

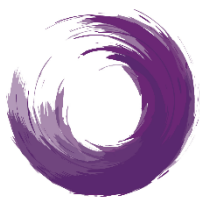
**Commonwealth Redress Scheme for Institutional Child
Sexual Abuse Bill 2017**

And

**Commonwealth Redress Scheme for Institutional Child
Sexual Abuse (Consequential Amendments) Bill 2017**

Sexual Assault Support Service Inc. (SASS) Submission

February 2018



Sexual
Assault
Support
Service

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Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017

SASS submission

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Introduction

Sexual Assault Support Service (SASS) is a free and confidential service for people of all ages who have been affected by any form of sexual violence, including intimate partner sexual violence. We also provide counselling to children and young people who are displaying problem sexual behaviour (PSB) or sexually abusive behaviour (SAB), along with support and information for their family members and/or carers.

The range of support options available at SASS includes counselling, case management and advocacy. We also provide information and support to professionals, and deliver training workshops and community education activities in a range of settings including schools and colleges.

SASS is contracted by the Federal Government to provide support to victims of institutional child sexual abuse as part of the Royal Commission into Institutional Responses to Child Sexual Abuse. As part of this work SASS is one of the few support organisations in Australia providing counselling and support services to Royal Commission clients who are currently incarcerated.

SASS welcomes the opportunity to respond to the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017.

We appreciate that the proposed scheme outlined within these Bills would include the three areas recommended by the Royal Commission, that is; monetary compensation, direct personal response and counselling and psychological care. We consider that these three areas are appropriate and important elements of redress for survivors of institutional child sexual assault.

Issues of concern

Whilst we strongly support the Bills, we do note three areas of concern that we believe need to be addressed before the main Bill is passed. These are outlined below.

A. The exclusion of individuals with certain criminal records

The potential exclusion from the scheme of individuals with certain criminal records is a cause for concern, as this would prohibit a number of survivors of institutional child sexual abuse from applying. The association between child sexual abuse victimisation and subsequent engagement in criminal

activities is well-documented, with Australian research indicating that survivors of child sexual abuse are more than five times more likely to be charged and convicted of any offence than their non-abused peers.¹ The Royal Commission's final report contains a number of pertinent reflections on this issue;

...we heard of common patterns in the lives of those survivors who were involved in criminal behaviour. Some survivors in private sessions and public hearings told us that their behaviour deteriorated in the years following the sexual abuse, most commonly in their teens and early 20s – years that were marked by increased substance abuse and antisocial and rebellious behaviour, leading to criminal offending.²

How a victim's criminal behaviour can impact on others was another issue highlighted in private sessions. Prisoners in particular spoke about the anger and violence they have inflicted on other people, and how the sexual abuse had led them to a hard, emotionless and numbing insensitivity to the feelings of others. We heard how feelings of rage and anger contributed to crimes of violence. A number of survivors told us about their violent offences, some in domestic situations, and often linked to alcohol and other drug use. 'Keith Michael' told us he was constantly fearful of others and used violence to protect himself. It was a strategy that quickly slipped from his control. He said drugs and alcohol inflamed his temper and he often flew into uncontrollable rages. Violence landed him in gaol and he ended up spending much of his life there.³

The Commission also highlighted that of the survivors who discussed impacts of abuse in private sessions, 23 per cent said that they had committed one or more types of criminal offence.⁴ Furthermore, nine per cent of all survivors who participated in private sessions with the Royal Commission were incarcerated at the time of doing so (this amounts to 713 individuals).⁵

The following data from SASS' work with Royal Commission clients is also relevant to note on this point:

- SASS had a total of 67 Royal Commission clients in 2017.
- Of the 67 clients, 42 (64 per cent) were currently incarcerated.
- At least 19 per cent of those incarcerated would be ineligible for compensation under the proposed scheme should it bar criminals of certain crimes with sentences of five years or more.

The Royal Commission did not recommend that individuals with certain criminal records be barred from the redress scheme. Additionally, it is possible that any potential provision regarding this would be in conflict with some state anti-discrimination laws, such as section 16 (q) of the *Anti-Discrimination Act 1998* (Tas), and section 19 (q) of the *Anti-Discrimination Act 1996* (Northern Territory), both of which prohibit discrimination on the basis of 'irrelevant criminal record'. Such a provision may also conflict with international human rights law and norms, such as:

- Article 26 of the *International Covenant on Civil and Political Rights* (to which Australia is a signatory) regarding equality before the law; and
- Section A. (3) of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* which discourages discrimination against victims of crime on the basis of any distinction.

SASS recommendation 1.

The scheme does not exclude applicants based on their criminal record.

