# Additional Comments by Labor Party Senators

1.1 Australian Labor Party Senators on this committee are supportive of the establishment of a National Redress Scheme for Survivors of Institutional Child Sexual Abuse, in line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse.

1.2 Labor Senators on this committee are grateful to the Royal Commission for their careful and considered work over five years and to the Survivors who shared their stories with both the Royal Commission and more recently, with this committee as part of its Inquiry.

1.3 Labor Senators on this committee understand that the Royal Commission did not make their recommendations lightly. They were carefully considered, based on extensive work and purposefully released with sufficient time for the Government to implement a national redress scheme. These recommendations should be implemented faithfully at every opportunity.

1.4 Labor Senators on this committee are committed to ensuring that the National Redress Scheme provides Survivors with a genuine opportunity to access justice for the crimes committed against them when they were children, and that the Redress Scheme takes in to account and caters to the unique needs of this group.

1.5 Based on the evidence presented to the committee, Labor Senators are concerned that the legislation, as currently drafted, does not meet this threshold.

1.6 Labor Senators note the urgency with which the Redress Scheme must be delivered, and do not seek to delay the implementation of the Redress Scheme.

1.7 Labor Senators on this committee agree with the central premise of the majority report—that it is time that Survivors of institutional child sexual abuse receive the recognition, and redress, that they have waited so long for.

1.8 Further, Labor Senators note, and agree with comments of the majority report that there are a number of key areas that the Government must give further consideration to.

1.9 However, Labor Senators on this committee believe that the recommendations of the majority report do not go far enough, and make more specific recommendations about what is required.

1.10 In particular, witnesses and submitters to the Inquiry raised a number of issues which Labor Senators on this committee believe should be changed or further considered to ensure that the best possible Redress Scheme is delivered.

1.11 These issues include:

- the availability of services for Survivors in regional and remote Australia;
- the time within which the Scheme would require Survivors to decide whether to accept an offer of redress;
- the cap on the amount available;

- the amount of support available, especially including legal advice;
- the provision of counselling services to Survivors;
- eligibility issues, both in terms of residency and criminal history;
- funder of last resort arrangements; and
- the interaction of the Redress Scheme and child applicants.

## States and Territories Opting In

1.12 Labor Senators on the Committee note the Royal Commission's strong recommendation that the Redress Scheme should be national.[1]

1.13 Labor Senators note the critical importance of the Scheme being national. This is the only way to ensure that it treats all Survivors fairly.

1.14 Labor Senators also acknowledge that since the end of this Inquiry's Hearings, Victoria, New South Wales and the Australian Capital Territory have all indicated that they will opt in to the Redress Scheme.

1.15 The Committee heard unequivocally that the Redress Scheme has created great hope and expectation in the Survivor community.

1.16 Witnesses and submitters from a wide cross section of advocacy and support services have explained the level of interest and expectation that has been created.

1.17 The Alliance of Forgotten Australians expressed the urgency with which the redress scheme must be implemented:

> …every week, there are people we meet who may have another few weeks to live and they're hoping that something might be in place before they're gone.[2]

1.18 The Alliance of Forgotten Australians explained further:

> 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.[3]

1.19 Tuart Place shared their similar experience:

> The announcement of a redress scheme has certainly raised expectations. I'll mention just two of many recent examples. One was last week, when we received a call from a former Redress WA client, who had suffered terrible

1 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendation 26, p. 67.

2 Boris Kaspiev, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 15.

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

> sexual abuse as a child at Wandering Mission. She was phoning in to give us her new bank deposit details so she could receive her payment under the Commonwealth scheme. She would not or could not accept that there is no redress scheme for her at the moment. Another caller asked to speak to our head office, because, clearly, we hadn't heard about the new redress scheme starting in July this year. There is a redress scheme starting in July, but it's currently funded for less than two per cent of the potential applicants. This fine print message isn't getting through.[4]

1.20 Labor Senators on the Committee are of the view that it is critical that all States, Territories and Institutions opt in to the Redress Scheme as a matter of urgency.

