# Chapter 2

## Administration and operation

2.1 Chapters two and three discuss the concerns raised by submitters and witnesses with the provisions of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill) and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Consequential Bill).

2.2 This chapter will highlight the key concerns raised in evidence to this inquiry relating to the administrative elements and application process of the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (Redress Scheme). A detailed discussion of concerns raised relating to the three elements of redress being offered to institutional child sexual abuse survivors (survivors) is contained in chapter three.

### An opt-in Redress Scheme

2.3 As outlined in chapter one, the two bills enact a Redress Scheme for Commonwealth or territory institutions and participating non-government institutions (NGIs) established in a territory—i.e. institutions located in the Australian Capital Territory and the Northern Territory. The bills currently under review establish the Redress Scheme as a voluntary opt-in scheme, whereby institutions will not be compelled to join.

2.4 A significant number of submissions have expressed reservations about the opt-in nature of the Redress Scheme. The majority of comments in relation to NGIs opting in to the Redress Scheme are relevant to both a commonwealth and a national scheme, assuming the opt-in nature would remain the same in a national scheme. These concerns are outlined further below.

2.5 A number of submissions have also specifically raised concerns with the opt-in nature of the Redress Scheme in relation to state government participation in a national Redress Scheme. There are concerns that without all states participating, the Redress Scheme will not be sufficiently inclusive.

2.6 The Australian Childhood Foundation submitted that the failure of some states to opt in would 'reflect an entrenched resistance to nationally consistent legislation needed to properly protect our children'.[1]

2.7 Bravehearts put forward a similar view, telling the Community Affairs Legislation Committee (committee) that the inequity between the amounts of redress paid through state-based redress schemes was 'horrendous' for survivors.[2]

---

1 Australian Childhood Foundation, *Submission 3*, p. 2.

2 Ms Carol Ronken, Director of Research, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 14.

2.8 Submitters and witnesses have recommended that the Australian Government make a strong effort to encourage participation from both state governments and NGIs.[3]

2.9 As of Friday 9 March 2018, the New South Wales and Victorian Governments have announced they will participate in a national Redress Scheme. The legislative process to establish a national Redress Scheme is not yet clear.[4]

### *Institutional participation*

2.10 The Centre Against Sexual Violence Inc. raised concerns that the two year period in which an institution can wait before opting in would have serious impacts on survivors because survivors are limited to a single application for redress, as discussed later in this chapter. A survivor who was sexually abused in more than one institution could be forced to make a choice between abandoning the opportunity for redress for some of the sexual abuse they suffered, or waiting two years to see if the other institution(s) would opt in to the Redress Scheme. Miss Miranda Clarke from the Centre Against Sexual Violence Inc. told the committee:

> 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.[5]

2.11 The Australian Childhood Foundation stated that redress responses are already fragmented, with many key organisations currently operating redress schemes with no consistent guiding principles, and submitted that:

> The engagement of as many stakeholders [as] possible in the Scheme will not only ensure that responses to the needs of survivors of child sexual abuse receive a consistently fair treatment but will also signal the adoption of a cooperative approach that is required to address the multitude of cross-jurisdictional responses need to protect children.[6]

---

3 Submitters who made this recommendation include: Anglicare Australia, *Submission 48,* p. 6; Mr Trevor Adams, *Submission 8,* [p. 1]; Australian Childhood Foundation, *Submission 3*, [p. 2]; Bravehearts Foundation, *Submission 26*, [p. 2]; National Social Security Rights Network, *Submission 38*, [p. 3]; Sexual Assault Support Service Inc., *Submission 4*, p. 4.

4 David Crowe, 'Political row over redress scheme for child sexual abuse', *Sydney Morning Herald*, 12 March 2018.

5 Miss Miranda Clarke, Royal Commission Liaison and Sexual Assault Counsellor, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 11. This concern was also raised by Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 22, Care Leavers Australasia Network (CLAN), *Submission 60*, p. 13, Setting the Record Straight for the Rights of the Child Initiative, *Submission 54*, p. 2 and Victorian Aboriginal Child Care Agency Co-Op. Ltd (VACCA), *Submission 36*, p. 7.

6 Australian Childhood Foundation, *Submission 3*, p. 2.

2.12 Mr Matt Jones, a survivor, submitted that an opt-in Redress Scheme could result in only some survivors having access to redress and create an inconsistent Redress Scheme. Mr Jones recommended that NGIs should be required to participate in the Redress Scheme.[7]

*Barriers to institutional participation*

2.13 Potential participating NGIs, such as churches and sport groups, have raised a number of concerns which they argue act as barriers to opting in to the Redress Scheme.

2.14 A key barrier cited is the organisational structure of many churches in Australia, which are a conglomeration of smaller entities, who would each need to autonomously sign up to a redress program.

2.15 The Department of Social Services (Department) told the committee the preferred option would be for each of the churches to establish a single entity which would act as a national representative to the Redress Scheme for their relevant jurisdictions or service delivery organisations.[8]

2.16 The Anglican Church told the committee that it was seeking to set up such an administrative body to streamline communications about redress applications, but the legal obligation would still lie with the legal entity that has been held responsible for the abuse.[9]

2.17 The joint submission from the Anglican Church, Uniting Church and Salvation Army recommended the definition of 'Representative Organisation' within the Redress Bill be amended to accommodate the structure proposed above.[10]

2.18 Scouts Australia argued the Redress Scheme should allow for institutions to opt out at any time, particularly where institutions felt operator decisions were being made outside the original intended scope of the Redress Scheme.[11]

2.19 Additionally, Scouts Australia said it would not opt in prior to seeing the finalised policies, Rules and definitions of the Redress Scheme. The churches appearing at the same hearing—the Anglican Church, Salvation Army and Uniting Church—did not propose a similar requirement.[12]

---

7 Mr Matt Jones, *Submission 6*, pp. 1–2.

8 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 70.

9 Ms Anne Hywood, General Secretary, Anglican Church of Australia, *Committee Hansard*, 16 February 2018, pp. 61–62.

10 Anglican Church of Australia, the Salvation Army and Uniting Church in Australia, *Submission 30*, p. 1.

11 Scouts Australia, *Submission 35*, p. 5.

12 Scouts Australia, *Submission 35*, p. 5, see also *Committee Hansard*, 16 February 2018, pp. 53–65.

2.20 NGI submitters and witnesses raised a number of concerns with the Redress Scheme which they stated acted as barriers to them opting in. These issues are addressed through out chapter two and three of this report, but in summary include:

- The deed of release does not include subsidiary or third party liability.
- The 'reasonable likelihood' test for assessing sexual abuse would limit NGIs from recouping payments from insurers.
- The definition of an officer of an institution is too broad.
- The definition of sexual abuse is too broad.
- Many details governing the operation of the Redress Scheme will be contained in as yet unpublished rules, meaning details were not available to assist in deciding whether to opt in.

2.21 However, the Attorney-General, the Hon. Christian Porter, MP, criticised excuses such as these from organisations:

> …the horrific circumstances that we are now dealing with came to be because of excuses—excusing the monstrous conduct of individuals and excusing the failures and outrageous wilful blindness of the institutions. What we cannot do now, at the critical point of creating a national redress scheme, is accept any more excuses. Excuses for failing to join the scheme must end. Lingering reasons for delay are now starting to look to any independent observer as if minor details are being manifestly and deliberately used as excuses for needless delay. Excuses are what created this problem, and they should not prevent the churches, the charities, the states and the territories from joining the redress scheme.[13]

2.22 Tuart Place submitted that the unknown nature of which institutions would ultimately opt in to the Redress Scheme had the potential to 'cause secondary harm to a vulnerable population of survivors' and recommended the Australian Government stipulate a deadline for opting in to the Redress Scheme.[14]

2.23 Mr Frank Golding made a similar recommendation in his submission, stating:

> It is unconscionable to allow offending bodies to determine whether they will be held responsible for the damage they have done to children in the past. Many Care Leavers wonder why churches in particular continue to be blessed with taxation exemptions and taxpayer funded grants and other benefits, especially when they treat crimes against children as mere sins to be absolved by internal church rituals, as if the laws of the land do not apply to them. Where abuse occurred in closed institutions, where children

---

13 The Hon. Christian Porter, MP, Attorney-General, *House of Representatives Hansard*, 8 February 2018, p. 60.

14 Tuart Place, *Submission 19*, pp. 1, 5.

> were compelled by law or public policy to reside, the relevant organisations should have no choice in the matter of participation.[15]

*Committee view*

2.24 The bills currently before the committee are limited to creating a Redress Scheme for Commonwealth and territory government institutions, as well as NGIs located in the Australian Capital Territory or Northern Territory. On a strict reading of the bills, participation in the Redress Scheme by state governments and state-located NGIs is not a relevant issue for these bills.

2.25 However, the current bills are an indication of provisions that could be expected in any legislation to establish a national Redress Scheme. Submitters and witnesses have provided evidence in that light and the committee will make comment reflecting that view. Additionally, the Department has already indicated there are amendments planned to change certain provisions within these bills, or a future national scheme bill, some of which reflect recommendations being made by submitters and witnesses during the course of this inquiry.

2.26 While the committee has great sympathy for the frustration in the community at the delay by state governments and NGIs to formally agree to opt in, it is important to remember the overall goal is to establish a Redress Scheme that is survivor focused and trauma-informed. It is appropriate that NGIs are voluntary and supportive participants to ensure the redress element of a direct personal response from those NGIs is of maximum positive benefit to survivors and does not re-traumatise.

2.27 While the bills before the committee do not include a specific deadline for opting in, it is clear from evidence received that submitters and witnesses believe more could be done, via negotiations, to encourage institutions to opt in early. A range of options could be considered by the Australian Government.

2.28 The option for the Redress Scheme to include funding for legal advice for civil litigation options for survivors where the responsible institution has not elected to participate in the Redress Scheme is discussed in chapter three. It would be an incentive for NGIs to participate in the Redress Scheme as an alternative to such civil litigation.

2.29 Another consideration for the Australian and state governments is the appropriateness of government funding, contracts or financial concessions being provided to NGIs that are delivering child-related services, but are not participants in the Redress Scheme. It may be appropriate to consider participation in the Redress Scheme as part of any decision-making matrix of whether an organisation is a child-safe organisation, particularly for those with historical child sexual abuse allegations.

---

15 Mr Frank Golding OAM, *Submission 42*, pp. 5–6. The recommendation to remove non-participating institutions tax deductible charity status or otherwise mandate institutional participation was also made by Australian Lawyers Alliance, Berry Street, Mr David O'Brien, In Good Faith Foundation, and Maurice Blackburn Lawyers, among others.

2.30 The committee agrees with the opt-in nature of the Redress Scheme as the most appropriate way of ensuring government and NGI participation is a voluntarily acknowledgement of their responsibilities to provide redress to survivors.

## Responsible entity

2.31 The Redress Bill provides a definition of what constitutes responsibility for child sexual abuse, particularly when more than one entity was involved in the care or service delivery to the child.

2.32 Scouts Australia raised concerns that the Redress Bill clause 21 definition of when a participating institution is responsible for the abuse was too broad. Scouts Australia argued this may have unintended consequences, such as institutions being found responsible where abuse occurred in a totally different setting, for which the institution could not be responsible, or where the institution took all reasonable care through its policies, procedures and practices to ensure that abuse did not take place. Scouts Australia recommended a change to the definition be made to tighten the scope of responsibility.[16]

2.33 Young Men's Christian Associations of Australia (YMCA) raised similar concerns with this subclause, citing instances where some abuse may have occurred at a YMCA facility, but the remaining abuse occurred elsewhere and in circumstances where there was no connection with the institution. YMCA called for greater clarity around the definition of responsible entity.

