

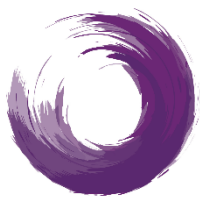
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## **National Redress Scheme for Institutional Child Sexual Abuse Bill 2018**

### **Sexual Assault Support Service Inc. (SASS) Submission**

**June 2018**

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Sexual  
Assault  
Support  
Service

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## National Redress Scheme for Institutional Child Sexual Abuse Bill 2018

### *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 has been 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. 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 National Redress Scheme for Institutional Child Sexual Abuse Bill 2018.

#### Issues of concern

Whilst we strongly support this Bill, we do note some areas of concern that we believe need to be addressed either within the Bill or within the subsequent Scheme Rules. These are outlined below.

##### **A. Governance of the Scheme**

SASS appreciates the need for flexibility and adaptability in implementing the Scheme, and the need therefore for delegated legislation in the form of rules for the Scheme. We understand that the governance arrangements of the Scheme are designed to balance this flexibility. We do hold concerns however, that the governance arrangements through the Ministerial Redress Scheme Board and the Redress Scheme Committee may not adequately take into account the best interests of survivors, given that neither body nor the Inter Jurisdictional Committee will have survivors or survivor support organisations as members.

We are also concerned that having faith based non-governmental institutions (NGIs) with high estimated exposure under the Scheme attend meetings of the Redress Scheme Committee constitutes a conflict of interest, as these are presumably the main organisations who will be held liable under the Scheme.

SASS feels that the Independent Advisory Council on Redress, comprising as it does survivors of institutional abuse, representatives from support organisations, legal and psychological experts, Indigenous and disability experts and institutional interest groups, should form a vital part of the governance of the Scheme (appreciating that consideration may need to be paid to how the Council can operate in the most effective manner possible), and not merely be reconvened occasionally for particular purposes as is the current intention.

**Recommendation 1.**

The Independent Advisory Council on Redress (or a body comprising members with similar expertise) be formally involved as an integral aspect of the governance of the Scheme.

**B. Provision of counselling and psychological care services**

Choice is one of the five key elements of trauma-informed practice in working with sexual assault survivors. This includes choice in the service provider or individual therapist who the survivor wishes to engage with. The Royal Commission also suggested that flexibility and choice should be a key principle in the provision of counselling and psychological care to best meet survivors' needs. SASS is concerned that subclause 16 (1) (b) of the Bill limits a survivor's choice in this regard.

We therefore recommend that applicants are able to specify in their application whether they would prefer to receive the counselling and psychological services payment instead of receiving counselling services from the state provider. It is likely that some survivors will have already established a relationship with a counsellor or psychologist whom they would prefer to continue accessing.

A further issue we would have hoped 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, meaning 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 after the application process.

Acknowledging this, the Royal Commission recommended greater funding for the provision of counselling and psychological services for survivors. The Commission also recommended 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.<sup>1</sup>

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.<sup>2</sup>

Our second point concerning the issue of counselling, is that there should be no time limit imposed on how long a survivor can access counselling. Counselling should be available, as the Royal Commission recommended, for as long as a survivor feels they need it. The need for counselling support typically fluctuates across a survivor's lifespan with periods of no or low need as well as periods of high need, with the latter often triggered by various events or life changes. The format of the Redress Scheme needs to take this into account.

#### **Recommendation 2.**

The Bill should take into account the particular needs of survivors in rural and regional areas, by ensuring a funding structure that adheres to Recommendation 14 of the Royal Commission's final report.

#### **Recommendation 3.**

The following principles (suggested by the Royal Commission) should underpin the design of the counselling and psychological support services aspect of redress:

- Counselling should be available throughout a survivor's life;
- Counselling should be available on an episodic basis; and
- There should be no fixed limits on services provided to a survivor.

#### **C. Survivors who are currently incarcerated**

We appreciate that the issue of allowing currently incarcerated survivors to apply to the Scheme is complex, and in particular that there are risks associated with the confidentiality of applicants in a closed institutional setting. Regarding the concern that it would be difficult to secure appropriate redress support services for this environment, we note that we have been successfully providing advocacy and counselling services to incarcerated survivors of institutional child sexual abuse for some time, demonstrating that this is possible, and can also be extremely beneficial for survivors.

#### D. Survivors with serious criminal convictions

We appreciate that this is an issue of concern to governments, and one that has been given much consideration in drafting this Bill.

We reiterate, however, the concerns we raised in our submission to the Commonwealth Bill, notably that the potential exclusion from the scheme of individuals with certain criminal records would prohibit a significant number of survivors of institutional child sexual abuse from being able to secure redress. It is also likely to be severely detrimental to the mental wellbeing of those survivors, and may also increase the risk of their re-offending.

It is well known that sentences vary from judge to judge, and from jurisdiction to jurisdiction. This means that in a case where two people commit similar crimes, but where one receives a sentence of less than five years, and one a sentence of more, the former will automatically be eligible under the Redress scheme whilst the latter will not. This creates a situation of considerable inequity between survivors based on factors that are outside of their control. We note on this point that one of the major recommendation of the Royal Commission was that any future redress scheme must provide survivors needed equal access and equal treatment for survivors.

Furthermore, 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.<sup>3</sup> 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.

The second, and related, point we would like to make relates to subclause 63 (6) (f) – that in assessing an application from a survivor with a serious criminal conviction the Operator may consider any other matter they believe relevant. SASS recommends that this provision specifically encourages the Operator to consider the likely correlation between the childhood sexual abuse suffered by the applicant, and their criminal behaviour.

