

Dissenting Report by the Australian Greens

1.1 The Australian Greens strongly support the establishment of a national redress scheme for survivors of institutional child sexual abuse as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). One based on fairness, equity and justice that is survivor focused and trauma and culturally informed.

1.2 While the Majority Committee Report thoroughly canvasses the issues, the Australian Greens cannot support its recommendation that the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill) and related bill be passed at this stage in their current form. It is very clear from the issues canvassed in the Majority Committee Report that amendments to the redress scheme are required. We therefore find it deeply perplexing that the Majority Committee Report does not recommend amendments to the Redress Scheme before the bills are passed. Below we outline a number of our concerns and the changes necessary to ensure the proposed Redress Scheme functions as intended.

1.3 As outlined in the Majority Committee Report, Redress Bill does not establish a National Redress Scheme. The Bill establishes the Commonwealth Redress Scheme (Redress Scheme) for Commonwealth and territory survivors of institutional child sexual abuse. This is due to the constitutional limits of the Commonwealth's power.

1.4 In order for there to be a National Redress Scheme, the states and territories need to opt in to the Redress Scheme. The Australian Greens acknowledge that Victoria, New South Wales and the Australian Capital Territory (though they are covered by the scope of the Bill regardless) have now indicated that they will opt in to the Redress Scheme. Consequently, there will need to be a new national scheme bill.

1.5 The Australian Greens have concerns about the proposed Redress Scheme and the Redress Bill including that significant items have been left to the rules, the maximum payment amount of \$150,000, limitations on counselling and psychological services and the direct personal response, the scope of eligibility for the Redress Scheme, the proposed exclusion of survivors with certain criminal convictions, elements of the redress claim process and the Scheme's implementation.

1.6 The Australian Greens note that there was a large volume of submissions to this inquiry, many of which proposed a number of recommendations for strengthening the Redress Scheme and the Redress Bill. We recognise that this is demonstrative of the need for amendments and further consultation on the Redress Scheme. We acknowledge this report does not address all suggested recommendations and additions made throughout the inquiry.

Significant items in rules

1.7 There was discussion throughout the inquiry of the level of detail regarding the Redress Scheme that had not been included in the Redress Bill and will be in the rules, which have not been released. It was felt that the lack of detail available in the Redress Bill had made it difficult for submitters and witnesses to adequately assess the Redress Scheme. This was particularly the case for matters that had not been included

in the Redress Bill, but the Government had spoken about in the media, such as the exclusion of survivors 'convicted of any sexual offence or another serious crime, such as serious drug, homicide or fraud offences for which they receive a custodial sentence of five or more years'.¹ Concerns were also expressed regarding the matrix being left to the rules and that it wasn't available yet.

1.8 Mr Bailes, President, Law Council of Australia, said:

[M]atters of substance ought to be in the act. At the moment, it's actually quite difficult to give commentary around the bill, because eligibility, which is clearly a primary element of the intended law, isn't spelt out. It's left to lesser instruments. In fact, that's a feature of this bill. It's quite concerning. It's one of our primary submissions that that ought to be cured. For instance, the commentary that's surrounded whether someone with a criminal record ought to be eligible or exempted is something that's simply run as a line of commentary. It isn't referred to in the explanatory memorandum or in the bill, so what are we to make of that in terms of providing cogent submissions to this committee, except to speculate. As to eligibility, surely the public ought to know about that. But, more importantly, when it comes to questions of eligibility, shouldn't it be subject to parliamentary debate? If it isn't in the bill it can't be subject to parliamentary debate and there's no transparency about that at all. The rules will just be set at some later time. That hardly seems satisfactory, with respect.²

1.9 Ms Ronken, Director of Research, Bravehearts Foundation, said:

The rules are going to be the way that the legislation is implemented and is going to sort of shape how it goes and how it's set out. I know that, when we were reading through the bill, there was a bit of discussion about, 'What does this mean? Because we haven't got the rules. We are not sure how this is going to be implemented or how it's going to play out.' That did make it quite difficult at times for us to get a good understanding about how the legislation is going to be played out and rolled out.³

1.10 Professor Daly, who appeared in her private capacity, but is a member of the Independent Advisory Council on Redress, said:

On the assessment matrix, it's very disappointing to see that no information was provided. There must be information provided of a sufficiently robust nature, but it can be general. It doesn't have to be so specific that fraud might occur. We need to know what will be assessed and its weight. I'm not clear whether that should be in legislation or in regulations. I will leave that aside. But it should not be in the rules. We should be able to talk about it today, and it should be made public.⁴

1 Department of Social Services, *Submission 27*, p. 4.

2 *Committee Hansard*, 6 March 2018, p. 56.

3 *Committee Hansard*, 16 February 2018, p. 21.

4 *Committee Hansard*, 16 February 2018, p. 41.

1.11 We acknowledge the concerns raised by both the Parliamentary Joint Committee on Human Rights and the Senate Scrutiny of Bills Committee in relation to this issue and outlined in the Majority Committee Report, particularly around survivors' eligibility for redress and the Scrutiny committee's concerns around the matrix.⁵

1.12 The Australian Greens want to see the rules released as a matter of urgency, including the proposed matrix. Survivors, those providing support services to survivors and non-government institutions need to see the matrix to determine whether it is in line with that recommended by the Royal Commission. There also needs to be a broader conversation about whether this is an appropriate way to assess the level of redress a survivor should receive, once the matrix has been released.

Elements of redress under the Redress Scheme

1.13 The proposed Redress Scheme will provide three elements of redress to survivors, specifically a monetary payment, access to counselling and psychological services and a direct personal response from the responsible institution, where that is the will of the survivor.

Monetary Payment

1.14 The maximum monetary payment for the Redress Scheme will be \$150,000. The Royal Commission recommended that the maximum redress payment be \$200,000 for the most severe case.⁶ The Australian Greens support the recommendation of the Royal Commission and we will continue to advocate for the Government to increase the maximum monetary payment amount to \$200,000.

1.15 There is no minimum monetary payment amount for the Redress Scheme. The Royal Commission recommended the minimum redress payment be \$10,000.⁷ The Australian Greens support the calls of a number of submitters and witnesses⁸ that the Redress Scheme includes a minimum redress payment amount of \$10,000.