2.34 YMCA also said that the definition of official of an institution was too broad because it includes 'member', which could be interpreted as including a member of a sporting club.[17]

2.35 The joint submission from the Anglican Church, Salvation Army and Uniting Church also discussed the use of the term 'member', arguing that attendees could be considered members and therefore 'the definition of "official" by including members means that each church could be liable as an institution through the conduct of members who are not authorised to conduct activities on behalf of the church'.[18]

2.36 The Truth Justice and Healing Council also raised similar concerns that the definition of the responsible entity for the abuse 'introduces a significant degree of subjectivity to the determination' and furthermore 'does not prescribe a standard of proof for determining responsibility when there is more than one participating institution'.[19]

2.37 The Truth Justice and Healing Council also pointed to the complex structure of the Catholic Church, where 'there will often be more than one Church authority working in a particular geographic region' and 'personnel from one Church authority

16 Scouts Australia, *Submission 35*, p. 2.

17 Young Men's Christian Associations of Australia, *Submission 37*, p. 2.

18 Anglican Church, Salvation Army and Uniting Church, *Submission 30*, p. 1.

19 Truth Justice and Healing Council, *Submission 79*, p. 5.

might work in the school or premises of another Church authority, with the latter having no direct responsibility for them'.[20]

2.38 The Anglican Church, Salvation Army and Uniting Church raised similar concerns with the definitions around when a participating institution could be held responsible for abuse, stating the current wording of the Redress Bill 'imports a moral judgment rather than objective criteria that can be applied by the Operator in a consistent, reliable and fair manner'.[21]

2.39 The Truth Justice and Healing Council further claimed the framing of clause 21 'may operate to protect governments and minimise their exposure under the Redress Scheme, both as "responsible" participating institutions and funders of last resort' and recommended 'a more transparent process to allocate degrees of responsibility between participating institutions should be included in the [Redress Scheme] Bill'.[22]

2.40 Evidence from the Minister for Social Services (Minister) outlines that the legislation has been left intentionally flexible to allow 'Independent Decision Makers' to make appropriate decisions based on their 'skillset and understanding of the survivor cohort' and who will 'make decisions on applications with highly variable levels of detail and without strict legislative guidance on what weight should be applied to the information they do receive'. Furthermore there will be processes to ensure consistency of decision making.[23]

2.41 The Department provided extensive evidence on the decision making framework for determining individual and joint institutional responsibility, which has been developed from the Royal Commission's recommendations. The Department outlined that this material is still under negotiation with state and territory governments and in consultations with NGIs.[24]

2.42 Additionally, the Minister provided extensive comment on the drafting of clause 21 to the Senate Scrutiny of Bills Committee (Scrutiny committee):

> Subclause 21(7) is intended to operate to ensure that institutions are not found responsible for abuse that occurred in circumstances where it would be unreasonable to hold the institution responsible, despite subclauses 21(2) and (3). For example, from the commencement of the Scheme, it is intended the rules will specify an institution is not responsible for child sexual abuse perpetrated by another child unless there is a reasonable likelihood that the institution mismanaged or encouraged the situation…

---

20 Truth Justice and Healing Council, *Submission 79*, p. 5.

21 Anglican Church, Salvation Army and Uniting Church, *Submission 30*, p. 2.

22 Truth Justice and Healing Council, *Submission 79*, p. 6.

23 The Hon. Christian Porter, MP, Minister for Social Services, in Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 95.

24 Department of Social Services, *Submission 27*, p. 6.

> …Until institutions opt in to the Scheme, it is not possible to envisage every possible circumstance to include in the legislation.[25]

*Committee view*

2.43 The legislation provides an appropriately flexible framework for determining the entities responsible for sexual abuse. As outlined by the Minister, Independent Decision Makers will be recruited for their expertise both in statutory decision making and in child abuse matters. If the legislation is too proscriptive about matters of institutional responsibility, it risks being inflexible and inadvertently denying redress to otherwise eligible survivors.

2.44 The committee believes the above flexibility reflects the general principles of the Redress Scheme to be survivor-focused and to avoid further harming or traumatising the survivor.

## Funding arrangements

2.45 The Redress Scheme funding arrangements follow the principle recommended by the Royal Commission that the institution in which the abuse occurred should fund the cost of redress.

2.46 To achieve this principle, Division 3 of Chapter 3 of the Redress Bill establishes that the Commonwealth will seek funding contributions from participating institutions, taking into account any joint responsibility determined through the assessment process.[26]

2.47 NGIs will be invoiced quarterly in arrears, and those funds placed into the Consolidated Revenue Fund.[27] The invoiced amount is for the 'funding contribution' which consists of the 'redress component' for the institution for a quarter and the Redress Scheme administration component for the institution for a quarter. The 'redress component' includes the institution's share of redress payments and the amount of the institution's share of providing access to counselling and psychological services to a survivor in the quarter. Internal review is not available for this decision.[28]

2.48 Funds for the purposes paying a redress payment to a person and providing counselling or psychological services to a person will be taken from the Consolidated Revenue Fund.[29]

---

25 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, p. 14.

26 Department of Social Services, *Submission 27*, p. 6.

27 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, Explanatory Memorandum (Explanatory Memorandum), p. 6.

28 Explanatory Memorandum, pp. 34–35. Subclause 32(2)(c) and 32(2)(d) of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill) provide for the Operator to determine an institution's share of the cost of a redress payment and the proportion of the institution's share of providing access to counselling and psychological services to a person, respectively.

29 Explanatory Memorandum, p. 33.

2.49 The Scrutiny committee has commented that this standing appropriation will mean 'the expenditure [of the standing appropriation] does not require regular parliamentary approval and therefore escapes parliamentary control'. The Scrutiny committee noted that where this form of funding is used, the usual practice is to provide reasoning in the Explanatory Memorandum to the bills, which was not included in this instance.[30]

2.50 The Minister responded to this concern and informed the Scrutiny committee that '[a]n Addendum to the Explanatory Memorandum will clarify this'.[31]

***Debt recovery provisions***

2.51 The Redress Bill includes provisions for the recovery of debts from individuals granted a redress payment as well as debts arising from the non-payment of invoices by participating institutions. No issues regarding this second form of debt was raised in evidence by submitters or witnesses.

2.52 Waller Legal raised concerns regarding the inclusion of debt recovery provisions in subclause 106(3) to recover redress payments made to an individual as a result of a false or misleading statement or misrepresentation. Waller Legal submitted there 'are a number of understandable circumstances where survivors, given their psychological symptoms and the fact that they were children when they were sexually abused, may make mistakes in the provision of information'. Waller Legal recommended debt recovery provisions should only be triggered where the applicant has been intentionally fraudulent.[32]

***Governments as funder of last resort***

2.53 Clause 66 and clause 67 set out the provisions as to when governments will be funders of last resort for participating NGIs. The Explanatory Memorandum outlines:

> Where there is an appropriate level of shared responsibility, it will be open to the Commonwealth or a self-governing Territory to step in to meet the cost of providing redress for survivors of that abuse. Division 2 provides the mechanism for the Minister to declare that the Commonwealth or a self-governing Territory is the funder of last resort for a non-government institution.[33]

2.54 knowmore legal service (knowmore) submitted that the Royal Commission recommendation for governments to act as a 'funder of last resort' should a responsible entity not be able to pay redress, did not include the concept of shared responsibility. knowmore argued this exclusion of universal last resort funding responsibility for governments would result in some survivors not being able to access the Redress Scheme:

---

30 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2017*, pp. 11–12.

31 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, p. 20.

32 Waller Legal, *Submission 52*, p. 22.

33 Explanatory Memorandum, p. 38.

> 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.[34]

2.55 Professor Kathleen Daly, a member of the Independent Advisory Council on Redress, told the committee that the Royal Commission recommendations were formed based on modelling undertaken by Finity Consulting, which 'included this notion that the government would be funder of last resort if an institution no longer existed'.[35]

2.56 The South Australian Commissioner for Victims Rights submitted that 'it is incumbent on institutions (such as religious organisations) and governments that violated, or were complicit in the violation, of a child's right to security of his or her person, to pay restitution. If, however, restitution is not readily available then the State—in terms of this submission, the Government of Australia—should establish a compensation (or redress) scheme'.[36]

2.57 The Department told the committee that in relation to discussions on whether the Redress Scheme should include a provision on the Commonwealth being the universal funder of last resort 'there is also a constitutional issue in terms of the Commonwealth being able to make funder of last resort payments: there has to be a connection to the Commonwealth'.[37]

2.58 In relation to how the funder of last report provisions may look in a national scheme, the Department told the committee:

> The Commonwealth bill, as it stands, is only for Commonwealth survivors and any territories that come in as part of that. I would describe the negotiations on funder of last resort at the moment as not having been completely finalised. I would say that in our negotiations with state and territory governments, and certainly from the Commonwealth government position, there is a desire to take on some responsibilities where some organisations are defunct or insolvent. The exact nature of the situation in

---

34 Mr Warren Strange, Executive Officer, knowmore legal service, *Committee Hansard,* 16 February 2018, p. 46.

35 Professor Kathleen Daly, personal capacity, *Committee Hansard,* 16 February 2018, p. 46.

36 South Australian Commissioner for Victims Rights, *Submission 72*, p. 2.

37 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Committee Hansard,* 6 March 2018, p. 72.

> which state and territory governments will take on those responsibilities and the exact drafting of those provisions are still very much not concluded.[38]

## Delegated legislation

2.59 Many submitters raised concerns about the use of delegated legislation to define aspects of the Redress Bill's application, particularly in relation to rules about eligibility and operation of the Redress Scheme. These specific concerns about the impact of individual rules are addressed in the relevant sections later in this chapter.

2.60 The use of delegated legislation within the Redress Bill was explained by the Department to be necessary for flexibility in the Redress Scheme:

> …learnings from past schemes have shown it will be necessary to adjust policy settings to mitigate against unintended outcomes. It is essential that the Scheme is flexible and adaptable to the realities of implementation, which requires some provisions to be in delegated legislation. This flexibility allows the Scheme to meet its objective of a survivor-focused and expedient process, with a lower evidentiary threshold, to ensure a survivor experience less traumatic than civil justice proceedings. Protections will be in place to balance this flexibility, including governance arrangements to provide oversight of the operation of the Scheme.[39]

2.61 While submitters and witnesses acknowledged and encouraged the need for flexibility within the Redress Scheme, many have questioned why at least some of the rules, particularly those which had already been discussed publicly by the Australian Government, were not released in any kind of draft consultation form when the Redress Bill was introduced.[40] Ms Carol Ronken of Bravehearts told the committee that the lack of visibility of the rules had made interpretation of the Redress Bill difficult:

> 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.[41]

2.62 Both the Parliamentary Joint Committee on Human Rights (Human Rights committee) and the Scrutiny committee expressed concerns about the use of delegated legislation for significant aspects of the Redress Bill.

---

38 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 6 March 2018, p. 70.

39 Department of Social Services, *Submission 27*, [p. ii].

40 Dr Cathy Kezelman AM, President, Blue Knot Foundation, *Committee Hansard,* 16 February 2018, pp. 7, 10; Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 23; Mr Neville Tompkins, National Coordinator (Redress), Scouts Australia, *Committee Hansard*, 16 February 2018, pp. 53, 59; among others.

41 Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 21.