B. Participation in the scheme

Our second point of concern is that the proposed scheme does not thus far have the support of all Australian jurisdictions. The Tasmanian Government, for example, has not committed to participating in the scheme. Whilst three states (Tasmania, Western Australia and Queensland) have implemented redress schemes in the past, and South Australia operates a current redress scheme, the amounts provided to survivors under these schemes are below those recommended by the Royal Commission (the Royal Commission recommends an average payment of \$65,000, whereas the four schemes had or currently have average payments of \$13,000 to \$30,000 respectively). The Royal Commission recommends that monetary compensation provides “a tangible recognition of the seriousness of the hurt and injury suffered by a survivor”.⁶ SASS supports the amounts recommended by the Royal Commission as being appropriate to achieve this. We note that in calculating the approximate amount that the scheme would cost each state and territory the Royal Commission has taken into account amounts already spent by that state on providing redress under past and current redress schemes.⁷

We are also concerned that a number of relevant institutions have not expressed their support for the proposed scheme, and further that even if an institution does choose to opt in, this may not be possible if the state in which they are located does not. Of the 60,000 individuals estimated by the Royal Commission to have been sexually abused as children in institutions, two-thirds are thought to have been abused in non-government institutions. This would leave the majority of survivors not able to apply to the scheme.

SASS recommendation 2.

The Federal Government continue to make significant efforts to encourage all Australian states and territories, as well as relevant institutions, to participate in the scheme.

C. Provision of counselling and psychological services

The Royal Commission suggests using redress funding to supplement existing state-funded services to increase the availability of services and reduce waiting times for survivors. This is an important factor to consider as survivors will continue to require support as the redress scheme is implemented – not only with ongoing counselling to overcome trauma, but also to help mitigate against any negative effects that the redress scheme may actually provoke – such as feelings of injustice regarding the differing amounts paid to survivors. Since the establishment of the Royal Commission, SASS and other specialist services across Australia have been granted additional funding to work with Royal Commission clients. This funding has enabled us to increase staff resourcing to cope with the added service demand. This funding will conclude in June 2018, which will result in fewer SASS staff resources and longer wait times to access counselling services. It is reasonable to assume that other specialist sexual assault support services across Australia will be in a similar position.

A further issue we would hope to see covered within the Bill is the issue of service provision to those in rural and regional areas. Regional and rural populations across Australia experience less comprehensive service provision than populations in urban areas. This is particularly the case with the provision of specialist services. For example, funding constraints mean that SASS can only offer limited outreach services which means that most clients are seen at our Hobart office. We are concerned that the limited service provision in rural and regional areas will have a real impact on the ability of survivors of

institutional child sexual abuse who are located in these areas to apply for redress under the scheme, and to receive support during and following the application process.

Acknowledging this, the Royal Commission recommends greater funding for the provision of counselling and psychological services for survivors. The Commission also recommends that a portion of redress funding be used to provide additional resources to state-funded specialist services to increase the availability of those services and reduce waiting times for survivors, and to address gaps in geographical service provision.⁸

SASS supports the reasoning and recommendations of the Royal Commission in this area. Specifically, we support the following recommendation outlined in the Commission's report on Redress and Civil Litigation:

14. The funding obtained through redress to ensure that survivors' needs for counselling and psychological care are met should be used to fund measures that help to meet those needs, including:
 - b. providing funding to supplement existing services provided by state-funded specialist services to increase the availability of services and reduce waiting times for survivors
 - c. measures to address gaps in expertise and geographical and cultural gaps by:
 - i. supporting the establishment and promotion of the public register that provides details of practitioners who have been identified as having appropriate capabilities to treat survivors.
 - ii. funding training in cultural awareness for practitioners who have the capabilities to work with survivors but have not had the necessary training or experience in working with Aboriginal and Torres Strait Islander survivors
 - iii. funding rural and remote practitioners, or Aboriginal and Torres Strait Islander practitioners, to obtain appropriate capabilities to work with survivors
 - iv. providing funding to facilitate regional and remote visits to assist in establishing therapeutic relationships; these could then be maintained largely by online or telephone counselling. There could be the potential to fund additional visits if required from time to time.⁹

40. The redress scheme, or each redress scheme, should establish a trust fund to receive the funding for counselling and psychological care paid under redress and to manage and apply that funding to meet the needs for counselling and psychological care of those eligible for redress under the relevant redress scheme.

41. The trust fund, or each trust fund, should be governed by a corporate trustee with a board of directors appointed by the government that establishes the relevant redress scheme. The board or each board should include:
 - a. an independent Chair
 - b. a representative of: government; non-government institutions; survivor advocacy and support groups; and the redress scheme
 - c. those with any other expertise that is desired at board level to direct the trust.

42. The trustee, or each trustee, should engage actuaries to conduct regular actuarial assessments to determine a 'per head' estimate of future counselling and psychological care costs to be met through redress. The trustee, or each trustee, should determine the amount from time to time

that those who fund redress, including as the funder of last resort, must pay per eligible applicant to fund the counselling and psychological care element of redress.¹⁰

SASS recommendation 3.

The Bill incorporate Recommendations 14, 40, 41 and 42 contained within the Royal Commission's Final Report.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report*. Commonwealth of Australia, Canberra, p.144.

² Ibid.

³ Ibid, p.145.

⁴ Ibid, p.143.

⁵ Ibid, p.144.

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse. (2015). *Redress and Civil Litigation Report*. Commonwealth of Australia, Canberra, p.20.

⁷ Ibid, p.225.

⁸ Ibid, p.18.

⁹ Ibid, p.218.

¹⁰ Ibid, p.345.