Counselling and psychological services

1.16 It is unclear whether the counselling and psychological services will be offered to survivors for the duration of their life or merely the duration of the Redress Scheme (until 30 June 2028). The Explanatory Memorandum to the bills reference the life of the survivor on page 5 and the life of the Redress Scheme on page 31. Yet, the Redress Bill itself is silent on this.⁹

5 *Majority Committee Report*, pp. 23-24.

6 Royal Commission, *Redress and civil litigation*, Recommendation 19.b.

7 Royal Commission, *Redress and civil litigation*, Recommendation 19.a.

8 See *Majority Committee Report*, p. 60, fn. 15.

9 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, p. 41.

1.17 The Royal Commission recommended that '[c]ounselling and psychological care should be available throughout a survivor's life.'¹⁰

1.18 In regards to the importance of lifelong counselling, Miss Clarke, Royal Commission Liaison and Sexual Assault Counsellor, Centre Against Sexual Violence Inc., said:

For someone who goes through childhood sexual abuse, particularly when that's in the context of a care-giving relationship, the effect for that person is something which extends beyond their lifetime. And, because it affects their ability to develop as a child and they miss key developmental stages, it means that that's something that can't necessarily be fixed. As the royal commission acknowledged, it's not something that can be cured with appropriate treatment, and it's something that will be triggered throughout their lifetime, for example, when they have their own children or grandchildren; if they were to run into someone from their past; a redress scheme; having to talk about what's happened—it's something which is constantly coming up for those people. The royal commission has done all this research already—it is the body that has said that this is something that is needed throughout their lives.¹¹

1.19 The Australian Greens support the recommendation of the Royal Commission and want to see survivors able to access counselling and psychological services throughout their lives.

1.20 Throughout the inquiry witnesses referred to a monetary figure of \$5,000 in relation to counselling and psychological services. The Department of Social Services (Department) indicated in its evidence at the hearing on 6 March 2018 that no decision had been made on that.¹² Yet the first reference we found to this amount was from the former Social Services Minister, Christian Porter, on the day the bills were introduced into the House of Representatives in an interview with Sabra Lane on AM.¹³

1.21 In relation to the \$5000 limit, Ms Jenkins, Manager, South East Metro Services, AnglicareWA, said:

Can I just add that many of the survivors experience comorbid symptoms and have complex diagnosis needs in terms of PTSD and other psychological, or even psychiatric, conditions. The current cost of accessing adequate referrals and support for these people would mean that \$5,000 would barely touch the surface.¹⁴

10 Royal Commission, *Redress and civil litigation*, Recommendation 9.a.

11 *Committee Hansard*, 16 February 2018, p. 3.

12 Dr Baxter, Department of Social Services, *Committee Hansard*, 6 March 2018, p. 75.

13 Sabra Lane, AM, 'Government to release details of institutional abuse redress scheme', *ABC*, 26 October 2017, <http://www.abc.net.au/radio/programs/am/govt-to-release-details-of-institutional-abuse-redress-scheme/9087126> (accessed 20 March 2018).

14 *Committee Hansard*, 16 February 2018, p. 28.

1.22 The Royal Commission recommended that '[t]here should be no fixed limits on the counselling and psychological care provided to a survivor.'¹⁵

1.23 \$5,000 for counselling and psychological services is an insufficient sum to enable survivors to obtain the necessary counselling and psychological support throughout their lives. The Australian Greens support the recommendation of the Royal Commission that there be no fixed limits in this regard.

1.24 Under the Redress Scheme, counselling and psychological services will be limited to survivors, rather than expanded to include the families of survivors.

1.25 The Royal Commission recommended that '[c]ounselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.'¹⁶

1.26 Dr Foster, Manager, Living Well, Anglicare Southern Queensland, said:

... family members carry a really heavy load. Often, the parents don't know about, this at the time, yet they're watching their children really struggle in life. They also become traumatised by this. They're living with the same levels of anxiety. One of the women we work with described it as having an octopus living in the family. It's hiding in the corners. You don't know when it's going to come out and grab you or any other member of the family. You can't get rid of it. It's always there.

The reality is that support for partners—particularly important for guys, because men have a smaller support circle; they don't have the long-term confidant that women often have. What happens is, the first person they disclose to, typically, is the partner. The second thing they say to the partner is, 'Don't tell anyone.' The partner is now isolated from all their support structures. For our service, when we're working with guys, we have groups for partners and groups for parents. Those people are very isolated so, in a sense, they learn they're not going mad. But they're the ones that are there 24/7; they're the ones that are there to pick up the pieces. The children, in growing up, want their parents, and the guys want to be the best parents they can; but, in a sense, they need support as well. This is not necessarily long-term support. It may be very focused support around this. There's diversity amongst all of this.

Absolutely, people live and breathe in context. Sexual abuse is a relational crime committed by one person against another. Healing is through building strong relationships. Support for families in helping the person means the victim is supported. It helps deal with the trauma for the victim and the vicarious trauma for the family.¹⁷

1.27 Ms Hillan, Director, Programs, Policy & Knowledge Creation, the Healing Foundation, said:

15 Royal Commission, *Redress and civil litigation*, Recommendation 9.d.

16 Royal Commission, *Redress and civil litigation*, Recommendation 9.g.

17 *Committee Hansard*, 16 February 2018, p. 5.

In Aboriginal and Torres Strait Islander communities it isn't just about the individual who has suffered; it is about a cumulative nature of individuals who have suffered together in institutions. People are often still living in those communities. That has huge impacts on families, partners, sisters, brothers, aunties and uncles, who have to provide support and are often the first point of call of support, because our services are very undeveloped and very limited in what has been offered. I think Hannah has very articulately outlined that there has been such a failure to invest in good sexual abuse healing and recovery that we now have communities that have been left to grapple with that with very limited and undeveloped supports. They have not good qualifications, not good training and very limited mental health or other supports they would be required. So these impacts are multi and are systemic across both the family and whole communities that are trying to address these issues. They are trying to address them over generations. We have services that are still very Western based. Even the redress services, or the services that were put in place for Aboriginal communities to support them through the royal commission, had one worker—that's what they were funded for—and very limited transport. And the burnout rate and the vicarious trauma that Aboriginal support workers have suffered has been considerable. They're carrying a huge cultural load, and many services have been required to utilise other funding that they've had to support that adequately. So, the whole construct of healing as a collective nature has been lost, so people see it as a very individual impact, but that is not the experience and it is not what the evidence tells us.¹⁸

1.28 The Australian Greens support the recommendation of the Royal Commission and want to see counselling and psychological services offered to family members of survivors as well. This will help reduce the incidence of vicarious and intergenerational trauma.