2.63 The Human Rights committee noted that through the use of rules 'the Minister has a very broad power to determine persons to be ineligible for the scheme' under proposed clause 16 of the Redress Bill and that this may 'limit the right of survivors of sexual abuse to an effective remedy'.[42] The Human Rights committee also held concerns about rules made under clause 21, relating to determining a participating institution's responsibility for abuse; clauses 39 and 40 relating to the provision of legal advice for survivors during the redress application process; and clause 77 relating to the sharing of information and right to privacy. In each instance, the Human Rights committee has expressed an intention to consider the 'human rights compatibility of the proposed rules…when they are received'.[43]

2.64 The Scrutiny committee questioned the used of rules particularly in relation to clause 16, about survivors' eligibility for redress; clauses 21, 22, 23, 25 and 26, about participating institutions, their inclusion and responsibilities; and clause 34, which gives the Minister power to decide the assessment matrix by which payments for redress are to be decided.[44]

2.65 The Scrutiny committee raised the appropriateness of these significant matters being determined by legislative rules, rather than regulations:

> In relation to this matter, the committee has noted that regulations are subject to a higher level of executive scrutiny than other instruments as regulations must be approved by the Federal Executive Council and must also be drafted by the Office of Parliamentary Counsel (OPC). Therefore, if significant matters are to be provided for in delegated legislation (rather than primary legislation) the committee considers they should at least be provided for in regulations, rather than other forms of delegated legislation which are subject to a lower level of executive scrutiny.[45]

2.66 The Minister addressed the use of rules rather than regulations in his response to the Scrutiny committee, explaining that:

> Using rules rather than regulations or incorporating all elements of the Scheme in the Commonwealth Bill, provides appropriate flexibility and enables the Scheme to respond to factual matters as they arise. It is uncertain how many applications for redress the Scheme will receive at the commencement of the Scheme, and whether there will be unforeseen issues requiring prompt responses. It is therefore appropriate that aspects of the Scheme be covered by rules that can be adapted and modified in a timely manner. The need to respond quickly to survivor needs is also a key feature of the Scheme as many survivors have waited decades for recognition and justice.[46]

---

42 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 79–80.

43 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 73–93.

44 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017.*

45 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017,* p. 10.

46 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017,* p. 16.

2.67 The Law Council of Australia (Law Council) drew upon the Scrutiny committee's report in its submission and, while accepting 'that there is a need for a reliance on legislative instruments to provide the flexibility for the Scheme',[47] explained that:

> …it is extremely difficult to meaningfully assess the appropriateness of the Scheme without additional detail on important matters such as rules regarding eligibility and institutional responsibility…the Law Council considers it inappropriate to delegate eligibility for redress and institutional responsibility to subordinate legislation and recommends that such matters are dealt with in primary legislation.[48]

2.68 Professor Kathleen Daly agreed that there is a need for flexibility within the Redress Scheme and that the use of rules would achieve this goal. However, she also expressed some reservations about scrutiny of the rules being made and recommended an oversight approach:

> If you trust the operator to do the right thing then it's okay, but we don't know right now, do we? So that's the question. Perhaps there could be some oversighting body in the early days that gave more parliamentary oversight without all the heavy weight of parliamentary oversight….you could expedite reviews and so forth….The question is [whether] the parliament would be most comfortable with the exercise of that, and whether there'd be some other route of oversight that permitted rules but some oversighting body that could be deliberative on some of those decisions.[49]

### *Uncertainty about rules is inhibiting opt in*

2.69 There is evidence that a lack of clarity around potential rules is one of the factors currently inhibiting opt in from states and participating institutions.

2.70 The Catholic Church's Truth Justice and Healing Council explained in its submission that:

> Given the significant implications of the Rules on both the operation and conduct of the scheme, it is appropriate that the Rules are made available to all stakeholders for consideration as soon as possible.[50]

2.71 Following the announcement that Victoria and New South Wales were intending to join a national scheme, Mr Francis Sullivan, Chief Executive Officer of the Truth Justice and Healing Council, told media that it is the Catholic Church's intention to join a national redress scheme once information about rules and the scheme's operation is available and has been reviewed. Mr Sullivan also stated that he believed that information about the scheme rules was being provided to some states

---

47 Law Council of Australia, *Submission 82*, p. 8.

48 Law Council of Australia, *Submission 82*, pp. 8–9.

49 Professor Kathleen Daly, *Committee Hansard*, 16 February 2018, p. 45.

50 Truth Justice and Healing Council, *Submission 79*, p. 4.

only and that other states, churches, charities and NGIs had not 'been party to the information that Victoria and New South Wales have got'.[51]

2.72 At the hearing on 16 February 2018, representatives from potential participant organisations also expressed their intention to join a national redress scheme, but that various steps first needed to be taken for this to happen. Mr Neville Tomkins of Scouts Australia went so far as to tell the committee that if it was not able to see the proposed rules before the 1 July 2018 opt in deadline:

> …then I don't believe Scouts Australia or its incorporated bodies, its branches, will make a final decision to opt in. Putting it more sharply, I would say Scouts Australia would not wish to make a final decision without seeing the final legislation, the rules and the implementation guidelines.[52]

2.73 The Anglican Church of Australia indicated that while it would not require the details of the rules before opting in to the Redress Scheme, a memorandum of understanding with the Department setting out how the rules and the Redress Scheme would operate would be 'the instrument by which [the Anglican Church] would opt in'.[53] This position was shared by the Salvation Army of Australia.[54]

2.74 The Uniting Church of Australia expressed an interest in seeing an updated assessment matrix (which would be prescribed by rule under clause 34 of the Redress Bill) before opting in.[55]

2.75 The Department provided context around the use of rules in the Redress Scheme, citing the need for flexibility to adapt to emerging and unforeseen circumstances, including the development of a national Redress Scheme:

> If a National Bill can be achieved, the scale of this Scheme will be larger than other state-based schemes or overseas experiences, with greater coverage, scale and participating institutions than these other schemes (for example, the Irish Redress Scheme only included the Catholic Church). This is the reason many provisions of the Scheme are framed flexibly, to account for an unconfirmed number of survivors, institutional contexts and other circumstances that may arise.
>
> Further, learnings from past schemes have shown it will be necessary to adjust policy settings to mitigate against unintended outcomes. It is essential that the Scheme is flexible and adaptable to the realities of implementation, which requires some provisions to be in delegated legislation. This flexibility allows the Scheme to meet its objective of a

---

51 Mr Francis Sullivan, *ABC News at Noon*, 12 March 2018.

52 Mr Neville Tomkins, Scouts Australia, *Committee Hansard*, 16 February 2018, p. 60.

53 Mr Garth Blake AM SC, Chair, Royal Commission Working Group, Anglican Church of Australia, *Committee Hansard*, 16 February 2018, pp. 60, 62.

54 Mr Luke Geary, Solicitor, The Salvation Army Australia, *Committee Hansard*, 16 February 2018, p. 60.

55 Ms Katrina Gillies, Member, National Redress Task Group, Uniting Church in Australia, *Committee Hansard*, 16 February 2018, p. 60.

> survivor-focused and expedient process, with a lower evidentiary threshold, to ensure a survivor experience less traumatic than civil justice proceedings.[56]

2.76 The Department went on to refer to the governance arrangements that will be put in place to balance flexibility with oversight. As outlined in chapter one these include a Ministerial Redress Scheme Board of Ministers from participating state and territory governments, which must agree to any legislative or key policy changes required over time, and a Redress Scheme Committee will provide the scheme operator with advice on key operational and implementation matters of the Scheme.[57]

*Committee view*

2.77 In order to achieve the goals of flexibility and adaptability, a number of aspects of the Redress Scheme will be governed by rules and other delegated legislation. The committee notes the responses from the Minister and the Department indicate that flexibility is being sought to ensure that the scheme remains survivor-focused, and that highly prescriptive rules do not inadvertently make survivors ineligible for redress.

2.78 The committee is satisfied that the use of delegated legislation in this bill is appropriate to achieve these goals.

2.79 The committee also recognises that there is a balance to be found in providing flexibility to improve and adapt a scheme throughout its implementation, and in providing sufficient information for survivors, institutions and state governments about the intentions of the bill.

2.80 Recognising the difficulty of stakeholder engagement in an ever-changing landscape where negotiations are continuing with state governments and NGIs, the committee is of the view that continued early and open communication from the Department will reassure survivors, their families and their advocates.

## Entitlement and eligibility criteria

2.81 Eligibility for redress under the proposed scheme is a key component of the Redress Bill, with Part 2-2 setting out who can be provided with redress and what this redress can include.

2.82 The committee heard evidence that survivors' eligibility for the scheme is a major concern for many survivors and their representative organisations.

2.83 It has been noted that many survivors do not understand that they are not eligible for the scheme in the Redress Bill, either because of the geographic limitations of the Commonwealth scheme or due to confusion around the definitions

---

56 Department of Social Services, *Submission 27*, [p. 2].

57 Department of Social Services, *Submission 27*, [p. 2].

of eligibility proposed by the Redress Scheme.[58] Mr Boris Kaspiev from the Alliance for Forgotten Australians told the committee:

> We believe that a lot of survivors, forgotten Australians, don't understand the complex politics between Commonwealth and state, and therefore people have this idea that they're going to get $150,000, that this is going to be a wonderful year. And, as the understanding of this starts to hit home, the despair among the people we represent is deep, traumatic and extraordinary.[59]

### *Standard of proof*

2.84 Clause 15 of the Redress Bill provides the conditions by which a person is entitled to redress. Paragraph 15(2)(b) provides that a person is entitled if 'the Operator considers that there is a reasonable likelihood that the person is eligible for redress under the scheme'.[60] Eligibility criteria are discussed further below.

2.85 The test of 'reasonable likelihood' will be the standard applied to assess applications under the scheme. In the Explanatory Memorandum, the definition of 'reasonable likelihood' in common law is understood as:

> …the chance of an event occurring or not occurring which is real – not fanciful or remote.[61]

2.86 While many submitters have praised using this standard of proof in the Redress Bill,[62] some NGIs have recommended that the scheme use the civil standard of 'balance of probabilities' instead.

2.87 The Catholic Church has applied the 'balance of probabilities' test to its redress schemes *Towards Healing* and *The Melbourne Response* and noted that the 'vast majority' of applications to those schemes were able to satisfy that test.[63] Mr Francis Sullivan, representing the Catholic Church Truth Justice and Healing Council, explained that insurance companies pay out in their policies where the test of 'balance of probabilities' is applied and that some institutions may not be willing to sign up to a redress scheme where their insurance companies will not pay out on the

---

58 Mrs Laurel Sellers, CEO, Yorgum Aboriginal Corporation, *Committee Hansard*, 16 February 2018, p. 1; Mr Boris Kaspiev, Executive Officer, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 14; Mr Duncan Storrar, Board Member, Victorian Kids In Care Advocacy Service, *Committee Hansard*, 16 February 2018, p. 50; Mr Mark King, *Committee Hansard*, 16 February 2018, p. 51; among others.

59 Mr Boris Kaspiev, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 14.

60 Redress Bill, paragraph 15(2)(b).

61 Explanatory Memorandum, p. 12.

62 Australian Lawyers Alliance, *Submission 47*, p. 4; Australian Human Rights Commission, *Submission 32*, p. 3; Ms Leonie Sheedy, Chief Executive Officer, CLAN, *Committee Hansard,* 6 March 2018, p. 21.

63 Truth Justice and Healing Council, *Submission 79*, p. 13.

lower threshold of 'reasonable likelihood', as NGIs and churches will be unable to recoup their Redress Scheme payments via their insurance coverage.[64]

2.88 Scouts Australia also addressed this concern about 'balance of probabilities' and insurance coverage for claims, noting that insurers will need to be satisfied as to the veracity of an applicant's claim and that the 'reasonable likelihood' test is lower than the standard of proof required by civil litigation.[65]

2.89 The Department explained in its submission that the scheme has been designed to be survivor focused, having a 'lower evidentiary threshold…than civil proceedings' in order to minimise survivor trauma and to expedite the decision-making process:[66]

> …the Scheme will not be legalistic in nature. The Scheme offers survivors an alternative to civil litigation with a lower evidentiary burden and a high level of beneficial discretion. The Scheme aims to have the needs of survivors at the core and to avoid further harm or re-traumatisation of survivors.[67]

2.90 Furthermore, at the hearing on 6 March 2018, the Department assured the committee that the Government was not considering raising the standard of proof required in the scheme:

> The primary reason is that this is supposed to be different from a court process. Many people have reported to us difficulties that they have in accessing records to be able to meet that kind of test, and there are many other issues that have come through from survivors. So there is no intention at this stage to change that.[68]

*Committee view*

2.91 The committee believes that the standard of proof required by the Redress Scheme achieves the goals of survivor focus and harm minimisation. It is intended to provide access to people who may not have the evidence available to them at levels required for civil litigation.

