Senator Dean Smith
Chair
Joint Select Committee on Implementation of the National Redress Scheme
By email: redress@aph.gov.au

17 April 2020

Dear Senator Smith

See the following submission from UCA Redress Ltd on behalf of the Uniting Church in Australia. We would welcome further discussions with the Committee on any aspect of the National Redress Scheme and wish the Committee well in its work.

Yours sincerely

Sarah Lim
National Director

Introduction

The Uniting Church is committed to redress for survivors of institutional child sexual abuse, and the safety of children continues to be at the forefront of our Church's work with children and families.

We remain supportive of the recommendations of the Royal Commission in relation to establishing a national, equitable and consistent redress scheme for survivors of institutional abuse. The realisation of the recommendations through the establishment of the National Redress Scheme goes a long way to fulfilling recommendations of the Royal Commission and we are committed to active participation in the Scheme.

The Uniting Church in Australia indicated in mid-2018 that we would be joining the Scheme. The process of onboarding took a number of months, with challenges presented due to the complex legal structures of the Church, interpretation of legislation by the Scheme Operators and developing Scheme processes. To overcome these complexities and to enable efficient participation in the Scheme, the Uniting Church established a separate company, UCA Redress Ltd, to be the interface between the Church and the National Redress Scheme. UCA Redress Ltd is now the Group Representative for almost all Uniting Church related entities, representing over 3500 entities of the Church including congregations, many agencies and schools and many defunct institutions of the Church. The bulk of these institutions became participants in the Scheme in March 2019, with a number of separately incorporated entities subsequently joining the Scheme through UCA Redress Ltd.

Our participation in the Scheme has been a learning process for the Church (as it has been for the government departments involved in the Scheme's operation) but one which we think we have resourced well to make us active and committed participants.

We are committed to redress for survivors of abuse, and keeping the needs of survivors as the focus of our work in this space.

Operation of the National Redress Scheme

There have of course been many teething problems with the Scheme as it has rolled out. Staff of the Department of Social Services and the Department of Human Services have been excellent to deal with – responsive, helpful and working in partnership with institutions to navigate the complexities of the Scheme.

We do not wish to raise procedural issues in this forum, as we know that many issues are being actively pursued by the departments. We note that changes in key departmental staff over time and the huge upscaling within the administration of the Scheme leads to reinterpretation of legislation and practice as well as administrative errors and inconsistencies. This has created frustrations for us and has operational impacts but we are committed to working in partnership on these issues.

This submission

In this submission, we will not re-prosecute matters on which we have previously spoken publicly in the development of the Scheme, including to the Senate Standing Committee on Community Affairs in its inquiry into the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Related Bill. We stand by positions expressed in previous forums.

In this submission we focus our comments on high level issues relating to the administration of the Scheme including policy issues that we think are impacting on survivor's experiences of the Scheme and on issues which are concerning to institutions' sustainable participation, and therefore the integrity of the Scheme.

Benefits of the Scheme

For the Uniting Church, approximately 80% of applications through the Scheme are from people we have not heard from before. We see this as positive, with the Scheme providing an avenue people haven't previously felt able to access. Perhaps this relates to the relative anonymity provided by the Scheme, or not having to engage directly with institutions.

We also see a benefit in the external validation of a survivor's experience that the Scheme provides. This is evidenced by a number of applicants with whom we have had previously settled matters where the monetary component of the previous settlement was well above the amount available under the Scheme.

While amounts of the monetary payment component under the Scheme are of course considerably lower than may be awarded in civil proceedings, we see many applications where chances of success through civil litigation would be minimal. We have had one application relating to abuse in the 1940s, and many from 1950s-70s. We see many applications where the applicant cannot recall or never knew the name of the alleged offender, or how they were connected to the institution. We are pleased that the Scheme appears to be providing an avenue for justice for these applicants.

We are also aware that around 25% of applicants identify as Aboriginal or Torres Strait Islander. While this overrepresentation is of course concerning, it shows that the Scheme is being accessed by First Nations people. However, this probably also suggests that there are many other First Nations People who aren't yet accessing the Scheme – a point to which we will return later.

