

Senator the Hon Slade Brockman
Chair
Community Affairs Legislation Committee
C/- Committee Secretary
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600
AUSTRALIA

31 May 2018

Dear Senator Brockman

Thank you for the opportunity to submit to the *Inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018* and related bill. The Alliance for Forgotten Australians has thought very carefully about again submitting to the Inquiry. While we do not wish to contribute to delays in passing legislation and establishing the scheme, we remain concerned about a number of aspects of the legislation. We do not take the opportunity to provide feedback to your committee lightly.

Ceiling for payment

AFA is concerned about the reduction in the maximum payment from \$200,000 recommended by the Royal Commission to \$150,000 as appears in the legislation.

As the Committee knows, the Royal Commission cost more than \$340 million. Individuals participated in more than 8,000 hearings. But beyond these statistics, the Royal Commission created huge expectations that justice will be done. Many Forgotten Australians tracked its progress with pain, grief and trauma – as well as hope. Strong feedback from our constituents is that it is unfair for governments to cherry pick the Royal Commission's recommendations. It comes down to the question – what price for a life?

The decision to reduce the maximum payout to \$150,000 has not been explained. Section 16(1). The Australian Government has missed the opportunity to publicly manage this decision and communicate its rationale. In the absence of an explanation, people draw their own conclusions. As previous submissions to this Inquiry have noted, this reduction is assumed to be the result of pressure brought to bear by the Catholic Church.

Most seriously, such decisions undermine faith in the design of the scheme. Where design decisions appear arbitrary, or unexplained, people lose confidence in the totality of the scheme.

Indexation

The formula outlined in Section 30 on working out the amount of redress payment includes an account for inflation since a previous payout was received by the applicant. However, there is no reference in the legislation to the future indexation of payments under the scheme. It is unclear whether the proposed level of payment will be static or adjusted for CPI.

Eligibility for those with serious criminal convictions

AFA is pleased the legislation acknowledges that there are exceptional circumstances where applicants with serious criminal convictions may still be eligible for redress. We congratulate governments for responding to the views almost unanimously expressed on this aspect of the scheme's design and appreciate that this has been a point of contention for Attorneys-General and others. (Section 63).

We are however concerned that the decision-making around exceptions is subject to a significant level of discretion and therefore open to external pressures. This creates inconsistent application across and even within jurisdictions. In the current absence of rules or guidelines to be applied, AFA has little confidence that this section of the legislation will be administered in a consistent and equitable way. Decisions to be made by the operator (without supporting rules) appear to be highly subjective and discretionary. While AFA believes that discretion provides the scheme with flexibility, the subjective nature of decision-making, especially in a highly sensitive area, is cause for concern.

For example, in this section (*italics added*):

- the Operator must *consider* whether to make a determination 63(3)(a);
- the Operator is *satisfied* that providing redress to the person under the scheme would not bring the scheme into *disrepute*; or *adversely affect public confidence* in the scheme 63(5)(a-b);
- the Operator must take into account *any other matter* the Operator considers is relevant 63(6)(f);
- the operator must give *greater weight* to any advice that is given by a specified advisor from the jurisdiction 63(7)(a).

We believe that all survivors should be eligible to apply for redress and that Section 63 of the legislation should be removed. This section appears to militate against the intent behind Section 10(5) 'Redress should be assessed, offered and provided in a way that protects the integrity of the scheme.'

Funder of last resort

Sections 163 – 165 outline the legislation about the funder of last resort but it is not clear who will actually fund a successful redress claim in relation to a defunct institution.

Counselling

Counselling is limited to \$5,000 for the survivor (Section 16(1)(b)(ii)). This may be sufficient for some; for others it will be inadequate to support a survivor for whom the impact of childhood abuse has lasted a lifetime. AFA again affirms the importance of counselling being available to survivors' families. The intergenerational impact of trauma is well researched and documented. And yet the design of the scheme limits access to a key aspect of healing, appearing to make what for many will be a token contribution for a lifetime of pain, poverty, lost opportunities and poor health.

Acceptance period for offers of redress

AFA is pleased that the scheme's operator may extend the acceptance period of an offer if there are exceptional circumstances. Section 40(2).

A national and inclusive scheme

AFA is also pleased that most state and territory governments have opted in to the scheme. We are hopeful that Western Australia will opt in by 1 July 2018.

I would like to reiterate our concern that the scheme should cover all forms of abuse, not just sexual abuse. I attach to this submission AFA's manifesto on redress developed by our members. AFA recognises that the scheme is *limited* to those who experienced sexual abuse. We will never accept this eligibility criterion. What may be defined as sexual in an intellectual, legal and eligibility context needs to acknowledge, with the support of overwhelming evidence, that all forms of abuse in an institutional context are connected.

I would be pleased to provide you with any further information.

Caroline Carroll OAM
Chair