2.92 These bills do not consider how individual institutions which opt in to the Redress Scheme will fund their redress obligations. Whether or not an institution's insurance will pay out on a claim based on the evidence provided to the Redress Scheme—thereby limiting the financial exposure of the responsible institution—is irrelevant to the overarching goal to provide redress to survivors of child sexual abuse, and that the Redress Scheme should be survivor-focused.

---

64 Mr Francis Sullivan, Chief Executive Officer, Truth Justice and Healing Council, *Committee Hansard,* 6 March 2018, p. 62.

65 Mr Neville Tomkins, Scouts Australia, *Committee Hansard*, 16 February 2018, pp. 56–57.

66 Department of Social Services, *Submission 27*, [p. ii].

67 Department of Social Services, *Submission 27*, p. 9.

68 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 6 March 2018, p. 76.

***Who is eligible under the scheme?***

2.93 Clause 16, which defines when a person is eligible for redress, was subject to significant discussion across the course of this injury.

2.94 Subclause 16(1) provides that a person is eligible for redress if:

(a) the person was sexually abused; and

(b) the sexual abuse is within the scope of the scheme (i.e. occurred when the person was a child, inside or outside of Australia, before the start of the scheme, a participating institution was responsible); and

(c) the person is an Australian citizen or a permanent resident at the time the person applies for redress.[69]

2.95 Subclause 16(2) provides that eligibility for redress can also be prescribed by rules, while subclause 16(3) provides that rules can prescribe a person *not* eligible regardless of the provisions under subclauses (1) and (2).[70]

2.96 As discussed earlier in this chapter, rules proposed under subclauses (2) and (3) have not been released to date.

2.97 However, the Explanatory Memorandum declares an intention that, on commencement of the Redress Scheme, rules under 16(2) will prescribe eligibility for former child migrants who are non-citizens and non-permanent residents;[71] non-citizens and non-permanent residents currently living in Australia; and former Australian citizens and permanent residents.[72] It should be noted that some submitters have recommended these rules be included in the primary legislation.[73]

2.98 Furthermore, the Australian Government has signalled its intention to exclude under 16(3) any survivors 'convicted of any sexual offence or another serious crime, such as serious drug, homicide or fraud offences for which they received a custodial sentence of five or more years'.[74]

2.99 These proposed rules, as well as other concerns about eligibility criteria, will be discussed in further detail below.

---

69 Redress Bill, subclause 16(1).

70 Redress Bill, subclause 16(2) and (3).

71 It is estimated that around 7000 children arrived in Australia through child migration schemes before 1970; Department of Social Services, *Answers to questions on notice,* 16 February 2018, p. 20 (received 2 March 2018).

72 Explanatory Memorandum, p. 13.

73 Law Council of Australia, *Submission 82*, p. 27; knowmore legal service, *Submission 31*, p. 4; Maurice Blackburn Lawyers, *Submission 28*, p. 2; among others.

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

***Sexual abuse and other forms of child abuse***

2.100 The definition of sexual abuse, the application of this definition, and the exclusion of other forms of child abuse has been raised in relation to survivors' eligibility for the scheme.

*Definition of sexual abuse*

2.101 Submitters have raised concerns about how the interpretation of the definition of sexual abuse in the Redress Bill could affect survivor's access to redress. In the Redress Bill, sexual abuse of a child is defined as including:

> …any act which exposes the person to, or involves the person in, sexual processes beyond the person's understanding or contrary to accepted community standards (e.g. exposing a child to pornography).[75]

2.102 As claims of abuse will be subject to interpretation under that definition, Shine Lawyers remarked that circumstances understood to be sexual abuse consistent with non-legalistic decisions could be found to not meet the requirements under the Redress Scheme and, as the Redress Scheme as proposed does not allow for external review, a rejection of a claim for redress in such a circumstance could cause further trauma for a survivor.[76]

2.103 YMCA also expressed the opinion that the definition in the Redress Bill 'may be open to varying determinations particularly when interpreting the terms "person's understanding" and "accepted community standards"' and recommended in its submission that the Redress Bill be amended to include the full definition used by the Royal Commission, including the description of sexually abusive behaviours.[77] That definition is as follows:

> Any act which exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards. Sexually abusive behaviours can include the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism, and exposing the child to or involving the child in pornography. It includes child grooming, which refers to actions deliberately undertaken with the aim of befriending and establishing an emotional connection with a child, to lower the child's inhibitions in preparation for sexual activity with the child.[78]

*Including survivors of other forms of child abuse under the scheme*

2.104 In the Redress Bill, a note to subclause 16(1) explains that:

---

75 Redress Bill, clause 9.

76 Shine Lawyers, *Submission 25*, [p. 4].

77 Young Men's Christian Associations of Australia, *Submission 37*, p. 2.

78 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report* (Royal Commission Report)*, Volume 2: Nature and Cause*, December 2017, p. 9.

> To be eligible for redress, a person must have been sexually abused. However, redress is for the sexual abuse, and related non-sexual abuse, of the person that is within the scope of the scheme.[79]

2.105 The Explanatory Memorandum explains this provision further:

> The survivor may also have suffered non-sexual abuse in connection with the child sexual abuse, which could include physical abuse, psychological abuse and neglect. Non-sexual abuse will be taken into consideration as an aggravating factor that contributed to the severity of the sexual abuse suffered.[80]

2.106 Many submitters raised concerns that the scheme as proposed in the Redress Bill only offers redress to survivors of sexual abuse, not survivors of non-sexual forms of child abuse such as physical, psychological or cultural abuse or neglect, and many have recommended that survivors of these other forms of abuse be made eligible for redress under this or another scheme.[81]

2.107 There have been a number of significant inquiries about the impact of institutional child abuse on the lives of survivors recommending reparations or redress schemes for this population, including *Bringing them home: The 'Stolen Children' report* (1997, Human Rights and Equal Opportunity Commission), *Lost Innocents: Righting the Record—Report on child migration* (2001, Senate Community Affairs References Committee) and *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children* (2004, Senate Community Affairs References Committee). Notably, the *Forgotten Australians* report made a key recommendation that a national reparation fund be founded for all survivors of institutional abuse.[82]

2.108 The Royal Commission was bound to the terms of its Letters Patent and was not able consider redress for:

> …those who have suffered physical abuse or neglect, or emotional or cultural abuse, if they have not also suffered child sexual abuse in an institutional context. Also…those who were in state care, who were child migrants or who are members of the Stolen Generations, regardless of whether they suffered any child sexual abuse in an institutional context.[83]

---

79 Redress Bill, subclause 16(1).

80 Explanatory Memorandum, p. 5.

81 CLAN, *Submission 60,* pp. 3–5; Alliance for Forgotten Australians, *Submission 2,* pp. 2–3; Tuart Place, *Submission 19*, p. 5; Mary Brownlee, Independent Advocate for Forgotten Australians, *Submission 45*, p. 1; Berry Street, *Submission 58*, p. 6; Historical Abuse Network, *Submission 64,* [p. 2]; Law Council of Australia, *Submission 82*, p. 7; Open Place, *Submission 61*, pp. 3–4; among others.

82 Senate Community Affairs References Committee, *Forgotten Australians*: *A report on Australians who experienced institutional or out-of-home care as children*, August 2004, p. xx.

83 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Royal Commission Redress Report), September 2015, p. 6.

2.109 However, the Royal Commission did not preclude the idea that a national redress scheme could be open to all survivors of institutional child abuse and noted that 'most previous and current redress schemes cover at least sexual and physical abuse. Some also cover emotional abuse or neglect'.[84] Furthermore, the Royal Commission:

> …[did] not discourage those who establish a redress scheme for survivors of institutional child sexual abuse from also providing redress for persons who have suffered other forms of institutional abuse or neglect but not institutional child sexual abuse or for particular groups regardless of particular experiences of abuse.[85]

2.110 The Alliance for Forgotten Australians described how a divide between the treatment of survivors of sexual abuse and survivors of other abuse had been a concern before the establishment of the Royal Commission, and could have a re-traumatising effect:

> When we advocated for a royal commission, and we did for many years, we wanted a royal commission into institutional care. What we got was one into institutional sexual abuse, as you know. That was a big step forward for many of us, because many of our people were sexually abused. However, many weren't, and the divide is huge. It makes people feel, yet again, like they felt as children: 'you're eligible for adoption, because you're attractive; you're not, because you're ugly.' That sort of stuff sits with people forever.[86]

2.111 Mr Frank Golding, a member of Care Leavers Australasia Network (CLAN) and a survivor, shared a similar view, noting that the scheme also has 'the unintended consequence of setting up a hierarchy of suffering which in itself has been traumatic for people who were abused in other ways'.[87]

2.112 Dr Philippa White, Director of Tuart Place, explained how considering other forms of institutional child abuse is particularly important in the survivor population who had been in state care in the wake of these previous inquiries:

> …if it's a child in the care of the state in a closed institutional setting, then it's dismissive of the rest of their experiences to only recognise sexual abuse, and it will set up hierarchies within a group of people who've been encouraged to form a collective identity through the [Forgotten Australians] Senate inquiry and the [Lost Innocents] child migrant inquiry. These are a group of people who have been brought together and told, 'You are one.' They're a diverse-needs group for the purposes of aged care. They have a collective identity. Yet now you just want do pick out sexual abuse as being the only relevant type of abuse? What was the forgotten Australians inquiry

---

84 Royal Commission Redress Report, p. 100.

85 Royal Commission Redress Report, p. 103.

86 Ms Caroline Carroll, Chair, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 16.

87 Mr Frank Golding OAM, *Submission 42,* p. 3.

> all about? What was that Senate inquiry for if now only sexual abuse is looked at? It's not appropriate for people who were in care.[88]

2.113 Many submitters and witnesses also raised concerns that cases of abuse that are solely non-sexual are being excluded from the scheme despite the fact that these other forms of abuse would be considered by the scheme in conjunction with a claim of sexual abuse.[89]

2.114 The Catholic Church Truth Justice and Healing Council took a different approach to many other submitters, explaining to the committee that the Catholic Church had been seeking a redress scheme exclusively related to child sexual abuse, as per the Royal Commission terms of reference, but that it was 'prepared to live with that compromise on the grounds that advice that came back, albeit anecdotal, was that some individuals have had experiences of sexual and nonsexual abuse as part of a whole episode in their life of abuse'.[90] In relation to this point however, the committee notes that the Royal Commission did consider that 'other unlawful or improper treatment, such as physical abuse, neglect or emotional or cultural abuse, may have accompanied the sexual abuse'.[91]

*Committee view*

2.115 The committee acknowledges the concerns of members of the Forgotten Australians and Stolen Generations, as well as other survivors of physical, psychological, emotional and cultural abuse in care, about their ineligibility for redress under the proposed Redress Scheme.

2.116 The committee is aware of the deep and abiding impacts that non-sexual abuse has had on the lives of survivors, particularly care-leavers.

2.117 While the committee is strongly supportive of the establishment of this Redress Scheme to address historic cases of institutional child sexual abuse, the committee is also of the view that the impacts of non-sexual abuse require greater thought and focus from all levels of government and Australian society in general.

### *Citizenship and residency status*

2.118 The Redress Bill proposes to limit eligibility for the Redress Scheme to Australian citizens or permanent residents at the time the applicant applies for redress. The Explanatory Memorandum explains that the citizenship and residency status requirements under proposed paragraph 16(1)(c) have been included in the bill:

> …to mitigate the risk of fraudulent claims and to maintain the integrity of the Scheme. It would be very difficult to verify the identity of those who are not citizens, permanent residents or within the other classes who may be specified

---

88 Dr Philippa White, Director, Tuart Place, *Committee Hansard,* 16 February 2018, p. 29.

89 Mr Frank Golding OAM, *Submission 42,* p. 2; CLAN, *Submission 60*, p. 3; among others.

90 Mr Francis Sullivan, Truth Justice and Healing Council, *Committee Hansard,* 6 March 2018, p. 63.

91 Royal Commission Redress Report, p. 102.

> in the Rules. Removing citizenship requirements would likely result in a large volume of fraudulent claims which would impact application timeliness for survivors.[92]

2.119 Despite this explanation and the intended rules to grant eligibility to certain non-citizen and non-resident groups as detailed earlier in this chapter, a number of issues with this proposed paragraph have been raised.