1.21 Further, Labor Senators on the Committee call on the Government to urgently comply with all requests for further information from all States, Territories and Institutions to facilitate their opting in to the Redress Scheme.

## Access to appropriate services for all Survivors

1.22 Labor Party Senators on this committee are of the opinion that it is vital for all Survivors engaging with a Redress Scheme to have easy access to adequate and culturally competent support, legal and counselling services.

1.23 In particular, the Committee received evidence that the arrangements in the current bill are likely to be insufficient for Survivors, especially those living in regional and remote Australia and Survivors of Aboriginal and Torres Strait Islander descent.

1.24 In their submission, Anglicare WA write that many Survivors were unable to participate in the Redress WA Scheme due to additional, logistical challenges that they faced engaging with the Scheme as a result of their residence in regional and remote areas of Western Australia.

1.25 They write that 'many people (both Aboriginal and non-Aboriginal) who missed out on the Redress WA Scheme were living in remote and regional Western Australia where information takes a long time to seep through and where mail services are slower than in cities'.[5]

1.26 The submission from Anglicare WA detailed further, more specific issues which would face Survivors in regional and remote Australia.

1.27 In particular, they refer to certain sections of the Bill, such as section 69 which refers to the Scheme Operators request for further information, and specifies a 14 day time period for response:

> …14 days will be entirely insufficient to allow for mail services to the regions and remote communities in Western Australia from say, Sydney or Melbourne and back again…there is a risk that it may appear that survivors

4 Dr Philippa White, Director, Tuart Place, Committee Hansard, 16 February 2018, p. 23.

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

> are declining the offer…when in fact they are at the mercy of the mail system.[6]

1.28 Anglicare WA also emphasise that Survivors living in regional and remote Australia may face additional hurdles accessing services which they perceive as being confidential.

1.29 They write:

> Access to counselling may be difficult in remote and regional Australia…access to suitably qualified, independent counsellors who are perceived as being confidential may be very limited. Even if innovative options such as voice-over-internet counselling are available, people still need a private room in which to undertake the counselling, something many remote communities lack.[7]

1.30 Regarding the provision of legal advice, they write that '…this may be extremely difficult to obtain in remote and regional Australia – especially within time constraints and with some guarantee of confidentiality'.[8]

1.31 The National Aboriginal and Torres Strait Islander Legal Services told the committee that 'We need to make sure there is a particular strategy to address both urban, rural and remote areas right across the country so that no-one is left out of the scheme'.[9]

1.32 National Aboriginal and Torres Strait Islander Legal Services explained the importance of culturally competent services to the committee, and said:

> …the [Aboriginal and Torres Strait Islander Legal Services] are the preferred, and in many instances the only, legal aid option across the country for many Aboriginal and Torres Strait Islander people, and we provide a unique legal service that recognises and responds to cultural factors that may influence and/or affect Aboriginal and Torres Strait Islander people. Acknowledging that many Aboriginal and Torres Strait Islander applicants live in regional and remote locations, adequate resources must be provided to each of the ATSILS to ensure that lawyers and support workers, including field officers and client service officers, which are unique to Aboriginal and Torres Strait Islander Legal Services, are able to meet with applicants in person.[10]

1.33 Laurel Sellers, CEO of Yorgum Aboriginal Corporation, emphasized the need for consideration of community requirements for Aboriginal and Torres Strait Islanders:

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

7 Anglicare WA, *Submission 10*, p. 7.

8 Anglicare WA, *Submission 10*, p. 7.

9 Karly Warner, National Aboriginal Torres Strait Islander Legal Services, *Committee Hansard*, 6 March 2018, p. 9.

10 Karly Warner, National Aboriginal Torres Strait Islander Legal Services, *Committee Hansard*, 6 March 2018, p. 6.

> We also believe that it's not only the client; it's also the families. The effect of the abuse of one person in a family extends out to the whole family and to the community. Support around that is really important. We believe that the whole family should be offered the same support.[11]

1.34 Yorgum also supports the ability of family members to apply on behalf of the deceased because of the effect of abuse on the whole family and the community.

