

Committee Secretary
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

your ref:
our ref: PSA::2082551

24 January 2018

Dear Committee Secretary,

**Submission to Senate Standing Committee on Community Affairs regarding
Commonwealth Redress Bill**

We refer to the above matter and advise that we wish to make a submission to the Committee regarding the proposed Commonwealth redress scheme for survivors of institutional child sexual abuse (“proposed scheme”).

Ryan Carlisle Thomas (RCT) is Victoria’s largest law firm representing survivors of institutional abuse. Since the late 1980s we have secured compensation for more than 2,500 survivors of abuse in government, non-government and religious institutions. We have also acted for clients appearing in public hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse (“The Royal Commission”).

Physical and Other Abuse

Ryan Carlisle Thomas is opposed to the exclusion of abuse survivors who have suffered non-sexual abuse such as physical abuse, psychological abuse and neglect. We note that the proposed scheme seeks to exclude such abuse unless it is “in connection with” child sexual abuse.

Many of our clients have suffered horrific physical abuse in institutional care, the emotional and physical scars of which often remain with them for life. Although the Royal Commission’s terms of reference did not extend to such abuse, we see no reason why the proposed scheme could not

extend to include physical abuse, psychological abuse and neglect, even in the absence of child sexual abuse.

Criminal Convictions of 5 years or more

We note that under the proposed scheme, those who have suffered sexual abuse, but who have served more than 5 years in prison, will be ineligible for redress. In our submission this exclusion is manifestly unjust.

The Royal Commission had conducted private sessions with 6,875 survivors as at 31 May 2017. Of those survivors, the Commission reported that 10.4 per cent were in prison at the time of their private sessions.

Assuming that these survivors were serving prison sentences of 5 years or more, this would mean that on the basis of those who spoke with the Royal Commission alone, 715 of those who attended private sessions would be excluded from redress on the basis of their convictions.

A significant proportion of our institutional abuse clients have criminal records, especially those who were abused as wards of the states or in the juvenile justice system. Many of our clients with criminal records stopped offending years ago. Given the survivors who spoke with Royal Commission were reported to take 23.9 years on average to disclose their abuse, it can be assumed that many would have stopped offending at the time of speaking to the Commission. Taking into account those with *past* criminal records with sentences of 5 years or more, the figure of 715 is likely be a gross underestimate of those who would be excluded by the government's proposed exemption.

It is well documented that one of the effects of child sexual abuse can include imprisonment.¹ Longitudinal studies have also shown that childhood abuse can considerably enhance the risk of

¹ Royal Commission into Institutional Responses to Child Sexual Abuse, Interim Report Volume 1, 2014, p. 117

survivors resorting to crime and violence later in life, although such criminal involvement tends to decline as they approach early adulthood.²

Previous research by the Australian Institute of Criminology in 2012 has found that childhood sexual abuse survivors were almost five times more likely than their peers to be charged with an offence.³ That study did not focus on survivors of institutional child abuse, but research conducted in Victoria in 2007 found that, of a sample of children aged over 10 years old and living in out-of-home care, 21 per cent had experienced police contact in the previous six months, including having been charged with a criminal offence or being cautioned or warned by the police.⁴

From the testimonies we have received from our clients, it is certainly not unusual for people with significant levels of abuse to “go off the rails”. Many abuse survivors tell us they turned to drugs to self-medicate, developing a drug habit for which they were then compelled to offend; others tell us they offended after becoming antisocial and resenting authority as a result of the abuse. In many instances the abuse they suffered has often had a major bearing on their criminal offending.

To include an exemption for abuse survivors with sentences of 5 years or more would effectively punish them again for crimes for which they have already served the time. Further, it is arguable that many would not have “done the time” in the first place had they not been abused. Such abuse survivors have already been punished, first by institutions where they suffered abuse, then by institutions of incarceration.