2.120 Many submitters shared the view that any person who was abused as a child while in the care of any Australian government, institution or organisation should be entitled to redress regardless of their citizenship or residency status. Submitters argued the proposed restriction goes against the findings of the Royal Commission, which saw no need to implement any citizenship or residency requirement.[93] These submitters recommended that, for this reason, proposed paragraph 16(1)(c) should be removed from the Redress Bill.[94]

2.121 Maurice Blackburn Lawyers commented that 'an applicant would still need to satisfy the entitlement requirements set out in subclause 15 of the draft legislation' and that fraudulent applications, regardless of citizenship or residency status, would not make it past that point. Furthermore, Maurice Blackburn Lawyers noted that:

> Nowhere in Volume 15 of the Final Report, nor in the Redress and Civil Litigation Report have the Royal Commissioners articulated that an inability to identify abuse victims (thereby opening the scheme up to 'a large number of fraudulent claims') may be an issue in relation to the integrity of the scheme.[95]

2.122 The Australian Human Rights Commission suggested that the integrity of the scheme could be better protected from fraud:

> …by the Minister prescribing rules that make vexatious applications ineligible for redress, rather than prescribing rules that confer eligibility upon multiple additional classes of people in response to a blanket restriction on non-citizens or non-permanent residents from accessing the Scheme.[96]

2.123 The Human Rights committee also discussed this matter in its reports about the bills, questioning whether 'the restriction on non-citizens' and non-permanent residents' eligibility for redress under the scheme is aimed at achieving a legitimate

---

92 Explanatory Memorandum, p. 13; see also Department of Social Services, *Submission 27*, pp. 3–4.

93 Royal Commission Redress Report, p. 347.

94 Bravehearts Foundation, *Submission 26*, [p. 2]; Maurice Blackburn Lawyers, *Submission 28*, p. 4; Anglican Church of Australia, Salvation Army Australia, and Uniting Church in Australia, *Submission 30*, p. 1; knowmore legal service, *Submission 31*, p. 24; Australian Human Rights Commission, *Submission 32*, p. 4; Child Migrants Trust, *Submission 33*, p. 2; Australian Lawyers Alliance, *Submission 47*, p. 7.

95 Maurice Blackburn Lawyers, *Submission 28*, p. 4.

96 Australian Human Rights Commission, *Submission 32*, p. 6.

objective for the purposes of human rights law', the efficacy of such a measure, and whether this measure is proportionate to the aim of avoiding fraud.[97] The Human Rights committee found that:

> …restricting the eligibility of noncitizens and non-permanent residents engages and limits the right to equality and non-discrimination. While the measure pursues a legitimate objective, there are concerns that the breadth of the restriction on the eligibility of all non-citizens and non-permanent residents may not be proportionate. However, setting out further classes of persons who may be eligible in the proposed redress scheme rules, including those who would otherwise be excluded due to not being citizens or permanent residents, may be capable of addressing these concerns.[98]

2.124 Submitters also identified categories of non-citizens and non-permanent residents who they believed should be eligible under the scheme, but are not currently eligible in accordance with the proposed bill or rules.

2.125 Some survivors of institutional child sex abuse, who have later been subject to criminal conviction, have had their permanent residency revoked on character grounds by the Department of Home Affairs under section 501 of the *Migration Act 1958.*[99] This group of survivors could be doubly ineligible under the scheme as it stands, both by reason of residency status and by reason of criminal history (which is discussed later in this chapter).[100]

2.126 Citizenship and residency requirements may also make redress unavailable to survivors of child sexual abuse which occurred in Australian immigration detention facilities.[101] These facilities were identified by the Royal Commission as places where abuse occurred and the Royal Commission Report made a number of specific recommendations in relation to immigration detention.[102] It appears that proposed rules for eligibility for non-citizens and non-permanent residents are unlikely to capture this group of survivors, as the Australian Lawyers Alliance explained:

> Asylum seekers or refugees living in the Australian community on temporary protection visas (TPVs) or bridging visas (BVs) will be directly affected by this lack of clarity. There will be others who sought asylum from, or were granted refugee status by, Australia who are not currently in Australia…whose eligibility also remains in doubt.…This group will of course include those who have tried to seek asylum from Australia but have

---

97 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 74–76.

98 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 78.

99 knowmore legal service, *Submission 31*, p. 23; Australian Lawyers Alliance, *Submission 47*, p. 8; Maurice Blackburn Lawyers, *Submission 28*, p. 4.

100 knowmore legal service, *Submission 31*, p. 23.

101 Maurice Blackburn Lawyers, *Submission 28*, p. 3; Angela Sdrinis Legal, *Submission 46*, pp. 4–5; Australian Association of Social Workers, *Submission 76,* p. 4; Law Society of NSW, *Submission 90,* [pp. 1–3]; among others.

102 Royal Commission Report, *Recommendations*, pp. 48–49.

> been prevented from doing so, even though they have been detained and sexually abused in Australian-run facilities abroad.[103]

2.127 In relation to the issue of eligibility and temporary visas, the Department of Home Affairs submitted that if the rules for eligibility were expanded to include those on such visas, this would have significant financial consequences for the Commonwealth:

> If the Rules were to expand the eligibility for redress under the Redress Scheme beyond Australian citizens and permanent residents to all temporary visa holders or certain temporary visa holders, the Department's financial exposure to liability under the Redress Scheme is likely to increase significantly. This is because the institutional settings for which the Department is likely to be responsible will generally involve unlawful non-citizens, who may or may not have become permanent residents or Australian citizens by the time they make their applications. Extending the Redress Scheme to such people would possibly mean the Department (on behalf of the Commonwealth) would be exposed to making a larger number of redress payments under the Redress Scheme.[104]

2.128 However, as discussed in the earlier section of this chapter on delegated legislation, the Explanatory Memorandum declares an intention that, on commencement of the Redress Scheme, rules under 16(2) will prescribe eligibility for 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. Many of the cohorts of non-citizen survivors raised as a concern by submitters would be made eligible by such a rule.

*Committee view*

2.129 The committee recognises that, as the Redress Scheme Rules are not yet published, there is some confusion and worry among survivors, their advocates and community organisations about individuals' eligibility to apply for redress, particularly in relation to citizenship and residency status.

2.130 The Australian Government has committed to opening the scheme to child migrants, former Australian citizens and permanent residents, and non-citizens and non-permanent residents living in Australia.

2.131 The committee recognises that the reality of people's citizenship and residency circumstances may not always be clearly captured by the rules. However, the flexibility offered by Redress Scheme Rules means a robust scheme for survivors, with the ability to prescribe eligibility for those whose eligibility is otherwise unclear.

2.132 Notwithstanding this, greater clarity from the Department on the intended rule regarding non-citizen eligibility would assist survivors and their advocates to understand the intended cohorts who will be eligible for redress.

---

103 Australian Lawyers Alliance, *Submission 47.1*, pp. 7–8.

104 Department of Home Affairs, *Submission 83*, p. 4.

### *Criminal convictions*

2.133 While not addressed in either the Redress Bill or Explanatory Memorandum, there has been significant debate in relation to a proposal to prescribe a rule excluding survivors with certain criminal convictions from the Redress Scheme.

2.134 In its submission, the Department confirmed that survivors 'convicted of any sexual offence or another serious crime, such as serious drug, homicide or fraud offences for which they received a custodial sentence of five or more years' would be excluded from the Redress Scheme by means of a rule prescribed under proposed subclause 16(3) of the bill.[105] The Department explained that this decision had been made by government in consultation with the state and territory ministers responsible for redress,[106] and that:

> The decision was made that in order to maximise the integrity of and public confidence in the Scheme, there had to be some limitations on applications from people who themselves had committed serious offences, particularly sexual offences.
>
> State and territory Ministers were of the strong view that excluding some people based on serious criminal offences is necessary to ensure the Scheme is not using taxpayer money to pay redress to those whose actions may not meet prevailing community standards.
>
> As this is a significant eligibility criterion for the Scheme, a provision determining the eligibility of survivors with criminal convictions will also be included in the National Bill.[107]

2.135 However, evidence presented to the committee suggests that no other Commonwealth compensation scheme or financial relief payment for other survivor or victim cohorts (such as the Defence Abuse Reparation Scheme, Drought Relief Assistance Scheme, the Australian Victim of Terrorism Overseas Payment or the Australian Government Disaster Recovery Payment) holds any eligibility restriction on access based on criminal conviction or similar character grounds.[108]

2.136 It should also be noted the Australian Capital Territory Government has argued against the exclusion of survivors who have spent time in jail for serious crimes.[109]

---

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

106 Department of Social Services, *Answers to questions on notice,* 16 February 2018, p. 23 *(received 2 March 2018).*

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

108 Tuart Place, *Submission 19*, p. 4; Professor Kathleen Daly, *Committee Hansard,* 16 February 2018, p. 43; Ms Jennifer Jacomb, Secretary, Victims of Abuse in the Australian Defence Force Association Inc., *Committee Hansard*, 6 March 2018, p. 30.

109 Katie Burgess, 'ACT Attorney-General Gordon Ramsay says national redress scheme should not divide survivors into "classes"', Canberra Times, 20 December 2017.

2.137 Professor Kathleen Daly noted that differences in sentencing practices would make criminal conviction exclusions difficult in practice:

> In our sentencing system, if you're setting a minimum period of imprisonment as the exclusion, you don't get the same offence 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.[110]

2.138 knowmore raised a similar concern regarding the jurisdictional differences in the operation of spent convictions:

> One area of inevitable inconsistency arises around 'spent convictions'. Will *'a conviction for a sexual offence'* include convictions which are legally to be regarded as 'spent' under a relevant State or Territory law? If so, there are differences as to how the various jurisdictions approach convictions for sexual offences. Victoria does not even have a spent convictions scheme. Unfairness will arise with survivors having similar criminal histories either included or excluded from access merely because of the location of where they were charged.[111]

2.139 knowmore went on to raise its concern that if criminal exclusions were included in the Redress Scheme, state or institutional redress schemes would likely follow suit 'thus effectively closing the door on redress as a justice-seeking option for any offender in the abovementioned categories'.[112]

2.140 The Department noted that exclusion from the scheme would still be subject to the discretion of the operator. This would allow people to be deemed eligible by rule under 16(2) even if otherwise ineligible by rule under 16(3), and would allow the operator to take into consideration issues of jurisdictional differences, such as mandatory minimum sentencing, in the equitable application of the proposed rule.[113]

2.141 The Department also explained that in 'exceptional cases' where an applicant has a criminal conviction below the threshold proposed, and where granting redress to a person with that conviction 'would affect the integrity and public confidence in the Scheme', another rule could be prescribed under 16(3) to prevent their eligibility.[114]

2.142 The Minister, in his response to the Human Rights committee report on the Redress Bill, indicated that the limitation on eligibility for persons with criminal convictions will be included in the primary legislation of any national bill for the

---

110 Professor Kathleen Daly, *Committee Hansard,* 16 February 2018, p. 43.

111 knowmore legal service, *Submission 31*, p. 17.

112 knowmore legal service, *Submission 31*, p. 19.

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

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

redress scheme.[115] This was also confirmed by the Department at the hearing on 6 March 2018.[116]

2.143 Nearly all submitters and witnesses to this inquiry recommended that survivors not be excluded from the Redress Scheme due to criminal offending or convictions.