1.35 Dr Hannah McGlade, Senior Indigenous Research Fellow at Curtin University, recommended that the legislation must be supported by additional responses aimed at addressing the collected harms suffered by Aboriginal people.

> Neither the redress bill nor the royal commission recommendations adequately recognise or respond to the collective harm that Aboriginal people have suffered as a result of cultural genocide and widespread sexual abuse of Aboriginal children perpetrated from colonisation, and particularly through the history of the stolen generation and subsequently with the continuing high level of Aboriginal child removals…[the legislation] should not be a missed opportunity to offer meaningful reparations to Aboriginal communities. And we should be addressing the consequences of institutional child sexual assault, including high levels of child sexual abuse and consequential impacts such as family violence; incarcerations, especially women's incarcerations; mental illness; and poor health evident today.[12]

1.36 Labor Senators on the committee believe that the plans for the provision of adequate, culturally competent services and supports in all areas of Australia must be clarified as a matter of priority.

1.37 Further, Labor Senators are of the view that these arrangements should be formalised in the legislation.

## Period for acceptance of offers

1.38 The Committee heard that Survivors, support organisations, sexual assault specialists, the legal profession and advocates were unanimously concerned that the period allowed for Survivors to decide whether to accept an Offer of Redress ('Offer') – 90 days – is too short.

1.39 Labor Senators note the recommendation of the Royal Commission on this topic, that Survivors should have a year to make this decision.[13]

1.40 Labor Senators on the committee understand that, under the current legislation, if an applicant does not respond to an Offer within the 90 day time period, and is not granted an extension, then they will be considered to have declined the Offer. This is unacceptable.

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11 Laurel Sellers, Yorgum Aboriginal Corporation, *Committee Hansard*, 16 February 2018, p. 2.

12 Dr Hannah McGlade, Senior Indigenous Research Fellow, Curtin University, *Committee Hansard*, 16 February 2018, p. 35.

13 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendation 59, p. 72.

1.41 Further, Labor Senators on the committee understand that accepting an Offer will require Survivors to sign a Deed of Release, stating that the Survivor will not undertake to pursue the responsible institutions in Court.

1.42 The Care Leavers Australasia Network (CLAN) emphasised to the committee that 'We need to give them 12 months in which to decide whether they accept. This is about signing away your legal rights'.[14]

1.43 Other advocates agreed with this statement:

> [a] Three month period to accept a payment: it is too short; it should be 12 months at least.[15]

1.44 Given the gravity of the decision, Labor Senators on the committee are strongly of the view that 90 days is a wholly inadequate period of time.

1.45 Many witnesses to the Inquiry explained the difficulty Survivors will face when making a decision of this magnitude.

1.46 Miranda Clarke from the Centre Against Sexual Violence explained:

> 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.[16]

1.47 The Alliance for Forgotten Australians explained that:

> When you think about the circumstances under which people who have been through intense trauma live—very often homeless, or in very deprived circumstances—three months is nothing. It's got to be longer than that. I would support the recommendation of a year. Sometimes people are unwell for significant periods of time. To impose that kind of quite short time

14 Leonie Sheedy, Care Leavers Australasia Network, *Committee Hansard,* 6 March 2018, p. 24.

15 Dr Philippa White, Director, Tuart Place, *Committee Hansard*, 16 February 2018, p. 28.

16 Miranda Clarke, Royal Commission Liaison and Sexual Assault Counsellor, Centre Against Sexual Violence Inc, *Committee Hansard*, 16 February 2018, p. 5.

> frame on them is unrealistic if you take into account how they struggle to live, just day to day.[17]

1.48 The committee heard that the proposed 90 day period is likely to present additional challenges for Survivors of Aboriginal and Torres Strait Islander descent and Survivors with disability.

