

# **Senate Standing Committees on Community Affairs**

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

**Children and Young People with Disability Australia  
Submission – February 2018**

## **CHILDREN AND YOUNG PEOPLE WITH DISABILITY AUSTRALIA**

Children and Young People with Disability Australia (CYDA) is the national representative organisation for children and young people with disability, aged 0 to 25 years. The organisation is primarily funded through the Department of Social Services and is a not for profit organisation. CYDA has a national membership of 5500.

CYDA provides a link between the direct experiences of children and young people with disability to federal government and other key stakeholders. This link is essential for the creation of a true understanding of the experiences and challenges faced by children and young people with disability.

CYDA's vision is that children and young people with disability living in Australia are afforded every opportunity to thrive, achieve their potential, and that their rights and interests as individuals, and as members of a family and of their community, are met.

CYDA's purpose is to advocate systemically at the national level for the rights and interests of all children and young people with disability living in Australia and it undertakes the following to achieve its purpose:

- **Listen and respond** to the voices and experiences of children and young people with disability;
- **Advocate** for children and young people with disability for equal opportunities, participation and inclusion in the Australian community;
- **Educate** national public policy makers and the broader community about the experiences of children and young people with disability;
- **Inform** children and young people with disability, their families and care givers about their citizenship rights and entitlements; and
- **Celebrate** the successes and achievements of children and young people with disability.

CYDA has received project funding by the Department of Social Services to provide information, support and systemic advocacy to and for children and young people with disability regarding the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

## **GENERAL COMMENTS**

The Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (the Bill) establishes a Commonwealth Redress Scheme for Survivor of Institutional Child Sexual Abuse (the Scheme). The proposed Scheme will provide three elements of redress to eligible survivors of institutional child sexual abuse: a monetary payment of up to \$150,000; access to counselling and psychological services; and the Scheme will facilitate a personal response from responsible institutions at the request of the survivor.

The Royal Commission into Institutional Responses to Child Sexual Abuse included careful consideration of the need, and ultimately a formal recommendation, that a single national redress scheme be established<sup>1</sup>. It was acknowledged that the establishment and implementation of a national scheme would require significant and time-consuming national negotiations<sup>2</sup>. A key reason for establishing a national redress scheme being to have a clear and consistent pathway for eligible survivors, regardless of where you live in Australia.

To date, many jurisdictions have articulated a range of concerns with the proposed national redress scheme, with a dominant concern being the role of states as “funders of last resort”<sup>3</sup>. This refers to situations where an institution in which abuse occurred no longer exists, meaning the state will likely have to pay the compensation to survivors<sup>4</sup>.

Therefore, it is unclear at this point which jurisdictions will in fact opt in to the proposed national redress scheme. The implication of this is that redress schemes will continue to vary between jurisdictions, so that survivors will either need to access existing state or territory redress schemes or possibly miss out. The continued existence of various schemes and opportunities for accessing redress does not align with the concept of a national redress scheme.

Children and Young People with Disability Australia (CYDA) strongly supports the establishment of a national redress scheme, and welcomes the opportunity to provide feedback on the Bill.

## **SPECIFIC FEEDBACK**

### **Accessibility**

CYDA stresses that it is critical to ensure that all elements of the Scheme are accessible to people with disability. This includes specific supports to access information and support regarding the Scheme and during the application and response stages. This issue is detailed at length in the submission by People with Disability Australia<sup>5</sup> (PWDA). CYDA endorses the comments and recommendations by PWDA regarding the essential need to ensure accessibility of the Scheme for people with disability.

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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, Sydney, p. 67.

<sup>2</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Redress and Civil Litigation Report*, Commonwealth of Australia, Sydney, p. 26

<sup>3</sup> S Donovan 2017, *A national compensation scheme for abuse victims was meant to be up and running by now. Why isn't it?*, ABC News, viewed 31 January 2018, <http://www.abc.net.au/news/2017-12-15/states-reluctant-to-sign-up-to-national-redress-scheme/9259032>

<sup>4</sup> The Parliament of the Commonwealth of Australia 2017, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017*, Commonwealth of Australia, p. 50

<sup>5</sup> People with Disability Australia 2018, *Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill Submission 16*, Parliament of Australia, viewed 31 January 2018, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/AbuseRedressScheme/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/AbuseRedressScheme/Submissions)

### Recommendation

1. A comprehensive review of all aspects of an established National Redress Scheme is undertaken to ensure it is accessible to people with disability. This review needs to be done with direct input from people with disability.

### **Determination to Approve**

CYDA is of the view that Part 2-4 Division 1 Section 28, regarding the determination of the Operator to approve, or not approve, an application, is too open ended and should provide an indicative time frame. It states that the Operator must make a determination “as soon as practicable” (p. 24). This contrasts with the Royal Commission’s recommendation that “the scheme’s processes and time frames should be as transparent as possible”<sup>6</sup>.