1.29 Counselling and psychological services also need to be appropriate for each group of survivors, including care leavers, non-care leavers, people with disability and Aboriginal and Torres Strait Islander peoples.

1.30 With respect to Aboriginal and Torres Strait Islander peoples, support services 'should include things like counselling, group work and whole-of-community healing activities in order for this redress scheme to have its full effect.'¹⁹

Direct personal response

1.31 Under the Redress Scheme direct personal responses from responsible institutions will be delivered 'after the survivor has accepted the offer of redress.'²⁰

18 *Committee Hansard*, 16 February 2018, p. 33.

19 Ms Warner, Executive Officer, National Aboriginal and Torres Strait Islander Legal Service, *Committee Hansard*, 6 March 2018, p. 10.

20 The Hon Christian Porter, MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12131.

1.32 The Royal Commission recommended that '[i]n offering direct personal responses, institutions should try to be responsive to survivor's needs.'²¹

1.33 YMCA stated in its submission:

Through YMCA Redress, in circumstances where survivors have sought a direct personal response, this has been facilitated at the commencement of the redress process, resulting in a greater level of mutual understanding between survivors and the YMCA and feedback received has suggested this has been highly beneficial for survivors. YMCA Australia has strongly recommended to the Commonwealth for the direct personal response to be offered at the early stages of the process as experience suggests this will result in a better outcome for survivors, particularly in terms of their emotional wellbeing and their engagement with the redress process overall.²²

1.34 While the Department gave evidence at the second hearing of the inquiry that the direct personal response framework is still being finalised, it was clear from the evidence that the direct personal response is expected to come after the redress application has been finalised.²³

1.35 The Australian Greens support the recommendation of the Royal Commission and are of the view that institutions should provide direct personal responses to survivors when requested, not necessarily after the survivor has applied to the Redress Scheme and opted to accept redress.

Scope of eligibility for the Redress Scheme

1.36 The Redress Scheme is for survivors of institutional child sexual abuse only. Survivors of institutional non-sexual abuse will not be eligible, unless they were also sexually abused. Non-sexual abuse, including physical abuse, psychological abuse or neglect, connected to the sexual abuse will be considered an aggravating factor when determining the severity of the sexual abuse suffered.

1.37 It is important to note here that '[f]or many Aboriginal survivors the meaning of sexual abuse may differ from their non-Aboriginal counterparts, because abuse is not only understood as a personal violation and an enormous breach of trust but often also seen within the context of colonisation and a larger systemic effort to deny basic human rights to one culture and what this brings with it.'²⁴

1.38 Limiting the scope of the Redress Scheme to sexual abuse is particularly problematic for care leavers. As Dr White, Director, Tuart Place said at the first hearing:

21 Royal Commission, *Redress and civil litigation*, Recommendation 5.d.

22 YMCA Australia, *Submission 37*, p. 5.

23 Dr Baxter, Department of Social Services, *Committee Hansard*, 6 March 2018, p. 69.

24 Ms Megan Van Den Berg, Victorian Aboriginal Child Care Agency, *Committee Hansard*, 6 March 2018, p. 2.

As found by the forgotten Australians and lost innocents Senate inquiries, for many children living in closed residential settings under state welfare systems, sexual abuse was sometimes the least of their worries. Their situation was totally different to that of a child living at home with his or her parents, who suffered sexual abuse at a sporting club or dance academy. We are in no way minimising their experiences. What we're saying is that they are very different to that of a child abused and neglected in state care, where there was no escape from the daily trauma.²⁵

1.39 Ms Carroll, Chair, Alliance for Forgotten Australians, said:

... there are many of our people who have suffered horrendous physical, emotional abuse and neglect, and they're not eligible for this scheme as it stands. It's wrong. Since the Senate inquiry in 2004 – and Claire's very aware of that, and Rachel, of course – that was a recommendation, that there should be a redress scheme, and nothing has been done, and we've come this close and we look like we'll miss out yet again.²⁶

1.40 She went on to say:

We're never going to do another redress scheme. If people who were physically abused, neglected or who suffered any of the other abuses aren't included in this one scheme it lets these bastards off the hook. The state governments, churches, and charities, they're standing up there clapping their hands that it's just sexual abuse, because the number is smaller. Whereas, if they had to pay for all the wrongs that they did to us as children there are many more people. No wonder they're clapping their hands about sexual abuse and all wanting to join this scheme—but they won't extend it to physical abuse as well.²⁷

1.41 Ms Carroll also explained that the Royal Commission did hear from survivors who weren't sexually abused, saying:

They did sit with people—probably because they were nice, kind, empathetic people who just couldn't say no to people—so people don't even know they're not eligible. They think: 'Wow, we're going to get \$150,000! Wow we're going to buy a house!' The expectations are just ridiculous, and sad. They did hear from people who weren't sexually abused.²⁸

1.42 At the second hearing of the inquiry, Frank Golding, who appeared in their private capacity, said:

For five years, the royal commission and the nation's media rammed home an unintended message to countless thousands of care leavers, that if they were only cruelly physically assaulted, emotionally abused, put into solitary confinement on a regular basis, exploited through unpaid labour and

25 *Committee Hansard*, 16 February 2018, p. 24.

26 *Committee Hansard*, 16 February 2018, p. 15.