1.49 Victorian Aboriginal Legal Services told the Committee that 90 days:

> …is far too short an amount of time for a number of reasons. One is that for Aboriginal and Torres Strait Islander communities…are often transient communities. People may not receive correspondence, particularly in remote communities. And in urban communities as well, people move around… The other side of it is the language barriers. If someone is receiving legal correspondence in Pitjantjatjara community, they are then going to have to find someone who can translate for them and someone who can translate correctly for them, so we need people with legal experience to be able to do that. A 90-day period is not enough in these instances given the reality of people's lives in receiving correspondence.[18]

1.50 People with Disability commented that:

> We didn't feel 90 days was sufficient for the decision-making process for some people with disability. Sometimes people's lives and conditions can impact upon decision-making for a particular time frame. People who have an episodic or psychosocial disability might be in a period where they're unwell and it's not reasonable for them to be expected to make a decision within 90 days…we absolutely want the royal commission's recommendation of a year to be the time frame for a decision around an offer or any other process.[19]

1.51 Additionally, witnesses from the legal profession, experienced in handling the cases of Survivors against the institutions responsible for their abuse referred to their previous experiences to suggest that the period allowed for decision making should be increased.

1.52 Morry Bailes, the President of the Law Council of Australia, said:

> This short period of time, coupled with community legal centres and other qualified providers being overburdened, raises serious questions as to whether survivors will in fact be able to make a fully informed decision on whether to accept an offer and renounce their rights to a civil common law [claim]. A decision to renounce the right to a civil claim against an institution, especially where payments under the scheme are capped at $150,000 and damages in a potential civil claim may far outstrip that

17 Boris Kaspiev, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 22.

18 Alistair McKeich, Victorian Aboriginal Legal Services, *Committee Hansard*, 6 March 2018, p. 4.

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

> amount, is a decision with serious legal, financial and emotional consequences.[20]

1.53 The committee heard from Maurice Blackburn that:

> 90 days is simply a grossly inadequate period of time for a person suffering injuries of this nature to make a reasonable decision. It's very common in my practice for people who get to the point of having to make a critical decision, which is often a once-and-for-all decision, to simply be overwhelmed at that point. They have to simply disengage from the process, disengage from me and my team, and just step away and become well again. It's not uncommon for that to be a period of three months or more.[21]

1.54 In light of the overwhelming evidence presented to the Committee, Labor Senators believe that the legislation should be amended to specify that Survivors be given a year to decide whether or not to accept an Offer, in line with recommendations of the Royal Commission.

## Cap on payments made under the Redress Scheme

1.55 Labor Senators on the committee note the recommendation of the Royal Commission in relation to the monetary cap on payments made under the Redress Scheme should be $200 000.[22]

1.56 Labor Senators also note evidence from the Department of Social Services that the decision to cut $50 000 from the maximum payment available, thereby reducing the cap to $150 000, was a 'decision of Government'.[23]

1.57 Evidence presented to the committee is that the Governments Independent Advisory Council on Redress, which was constituted to provide advice and feedback to the Government on the design of the Redress Scheme, was prevented from giving advice on this matter.

1.58 A member of the Independent Advisory Council explained further:

> We were all able to raise anything that we wanted in the committee about the approach to a payment. The cap was something that was introduced on day one as just non-negotiable: 'This is the decision that the government has made: that it will be $150,000 rather than the royal commission's $200,000.' So the scope of payment was not up for discussion.[24]

1.59 The Committee heard a range of evidence regarding the reduced cap.

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

21 Michelle James, Maurice Blackburn, *Committee Hansard*, 6 March 2018, p. 56.

22 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendation 19, p. 66.

23 Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 73.

24 Matt Bowden, People with Disability Australia, *Committee Hansard*, 6 March 2018, p. 14.

1.60 From Survivors, the Committee heard that decision by the Government to reduce the cap is insulting.

1.61 CLAN told the Committee that:

> The government shouldn't be able to cherry pick which recommendations they want or like.[25]

1.62 And also:

> …it is a disgusting amount of money for people who have suffered all their lives and the trauma and the crimes against them. It needs to be the $200,000 that the royal commission recommended.[26]

1.63 Other Survivors explained that:

> The precedent set by the proposed scheme is that the rape of children is not as important as a person who is falsely detained by the government or a person who falls over in a supermarket, both of which have seen people paid from $400,000 to over $1 million, plus ongoing care.[27]

1.64 And also:

> That applicants should be required to sign a document preventing them from further compensation while being forced to accept such an inadequate maximum payment is, to me, incomprehensible.[28]

1.65 The committee heard evidence from the legal profession that the damages available to Survivors who choose to pursue the institutions responsible for their abuse through the courts were likely to far outweigh the $150 000 cap decided by the Government.