2.144 Shine Lawyers were also not convinced that excluding this population would protect the integrity of the scheme, as:

> …it would stand in contrast with the integrity of a redress scheme if all affected survivors pursued civil litigation instead of seeking redress.[117]

*The impact of childhood abuse on future offending*

2.145 The Royal Commission noted in its final report that there is a 'growing body of research that examines a potential relationship between child sexual abuse and subsequent criminal offending', and that while the majority of survivors do not commit crimes, there is a higher prevalence of offending in this group when compared with the general population.[118] The Australian Institute of Criminology found in 2012 that survivors of sexual abuse were five times more likely to be charged with an offence than their peers, while research in Victoria in 2007 found that 21 per cent of children aged 10 years or older, living in out-of-home care, had experienced police contact in the preceding six months.[119]

2.146 The Royal Commission found that the reasons why survivors engaged in criminal behaviour were complex and related to 'various social, cultural, institutional and family factors in their lives at the time of abuse and following the abuse, including disadvantage, maltreatment and trauma'.[120] Submitters and witnesses also described how the impact of institutional child sexual abuse and other child abuse could be a reason for offending.[121]

2.147 The Royal Commission held a total of 722 private sessions to allow prison inmates to share their experiences, including 493 face-to-face sessions in prisons. This represented just over 1 in 10 of all survivors heard in private sessions across the Royal

---

115 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 81.

116 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 6 March 2018, pp. 73–74.

117 Shine Lawyers, *Submission 25*, [p. 9].

118 Royal Commission Report, *Volume 3: Impacts,* pp. 143–146.

119 Ryan Carlisle Thomas, *Submission 5*, p. 3.

120 Royal Commission Report, *Volume 3: Impacts,* pp. 143–146.

121 Dr Cathy Kezelman AM, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 7; Bravehearts Foundation, *Submission 26,* [p. 3]; Relationships Australia, *Submission 29*, [p. 4]; knowmore legal service, *Submission 31*, p. 11; International Association of Former Child Migrants and their Families, *Submission 65,* p. 2; Royal Australian and New Zealand College of Psychiatrists, *Submission 62,* [pp. 1–2]; among others.

Commission's inquiry. 182 written accounts from survivors in prisons were also received by the Royal Commission.[122]

2.148 The South Australian Commissioner for Victims Rights submitted that the exclusion of criminal offenders from the Redress Scheme may be a violation of international law.[123]

2.149 Witnesses and submitters were worried that this population, representing a significant number of survivors who had been actively sought out by, and had contributed to, the Royal Commission could now be excluded from the redress scheme.[124] The Royal Commission made no recommendation in its Redress and Civil Litigation Report that survivors with criminal records be excluded from a redress scheme.

2.150 Many submitters held concerns that denying redress in any form to this population is further punishment for their crimes. This concern was succinctly summarised in the submission from the law firm Ryan Carlisle Thomas:

> 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.[125]

2.151 Submitters explained that some survivors may have committed crimes long ago, and have since been rehabilitated and reintegrated into the community. Mr Mark Glasson from Anglicare WA presented the committee with a case study of the type of person who could be affected by this:

> We've actually worked with one client which is a good illustration of the problem. He's 68 years old and married with adult children. His criminal offending ceased when he was aged 30 but it was significant and, under the current proposals, he would be ineligible. But for the last 38 years he's lived

---

122 Royal Commission Report, *Volume 1: Our inquiry,* pp. 27, 50.

123 South Australian Commissioner for Victims Rights, *Submission 72*, pp. 1–3. Relevant international laws cited were: Universal Declaration of Human Rights, Article 8, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Articles 8, 9, 12 and 13 and the Convention on the Rights of the Child, Article 19.

124 Mr Richard Weston, Chief Executive Officer, The Healing Foundation, *Committee Hansard,* 16 February 2018, p. 34; Anglican Church of Australia, Salvation Army Australia, and Uniting Church in Australia, *Submission 30*, p. 1; knowmore legal service, *Submission 31*, pp. 10–18; National Social Security Rights Network, *Submission 38*, [p. 3]; Mr Frank Golding OAM, *Submission 42*, p. 8; Mr Peter Fox, *Submission 43*, p. 1; CLAN, *Submission 60*, p. 5; among others.

125 Ryan Carlisle Thomas, *Submission 5*, p. 3.

> a law-abiding life and he's largely dealt with the issues that drove him to his offending. To exclude that man would be totally unreasonable.[126]

2.152 The committee also heard from a man known as 'John' at hearing on 6 March 2018, who described how the abuse he had suffered led directly to his offending:

> What I'm leading to here is the fact that I would have been all right in life if it hadn't been for the sexual abuse committed against me and rejections by the system. So how can Mr Turnbull judge me as not being eligible for compensation on the grounds of criminality? I was a system-made problem… To add to that, the last time I committed a crime was 1986. I haven't committed a crime since, although for seven years of that I was in jail. I've worked every day, and I'm just about to retire. I feel that I've done pretty well for a person who went through all of that, and I just don't want people to keep thinking that people in jail are just there [because] they're crims. They're there because a lot of them were put there, made there.[127]

2.153 A number of witnesses and submitters observed that such a provision will also disproportionately disadvantage Aboriginal and Torres Strait Islander people due to high rates of indigenous incarceration.[128] Mr Richard Weston from the Healing Foundation told the committee that:

> Sexual abuse and institutionalisation of Aboriginal and Torres Strait Islander people have contributed to the shocking rates of incarceration across Australia.…Victims were children at the time of the abuse, and that might be something that's lost. While people are serving time in prison, the abuse occurred when they were children, not adults, and they should not be held responsible for the impact of the abuse on their lives through their subsequent behaviour. The failure to provide any quality healing services over many years, especially for men, means that many children, young people and then adults were not afforded the opportunity to heal. Many manifested their pain and dealt with it through the use of substances, caught constantly in a fight or flight predicament.[129]

---

126 Mr Mark Glasson, Director, Services, Anglicare WA, *Committee Hansard,* 16 February 2018, p. 27.

127 'John', individual appearing with Ryan Carlisle Thomas, *Committee Hansard,* 6 March 2018, p. 45.

128 Law Council of Australia, *Submission 82,* p. 31; Ms Lisa Hillan, Director, Programs, Policy & Knowledge Creation, the Healing Foundation , *Committee Hansard,* 16 February 2018, p. 35; Dr Hannah McGlade, Senior Indigenous Research Fellow, Curtin University, *Committee Hansard,* 16 February 2018, p. 36; Dr Gary Foster, Manager, Living Well, Anglicare Southern Queensland, *Committee Hansard,* 16 February 2018, p. 6; Mr Alistair McKeich, Senior Project and Policy Officer, Victorian Aboriginal Legal Service, *Committee Hansard,* 6 March 2018, p. 3; among others.

129 Mr Richard Weston, The Healing Foundation, *Committee Hansard,* 16 February 2018, p. 34.

*Other solutions for redress in this population*

2.154 Should an eligibility exclusion for criminal offenders be introduced in the rules of the scheme, witnesses and submitters made a number of recommendations of how redress could still be provided to survivors with a criminal history without providing a lump-sum payment. For example, Relationships Australia recommended that, at a minimum, survivors with criminal convictions should still be offered the counselling and direct personal response aspects of redress under the scheme.[130]

2.155 Submitters explained that counselling plays an important role both in rehabilitation of former offenders and in supporting survivors of child sexual abuse.[131] Miss Miranda Clarke, from the Centre Against Sexual Violence Inc., explained how counselling can assist survivors in this population:

> 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. 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?[132]

2.156 There has been a recommendation made to the committee by a number of witnesses and submitters that redress payments could still be made to survivors with criminal convictions, on the condition that any such payment is held in trust.[133] This trust fund could then be used to support the survivor's family or any victims of that survivor's crimes,[134] or be used for intensive rehabilitation programs or employment access assistance to reduce their chances of reoffending.[135]

2.157 The Minister announced in February 2018 that this issue had not yet been fully resolved and would be discussed at an upcoming meeting with state and territory

---

130 Relationships Australia, *Submission 29*, [p. 4].

131 Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, pp. 15–16; Dr Philippa White, Tuart Place, *Committee Hansard,* 16 February 2018, p. 28; Mr Mark Glasson, Anglicare WA, *Committee Hansard,* 16 February 2018, p. 31.

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

133 Relationships Australia, *Submission 29*, [p. 5]; Dr Philippa White, Tuart Place, *Committee Hansard,* 16 February 2018, p. 32; Dr Gary Foster, Anglicare Southern Queensland, *Committee Hansard,* 16 February 2018, p. 6.

134 Relationships Australia, *Submission 29*, [p. 5]; Dr Gary Foster, Anglicare Southern Queensland, *Committee Hansard,* 16 February 2018, p. 6.

135 Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 16.

attorneys-general, with a view to 'giving exemptions to those who have demonstrated rehabilitation'.[136]

*Committee view*

2.158 The committee recognises there is great difficulty in balancing the need for redress for survivors of institutional child sexual abuse and managing community expectations around payments to persons who have been convicted of serious crimes. However, the committee notes that similar redress or victims of crime compensation schemes do not include such criminal exclusions.

2.159 The committee notes the Minister has stated the inclusion and operation of a criminal exclusion clause has not been finally determined, and that discretion to waive any such exclusion is still under consideration.

2.160 The committee considers it should be taken into account that an offender's rehabilitation could be assisted by the non-payment elements of redress, comprising counselling and a direct personal response from the institution responsible for the sexual abuse.

2.161 Furthermore, it should be considered that the proposed criminal offending exclusion may result in an unintended perception that institutions are not being held to account for the sexual abuse of certain children in their care.

## Applications for redress

2.162 Part 2-4 of the Redress Bill includes provisions setting out the application process for redress.

2.163 Part 4-1 of the Redress Bill sets out the powers of the operator to obtain further information to inform these applications, while Part 4-2 provides guidelines for the use and disclosure of information throughout the application process.

2.164 Also related to the application administrative process, Part 4-4 of the Redress Bill makes provisions about the appointment and role of nominees to act on behalf of survivors for the purposes of the scheme.

2.165 Submitters and witnesses raised a number of points relating to these parts of the Redress Bill.

### *One application per survivor*

2.166 Proposed clause 30 of the bill stipulates that:

> A person may only make one application for redress under the scheme.[137]

2.167 The Explanatory Memorandum further describes that:

---

136 Amy McNeilage, 'Coalition to rethink plan to bar criminals from child sex abuse redress scheme,' *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 20 March 2018).

137 Redress Bill, clause 30.

> …applications for redress under the Scheme are limited to one application per survivor, whether or not that person suffered sexual abuse in more than one institution. Survivors will be able to include multiple episodes of sexual abuse and related non-sexual abuse suffered in multiple institutions in the one application.[138]

2.168 The Explanatory Memorandum also provides examples of how this will be applied in practice (largely in relation to clause 31, which permits a person to withdraw an application at any time before a determination is made), but does not provide any explanation of why only one application will be permitted per survivor.[139]

2.169 In its submission, the Department explained that a single application was designed to avoid requiring separate applications for separate instances of abuse, thereby reducing trauma for individuals:

> …survivors will only need to complete one form to cover all instances of child sexual abuse experienced in institutional contexts during their childhood. As a survivor will only need to disclose their experiences of child abuse in one application, it will provide the opportunity for the survivor to receive closure after a potentially traumatic, but singular, application process. The Royal Commission recommended that survivors should not have to make multiple applications if they were abused in multiple institutions, to achieve equal or fair treatment between survivors.[140]

2.170 However, submitters have raised concerns that not permitting multiple applications may cause unintentional consequences for certain groups of survivors.

2.171 As discussed earlier in this chapter, there is also a concern that survivors may need to wait a long time before being able to make a full application, as participating institutions have yet to opt in and will have an extended period in which to do so. This would also unfairly disadvantage those abused in more than one institution and who may be required to wait.[141]

2.172 Dr Kezelman, President of the Blue Knot Foundation, explained that the complex nature of traumatic memory means that survivors may not recall all relevant information about their trauma at the time of making their application:

> …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

---

138 Explanatory Memorandum, p. 5.

139 Explanatory Memorandum, p. 21.

140 Department of Social Services, *Submission 27*, p. 2.

141 Miss Miranda Clarke, Centre Against Sexual Violence Inc., *Committee Hansard,* 16 February 2018, p. 11; Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 25; VACCA, *Submission* 36, p. 7; Waller Legal, *Submission 52*, p. 10; CLAN, *Submission 60*, p. 13.