27 Ms Carroll, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 17.

28 Ms Carroll, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, pp. 18-19.

deprived of an education, subjected to unauthorised medical trials but had their own personal health neglected, placed in an adult mental health facility and stripped of personal identity and terminally separated from their parents and siblings, if they only experienced those forms of abuse they were considered subordinate or inferior. The royal commission did its job as it was required to do, but this should not be taken as a warrant—rigid, inflexible and mandatory—for the national parliament to establish a one-dimensional sexual abuse scheme only. When it came to redress, the royal commission was well aware of the impact of having its arms tied.²⁹

1.43 Mr Golding continued:

There is no impediment, legal or moral, to the parliament including all forms of abuse in a national redress scheme. It's not for want of evidence or recommendations on redress.³⁰

1.44 While the Australian Greens acknowledge that the Royal Commission's scope was limited to institutional child sexual abuse, we believe that those who suffered non-sexual abuse should be eligible for redress under the Redress Scheme, particularly where the survivor is a care leaver.

Exclusions of certain groups of survivors

1.45 During the inquiry, there was significant concern expressed about the Government's proposal to exclude those survivors who have been convicted of sexual offences themselves or have received a custodial sentence of five years or more for certain serious non-sexual crimes.

1.46 As the opening statement of Dr Kezelman AM, President, Blue Knot Foundation, said:

This constitutes a double punishment and ignores the reality of underlying child sexual abuse and other traumas in victimisation and perpetration cycles.³¹

1.47 She went on to say at the hearing that:

... so many of the people who are imprisoned have experienced child sexual abuse and their behaviour has resulted from that. To actually exclude them from redress is incredibly punitive and shows a lack of understanding about the dynamics of child sexual abuse and what it means to victims.³²

1.48 Miss Clarke, Centre Against Sexual Violence Inc., said:

It also doesn't give them the opportunity to learn and grow. Part of redress is access to counselling and psychological care. We want people to be able to change their life trajectory, and we know that the counselling and psychological care offered to survivors in the prison system is inadequate.

29 *Committee Hansard*, 6 March 2018, p. 20.

30 Mr Frank Golding, *Committee Hansard*, 6 March 2018, p. 21.

31 *Committee Hansard*, 16 February 2018, p. 7.

32 Dr Kezelman AM, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 7.

In Queensland, we've had one of the highest rates of prisoner engagement through the royal commission, and the feedback we're getting is that it's making a difference for them. Do we want that support to stop for those people who are in the prison system or do we want to continue to engage with them and help them to change their direction in life? We've supported people who have left the prison system, are still out of the prison system and are still not back on drugs and alcohol. This has to be making a difference. And we want to take that away from them?³³

1.49 Dr White, Tuart Place, spoke of the feedback she received from the international network of people who work on redress saying:

... so we put to this group the question in very neutral terms: 'What do you think of this idea of excluding anyone who's committed a sex offence or been imprisoned for five years or more?' The response was overwhelming and unequivocal. Everyone thought that it was a really bad idea, that it was double punishment and that it ignored the connection between the person's own childhood trauma and abuse and their later aberrant behaviours. Dr Stephen Winter of the University of Auckland made an interesting point: that financial redress may be an asset in rehabilitation and it's actually a child protection measure in some ways for people who've been convicted of a child sex offence. One of the most effective ways to prevent an offender reoffending is to assist them to gain insight into the reasons for their offending to make the link between their own childhood trauma and abuse and their later offending. So a redress scheme could be enormously helpful in that regard, and a scheme that just leaves those people out is going to be enormously unhelpful.³⁴

1.50 Dr Foster, Anglicare Southern Queensland, pointed out that exclusions for survivors with certain criminal convictions will disproportionately affect Aboriginal and Torres Strait Islander peoples due to overrepresentation in the justice system. He said:

This is particularly important: it was highlighted that, in Queensland, over a thousand people in correctional facilities came forward to the royal commission—a thousand! We must remember also that a fair proportion—a disproportionate number of those people—are Aboriginal and Torres Strait Islander people. This will set up 'deserving' and 'undeserving', and it will actually legalise that. And the people who will feel it most will be the Aboriginal and Torres Strait Islander community. I think 14.8 per cent of those who came forward to the royal commission were Aboriginal and Torres Strait Islander people, because they were in dormitories where they were sexually abused because they were removed from their families. Currently, in this country, across the country, Aboriginal and Torres Strait Islander people are 13 times more likely to be incarcerated. We have to be careful about this.³⁵

33 Miss Clarke, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 6.

34 Dr White, Tuart Place, *Committee Hansard*, 16 February 2018, p. 29.

35 Dr Foster, Anglicare Southern Queensland, *Committee Hansard*, 16 February 2018, p. 6.

1.51 Mr Strange, Executive Officer, knowmore legal service, said:

In our sentencing system, if you're setting a minimum period of imprisonment as the exclusion, you don't get the same sentence for the same conduct around Australia. There are differences in states. There are differences, depending on when you committed the offence—the sentencing regimes have changed over time; maximum penalties have increased. But for historical offences, you'll receive the sentence that was in operation at the time. There are all those sorts of problems that I think make it very, very difficult to apply those exclusions in practice.³⁶

1.52 As Mr Bowden, Co-Chief Executive Officer, People with Disability Australia, said:

This is about redress to the child and the experiences that the child had. We failed to provide them, when they were in care, with safety. That's what this is about. What happens to the person's life afterwards, I don't think is the business of this scheme. This is about what happened to them as a child.³⁷

1.53 It was also noted by Mr Bailes, Law Council of Australia, that '[i]t seems strange that you would have a statutory scheme that includes an exemption that won't apply at common law.'³⁸

1.54 The Australian Greens are of the view that all survivors should be eligible for the Redress Scheme, regardless of whether they have been convicted of certain offences. Such survivors were children when they were sexually abused and excluding them from the Redress Scheme when they have already been punished for the crimes they have subsequently committed is vastly unfair and constitutes double punishment. Excluding these survivors from the Redress Scheme ignores the link between the abuse they experienced as a child and the crimes they went on to commit in later life. Instead, we should be providing these survivors with redress to assist them with their rehabilitation.

1.55 The Australian Greens believe the case-by-case exemption put forward as a possible solution by the Minister does not go far enough to ensuring this group of survivors are not punished more than once.³⁹ As Megan Van Den Berg, Executive Manager, Royal Commission into Institutional Responses to Child Sexual Abuse Support Service, Victorian Aboriginal Child Care Agency said:

Victims would have to go through the shame of putting forward their case, being judged, being evaluated and having to wait for a determination of

36 *Committee Hansard*, 16 February 2018, p. 43.

37 *Committee Hansard*, 6 March 2018, p. 17.