1.66 Ryan Carlisle Thomas explained that, of 'two recent decisions of the Supreme Court. One was in excess of $700 000 for Mr Hand and we also have the decision of Erlich, which was an award of damages in excess of a million dollars'.[29]

1.67 Waller Legal explained to the committee further that in the matter of Hand v Morris:

> The court ordered that the plaintiff should receive general damages assessed at $260,000; past pecuniary loss—which was loss of wages—in the sum of $100,000; future pecuniary loss at $320,000; and future medical expenses at $36,400. If Mr Hand had applied under the redress scheme, the most he could have recovered would be $150,000, and it's not likely that he would have recovered the maximum but perhaps only the average payment of around $50,000 to $60,000. It's also important to note that Mr Hand would

25 Leonie Sheedy, Care Leavers Australasia Network, *Committee Hansard*, 6 March 2018, p. 23.

26 Leonie Sheedy, Care Leavers Australasia Network, *Committee Hansard*, 6 March 2018, p. 26.

27 Andrew Collins, *Committee Hansard*, 6 March 2018, p. 34.

28 Matthew Jones, *Committee Hansard*, 6 March 2018, p. 39.

29 Penny Savidis, Ryan Carlisle Thomas, *Committee Hansard*, 6 March 2018, p. 49.

> not have been able to recover the cost of past and future medical expenses and would not have been able to recover loss of earnings.[30]

1.68 Additionally, as explained by Waller Legal:

> The scheme does not provide for past or future loss of earnings to be taken into account. The scheme does not provide for past or future medical expenses beyond the 10 years of the operation of the scheme. It does not allow for a plaintiff to recover punitive or exemplary damages.[31]

1.69 Members of the legal profession expressed to the committee that the great disparity between the maximum payment available under the Redress Scheme, and the potential rewards for electing litigation instead, may make litigation a more attractive option for Survivors, and lead to greater costs being incurred by Institutions and States.[32]

1.70 The President of the Law Council of Australia told the committee that:

> …no amount of money is going to compensate some of these people—but the higher the better. But, given that's the recommendation and given that, frankly, it seems relatively modest compared to what a common-law claim might be worth.[33]

1.71 Members of the legal profession also expressed support for the $200 000 cap set by the Royal Commission.

1.72 Maurice Blackburn stated:

> …the figure that was recommended and it was recommended not because it was plucked out of the air but because it was based on substantial work and research into the actuarial cost of providing redress at that level.[34]

1.73 National Aboriginal and Torres Strait Islander Legal Services also called for the cap to be increased.[35]

1.74 Further, Labor Senators are not aware of any institution appearing before the committee that expressed an unwillingness to pay the maximum amount put forward by the Royal Commission.

1.75 Francis Sullivan, of the Truth, Justice and Healing Council, representing the Catholic Church explained:

> The various church leaders who were in the royal commission from the Catholic Church said that they supported the royal commission's concept of

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30 Vivian Waller, Waller Legal, *Committee Hansard*, 6 March 2018, p. 47.

31 Vivian Waller, Waller Legal, *Committee Hansard*, 6 March 2018, p. 46.

32 Penny Savidis, Ryan Carlisle Thomas, *Committee Hansard*, 6 March 2018, p. 50.

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

34 Michelle James, Maurice Blackburn, *Committee Hansard*, 6 March 2018, p. 55.

35 Karly Warner, National Aboriginal Torres Strait Islander Legal Services, *Committee Hansard*, 6 March 2018, p. 6.

> a national redress scheme, so, by implication, they would support the $200,000.[36]

1.76 Labor Senators are of the view that the success of a Redress Scheme rests largely on whether it is viewed as being a credible alternative to the court system, which is capable of delivering justice.

1.77 The maximum amount of redress available through the Scheme plays a key role in establishing perceptions of the Schemes ability to do this.

