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NGO in Special Consultative Status with the
Economic and Social Council of the United Nations

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24 January 2018

Dear Senate Standing Committee on Community Affairs,

**Re: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill
2017 and related bill**

People with Disability Australia ([PWDA](#)) is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation. Our primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible, and inclusive community, in which the human rights, citizenship, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is also a founding member of Disabled People's Organisations Australia ([DPO Australia](#)) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. DPOs are organisations that are led by, and constituted of, people with disability.

The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities. DPO Australia has been funded by the Australian Government to be the recognised coordinating point between Government/s and other stakeholders, for consultation and engagement with people with disability in Australia.

PWDA has been funded by the Department of Social Services to support children and adults with disability who have been affected by the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission). Our project, Disability Support for the Royal Commission (<http://rcsupport.pwd.org.au>) involves individual advocacy, systemic advocacy, research and training. In addition, we have been an active member of the Commonwealth Redress Advisory Council (Advisory Council), offering advice and information relating to the needs and experiences of people with disability in relation to the Redress Scheme.

Over the course of our project, PWDA has heard from a number of people with disability who have had positive experiences with the Royal Commission, particularly in regards to telling their stories and feeling heard. As we have previously discussed with the Advisory Council, it is important that these individuals feel similarly heard and respected when engaging with the Redress Scheme.

To support the work of the Committee, and to ensure the Redress Scheme is as accessible as possible for all survivors of institutional child sexual abuse, we make the following general comments that relate to numerous sections of the legislation, followed by some more specific comments. We believe these comments are especially pertinent given the disproportionate rates of sexual violence against people with disability.

General comments

Survivors with disability are entitled to access the Redress Scheme on their own terms, with the support they need. Such supports could include independent individual advocates, interpreters, augmentative or alternative communication devices, or other decision-making supports. Survivors with disability must therefore have access to these supports, to enable them to access the type of justice offered by the Redress Scheme. Indeed, accessing the Redress Scheme will likely be significant for many people with disability who have experienced numerous barriers when attempting to access other justice system responses.

PWDA considers it vital that appropriate supports and services are available to survivors throughout their engagement with the Redress Scheme. This may include, for example, decision-making support for individuals who are contemplating applying for redress. For others, this may include support in completing application forms,

understanding offers, actioning notices for additional information, and so on. Additionally, it is so important that independent legal advice is made freely available to all individuals planning to apply for the Redress Scheme prior to them making an application. This would assist individuals to make informed choices regarding whether applying for redress through the Redress Scheme is the best avenue for them and their circumstances.

Consequently, PWDA recommends that all staff involved or associated with the Redress Scheme receive trauma informed disability awareness training and education. This must include Helpline staff, the Operator, independent decision-makers, other officials and staff more directly involved with the practical administration of the Redress Scheme, as well as support services and legal services offering assistance and advice to survivors.

This training would emphasise the importance of clear communication and using plain English, even when the topic at hand is quite complex. This would help to communicate what the Redress Scheme is, how decisions are made, and what the process involves. This may in turn help to manage the expectations of survivors with disability enquiring about the Redress Scheme.

As mentioned briefly above, survivors with disability often experience significant barriers when attempting to access justice. Similar barriers may also prevent survivors with disability from accessing compensation through civil litigation. It is therefore vital that the Redress Scheme, and information about and in relation to the Redress Scheme, is as accessible and easy to understand as possible. Information about the scheme must be made available in a range of accessible digital and non-digital formats, and all correspondence with the survivor must be in an appropriate and accessible format.

Ideally, upon application survivors would be able to indicate their preference of communication method or format (for instance, large print, Braille, Easy Read, Plain English). They would also be able to note whether they may require additional time to complete or respond to tasks related to their redress application. These requirements would be recorded and implemented throughout all communications, including notices of determination, offers and requests for additional information. Importantly, forms to be completed by survivors must also be available in a range of digital and non-digital formats. This must include accessible and alternative formats for application forms, offer acceptance forms, forms to request additional time to respond, forms to request internal review and complaints forms.

PWDA appreciates the apparent flexibility of the Redress Scheme as outlined in the Bill. For instance, allowing certain set time periods for responses, yet allowing survivors to apply for extensions where necessary (while also giving the Operator the powers to grant extensions in particular circumstances) is particularly important for

survivors with disability, especially those with episodic disability, communication support needs or intellectual disability. Such individuals may require additional time to ask questions, to process the information they have received, or to seek and receive support (including legal advice).

Specific comments

PWDA is concerned by the possible implications of Part 2-2 Division 2 Section 16(3), which outlines that:

Despite subsections (1) and (2), a person is not **eligible** for redress under the scheme if the rules prescribe that the person is not eligible for redress under the scheme.

PWDA strongly believes that the only eligibility criteria that should be applied is that provided by Part 2-2 Division 2 Section 16(1). This would ensure that the Minister, through the making of the Commonwealth Redress Scheme Rules (as outlined in Part 5-2 Division 2 Section 117 of the legislation) would not be able to set restrictions or exemptions in relation to eligibility requirements.