38 *Committee Hansard*, 6 March 2018, p. 57.

39 Amy McNeilage, 'Coalition to rethink plan to bar criminals from child sex,' *The Guardian*, 19 February 2018, <https://www.theguardian.com/australia-news/2018/feb/19/coalition-to-rethink-plan-to-bar-criminals-from-child-sex-abuse-redress-scheme> (accessed 26 March 2018).

whether they are a deserving or an undeserving victim of child sexual abuse. This is not survivor-led and this is not trauma informed.⁴⁰

1.56 There was also discussion throughout the inquiry regarding the limitation of the Redress Scheme, under the current Redress Bill, to survivors who are an Australian Citizen or permanent resident.

1.57 With regards to the exclusion of those survivors who are not Australian citizens or permanent residents at the time they apply for redress, Ms Ronken, Bravehearts Foundation, said:

I think they're incredibly inequitable. I think everyone who was abused in an institution in Australia should have access to the redress scheme, whether or not they're an Australian citizen currently or at the time the abuse occurred. It's our responsibility to ensure that those victims are provided with the recompense that they deserve.⁴¹

1.58 The Australian Lawyers Alliance said in its submission:

Asylum seekers, refugees and stateless people who suffered abuse in immigration detention (including community detention, and both onshore and offshore detention) would be particularly affected by this exclusion. Other members and former members of migrant could also be affected, particularly if they have been deported according to recently enhanced powers to deport migrants holding valid visas.⁴²

1.59 The Explanatory Memorandum for the bills says:

It is intended that on commencement of the Scheme, rules made under subclause 16(2) will prescribe three categories of persons that are eligible under the Scheme. These are former child migrants who are non-citizens and non-permanent residents, non-citizens and non-permanent residents currently living in Australia, and former Australian citizens and permanent residents.⁴³

1.60 However, the rules have not been released publically and, as noted in the Majority Committee Report, are unlikely to cover survivors of child sexual abuse where it occurred in Australian immigration detention facilities.⁴⁴

1.61 The Australian Greens want to see all survivors of child sexual abuse connected to Australia eligible for the Redress Scheme. This includes former child migrants, those no longer living in Australia (whether a citizen or permanent resident at the time or not) and those who are still living here but are not citizens or permanent residents. It should also include survivors who experienced their abuse in detention centres established by Australia, even where the survivor has never entered Australia.

40 *Committee Hansard*, 6 March 2018, p. 2.

41 Ms Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 15.

42 Australian Lawyers Alliance, *Submission 47*, p. 8.

43 *Explanatory Memorandum*, p. 13.

44 *Majority Committee Report*, p. 36, para. 2.126.

Redress claim process

Single application

1.62 Survivors will only be able to make a single application to the Redress Scheme for redress. This application would be required to cover all instances of child sexual abuse suffered. There were concerns raised in relation to this throughout the inquiry.

1.63 Miss Clarke, Centre Against Sexual Violence Inc., said:

From my understanding, from the information we've received, survivors will have the right to put in an application regarding all the institutions in which they were abused. If there's an institution that hasn't as yet opted in—I understand there's a period of up to two years in which states and institutions can opt in—the survivor will have the opportunity to have their whole application put on hold until we know whether or not all the other institutions have opted in. Otherwise, they can just at that point accept what they can get for the institution that has opted in. I think that puts survivors in an absolutely awful position. A lot of these survivors are dying. They have serious financial issues and ailing health. They have family members and family pressures. I don't think that's a situation we should be putting them in. I think a lot of survivors will be forced into making the choice not to be able to access everything that they're entitled to because they need that money and they needed that money yesterday.⁴⁵

1.64 Dr Kezelman, Blue Knot Foundation, said:

The other issue related to that is around traumatic memory and the fact that at different times in people's lives they may not have a narrative, and often never get to a narrative, of what happened to them and when. So, when people come back and say they now remember that they were abused in institution Y, they're not necessarily making that up; that's just the very nature of trauma. If it's restricted to one application at a point in time and then, 10 years later, the person has remembered more information, what happens as a result of that?⁴⁶

1.65 Mr Strange, knowmore legal service, said:

We would like to see, as a compromise—and we understand the reasons why there would be one application only—an exceptional circumstances provision, particularly where someone has been excluded from redress. I'm thinking of someone who falls at the funder of last resort hurdle, if that is passed in its current form, who doesn't show government involvement and may have made their own application, and somewhere down the track they come and talk to us, for instance, and we identify that, actually, they were a ward of the state. So, in those sorts of cases where people have been refused redress, perhaps there could be a discretion for the scheme operator to

45 Miss Clarke, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 11.

46 Dr Kezelman AM, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 11.

accept a further application where further cogent information has come to light.⁴⁷

1.66 The Australian Greens do not support survivors being given only one opportunity to apply to the Redress Scheme and believe this needs to be amended. The Redress Scheme needs to meet the needs of survivors and be as flexible as possible.

1.67 We also do not support a long timeframe for institutions to opt in to the Redress Scheme – two years is too long and should not be adopted. Such a timeframe will leave many survivors in limbo. This is particularly the case in states that have not removed limitation periods for civil litigation of child sexual abuse cases as recommended by the Royal Commission, such as South Australia and Western Australia (though Western Australia has amending legislation before its parliament currently) (to be discussed below).

Statutory declaration

1.68 Survivors will be required to complete a statutory declaration to verify the information contained in their application for redress under the Redress Scheme.

1.69 Dr Kezelman, Blue Knot Foundation, also said in her opening statement at the first hearing of the inquiry that:

Bottom line for survivors is being believed as many have had their histories repeatedly denied and dismissed. Many are allergic to power hierarchies as they were profoundly disempowered within systems of power, and silenced accordingly. Having a government and institutional process which ostensibly has been established to recognise the harm done but which implies that survivors are not trusted or believed is retraumatising. Additionally the information being included within the redress application form is highly personal and seeking another person to witness it can be perceived as a privacy breach regardless of how survivors are reassured.⁴⁸

1.70 When asked during the first hearing of the inquiry what an alternative approach might be, Mr Kaspiev, Executive Office, Alliance for Forgotten Australians, said:

... I would be advocating for any process which minimises the likelihood of traumatising people and requiring them to reproduce reams of paper and going back to what evidence they may already have given or the kind of evidence they already provided either to the royal commission or other redress schemes in the past.⁴⁹

1.71 The Australian Greens do not support this requirement. We want to see it removed and a more appropriate process developed with survivors.