> then, 10 years later, the person has remembered more information, what happens as a result of that?[142]

2.173 The Australian Lawyers Alliance recommended that if only a single application will be permitted, survivors should be informed if their application will be denied and the reason for this before a final official determination is made. The survivor should then be able to withdraw the application and resubmit with it with further information if they choose.[143] However, Shine Lawyers noted that if people choose to withdraw and resubmit to get a better outcome, this is likely to increase administrative costs for the scheme.[144]

2.174 Restricting survivors to a single application under the scheme also has implications where a survivor fails to accept an offer within the prescribed time limit. This is discussed later in this chapter.

2.175 A number of submitters recommended that clause 30 be changed to allow survivors to make multiple applications to the scheme,[145] while Relationships Australia recommended another approach could be to have a cap on the number of applications at a scheme level, rather than an individual level.[146]

*Committee view*

2.176 The committee notes the concerns of many submitters that allowing only one application under the scheme may have unintended consequences of delaying some survivors' applications and excluding some survivors from the scheme.

### *Providing documentation and records*

2.177 Concerns were raised about the provision of information and records as part of the redress application process, including verifying that information.

2.178 Proposed subclause 29(2) of the Redress Bill sets out the requirements for applications for redress:

> (2) The application must:
>
> (a) be in the form (if any) approved by the Operator; and
>
> (b) include any information, and be accompanied by any documents, required by the Operator; and
>
> (c) verify the information included in the application by statutory declaration.

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

143 Australian Lawyers Alliance, *Submission 47*, p. 14.

144 Shine Lawyers, *Submission 25*, [p. 7].

145 Bravehearts Foundation, *Submission 26*, [p. 3]; Miss Miranda Clarke, Centre Against Sexual Violence Inc., *Committee Hansard,* 16 February 2018, p. 12; Mr Warren Strange, knowmore legal service, *Committee Hansard,* 16 February 2018, p. 47; among others.

146 Relationships Australia, *Submission 29*, [p. 5].

2.179 Submitters and witnesses have observed that a lack of records may make applications for redress difficult for some survivors as the veracity of their claims could be called into question.[147]

2.180 There have been concerns raised that getting evidentiary documentation from institutions in particular could present a hurdle for survivors.[148] One survivor told the committee that, where institutions are unable to produce documents:

> Survivors who cannot locate information should not be discarded from the process of redress simply because records were either poorly kept or lost.[149]

2.181 Submitters also noted that the experience of survivors in the Western Australian redress scheme, Redress WA, was that some documents took up to six months to obtain, in turn slowing down the survivor's application process.[150] While such delays could cause similar problems with applications in the proposed Commonwealth scheme, this has more serious implications when considering potential requests from the operator for further documents after an initial application is received. This matter is discussed further below.

2.182 It may also be necessary to include supports for certain survivors in accessing and providing their documents in order to make an application. The Victorian Aboriginal Child Care Agency explained in its submission that clients have had difficulty in accessing records about their time in care.[151]

*Statutory declarations*

2.183 The Department explained that the requirement at proposed paragraph 29(2)(c), that information included in an application be verified by statutory declaration, is intended to protect against fraud in the scheme due to the related penalties for making a false declaration.[152]

2.184 However, many submitters and witnesses questioned the need for this requirement as it may be difficult for many survivors to arrange,[153] particularly those living in rural and remote communities. Anglicare WA told the committee that:

> Access to independent people who can sign Statutory Declarations in remote communities may be limited and survivors may be reluctant to approach their closest signatory because of confidentiality issues.[154]

---

147 See for example: PeakCare Queensland Inc., *Submission 51*, p. 6; Setting the Record Straight for the Rights of the Child Initiative, *Submission 54*, pp. 1–4; VACCA, *Submission 36*, p. 7; Victorian Aboriginal Legal Service, *Submission 14*, p. 5.

148 Setting the Record Straight for the Rights of the Child Initiative, *Submission 54*, p. 2.

149 David Brabender, *Submission 11*, p. 1.

150 Anglicare WA, *Submission 10*, p. 6.

151 VACCA, *Submission 36*, p. 10.

152 Department of Social Services, *Submission 27*, p. 3.

153 Mr Matt Jones, *Submission 6*, pp. 3–4; knowmore legal service, *Submission 31*, p. 27; Survivors & Mates Support Network (SAMSN), *Submission* 66, p. 4; among others.

2.185 Submitters and witnesses reiterated that the scheme's evidentiary process should be survivor-focused, non-legalistic and minimise re-traumatisation.[155]

### *Operator powers to request further documents*

2.186 Proposed clause 69 of the bill gives the operator of the scheme powers to request further information from an applicant where there are 'reasonable grounds to believe that the person has information…that may be relevant to determining the application'.[156] Proposed clause 70 also sets out a parallel provision to clause 69 for the operator to require information from institutions or other persons that may be relevant to determining an application.

2.187 Proposed clause 71 provides consequences for where information is not provided by an individual or institution in accordance with clauses 69 and 70, including civil penalty and reports of non-compliance to Parliament.[157]

2.188 Although not specifically outlined in the Redress Bill, the Explanatory Memorandum also clarifies that, where information is not provided when required under clauses 69 and 70, the operator may make a decision about an application in the absence of that information.[158]

#### *Timeframes*

2.189 Clauses 69 and 70 each propose a minimum period of 14 days for the production of documents after a request. The Explanatory Memorandum notes that in each instance, 'it would be open to the Operator to allow a longer time period' and that extensions may be granted before the end of the production period in accordance with subclauses 69(7) and 70(7).[159]

2.190 However many submitters have recommended that the production period be longer than this minimum.

2.191 Survivor groups have made a number of comments about obtaining documents and evidence from institutions for both redress and litigation purposes. CLAN commended the requirement that institutions must provide documents when requested, noting that documents are often delayed or withheld by institutions for myriad reasons.[160] However, there are concerns that documents will still be delayed and that this could hold up or impact upon application processing:

---

154 Anglicare WA, *Submission 10*, p. 6.

155 Mr Boris Kaspiev, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 21; Dr Cathy Kezelman AM, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 7; knowmore legal service, *Submission 31*, p. 27.

156 Redress Bill, paragraph 69(1)(b).

157 Redress Bill, subclause 71(1).

158 Explanatory Memorandum, pp. 40–41.

159 Explanatory Memorandum, pp. 40–41.

160 CLAN, *Submission 60*, pp. 14–15.

> I am extremely worried about the redress scheme requesting records from the past providers, the churches and charities. The Salvation Army are delaying sending out records by months. Already, Catholic Care in Bankstown have told us there is a six-month delay for records. What happens in July when all these care leavers flood the redress scheme and the redress scheme requests files? Are care leavers going to die while past providers send these files or look for the records when they have been destroyed?[161]

2.192 Anglicare WA stated that 14 days to produce additional information is 'entirely insufficient' where documents need to be sourced by post from interstate, and particularly where an applicant is based in a rural or remote location.[162]

2.193 The Law Council expressed concern that the 14 day minimum period could become the default in production orders and noted that the wording of 69(5) and 70(5) allows extensions only in 'exceptional circumstances'. The Law Council that there are many ordinary circumstances where 14 days would be insufficient for a survivor to produce documents and that 'exceptional circumstances' are not defined in the Redress Bill. The Law Council recommended that the test for extension of that time period be 'reasonable grounds' instead of 'exceptional circumstances' and that 28 days would be a more appropriate minimum time limit.[163]

2.194 Other submitters variously recommended that the 14 day minimum time limit be expanded to 30[164] or 60 days,[165] or at least 3 months.[166]

*Legal consequences of providing, or not providing, documents*

2.195 The Law Council raised concerns about the possibility of the provision at subclause 71(1) being used to bring a civil penalty against a survivor who failed to provide a document under clause 69, stating that:

> As the purpose of the Scheme is to provide compensation and other forms of redress to survivors, it seems inimical to that objective to apply a civil penalty to a survivor for failure to complete their own application for compensation.[167]

2.196 Furthermore, The Law Council raised that 71(3) could potentially remove a survivor's right to claim privilege against self-incrimination.[168]

---

161 Ms Leonie Sheedy, CLAN, *Committee Hansard,* 6 March 2018, p. 22.

162 Anglicare WA, *Submission 10*, p. 6.

163 Law Council of Australia, *Submission 82*, pp. 16–17.

164 Blue Knot Foundation, *Submission 1*, [p.4].

165 Angela Sdrinis Legal, *Submission 46*, pp. 3, 10.

166 Kimberley Community Legal Services Inc., *Submission 63*, [p. 3].

167 Law Council of Australia, *Submission 82*, p. 17.

168 Law Council of Australia, *Submission 82*, p. 34.

2.197 knowmore indicated that the provisions of the bill relating to documentation may have some unintended legal consequences when survivors are requested to provide further documents to support their application:

(a) That in needing to disclose the quantum of previous settlement payments, providing that figure may be in breach of other deed of settlement or release provisions, such as confidentiality clauses.[169]

(b) That in providing copies of statements or transcripts of evidence, made where a complaint was made to police about an incident of abuse, providing that information may 'breach statutory provisions and/or court orders about identification of complaints and accused persons in criminal matters'.[170]

2.198 knowmore have recommended that the Redress Bill be amended to clarify that such situations would not adversely impact on a survivor's ability to provide full information to the operator.[171]

*Institution involvement in document production*

2.199 Some institutions have raised concerns about their ability to provide documents under clause 70 and their rights under clause 71.

2.200 The Department of Home Affairs has reported that, as some incidents occurred many years ago, it 'may no longer have the information or the information may be difficult or impossible to find if the information supplied by the claimant is not correct' and that this could increase the risk of fraud in scheme.[172]

2.201 The Catholic Church's Truth Justice and Healing Council has recommended that it should be compulsory to seek information from accused institutions as part of the application process and institutions should be granted access to all protected information held by the operator regarding an application.[173] As part of this, the Truth Justice and Healing Council has also recommended that clause 70 be amended to place an obligation on the operator:

> …to seek information, from the relevant institution both in the nature of any relevant background and an opinion in relation to whether the participating institution considers itself to be 'responsible' in the course of considering an application for redress.[174]

2.202 Furthermore, the Truth Justice and Healing Council have suggested that the inclusion of penalties for noncompliance under clause 71 is 'unreasonable' and will act as a disincentive for institutions to opt in to the scheme. The Truth Justice and Healing

169 knowmore legal service, *Submission 31*, p. 40.

170 knowmore legal service, *Submission 31*, p. 41.

171 knowmore legal service, *Submission 31*, pp. 40–41.

172 Department of Home Affairs, *Submission 83*, p. 4.

173 Truth Justice and Healing Council, *Submission 79*, p. 16.

174 Truth Justice and Healing Council, *Submission 79*, p. 17.

Council suggested that opting in to the scheme is sufficient proof of an institution's motivation to cooperate and comply.[175]

2.203 Mr Luke Geary, representing the Salvation Army Australia, expressed a view that, in order for transparency in the processes of the scheme and for reassurance that all relevant information provided under these clauses has been used in decision-making, an un-redacted copy of the full redress offer decision should be provided to both the survivor and the responsible institution.[176]

*Committee view*

2.204 The Redress Scheme is intended to have a low evidentiary threshold in order to achieve its goals of survivor focus and harm minimisation and to provide access to people who may not have the evidence available to them at levels required for civil litigation.

2.205 The committee is of the firm belief therefore, that the process for survivors to provide supporting documents, either at the start of an application or additionally as requested, should be as non-adversarial as possible in order to avoid any further traumatisation.