1.78 Given the views of Survivors regarding the adequacy of the proposed cap, as well as the evidence provided by legal experts and the willingness of institutions to pay, Labor Senators are strongly of the view that the legislation should be amended to increase the cap on maximum payments, in line with the recommendations of the Royal Commission.

1.79 Although Labor Senators on the committee agree that the quantum of average payments is also important, they do not accept that a concentration on average payments is adequate justification for a lower maximum payment.

1.80 Labor Senators on the committee dispute the assertion that a higher maximum payment will necessarily lead to a lower average payment.

## Eligibility of Survivors with a criminal record

1.81 A number of witnesses and submitters to this Inquiry were clear that the decision to limit eligibility for the Redress Scheme and exclude some Survivors with a criminal record is totally inappropriate.

1.82 The committee heard compelling evidence that a history of childhood abuse is a significant, causative factor for offending later in life, and that excluding people from the redress scheme on this basis is deeply unfair.

1.83 The manager of Living Well Anglicare Southern Queensland, a former police officer, explained to the committee:

> We do understand that victims/survivors of childhood sexual abuse are five times more likely to be charged with a criminal offence. We know they are more likely to have received a custodial sentence. They are much more likely to continue offending to older age. They are more likely to be involved in more violent crime…it's an injustice for people who, through no fault of their own, often placed for their own care and protection, ended up on a trajectory which meant they were in prison and for a very long time.[37]

1.84 The committee heard from others that:

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36 Francis Sullivan, Truth Justice and Hearing Council, *Committee Hansard*, 6 March 2018, p. 60.

37 Dr Gary Foster, Manager, Living Well Anglicare Southern Queensland, *Committee Hansard*, 16 February 2018, p. 6.

> I believe that people were groomed, formed. They learned to do what they do in the institutions. And the institutions are to blame for whatever the person has come out with in their life.[38]

> The lack of trauma understanding is significantly reflected in the redress legislation's exclusion of victims with a criminal record. Sexual abuse and institutionalisation of Aboriginal and Torres Strait Islander people have contributed to the shocking rates of incarceration across Australia. A failure to understand the trauma impacts of sexual abuse and its correlation with offending is deeply concerning… they should not be held responsible for the impact of the abuse on their lives through their subsequent behaviour.[39]

1.85 And also:

> Based on research in this field and our clients' testimonies, it's certainly not unusual for abuse survivors to go off the rails after suffering abuse. We consider that the committee needs to recognise that many of these crimes stem from psychological injury, antisocial behaviour and drug addiction caused by institutional abuse. To exempt abuse survivors with lengthy criminal records, we'd punish them again for crimes for which they have already served the time.[40]

1.86 Given the undeniable correlation between a childhood history of abuse and adult criminal offending, many witnesses and submitters emphasised that the exclusion of these survivors from redress is deeply unfair, and, in the words of one, 'soul-destroying'.[41]

1.87 Witnesses from Survivor support services explained as follows:

> Many of the people who are imprisoned have experienced child sexual abuse and their behaviour has resulted from that. To actually exclude them from redress is incredibly punitive and shows a lack of understanding about the dynamics of child sexual abuse and what it means to victims.[42]

> …a drop in the bucket for a lifetime that's been…blighted by childhood experiences. We have to recognise…that some of the products of our adult systems, our prisons and our mental-health services, and our drug-and-alcohol services, and our homelessness services are part of what we have produced. And we have to be responsible for that.[43]

1.88 Members from the legal profession also emphasised the unfairness of excluding some Survivors from the redress scheme.

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38 Ron Love, Chairperson FACT, Tuart Place, *Committee Hansard*, 16 February 2018, p. 26.