Lack of take up of direct personal response (DPR)

We are strongly supportive of the Direct Personal Response element of the National Redress Scheme. Over the years we have had many productive engagements with survivors of abuse outside of the Scheme and we see the positive impact it has on people when they have the chance to tell their story to a senior representative of the institution and hear an apology from that person.

In the Scheme, when a person accepts an offer of redress, they indicate by way of a tick box that they would like to access a DPR. They are then provided with a copy of contact details for the institution and must get in touch with that contact to advise they are ready to commence the DPR. The applicant can initiate the DPR at any time during the life of the Scheme, ie until 2028.

The institution is advised that the applicant has indicated that they want to access a DPR but the institution cannot make contact with the applicant to initiate the DPR.

We have seen just over 50% of applicants indicate that they wish to access a DPR. For the Uniting Church, as at end March 2020 we have had only one applicant contact us to say they wish to commence the DPR process. This is a very low take up to date and we are concerned that many survivors are missing out on the potential benefits of a DPR.

We understand and support the policy rationale for ensuring that survivors have control of whether and when to commence the DPR process. However, we are concerned that low take up might indicate a barrier in having to make yet "another" call, to someone they don't know. We are keen to ensure that survivors are in control of every stage of the process so have considered what we can do to make the process of contacting the institution as easy as possible, for example, by having prominent information about how to start a DPR available on our websites and developing videos about making contact to put a face to the institution to warmly invite contact. However, we consider that it would be useful if we could add material to the applicant's final correspondence from the Scheme Operator, which outlines the institution's approach to DPRs and warmly invites the initial contact to be made.

Another option would be for a further tick box to be added to the acceptance form – *do you accept the DPR? If yes, would you like the institution to contact you and how?* Of course, any follow up contact from the institution needs to be undertaken in a trauma-informed way.

Underrepresented cohorts

We note that there are lower numbers of applicants in the Scheme than was anticipated in its early years of operation.

As mentioned above, we believe that there may be underrepresentation of Aboriginal and Torres Strait Islander applicants in the cohort and suggest targeted marketing of the Scheme to First Nations People.

We also have no applications that relate to abuse in disability services or in childcare settings. This may could suggest a gap in the reach of the NRS and point to a need for targeted marketing.

Lack of visibility on decision making and calculation of payments

Again, we reiterate our commitment to the Scheme. However, we have concerns about the lack of information that is available to institutions in the process. Once the institution completes the response to the request for information (RFI), we generally do not have further contact with the Scheme Operator until an offer is made.

The information contained in the offer advice varies in format and usually contains little information. We are advised that the relevant UCA institution has been found to be liable, a figure of a monetary payment (which may or may not include a total across all institutions where there is found to be liability), the amount of any prior payment from the UCA institution that has been taken into account (indexed), an amount for counselling and that the offer includes DPR.

It is impossible for us to know from the information we get whether there has been a fair assessment of institutional responsibility. It can be difficult to know whether a mistake has been made and we have examples where we think certain matters have not been properly taken into account or outright errors made but we have no visibility or recourse. The Scheme Operator has advised that we can make contact to ask for further explanation or information, but are sometimes advised that there is little further information that can be provided.

In trying to undertake an analysis of the figures, it is impossible to reverse engineer the assessed quantum and therefore analysis of trends cannot be undertaken. This makes it extremely difficult for our institutions to undertake future planning in order to manage their ongoing sustainability. We believe this could be improved if further information was provided in the Reasons for Determination regarding how the assessment framework has been applied, the amount of any prior legal costs which have been offset against a prior payment and how the institution's gross liability has been determined, particularly in situations whether there are multiple sets of abuse or responsible institutions.

We accept that institutions are given no right of review in the Scheme operation. However, if there are suspected errors and no visibility or recourse, it risks undermining the integrity of the Scheme.

Conclusion

We thank the Committee for the opportunity to raise these issues and would welcome the opportunity to provide further information to the Committee as it undertakes its inquiry.