While not condoning or excusing the crimes they have committed, we need to recognise that many of the crimes stem from psychological injury, antisocial behavior and drug addiction caused by the abuse they suffered in the institutions

We submit that those abuse survivors with criminal records should be judged equally to other abuse survivors. The proposed scheme is sophisticated enough to assess each claim on its merits.

² <http://insight.vcross.org.au/the-role-of-out-of-home-care-in-criminal-justice-outcomes>

³ <http://www.sciencedirect.com/science/article/pii/S0145213417300066>

⁴ S Wise & S Egger, The Looking After Children Outcomes Data Project: Final Report, Australian Institute of Family Studies, prepared for the Department of Human Services Victoria, 2007, p. 15.

Our client “John’s” letter

One of our clients known by the pseudonym “John”, was so incensed that survivors were going to be excluded from redress that he wrote to me recently with a letter he wanted to send to the Prime Minister’s office. His letter is also extracted below and we have sent it to the Hon Malcolm Turnbull MP today.

John’s letter details horrific abuse and how it led to a life of crime for a period until he got his life back on track. He deserves to be listened to. We think his letter is so powerful that we have also spoken with Jon Faine on ABC radio about it this morning⁵ and have published it on our firm’s website today,⁶ urging people to read it. We challenge anyone to read John’s letter and not be moved by it:

What else do I need to do before I'm judged worthy of redress?

Open Letter to the Prime Minister, from a survivor of child abuse and ex-‘criminal’

Author: Identity kept confidential

“The Royal Commission has recommended that a redress scheme should be set up to offer financial redress to survivors of institutional child abuse. It appears that the Turnbull government wishes to impose restrictions so that those victims who went on to become criminals are not to be considered for compensation.

My story is one that should make such a judgement wrong.

I was made a ward of the state at the age of thirteen and was put away at a place called Billabong, a division of the Turana Boys’ Home. While at Billabong I was a victim of molestation by an officer of the staff, and I have made a record of his abuse. So at a young age I was a victim.

After this happened my life spiralled out of control completely. It had been tough already, but after being molested at this government institution I felt shattered and wanted to commit suicide, and harmed myself a number of times.

⁵ <http://www.abc.net.au/radio/melbourne/programs/mornings/mornings/9337762> (39.49 to 50.05 minutes)

⁶ <https://rctlaw.com.au/legal-blog/2018/what-else-do-i-need-to-do-before-im-judged-worthy-of-redress>

The only comfort I found at Turana was other inmates. I learned how to survive from older boys which led to a life of crime. Already being a petty criminal at a young age, I continued on in that mode.

I was then victimised at a Salvation Army institution at Bayswater. It seemed I was a magnet for pedophiles. The abuse I suffered at Bayswater was mind boggling and sent me right over the top. I was committing major crimes at the age of 16. Armed robbery, assaults and more. All this while older people I'd been influenced by were committing shop lifting and burgling houses.

I was very angry and when my life of crime got moving at this young age I became a leader among older youths. My parents always tried to convince the courts that I was easily led by older people, but if the truth be known I was more of the ring leader. So was my hate for society. I was angry, I didn't care about my future.

All this happened after the Bayswater abuse, because after the Turana abuse I went bad, but tried to turn it around; even having reports from the welfare authorities that my prospects were looking better and there are reports that I was turning my life for the better, but I was still impulsive and found it hard to think right. I couldn't keep myself away from bother, though I had stopped being a thief and after passing my Junior Technical Certificate after a stint in Turana at the age of 14, I became a worker, gaining an apprenticeship in printing.

I was doing well at that, but committing assault after an altercation I was again committed to a short sentence at Turana Youth Training Centre, after which I was then transferred to Bayswater to do that six months.

I only served a short time of that sentence, but in that time I was raped, bashed, tortured, and traumatised so much that I wanted to die. Nothing was ever going to be right for my life again and even though I went back to my apprenticeship on release; it wasn't to be that I would settle into a normal life free from crime. I was ruined, and though I committed major crimes, such as robbery, I was amazed that I never committed murder; I hated life so much.

