

Joint Select Committee on implementation of the National Redress Scheme

Supplementary submission

My compliments to the Committee on providing an Interim Report on schedule. The Report contains a great deal of insightful analysis and provides some clear advice that will be helpful in the forthcoming legislated review of the National Redress Scheme (the Scheme). In particular, I positively acknowledge the Committee's recommendations in respect of

- engaging with survivors and survivor support and advocacy groups
- improving the short-term experience of survivors and minimising the trauma of the process
- enhancing the transparency of the Scheme and the flow of information to survivors
- making more muscular demands on institutions that have not yet joined the Scheme
- removing impediments like indexing, the statutory declaration and the lifting of the veil of secrecy of the assessment framework guidelines.

The reasons for making this supplementary submission are twofold. First, I want to submit that the Committee may have missed the mark in respect of the disadvantages imposed by the Scheme on Care Leavers who are the largest cohort of participants and potential participants in the Scheme. Second, I want to highlight deficiencies in the data being collected and used in respect of Care Leavers (and other survivors).

1. The Interim Report and Care Leavers within the Redress Scheme

The Interim Report does not give adequate consideration to one of the significant flaws in the Scheme's design and processes application: it treats everybody the same when they are not equal. This simplistic approach to social justice—equal treatment of unequal groups—has been long discredited.

There is ample evidence from practical experience, from research and from many formal inquiries, including the Royal Commission into Institutional Responses to Child Sexual Abuse, to show that children who grew up in out-of-home institutions are severely disadvantaged compared to others. In broad terms, this disadvantage is evident in the low levels of education especially in reading and writing; low levels of family support and access to community services; high levels of homelessness, unemployment, and mental health issues. Care Leavers are often isolated in the community, friendless, and disconnected from remnant family. Many—rightly or wrongly—do not trust government departments, authority figures and church and charitable agencies. Many come to the Scheme not just as victims or survivors of sexual abuse; they bring a whole lifetime of trauma resulting from a childhood of maltreatment and neglect, where they were taken into Care to be looked after but were tragically let down by the system.

Many Care Leavers struggle to complete the Redress Application Form without having the vocabulary to say what happened to them and the impact on their lives, to have the paperwork copied, to find a person to witness their Statutory Declaration. Many have very negative experiences of Centrelink and are suspicious of the links between the Scheme and the Government. Some will hold back from making an application and reject offers of assistance even though it may well be in their best interests to get help.

Others have been re-traumatised by the disrespectful way in which they have been treated by personnel operating the Scheme who appear to know little or nothing about the history and nature of the out-of-home Care system. Word-of-mouth accounts travel quickly, and a negative narrative once widely transmitted is hard to counter.

I do not think the Interim Report has reflected the evidence that has been put before it about these sorts of issues. I regret that the Interim Report did not consider recommending that the Scheme establish a separate strand of the process, or at least a team within its establishment. Such a team could be engaged with Care Leaver and be trained to work closely and sensitively with Care Leavers and their support groups. This change could be brought about at virtually no extra cost. I strongly recommend that the Committee's next report to the Parliament address this matter. It could be a circuit-breaker stemming the many frustrations Care Leavers are experiencing and diminishing the problems in the one-size-fits all approach to the Scheme.

2. Data on Care Leavers within the National Redress Scheme

If the Interim Committee is to do its job well, and identify areas where the Scheme needs to improve, it needs better data. Care Leavers are deeply concerned that there is scant information about them as the largest single cohort of survivors.

Up until very recently, some information has been made available about people who identify as Aboriginal and Torres Strait Islanders and, to a lesser degree, people with disability. The Scheme's first attempt to provide data on Care Leavers came in answers to questions on notice arising from the Joint Committee's Public Hearing held on 19 March 2020. The Department of Social Services provided answers in early April, but the data supplied to the Committee is of dubious validity, and certainly inadequate to the purpose.