47 Mr Warren Strange, knowmore legal service, *Committee Hansard*, 16 February 2018, pp. 46-47.

48 Dr Kezelman AM, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 7.

49 *Committee Hansard*, 16 February 2018, p. 21.

Timeframe for accepting or rejecting an offer

1.72 Survivors will have a minimum of 90 days to accept or reject an offer of redress under the Redress Scheme, which can be extended, if needed.

1.73 The Royal Commission recommended '[a]n offer of redress should remain open for acceptance for a period of one year.'⁵⁰

1.74 Miss Clarke, Centre Against Sexual Violence Inc., said:

I understand that for someone who's gone through a fairly normal life, for someone who hasn't experienced complex trauma, three months would be an appropriate time frame to get legal advice and counselling and to talk with their family. For someone who's gone through complex trauma, getting that offer is going to be highly traumatic for them. It's going to bring up maladaptive core beliefs. It's going to be basically placing a value on the abuse that they suffered, and that's going to be really challenging for that person to process.

People who go through childhood sexual abuse are often plagued by suicidal ideation and self-harm, mental health issues, financial distress, unstable living environments and homelessness, abusive relationships and issues with drugs and alcohol, as well as relationship issues. It's highly likely that, if you give someone three months to respond, they might not even have got your response by then because they've moved and they've lost their mobile phone and can't afford to replace it, and they haven't provided a forwarding address.⁵¹

1.75 As Miss James, Principal, Maurice Blackburn Lawyers, said:

90 days is simply a grossly inadequate period of time for a person suffering injuries of this nature to make a reasonable decision. It's very common in my practice for people who get to the point of having to make a critical decision, which is often a once-and-for-all decision, to simply be overwhelmed at that point. They have to simply disengage from the process, disengage from me and my team, and just step away and become well again. It's not uncommon for that to be a period of three months or more.⁵²

1.76 This issue is particularly important for Aboriginal and Torres Strait Islander peoples and people with disability.

1.77 As Mr McKeich, Senior Project and Policy Officer, Victorian Aboriginal Legal Service, said:

My understanding is that there is a 90-day period to accept an offer of compensation and, after that time expires, it goes off the table. That is far too short an amount of time for a number of reasons. One is that for Aboriginal and Torres Strait Islander communities, they are often transient

50 Royal Commission, *Redress and civil litigation*, Recommendation 59.

51 Miss Clarke, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 5.

52 *Committee Hansard*, 6 March 2018, p. 55.

communities. People may not receive correspondence, particularly in remote communities. And in urban communities as well, people move around. They might have medical appointments or they might even be locked up in prison so it is difficult to track down where people are.⁵³

1.78 Mr Bowden, People with Disability Australia, said:

We didn't feel 90 days was sufficient for the decision-making process for some people with disability. Sometimes people's lives and conditions can impact upon decision-making for a particular time frame. People who have an episodic or psychosocial disability might be in a period where they're unwell and it's not reasonable for them to be expected to make a decision within 90 days. A year would be far more preferable.⁵⁴

1.79 The Australian Greens support the recommendation of the Royal Commission and want survivors to be given the option of one year to accept or reject an offer of redress.

Discharging liability

1.80 Survivors will be required to discharge the responsible institution from civil liability if they accept redress under the Redress Scheme. Some states are yet to remove limitation periods for civil litigation of child sexual abuse cases as recommended by the Royal Commission. This is concerning.

1.81 As Mr Bailes, Law Council of Australia, said:

In the state of South Australia, there's not even contemplation of the change in the statute of limitations. So you've got a scenario where, if an offer's made under a redress scheme, you're in the even more invidious situation of not yet understanding whether you've got a common-law entitlement or not.⁵⁵

1.82 The Australian Greens believe that where the abuse of a survivor occurred in a state that has not removed its limitation periods for civil litigation of child sexual abuse cases at the time the survivor chooses to accept their offer of redress, the survivor should not be forced to release and discharge the institution deemed responsible for the abuse they suffered.

External review

1.83 As discussed in the Majority Committee Report, there is no remit for external merits review or judicial review of a decision relating to redress under the Redress Scheme, only for an independent internal review.⁵⁶

1.84 Mr Strange, knowmore legal service, said:

53 *Committee Hansard*, 6 March 2018, p. 4.

54 Mr Bowden, People with Disability Australia, *Committee Hansard*, 6 March 2018, pp.15-16.

55 Mr Bailes, Law Council of Australia, *Committee Hansard*, 6 March 2018, p. 55.

56 *Majority Committee Report*, p. 83, para. 3.132.

I think that's an area that needs some further consideration around exactly what that right of external review should be. This will be a complex scheme and it's a new scheme, and we want to ensure that there isn't inconsistency in how it operates or that wrong views are taken around issues and perpetuated across a series of cases. I understand why it's been drafted in a way that there's no external review of individual applications. There is an intent to make the scheme non-legalistic. I think there should be some clear avenue for external review where the scheme is miscarrying on a systemic level. There is also the potential for ombudsman review. I've read the ombudsman's submission where he notes that it's unclear how his jurisdiction would impact upon a decision about redress that he found to be wrong under the scheme. So I think those sorts of issues could usefully be addressed in further consideration.⁵⁷

1.85 Miss James, Maurice Blackburn Lawyers, said:

... it's critical to the success of the scheme for those accessing the scheme, who are the survivors, that they feel as though the process is a fair one and one where they have access to external review of poor decisions. People such as abuse survivors have already been traumatised by a system that has let them down, and in our submission this poor perception could be magnified to the level of conspiracy were it to be the case that there was no opportunity for and access to external review.⁵⁸

1.86 The Royal Commission recommended '[a] redress scheme established on an administrative basis should be made subject to oversight by the relevant ombudsman through the ombudsman's complaints mechanism.'⁵⁹

1.87 In its submission to the inquiry, the Law Council of Australia said:

The Law Council supports this recommendation and submits that an external review mechanism, such as through the Ombudsman, promotes integrity and should be made available within the Scheme.⁶⁰

1.88 The Australian Greens acknowledge that the Redress Scheme is designed to be not legalistic, however, there should some form of external review open to survivors who wish to pursue it, preferably in line with the recommendation of the Royal Commission.

