential 60 000 survivors of sexual abuse that will be eligible for the scheme. Of the 6875 private sessions held during the Commission, 985 were private sessions of people who identified as Aboriginal and/or Torres Strait Islander – around 14 per cent. Therefore, it is likely that of the potential 60 000 possible claimants, there will be a disproportionate number of Aboriginal and Torres Strait Islander people as potential claimants. Any potential exclusion clause of any nature will disproportionately impact on Aboriginal and Torres Strait Islander people

For the majority of people who spoke in a private session at the Commission, this was the first instance where they had spoken about their abuse to anyone. This demonstrates a potential reluctance for people to come forward, and in particular, the Royal Commission final report acknowledged that there may be many more Aboriginal and Torres Strait survivors who did not come forward during the Commission. A potential exclusion clause will only further risk Aboriginal and Torres Strait Islander people not coming forward to seek redress.

## **2) Miscommunication and language barriers may prevent Aboriginal and Torres Strait Islander people coming forward to seek redress**

It is important to note that even the suggestion of an exclusion clause could significantly impact on the willingness of Aboriginal and Torres Strait Islander people to seek redress. This might be due to a range of reasons but be compounded by:

- Miscommunication – for example, if someone hears that you are not eligible for redress if you've been locked up they may believe that because they have been held on remand at one point in time that they are not eligible for redress.
- Language barriers – for example, if English is a second or third language it could be easily understood how an Aboriginal and Torres Strait Islander person may not understand the details of a redress scheme, let alone a potential exclusion clause.
- Low literacy – for example, if the information is not clear enough, then people won't come forward to seek redress.
- Lack of access to information – for example, a number of Aboriginal and Torres Strait Islander people living in regional and remote locations may not have access to adequate and frequent information updates as to a possible exclusion clause and this may prevent them coming forward to seek redress if they hear that there is an exclusion clause in place.

## **3) A potential exclusion cause will disproportionately impact Aboriginal and Torres Strait Islander people due high levels at which they experience legal issues**

The higher levels at which Aboriginal and Torres Strait Islander peoples experience legal issues across all areas of the justice system is well documented.<sup>1</sup> From significantly higher rates of imprisonment and involvement with child protection systems<sup>2</sup>, to vast unmet need for civil and family law services, access to justice directly impacts upon Aboriginal and Torres Strait Islander people's physical, emotional and social wellbeing. Aboriginal and Torres Strait Islander people are grossly overrepresented at all stages of the criminal justice process. The national imprisonment rate for Aboriginal and Torres Strait Islander adults is 15 times higher than that for non-Indigenous adults.<sup>3</sup> Whilst Aboriginal and Torres Strait Islander people make up only 2 % of the national population, they account for 27% of the national prison population.<sup>4</sup> Australia must be doing all it can to repeal any policies that racially discriminate and adversely impact on Aboriginal and Torres Strait Islander people and not create new policies.

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<sup>1</sup> For more on this issue see the publications of the Indigenous Legal Needs Project: <https://www.jcu.edu.au/indigenous-legal-needs-project>

<sup>2</sup> In 2014, Aboriginal and Torres Strait Islander children were 9.2 times more likely to be in out of home care than their non-Indigenous peers. Child Family Community Australia, *CFCA Resource Sheet: Child protection and Aboriginal and Torres Strait Islander children* (Australian Institute of Family Studies, September 2015).

<sup>3</sup> Australian Bureau of Statistics, 4512.0-Corrective Services, Australia, December quarter 2016

<sup>4</sup> Australian Bureau of Statistics, 4512.0-Corrective Services, Australia, December quarter 2016 <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2016~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5>

**4) An exclusion clause risks further compounding intergenerational trauma**

Invasion and the colonisation process inflicted on Aboriginal and Torres Strait Islander people was characterised by brutality, massacres, land dispossession, forced labour, removal of children, and other discriminatory policies of control, cultural destruction and assimilation. A significant consequence of the continuing lived experience of discrimination for Aboriginal people is intergenerational trauma, which has far-reaching impacts on physical and mental health and wellbeing.<sup>5</sup> It is important to recognise the wider ripple effects of individual instances of institutional child sex abuse and the intergenerational effects of institutional child sex abuse. It is also important to acknowledge and address the reality that within many Aboriginal communities and for many Aboriginal victims/survivors, institutional child sex abuse is intimately connected to broader historical disenfranchisement, isolation and abuse as committed by state and non-state institutions, and the historical lack of accountability of such institutions. This is particularly so for those members of the Stolen Generations. Any potential exclusion clause could deny redress to those who are not only suffering with trauma as a result of being a survivor of child sexual abuse but may also further compound intergenerational trauma.

**5) An exclusion clause may unintentional frame redress as a reward for good behaviours and see**

The Redress Scheme is meant to provide support to people who were sexually abused as children while in the care of an institution. The plan to have a Redress Scheme came from the Royal Commission into Institutional Responses to Child Sexual Abuse. It is one way the government is working to acknowledge and help people who experienced child sexual abuse and the Government has made a promise to redress them for that abuse. Further it is designed so that relevant organisations take responsibility to make amends for sexual abuse that happened to children they were looking after. The Government will be seen as breaking that promise to redress victims and survivors of child sexual abuse. Redress should not be a reward for people who have had no significant exposure to the criminal justice system but who were abused as children.

**About the NATSILS:**

The NATSILS is the peak national body for Aboriginal and Torres Strait Islander Legal Services (ATSILS) in Australia. NATSILS provides a united voice at the national level for the rights of Aboriginal and Torres Strait Islander people and supports the ATSILS to provide high quality and culturally competent legal services.

The NATSILS brings together over 40 years of experience in the provision of legal advice, assistance, representation, community legal education, advocacy, law reform activities and prisoner through-care to Aboriginal and Torres Strait Islander peoples in contact with the justice system. The ATSILS are the experts on the delivery of effective and culturally competent legal assistance services to Aboriginal and Torres Strait Islander peoples. This role provides the NATSILS with a unique insight into access to justice issues affecting Aboriginal and Torres Strait Islander peoples.

The NATSILS represents the following ATSILS:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS Qld);
- Aboriginal Legal Rights Movement Inc. (ALRM);

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<sup>5</sup> For discussion on intergenerational trauma, see Judy Atkinson, 'Trauma-informed Services and Trauma-specific Care for Indigenous Australian Children' (Resource Sheet No 21, Closing the Gap Clearinghouse, 2013).

- Aboriginal Legal Service (NSW/ACT) (ALS NSW/ACT);
- Aboriginal Legal Service of Western Australia Ltd (ALSWA);
- Tasmanian Aboriginal Community Legal Service (TACLS);
- North Australian Aboriginal Justice Agency (NAAJA); and
- Victorian Aboriginal Legal Service Co-operative Ltd (VALS).

Yours sincerely,

Karly Warner

Executive Officer

National Aboriginal and Torres Islander Legal Services