39 Richard Weston, CEO, the Healing Foundation, *Committee Hansard*, 16 February 2018, p. 34.

40 Penny Savidis, Ryan Carlisle Thomas, *Committee Hansard*, 6 March 2018, p. 44.

41 Karly Warner, National Aboriginal Torres Strait Islander Legal Services, *Committee Hansard*, 6 March 2018, p. 9.

42 Dr Cathy Kezelman, Director, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 7.

43 Simon Gardiner, Berry Street, *Committee Hansard*, 6 March 2018, p. 17.

1.89 Victorian Aboriginal Legal Services said:

> We're not redressing people's behaviour as adults; what we're actually doing is righting a wrong that happened to children. People weren't offenders when they were children; they were just children and they were sexually abused.[44]

1.90 Dr Waller of Waller Legal explained that:

> Waller Legal notes that each and every survivor was a child at the time of the abuse and was not capable of controlling their environment. Many children were placed in an institution by a state government where adults abused them. Most likely they have been impaired in attaining the usual personal, social, educational and work-related developmental milestones. To exclude those in prison for five years or more seems to lack compassion and understanding.[45]

1.91 Ryan Carlisle Thomas referred to their previous experience representing Survivors of institutional child sexual abuse to illustrate the overrepresentation of this group in the justice system more generally:

> Speaking anecdotally, in terms of my practice that deals with wardship claims, I would estimate that as many as probably 50 per cent of clients have got past criminal records.[46]

1.92 In addition to issues of fairness, the impact of receiving redress on the likelihood of recidivism was raised before the Committee. It was put to Senators that engagement with the redress scheme would be beneficial for Survivors with a criminal conviction, particularly those that are incarcerated at the time of their interaction with the redress scheme, and that this has the potential to reduce the likelihood that they would continue to offend.

1.93 Miranda Clarke from the Centre Against Sexual Violence specified that excluding some Survivors from the redress scheme:

> …doesn't give them the opportunity to learn and grow. Part of redress is access to counselling and psychological care. We want people to be able to change their life trajectory, and we know that the counselling and psychological care offered to survivors in the prison system is inadequate. In Queensland, we've had one of the highest rates of prisoner engagement through the royal commission, and the feedback we're getting is that it's making a difference for them. Do we want that support to stop for those people who are in the prison system or do we want to continue to engage with them and help them to change their direction in life? We've supported people who have left the prison system, are still out of the prison system

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44 Alistair McKeich, Victorian Aboriginal Legal Services, *Committee Hansard*, 6 March 2018, p. 4.

45 Vivian Waller, Waller Legal, *Committee Hansard*, 6 March 2018, p. 46.

46 Penny Savidis, Ryan Carlisle Thomas, *Committee Hansard*, 6 March 2018, p. 50.

> and are still not back on drugs and alcohol. This has to be making a difference. And we want to take that away from them?[47]

1.94 Labor Party Senators are of the view that the eligibility requirements recommended by the Royal Commission should be upheld and respected.

## Eligibility: Residency Requirements

1.95 Labor Party Senators note that the Royal Commission did not recommend that Survivors who are not Australian residents be excluded from the Redress Scheme.

1.96 The Bill considered by this Inquiry imposes Australian residence as an eligibility requirement for accessing the proposed Redress Scheme.

1.97 Witnesses described the exclusion of Survivors who no longer live in Australia as being 'incredibly inequitable'.[48]

1.98 In their submission, the Child Migrants Trust explained that many former child migrants 'left Australia as a consequence of their abuse as children in institutional care'.[49]

1.99 Labor Party Senators on the committee believe it is important that the recommendations of the Royal Commission be respected, and call for the Bill to be amended to remove the residency based eligibility requirement.

## Counselling

1.100 Labor Senators on this committee note the Royal Commissions recommendation that lifelong access to counselling be provided to Survivors as part of their Offer of Redress.[50]

1.101 Throughout the course of the Inquiry, the Committee has become aware that the amount of counselling likely to be offered to Survivors as part of the redress package is likely to be capped at $5000.

1.102 The Committee heard evidence that this amount is 'not going to go anywhere'[51] and is 'significantly short of what would be required'.[52]

1.103 Anglicare WA explained to the Committee that Survivors often have complex requirements when accessing supports, and that as a result, counselling funding needs to be adequate to meet this higher threshold. She said that:

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47 Miranda Clarke, Royal Commission Liaison and Sexual Assault Counsellor, Centre Against Sexual Violence Inc, *Committee Hansard*, 16 February 2018, p. 6.