Disclosure

1.89 The Australian Greens have concerns regarding the ability of the operator to request information from the responsible institution relating to an applicant's application and information relating to a survivor's application being disclosed to the responsible institution (except the name of the perpetrator), particularly where the

57 Mr Strange, knowmore legal service, *Committee Hansard*, 16 February 2018, p. 44.

58 Miss James, Principal, Maurice Blackburn Lawyers, *Committee Hansard*, 6 March 2018, pp. 54-55.

59 Royal Commission, *Redress and civil litigation*, Recommendation 62.

60 Law Council of Australia, *Submission 82*, p. 20.

survivor does not wish to pursue a direct personal response. As Ms Sheedy, Chief Executive Officer, Care Leavers Australasia Network, said:

Another point I would like to raise is that I am really against past providers knowing that I have put in an application for redress. I really object to that. What about my privacy? What about everybody else's privacy? The people who abused us as children get the right to know that we have filled out an application form for redress! I strongly object to that. I don't even know whether I will fill in a redress form.⁶¹

Implementing the Redress Scheme

Support services

1.90 There needs to be adequate funding for appropriate support services for survivors applying to the Redress Scheme and those who go on to accept an offer of redress. This should not only include legal services but also financial advice and counselling and advocacy among others. Such services need to be appropriate to each group of survivors as mentioned above.

1.91 With regards to legal services, Mr Bailes, Law Council of Australia, said:

We've got community legal centres and so forth under impossible strain now. Our statistics from the current Justice Project being undertaken by the Law Council show that there are tens of thousands of people that were turned away from community legal centres last year unrelated to these matters. It will be potentially overwhelming. And so even with the best statement of intent, genuinely resourcing to advise that many people—and remember: while we don't actually know how it's going to be assessed, the advice is not just about where you might fall in an assessment table; you've got to advise them on electing to give away their common-law claim. These are investigations that can often take years. They're incredibly complex. Historical matters that go back, the offending might have been over many, many years and many, many instances. The complexity of psychiatric evidence and so forth means that this is no mere giving of five minutes of advice; this is involved.⁶²

1.92 The Australian Greens note that there was mention during the second inquiry of knowmore having been funded to provide legal services to redress applicants for the next ten years.⁶³ However, with respect to services for Aboriginal and Torres Strait Islander peoples, there needs to be further funding for additional culturally appropriate legal services so that there are sufficient services available to meet the needs of Aboriginal and Torres Strait Islander peoples so they have a choice about where they seek legal advice from. There were problems with this during the Royal Commission.

61 *Committee Hansard*, 6 March 2018, p 27.

62 Mr Bailes, Law Council of Australia, *Committee Hansard*, 6 March 2018, p. 57.

63 Jeannie McIntyre, Victorian Aboriginal Child Care Agency, *Committee Hansard*, 6 March 2018, p. 7.

1.93 In this regard, Mr McKeich, Victorian Aboriginal Legal Service, said:

For example, that was my role while the royal commission was on. There was one role per ATSILS. Victoria is difficult enough, but in Western Australia, with the size of the state and the variety of language groups and all the rest of it, one person is obviously not enough. That funding has now ceased altogether.⁶⁴

1.94 Ms Warner, National Aboriginal and Torres Strait Islander Legal Service, said:

The same amount of funding was provided to each of the Aboriginal and Torres Strait Islander legal services. That's why I suggested that in principle there was a choice; however, I would suggest that if you were going to a service and there was only one person who could assist you and they were busy assisting many other Aboriginal and Torres Strait Islander people, then there is probably a bit of a grey area about whether you actually do have a choice to use that service, if they don't have the resources available to assist you in the ways that you need.⁶⁵

1.95 Jeannie McIntyre, Manager, Royal Commission into Institutional Responses to Child Sexual Abuse Support Service, Victorian Aboriginal Child Care Agency, said:

But again, on the back of what my colleagues were saying, one person funded in a link-up service is not nearly enough. We've heard the stats that have come forward to the royal commission. We're still getting people ringing and saying, 'We've just heard about this royal commission—can we tell our story?' The resources that went out to support services and legal services were totally inadequate for the numbers of Aboriginal people affected. But we are in communication with the Department of Social Services through our role as a royal commission support service, if that makes sense.⁶⁶

1.96 There is also a need for further funding for legal services for Aboriginal and Torres Strait Islander peoples to assist them in drafting wills. This is because if a survivor dies after submitting an eligible application but before receiving an offer of redress, or after receiving an offer of redress but before accepting, the payment will go to their estate. As Jeannie McIntyre said:

I don't know if you're aware of this but most Aboriginal people do not have a will. It's not a common practice within the Aboriginal community to have a will. So if the only way someone who passes through this process—remembering that so many elders now are at that point of dying, and they have been dying for the last several years. If it's insistent on having a will, then we need Aboriginal legal services to be funded to go out there and get

64 Mr McKeich, Victorian Aboriginal Legal Service, *Committee Hansard*, 6 March 2018, pp. 7-8.

65 Ms Warner, National Aboriginal and Torres Strait Islander Legal Service, *Committee Hansard*, 6 March 2018, p. 8.

66 *Committee Hansard*, 6 March 2018, p. 8.

everyone to have a will because the majority of Aboriginal people do not have wills.⁶⁷

1.97 More broadly, Mr Glasson, Director, Services, AnglicareWA, outlined his organisations experience, particularly working with Aboriginal people, saying:

Our workers have learnt, particularly when working with Aboriginal clients, that counselling cannot be separated from therapeutic case management, and often case management is a necessary precursor to effective counselling. The majority of the people that we have seen we have seen for between one and three sessions. But we have seen people for many, many, many more sessions than that. The average number of sessions for people we have seen has been eight. The highest is over 100. Our argument is that just the provision of counselling alone will not meet the needs of these people.⁶⁸