In response to question reference number: SQ20-000326, DSS reported that as at 3 April 2020, 2,799 applicants were state wards. I submit that this figure is probably not accurate because of the way state ward is defined—or more to the point, not defined in the Scheme's application process. Question 36 of the Application for Redress Form lacks clarity and is likely to be interpreted in various ways by applicants. The question provides for applicants to tick boxes with eight options (presumably only one box permitted although there is no instruction to that effect). The first option is 'A state ward'. It is possible that the data that is reported by DSS relates only to those who ticked that box.

However, the next three options at Question 36—"A foster child", 'In relative or kinship care' and 'Under other court ordered care'—are all alternative labels commonly applied to children in out-of-home Care. Any one of them could signify the child was also a state ward. Applicants could properly tick several of the boxes because, as children, they could have been in more than one category simultaneously or sequentially. Moreover, many children were placed in orphanages and other out-of-home settings without legal formalities. It is common to find that children did not know their legal status—and may not know it even now. (See Senate, *Forgotten Australians* Report, 2004, chapter 3.)

Furthermore, the variations between jurisdictions as shown in the table attaching to the answer provided by DSS are improbable and unexplained. For example, only 364 NSW applicants indicated they were state wards compared to 827 in Queensland and 622 in WA and such discrepancies suggest that the interpretations of 'state ward' are not applied uniformly across Australia.

The answer provided to the Joint Committee in response to question reference number SQ20-000328 also suggests that the number of state wards was far greater than the 2,799 supplied by DSS. As at 3 April 2020, DSS reports that 5,087 (77% of applications) named more than one institution as follows:

- 1,564 applications name two institutions;
- 1,420 applications name three institutions;
- 861 applications name four institutions; and
- 1,242 applications name more than four institutions.

It is highly probable that the vast majority of these 5,087 applicants were abused in out-of-home Care given that it is widely acknowledged that, unlike children who lived in regular families, many institutionalised children were frequently moved from placement to placement (see Royal Commission *Final Report* Vol. 11, p. 66).

The issue highlighted here reveals that the Redress Application Form was designed without a proper understanding of the complex nature of out-of-home Care. Preliminary consultation with Care Leaver groups could have made the Application Form more fit to purpose and likely to yield more reliable data.

The more general point I making is that providing better quality data on numbers of applicants, while necessary, is hardly sufficient if the purpose is to monitor the effectiveness of the Scheme and its outcomes. We need to know a whole lot more than simply how many Care Leavers (or ‘state wards’) apply for Redress as compared to other survivors.

If we are to answer legitimate questions about parity and fair treatment and equity in outcomes, we need better data, especially comparative data showing Care Leavers compared to other survivors. Some of the indicators might include:

- rates of applications received;
- the average length of time for applications to be processed to an offer;
- rates of applications rejected because deemed ineligible;
- average levels and range of payments offered;
- numbers of applications held up by institutions not participating;
- numbers of applications relating to more than one institution;
- the number of applicants given priority treatment because of ill health or frailty;
- the number who have died while waiting for an offer of redress;
- the number of applicants who have asked for a review of a redress decisions and the proportion of reviews that resulted in increased/reduced/unchanged offers;
- the number of applicants who have accepted/rejected offers of redress;
- the number of applicants who have accepted/rejected offers of counselling;
- the number of applicants who have accepted/rejected offers of direct personal responses.

Similar data sets might prove useful for the analysis of other cohorts such as Aboriginal and Torres Strait Islander survivors. I submit that the Joint Committee should require the data that the Scheme collects be made available not just to the Committee but to the public in the interests of transparency.

The Chair of the Joint Committee states that “The purpose of this first Interim Report is to reassure survivors that your voice has been heard, your experiences have been noted, and the issues you have identified will be front and centre as the Scheme evolves over the next twelve months.” The Chair also reports that the Scheme’s operators have said that the Scheme “is not providing the fast, simple, and trauma-informed response that survivors deserve.”

I submit that the changes that are necessary will come about not only by hearing the voices of Care Leavers but also by requiring the Scheme to set up Care Leaver-informed processes that meet their needs as a distinctive strand of survivors, and, finally by regular examination of what the data reveals about how they are faring in the Scheme.