On this point, SASS recommends that survivors with serious criminal convictions receive particular support in making their applications so that they can best represent the impact their childhood sexual abuse has had on their life trajectory (including criminal behaviour). The counsellor would need to meet with the survivor a number of times (we suggest a minimum of four sessions) to build a relationship and gain their trust, before being able to support them through the application process. This would give the counsellor time to begin to understand the client's story and to be able to assess the impact of the child sexual abuse on their behaviour as an adult. The counsellor could also be available to provide advice to the Attorney-General in their consideration of the application.

We also strongly recommend that counselling be available for any survivor with a serious criminal conviction who applies to the scheme and has their application rejected, and that this counselling be delivered (if this is what the survivor wishes) by the counsellor who supported them through the application process. SASS counsellors have expressed substantial concern that for a number of survivors who have serious criminal convictions, a rejection of their application on the basis of their conviction would be extremely detrimental to their mental health, and in many cases could lead them to feel suicidal. Survivors of institutional child sexual abuse almost always feel that they have been let down by 'the system', and this is likely to be seen by survivors as definitive proof of this. SASS counsellors have expressed that they would be hesitant even telling some survivors with serious criminal convictions about the scheme if there was a risk that they would be rejected.

#### **Case study**

The following is a life-story description of one of SASS' clients, who is currently incarcerated and serving a sentence of over five years. All identifying details have been removed.

John (not his real name) was taken out of a family violence situation and placed in foster care at the age of nine, where he suffered sexual and physical abuse from the male carer and the carer's son. Initially he tried to tell Child Protection and Police but was not believed. He started committing crimes, and was taken into police custody where he was physically assaulted. He was sent to a boys' home where he again suffered serious sexual and physical abuse from numerous staff and older boys at the home. Sexual abuse was often used as a punishment. He again tried to tell an adult, but received an extremely negative reaction from them.

He spent a short stint back at home, where he again experienced family violence, prompting him to run away. After committing several crimes, he was sent to a youth juvenile detention centre. He was only 13 at this point. He was repeatedly violently raped at the facility, describing these incidents of abuse as "*ongoing and too many to name or even want to remember*". John was forced to commit cruelty to animals, and to watch younger children being assaulted. He describes how he would feel relieved when the younger boys were assaulted, because that would mean he would be left alone, and how he felt that he couldn't protect them for fear of making himself a target. To this day John holds tremendous guilt that he couldn't protect the younger children.

After several years John received some state compensation for the abuse he had suffered. He feels that the process was handled appallingly and was not remotely genuine. John had an interview in which he was asked by strangers about his abuse, and was then given no support to deal with this afterwards. He states that "*it brought everything up and I had to relive it all*".

John has had substance abuse issues since he was 11. He states,

*When I use drugs I am able to block the memories, and when I have been most well, attempting to be fit and healthy, I have experienced most memories, so using drugs is the way to cope. I have a lot of flashbacks and nightmares. I try to block thinking or feeling anything.*

John has children, who are all in care. He suspects that several have been sexually assaulted in care, and feels immense guilt and pain that he can't protect them from this. He believes that "I'm not good enough to be a father".

John has been in and out of prison for a number of years. During one of his periods of incarceration he learnt a trade, but upon release couldn't find accommodation or work because of his prison record.

He is now back in prison for a serious offence. He is suicidal most of the time, and expresses immense anger at the 'system'.

*I just wish police, courts and politicians could know what it feels like to go through what happened to me, to live one day with what I live with. No-one cares what happened. There must be people involved all the way to the top who know what was going on, and who are involved. I want to tell my story so it doesn't happen again. I don't want any child to go through what happened to me.*

**Recommendation 4.**

Survivors with serious criminal convictions are entitled to a minimum of four sessions with a counsellor from a funded Redress Scheme support service when making their applications.

**Recommendation 5.**

Attorney-Generals from all participating states and territories receive specific training in the correlation between childhood sexual abuse and later criminal offending.

**Recommendation 6.**

Survivors with serious criminal convictions are entitled to ask that the Attorney General who will be considering their application meet with their counsellor as part of the application process.

**Recommendation 7.**

Survivors with serious criminal convictions who have their applications rejected due to their criminal record are entitled to access counselling and psychological services to the same extent as survivors who have their application accepted. These survivors are to have choice in where they access this counselling, including (if the survivor wishes) by the counsellor who supported them through the application process.

**E. Time period within which an Attorney-General must give advice**

Given that time periods for stages of the application process are not specified, we assume that these will be outlined within the Rules of the Scheme. SASS is concerned that survivors with serious criminal convictions may be unfairly prejudiced in the amount of time it takes their application to be processed, given the additional assessment that their applications will need to undergo. We note that under subclause 63 (4) (c) the Operator must specify the period that the Attorney-General or other specified adviser has to provide advice to the Operator regarding redress to a person who has been convicted of a

serious offence, and that this must be at least 28 days. We recommend that a maximum period of time is also included, and we suggest that this be no more than 30 business days.

**Recommendation 8.**

Subclause 63 (4) (c) be amended to provide a maximum period within which advice must be given, and that this be within the region of 30 business days.

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. (2015). *Redress and Civil Litigation Report*. Commonwealth of Australia, Canberra, p.18.

<sup>2</sup> Ibid, p.218.

<sup>3</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final Report*. Commonwealth of Australia, Canberra, p.144.