The vagueness of this section is also not in accordance with many other parts of the Bill which impose definitive time frames on specific parts of the process. For example, Part 2-5 Division 2 Section 38(1) of the Bill, which regards the acceptance period for offers of redress, specifies a time frame of “at least 90 days, starting on the date of the offer” (p. 34).

CYDA believes that the lack of a timeframe will increase the likely stress associated with applying for redress. CYDA recognises that the setting of a definitive time for a determination of an application for redress could be problematic, particularly in circumstances where information is being sought to assist the processing of a claim. However, it is still seen as important that there are clear expectations stipulated around “usual” times taken and that applicants have assurances that they will receive regular communication regarding determination of applications.

### Recommendation

2. An indicative timeframe for determination of an application for redress is specified.
3. If the Operator is unable to meet this time frame, they must correspond with the applicant within a defined time, detailing why the timeframe has not been met and when they can expect the Operator’s determination to be made.

### **Application for the Redress Scheme**

CYDA notes Part 2-4 Division 2 Section 30, which states that “a person may only make one application for redress under the scheme” (p. 26). It is thought that there may be circumstances in which this condition would unnecessarily restrict a person from accessing redress. For example, if a person makes an application that is not approved, after which substantial new evidence comes to light, they would not be able to make a second application despite this new evidence. Further, the restrictive nature of this section of the

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<sup>6</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Redress and Civil Litigation Report*, Commonwealth of Australia, Sydney, p.73

Bill contrasts with the Royal Commission's recommendation that "there should be a 'no wrong door' approach for survivors in gaining access to redress"<sup>7</sup>.

#### Recommendation

4. The Bill is amended to allow for more than one application to be made by individuals in specific circumstances.

#### **Maximum Monetary Payment**

CYDA notes the disparity between the maximum monetary payment stated in the Bill and that recommended by the Royal Commission. The Royal Commission recommends that "a maximum payment of \$200,000 for the most severe cases"<sup>8</sup> is appropriate. This contrasts with Part 2-4 Division 3 Section 33(2) of the Bill, which states that "the maximum amount must not be more than \$150,000" (p. 28).

#### Recommendation

5. The maximum monetary payment is amended in accordance with the recommendation of the Royal Commission to \$200 000 unless clear and fair justification can be made for the reduced amount.

#### **Access to Legal Services**

CYDA notes Part 2-5 Division 2 Section 37(1)(g) of the Bill, which relates to offers of redress. It is stated that if a person's application for redress has been approved, the Operator must provide "information about the opportunity for the person to access legal services under the scheme for the purposes of obtaining legal advice about whether to accept the offer" (p. 33). It is unclear whether it is free to access these legal services or if there is an associated cost.

#### Recommendation

6. This section is amended to clearly indicate whether access to legal services under the scheme is free or has an associated cost.

#### **Internal Review of Determination**

CYDA also holds concerns regarding Part 4-3 Division 2 Section 88(3), which states: "When reviewing the original determination, the person may only have regard to the information and documents that were available to the person who made the original determination" (p. 68). Similar to our concerns relating to Section 30, addressed above, CYDA believes that there are circumstances in which this may unjustly restrict a person's access to the Scheme.

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<sup>7</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Redress and Civil Litigation Report*, Commonwealth of Australia, Sydney, p. 61

<sup>8</sup> Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Redress and Civil Litigation Report*, Commonwealth of Australia, Sydney, p. 66

### Recommendation

7. The Bill is amended to allow for additional information and documents to be regarded in specific circumstances.

### **SUMMARY OF RECOMMENDATIONS**

1. A comprehensive review is undertaken of all aspects of an established National Redress Scheme is undertaken to ensure it is accessible to people with disability. This review needs to be done with direct input from people with disability.
2. An indicative timeframe for determination of an application for redress is specified.
3. If the Operator is unable to meet this time frame, they must correspond with the applicant within a defined time, detailing why the timeframe has not been met and when they can expect the Operator's determination to be made.
4. The Bill is amended to allow for more than one application to be made by individuals in specific circumstances.
5. The maximum monetary payment is amended in accordance with the recommendation of the Royal Commission to \$200 000 unless clear and fair justification can be made for the reduced amount.
6. This section is amended to clearly indicate whether access to legal services under the scheme is free or has an associated cost.
7. The Bill is amended to allow for additional information and documents to be regarded in specific circumstances.

Thank you for the opportunity to provide feedback regarding the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017. Please do not hesitate to contact CYDA if you would like to discuss any aspects of this submission further.

### **CONTACT**