Furthermore, PWDA strongly recommends that there be no exclusions to who is eligible to access the Redress Scheme based on past criminal convictions. As has been reported, survivors who have been convicted of sex offences or sentenced to prison terms of five years or more for crimes such as serious drug, homicide or fraud offences would be excluded from the Redress Scheme.¹ PWDA is deeply concerned by these exclusions, and the subsequent categories of 'deserving' and 'undeserving' victim that they establish.

In order for the Redress Scheme to offer a just response, it must be available to all survivors of institutional child sexual abuse. This must include children who may be sexually abused in institutions after the start day of the Scheme (thus requiring adjustments to Part 2-2 Division 2 Section 17 (c) which outlines when abuse is in the scope of the Scheme).

PWDA is also concerned by the language used in Part 4-4 around nominees. The continued use of nominee provisions in legislation demonstrates that the concept of legal capacity² remains unrealised by law and policy makers.³ Nominee provisions

¹ Reported: <http://www.abc.net.au/news/2017-10-26/sex-offenders-to-be-excluded-from-child-abuse-redress-scheme/9087256>

² For additional information regarding legal capacity, see: People with Disability Australia (PWDA), the Australian Centre for Disability Law (ACDL) and the Australian Human Rights Centre (AHRCentre). 2014 *Australian Law Reform Commission (ALRC): Equality, Capacity and Disability in Commonwealth Laws Discussion Paper*, Available:

<http://www.pwd.org.au/documents/pubs/SB14-ALRC-Submission-PWDA-ACDL-AHRCentre.doc>; NGO Coalition, 2015, *Australia's UPR 2015: Fact Sheet Legal Capacity*, available: <http://www.pwd.org.au/documents/Word/AusUPRFactSheetSupportedDecisionMaking.docx>

³ As outlined in: Lea, M., & Sands, T., (2017), 'Disabled People's Organisations Australia (DPO Australia) Submission to the Australian Law Reform Commission Discussion Paper: Protecting the Rights of Older Australians from Abuse', DPO Australia, Sydney, Australia.

routinely limit the participation of people with disability in decision-making about their lives and rights.⁴

PWDA is particularly concerned that Part 4-4 Division 2 Section 94 Subsection 3 outlines the following:

‘The Operator must not appoint a nominee for a person (the ***principal***) under this section except: (a) with the written consent of the person to be appointed; and (b) after taking into consideration the wishes (if any) of the principal regarding the making of such an appointment’.

It is our position that the wishes of the principal should always be paramount. Indeed, payment and correspondence nominees must only be appointed if it is the direct will and preference of the principal for this to occur. Instead, survivors should be provided with any and all decision-making supports they may require for them to express and implement their will and preference.⁵

Contrary to this, the legislation goes on (in Part 4-4, Division 3, Section 96(1)) to outline that ‘it is the duty of a correspondence or payment nominee of a person to act in the best interests of the person at all times’. Requiring nominees to act according to the ‘best interests’ of the principal remains firmly positioned within the current legal capacity framework, whereby a person is perceived to lack capacity and therefore requires someone to make decisions on their behalf.⁶

PWDA rejects the notion of ‘best interests’, and implores the Committee to reconsider the use of nominees in favour of enshrining in legislation the provision of any and all decision-making supports that a survivor may require to engage with the Redress Scheme.

Finally, in relation to Part 2-6 Division 4 Section 52 Subsection 6, which outlines the general principles to guide the provision of direct personal responses, PWDA recommends additional competencies for those delivering direct personal responses. In addition to the need for these individuals to have received cultural awareness training, sensitivity training and training about the nature and impact of child sexual abuse and the needs of survivors, these individuals must also receive disability awareness training. This will support these individuals to communicate clearly and effectively with people with disability, in addition to giving them additional insights into

⁴ People with Disability Australia (PWDA), 2014. ‘Consideration of the 4th and 5th Reports of Australia by the Committee to the Convention Against Torture’, pp16-17. Available: <http://www.pwd.org.au/documents/pubs/SB14-UNCAT.doc>

⁵ Decision-making support may take different forms for each individual. For instance, a person with a hearing impairment may request an Auslan interpreter to communication information about their decisions, while a person with cognitive impairment or episodic psychosocial disability may appoint a support person to assist them to understand and respond to information.

⁶ Indeed, the Convention on the Rights of Persons with Disabilities offers a shift from a ‘best interests’ approach to providing sufficient supports to enable an individual to express their will and preference.

the social model of disability and the numerous structural barriers and factors that can contribute to the disproportional rates of institutional violence experienced by people with disability.

PWDA thanks the Committee for the opportunity to provide this information. PWDA also welcomes any future opportunities to provide information about increasing the accessibility of the Redress Scheme for all people who have experienced child sexual abuse in institutional settings.

Yours sincerely,

MATTHEW BOWDEN
Co-Chief Executive Officer
People with Disability Australia