1.98 Ms Hillan, the Healing Foundation, said:

The experience of WA post that state redress scheme was that one of the complications was the time frame and that many people in remote and regional parts of WA didn't hear about it and didn't know about it. We do know from the services that we support that people are still coming forward now and are really angry about not being able to participate. What helps people to participate is not a good leaflet or a good website; it's all based on the relationships that people have. If the redress services that are going to be funded by the Department of Social Services do not enable the Aboriginal services in that to outreach into all those communities and build relationships and build people's understanding, then there will not be people who will be able to come forward. It is in those relationships of safety and security that people will come and be able to get the information. They need to be able to use translators and interpreters appropriately, and, at the moment, the funds are not adequate in any way, shape or form for them to do that. But they need to be able to visit regularly and supportively, and that is the only way that we know that that will occur in terms of the ways they can identify and support people but also the safety of people to feel that they can actually be supported through a process. So I don't think that's thought about currently. What we see when the departments fund things is a one-size-fits-all, without a really great understanding of the nuanced remote and regional strategies and how Aboriginal people work best in that. So, absolutely, I think that that's a missing element in this.⁶⁹

1.99 In relation to additional services, Mr Glasson, AnglicareWA, said:

67 Ms Jeannie McIntyre, Victorian Aboriginal Child Care Agency, *Committee Hansard*, 6 March 2018, pp.15-16.

68 *Committee Hansard*, 16 February 2018, p. 25.

69 Ms Hillan, the Healing Foundation, *Committee Hansard*, 16 February 2018, p. 38.

There are a couple of things we would recommend to make the scheme work better. One is that we need to find some way of having advocates working for applicants.⁷⁰

1.100 There is also a need for specialist sexual assault services to be adequately funded to ensure such services are available to survivors throughout their lives.

1.101 Miss Clarke, Centre Against Sexual Violence Inc., said:

Services are limited. There isn't the experience within mainstream organisations to be able to respond to these survivors. You know, suicide rates among survivors of childhood sexual abuse are huge, and substance use. If there is not adequate funding put into services like all of ours to assist these clients, you're going to see them in other ways—you're going to see them presenting to health services, you're going to see them presenting to drug and alcohol services.⁷¹

1.102 Dr Foster, Anglicare Southern Queensland, continued:

Who don't have the skills to do it. They've been bumping into services for years. The royal commission is a litany of failures by institutions to respond to those people. We have to recognise that—and we've all learnt through the royal commission, as more people have come forward who are really on the periphery of society—and what we've learnt around that is people need to have advocacy. And this is from the challenges to the psychological responses—fine, have psychological services, but we need to make sure that those counsellors are willing to actually do the advocacy, to work with Centrelink, to make sure you've got a home—so that you can do phase one, safety and stabilisation, because you've got somewhere to go to where you're not going to be triggered; and they've got to have a willingness to engage with the court process and support you through that. So it's a particular kind of work. It's trauma work, but it's trauma work about an instance of childhood sexual abuse which has compromised people's bodily integrity. Many services, unfortunately, aren't prepared, and really, we're only learning—and this is the ongoing process, where we all need to continue to learn—to better respond to people.⁷²

1.103 The Australian Greens want to see the Government invest more in additional support services for those applying for and accepting redress under the Redress Scheme.

Supported decision making

1.104 The Redress Bill provides for nominees to act on behalf of an applicant.

1.105 People with Disabilities Australia raised concerns relating to these provisions, specifically around the nominee acting in accordance with the 'best interests' of the

70 Mr Glasson, AnglicareWA, *Committee Hansard*, 16 February 2018, p. 28.

71 Miss Clarke, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 3.

72 Dr Foster, Anglicare Southern Queensland, *Committee Hansard*, 16 February 2018, p. 3.

survivor, shifting the focus away from them and onto the substitute decision-maker.⁷³
As Mr Bowden said:

So what we would be pushing for is a supported decision-making process where the appointment of a nominee is the absolute last resort, when every other opportunity has been given to the person to exercise agency and to be involved in and to be making decisions and for their will and preference to be expressed during that process.⁷⁴

1.106 The Australian Greens would like to see the Department of Social Services work with people with Disability to rectify this issue and ensure nominees are only used as a last resort.

Funder of last resort

1.107 The concept of governments as funder of last resort is included in the Redress Bill, though only to the extent of shared responsibility for the sexual abuse.

1.108 Mr Strange, knowmore legal service, said:

We've assisted a number of survivors who were in institutions which no longer exist. There is no successor institution. For them to face the reality of a redress scheme being established but they're still excluded from any effective justice is going to be devastating. The way it's phrased at the moment is that the government will only be the funder of last resort if it meets this test of shared responsibility. So someone who might have been a ward of the state may have been placed in the now-defunct institution because of government involvement, but that is frequently not the case for many survivors, who were placed there because of family circumstances, without formal intervention by the state. It's a very difficult area, and I think that's one of the areas where survivors who are potentially in that position will need legal assistance in order to identify any circumstances that might found institutional responsibility or government responsibility.⁷⁵

1.109 Professor Daly said:

The spirit of the royal commission was definitely 'funder of last resort'. They're wiggling out of the funder of last resort idea. I don't know why they are, exactly.⁷⁶

1.110 The Australian Greens are of the strong view that there is a need for governments to act as the funder of last resort, regardless of whether there was shared responsibility. This issue will be of particular pertinence for the future national bill and the Australian Greens will be following this issue closely.

73 People with Disabilities Australia, *Answers to questions taken on notice*, 6 March 2018, p. 2 (received 14 March 2018).

74 Mr Bowden, People with Disability Australia, *Committee Hansard*, 6 March 2018, p. 19.

75 Mr Strange, knowmore legal service, *Committee Hansard*, 16 February 2018, p. 46.

76 Professor Daly, *Committee Hansard*, 16 February 2018, p. 46.

Recommendation 1

The Australian Greens strongly support the establishment of a national redress scheme for survivors of institutional child sexual abuse. We need to get the Redress Scheme settings right to ensure that the Redress Scheme is one based on fairness, equity and justice that is survivor focused and trauma and culturally informed. Accordingly, the Australian Greens recommend the Redress Bill and related bill not be passed in their current form and urge the Government to address the concerns raised by submitters and witnesses, some of which are outlined above, in the future national scheme bill.

Senator Rachel Siewert