2.206 The committee recognises concerns about the ability of some survivors, particularly in rural and remote areas, to access a statutory declaration process that protects their privacy. This issue should be given greater consideration by the Department or scheme operator.

2.207 The committee also notes concerns about the minimum timeframe for the production of additional documents and the impact of this on survivors' access to the Redress Scheme. The committee considers that timeframes for the production of documents should be set as appropriate in each circumstance and that it may be appropriate to change the test for an extension of time from 'exceptional circumstances' to 'reasonable grounds' in order to enable easier access and improve the survivor focus of this aspect of the Redress Scheme.

2.208 The committee also notes concerns about unintended legal consequences for survivors of providing documents to support their applications. Again, this is an issue that requires greater consideration by the Department or scheme operator, particularly to achieve the goal that redress should avoid harming or traumatising the survivor.

2.209 Finally, while the committee is cognisant of those concerns posed by institutions who may be required to provide documents or information to the Redress Scheme, it wishes to reiterate the purpose of this Redress Scheme is to provide an avenue for justice for those survivors who are unable to access civil litigation for various reasons. Documentation will be sought by the scheme operator to inform their decision-making process, not to provide an avenue for institutions to investigate or challenge the veracity of a survivor's claim.

---

175 Truth Justice and Healing Council, *Submission 79*, pp. 17–18.

176 Mr Luke Geary, The Salvation Army Australia, *Committee Hansard,* 16 February 2018, p. 58.

***Disclosure of documents and privacy***

2.210 Part 4-2 of the Redress Bill sets out provisions for protecting information under the scheme and for authorised disclosures of information in a variety of circumstances. Clause 77 permits disclosure of information by the operator in certain circumstances, such as in cases of public interest, or to various government authorities.

2.211 Clause 77 does not require that the operator have regard to the impact the disclosure might have on a person who has applied for redress, making it broader in nature than similar clauses within this part of the Redress Bill, and this was criticised by a number of submitters.[177]

2.212 Blue Knot Foundation stressed that disclosure in the public interest needs to be 'balanced against a survivor's rights to confidentiality'.[178]

2.213 The Law Council explained that clause 77 was inconsistent with clauses 78 and 79,[179] which both contain a subclause (3) requiring 'regard to the impact' on a person.[180] This was also observed by the Scrutiny committee.[181]

2.214 The Australian Human Rights Commission recommended that clause 77 be amended:

> …to stipulate that, prior to disclosing information under proposed s 77, the Operator consider the impact that disclosure may have on a person to whom the information relates.[182]

2.215 The Human Rights committee also raised concerns that clause 77 as drafted limits a person's right to privacy, however the statement of compatibility in the Explanatory Memorandum states that in relation to the right to protection against arbitrary or unlawful interferences with privacy:

> The information sharing provisions of the [Redress] Bill are necessary to achieve the legitimate aims of assessing eligibility under the Scheme and protecting children from abuse, and are appropriately limited to ensure they are a proportionate means to achieve those aims.[183]

2.216 The Minister also responded to the concerns of the Human Rights committee, confirming that disclosure powers would only be used after careful consideration and

---

177 Law Council of Australia, *Submission 82*, p. 14; Australian Human Rights Commission, *Submission 32*, pp. 10–11; Blue Knot Foundation, *Submission 1*, p. 4.

178 Blue Knot Foundation, *Submission 1*, [p. 4].

179 Mr Morry Bailes, President, Law Council of Australia, *Committee Hansard,* 6 March 2018, p. 56.

180 Redress Bill, subclause 78(3) and 79(3).

181 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017,* pp. 21–22.

182 Australian Human Rights Commission, *Submission 32,* p. 11.

183 Explanatory Memorandum, p. 73.

that clause 77 has been drafted 'to reflect similar provisions in other legislation within the Social Services portfolio'. Furthermore, the Minister stated that:

> I will consider including a positive requirement for rules in the National Bill, including a requirement that the Scheme Operator must have regard to the impact the disclosure may have on a person to whom the information relates.[184]

2.217 The Department confirmed on notice that further consideration is being given to including a provision in clause 77 similar to that in subclause 79(3).[185]

*Committee view*

2.218 The committee notes submitters' concerns about privacy and disclosure of documents. The committee is satisfied by comments from the Minister and the Department that these issues have been considered and that 'regard to the impact' of such disclosures under clause 77 may be included in a future national bill.

***Nominees***

2.219 Part 4-4 of the Redress Bill sets out provisions for the appointment of and interaction with nominees acting on behalf of an applicant.

2.220 Australian Lawyers Alliance has suggested that it would useful for the bill to more clearly state the purpose of nominees within the scheme, to include criteria by which the nominee is appointed, and avenues for reparation where a nominee is appointed against an applicant's wishes.[186]

2.221 People with Disability Australia (PWDA) also noted that the appointment process for nominees is not clearly articulated in the Redress Bill, nor is there a review process where a nominee has been appointed.[187]

2.222 PWDA have informed the committee that nominee provisions in legislation 'routinely limit the participation of people with disability in decision-making about their lives and rights'.[188]

2.223 Specifically, PWDA noted that the Redress Bill requires that nominees act in the 'best interests' of the principal, rather than in accordance with their will and preferences, and that this 'focuses on the substitute decision-maker' rather than on the survivor.[189] The organisation explained that:

---

184 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 91–93.

185 Department of Social Services, *Answers to questions taken on notice,* 6 March 2018, p. 6 (received 16 March 2018).

186 Australian Lawyers Alliance, *Submission 47*, p. 17.

187 Mr Matthew Bowden, Co-CEO, and Ms Meredith Lea, Senior Policy Officer, People with Disability Australia, *Committee Hansard,* 6 March 2018, p. 18.

188 People with Disability Australia, *Submission 16*, [pp. 4–5].

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

> It is our position that the wishes of the principal [i.e. the person applying for redress] should always be paramount. Indeed, payment and correspondence nominees must only be appointed if it is the direct will and preference of the principal for this to occur. Instead, survivors should be provided with any and all decision-making supports they may require for them to express and implement their will and preference.[190]

2.224 PWDA recommended that the appointment of a nominee should be a 'last resort' option when 'every other opportunity has been given to the person to exercise agency'.[191]

2.225 The Department confirmed that there is no requirement for a person with disability to establish a nominee relationship in order to access the scheme and explained that:

> The reason that the consent of the principal is not required in the legislation is ensure that survivors who cannot provide consent are not prohibited from accessing the Scheme.[192]

2.226 The Department has acknowledged concerns about the appointment of nominees and informed the committee that the department is 'carefully looking at what might be the appropriate provisions' for people with disabilities and other individuals who may require these kinds of supports in accessing the scheme.[193]

*Committee view*

2.227 The committee is satisfied that the Department is aware of concerns about the appointment and function of nominees within the Redress Scheme and is appropriately considering and reviewing those provisions of the Redress Bill.

## Offers and acceptance of redress

2.228 Submitters and witnesses made a number of criticisms about the process for acceptance of offers set out in Part 2-5 of the Redress Bill, specifically in relation to timeframes for acceptance of offers.

2.229 Further issues relating to offers of redress, including the contents of a redress offer, the legal advice provided in relation to an offer, and requirements related to signing a deed of release, are discussed in chapter three.

2.230 Clause 38 sets that the acceptance period for offers of redress is 'determined by the Operator', 'must be at least 90 days, starting on the date of the offer' and can be extended by the scheme operator either on the scheme operator's own initiative or by

190 People with Disability Australia, *Submission 16*, [p. 5].

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

192 Department of Social Services, *Answers to questions taken on notice,* 6 March 2018, p. 3 (received 16 March 2018).

193 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 6 March 2018, pp. 74–75.

request of the applicant. Subclause 37(2) states that the 'offer expires at the end of the acceptance period' and subclause 42(2) states that an offer can also be declined 'by not accepting the offer within the acceptance period'.

2.231 There is a widespread concern that the 90 day minimum acceptance period is too short a time for survivors to consider and accept an offer of redress. This was raised in particular for people with disability[194] or complex health concerns,[195] and rural, regional and transient populations.[196] Miss Miranda Clarke from the Centre Against Sexual Violence Inc. told the committee how receiving an offer could affect a survivor and described some of the issues faced by survivors which may prevent them being able to accept an offer in this proposed time frame:

> 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 like 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.[197]

2.232 CLAN noted that not everyone will need a longer timeframe and that some survivors will still make a decision as soon as possible after receiving an offer:

> Some people won't need the longer time. They're elderly and they are dying. If there are three months to make a decision then they will make the decision—as soon as possible, a lot of them. But for people who require more time then three months is not long enough. We need to give them 12 months in which to decide whether they accept. This is about signing away your legal rights. You can no longer go and take a civil action.[198]

---

194 Mr Matthew Bowden, People with Disability Australia, *Committee Hansard,* 6 March 2018, pp. 15–16.

195 Ms Ellen Bucello, private capacity, *Committee Hansard,* 6 March 2018, p. 37.

196 Anglicare WA, *Submission 10,* p. 6; VACCA, *Submission 36*, pp. 7–9; Victorian Aboriginal Legal Service, *Submission 14*, [p. 3].

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

198 Ms Leonie Sheedy, CLAN, *Committee Hansard,* 6 March 2018, p. 24; see also Mr Ian Gibson, *Submission 17*, [p. 1].

2.233 The Law Council described the decision which survivors would be required to make, in particular the decision 'to renounce the right to a civil claim against an institution', to be one with 'serious legal, financial and emotional consequences'.[199]

2.234 Legal groups told the committee that 90 days may be insufficient time for survivors to seek legal advice, or for legal firms to provide such advice.[200] Miss Michelle James, Principal at Maurice Blackburn Lawyers, told the committee:

> It's a wholly inadequate time period, taking into account the nature of the injuries that these people are dealing with. When you add into that that, even if they felt well enough to speak with a lawyer and get adequate legal advice about the amount of the offer that they've been given, as has been said by earlier witnesses, the nature of the evidence gathering, the questioning that we need to do as lawyers to provide that advice, is impossible to do with any certainty and with any accuracy in a 90-day time frame. We would rely on the recommendation of the royal commission and say that a year is a more reasonable time frame.[201]

2.235 This proposal of one year to make a decision about an offer, recommended by the Royal Commission, was supported by most submitters and witnesses who were unhappy with 90 day minimum timeframe.[202]

2.236 At the hearing on 6 March 2018, the Department told the committee that, in relation to the 90 day minimum timeframe for accepting offers of redress:

> We have taken on board the submissions that have been made to this inquiry and the discussion that we had last time, and we are looking at movement on that. There's not a final landing, but we are certainly looking at lengthening the time period, based on the submissions and discussions we had last time.

*Committee view*

2.237 The committee acknowledges concerns that the 90 day minimum period for accepting an offer of redress is insufficient and is satisfied that these concerns will be resolved by the Department ahead of the commencement of the Redress Scheme.

---

199 Mr Morry Bailes, Law Council of Australia, *Committee Hansard,* 6 March 2018, p. 52.

200 Mr Alistair McKeich, Victorian Aboriginal Legal Services, *Committee Hansard,* 6 March 2018, p. 40; Dr Vivian Waller, Principal Solicitor, Waller Legal Pty Ltd, *Committee Hansard,* 6 March 2018, p. 48; Miss Michelle James, Principal, Maurice Blackburn Lawyers, *Committee Hansard,* 6 March 2018, pp. 55–56; Mr Morry Bailes, Law Council of Australia, *Committee Hansard,* 6 March 2018, p. 52.

201 Miss Michelle James, Maurice Blackburn Lawyers, *Committee Hansard,* 6 March 2018, p. 56.

202 Law Council of Australia, *Submission 82*, pp. 16–18; VACCA, *Submission 36*, pp. 7–9; Maurice Blackburn Lawyers, *Submission 28*, p. 8; Waller Legal, *Submission 52*, p. 19; Centre Against Sexual Violence Inc., *Submission 21*, [p. 4]; Mr Paul Holdway, *Submission 53*, [p. 1]; among others.