Can you understand how my life was?

Nothing was going right in my life. Bayswater, had taken away my future and other things went against me; such as being rejected for National Service. There I was, thinking I was needed and I was willing to be drafted, when many were hating such a thing. Being let

down again I became more impulsive and the anger that had built up in me caused me that much frustration that they couldn't even control me in prison. I was continually a pain in the arse for the corrections authorities, attempting escape, assaulting prison officers, serving time in maximum security - doing time in a prison by being locked away in a prison's prison. H Division, for years. Breaking rocks and being bashed again and again by the thugs who worked there.

What I'm leading to here is the fact that I would have been alright in life if it hadn't been for the sexual abuse committed against me, and rejections by the system, so how can you Mr Turnbull judge me as not being eligible for compensation on the grounds of criminality?

I was a system-made problem.

All those years of trauma, even the thought that I could have been infected with AIDS from being raped, fears coming after hearing of Rock Hudson coming out saying he had caught aids from sexual intercourse as a gay man. Doctors telling the world that the Aids bug could take years to develop. Then after all that I was informed that I had a huge chance of becoming a molester myself, because what happened to me could trigger pedophilia in my own personality. Just the thought of that making me want to kill myself, to prevent that.

I played a huge role in the Royal Commission. I went to Adelaide and told my story and punched above my weight there, then I travelled to Sydney and added to what I had done in Adelaide. Only this time the role of the Royal Commission was more about examining certain laws and rules of the court system. I was able to help there, not only as a victim of institutional abuse, but as a defendant in a criminal sense. Where the laws of the court system allowed perpetrators of multiple offences separation of trials. Making it easy for perpetrators to be found not guilty, as was in my case when the pedophile was acquitted from lack of evidence. Though there were five other people telling the same story about the same person in the same year as me.

I made out it was easy to do this but all that time I was traumatised, not only that I was recounting being a victim, not a survivor as some called me; but a real victim who still wanted to keep others from learning of my tragic past.

It is noted that 10% of victims were in prison when interviewed by the Royal Commission; that might be so, but what about the other, probably, 20% that were not interviewed, because they felt belittled by the abuse and didn't want the world to know? And what

about the percentage of victims that had died through suicide, while incarcerated, or through being involved in crime?

I could go on with this story for many more pages, but I just want you Mr Turnbull to judge those many victims of institutional abuse who ended up in prison as equals to all other victims, and in some cases more tragic.

In my case I had to tell my wife and children of what happened to me. I had already turned my life around; how I found what I had been looking for most of my life; the love from a good person coming into my life helping me become a good family man and a person my daughters are proud of.”

Conclusion

In its Final Report (at page 14), the Commission stated:

The majority of survivors who were in prison when we spoke to them described entrenched disadvantage when they were growing up. From a young age, many were subjected to multiple types of sexual and other abuse. In the absence of any protective adults, they had learned to take care of themselves. Many had come to the attention of police and welfare authorities, when on the street or otherwise trying to fend for themselves. As children these survivors were frequently moved in and out of out-of-home care placements, sometimes homeless, and often spent time in youth detention. Many said youth detention centres were violent places and physical abuse of children by staff was tolerated as a means of enforcing rules. Frequently, we were told that the institutional cultures of youth detention and prison made it impossible to disclose any kind of abuse, especially to authorities and police.

The proposed exclusion of survivors with criminal records from redress has not been formally included in the proposed scheme. To include such an exemption would effectively punish survivors again for crimes for which they have already served the time.

Senate Standing Committee on Community Affairs

PSA: 2082551
24 January 2018

We thank you for considering our submission. A copy of our earlier submission to the Royal Commission redress consultation in March 2015 is also attached to this submission.

Yours faithfully,

Penny Savidis
Partner
RYAN CARLISLE THOMAS

Enc: As listed above