48 Caroline Ronken, Bravehearts, *Committee Hansard*, 16 February 2018, p. 15.

49 Child Migrants Trust, *Submission 33*, p. 2.

50 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendation 9a, p. 63.

51 Jeannie McIntyre, Victorian Aboriginal Child Care Agency, *Committee Hansard*, 6 March 2018, p. 8.

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

> …many of the survivors experience comorbid symptoms and have complex diagnosis needs in terms of PTSD and other psychological, or even psychiatric, conditions. The current cost of accessing adequate referrals and support for these people would mean that $5,000 would barely touch the surface.[53]

1.104 Dr Kezelman, the Director of the Blue Knot Foundation explained that:

> A lot of survivors need counselling in and out, right through their life at different times, depending on what's going on for them, so that they can get an opportunity to live a life that's worth living.[54]

1.105 The Committee also heard that it will be critical for Survivors to have lifelong access to counselling as part of their offer of redress.

1.106 Ms Sheedy of CLAN compared the experience of Survivors to that of veterans. She said:

> I think that those who want counselling should have it for as long as they need it. With Vietnam veterans, we acknowledge that war veterans have post-traumatic stress disorders, and, as taxpayers in this nation, we provide support to those soldiers. Well, children in orphanages and children who were in the care of the state, the churches and the charities are like little soldiers. We were in a war zone. We didn't have a gun, but we lived with fear every day of our lives.[55]

1.107 Maurice Blackburn told the Committee that they believe it is appropriate for the counselling provided through the Redress Scheme to be lifelong:

> We are of the view that, if the impact of the abuse is lifelong, so should the supports be too.[56]

1.108 Labor Senators on the Committee are deeply concerned that the counselling offered to Survivors as part of their redress will not be adequate, or even close to adequate, to meet their needs.

1.109 It is important that the counselling provided through the redress scheme is sufficient, as these services are beyond the financial capacity of many Survivors, and are only funded through Medicare in a limited way.

1.110 Once accepting an Offer of Redress and signing a Deed of Release, Survivors will have no further recourse to seek funding for these services from the institutions responsible for their abuse.

1.111 For these reasons, if the access to counselling is not provided through the redress scheme in an ongoing way, it is possible that Survivors will not be able to access these services at all.

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53 Linda Jenkins, Anglicare WA, *Committee Hansard*, 16 February 2018, p. 27.

54 Dr Cathy Kezelman, Director, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 10.

55 Leonie Sheedy, Care Leavers Australasia Network, *Committee Hansard*, 6 March 2018, p. 24.

56 Michelle James, Maurice Blackburn, *Committee Hansard*, 6 March 2018, p. 53.

1.112 Labor Senators on the committee believe that it is critical that the redress scheme fully meet the needs of Survivors for counselling, and that the recommendations of the Royal Commission in respect to counselling and psychological support should be adhered to.

## One Application

1.113 Labor Senators on the Committee understand that the legislation being considered limits the number of applications Survivors are permitted to submit to the Redress Scheme to one.

1.114 Labor Senators note that this was not the recommendation of the Royal Commission.

1.115 Witnesses and Submitters to the Inquiry have raised concerns about this rule.

1.116 Dr Kezelman of the Blue Knot Foundation explained that by limiting the number of applications that could be made, Survivors could be disadvantaged:

> …traumatic memory and the fact that at different times in people's lives they may not have a narrative, and often never get to a narrative, of what happened to them and when. So, when people come back and say they now remember that they were abused in institution Y, they're not necessarily making that up; that's just the very nature of trauma. If it's restricted to one application at a point in time and then, 10 years later, the person has remembered more information, what happens as a result of that?[57]

1.117 The issue of timing was also raised by Witnesses. The Centre Against Sexual Assault explained the difficult position this rule could place Survivors in:

> 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.[58]

1.118 Further, Bravehearts told the Committee that:

> We work with survivors who have been abused across different institutions. For them, as raised this morning, the option will be to either hold back until all institutions have opted in, or to put in an application and then potentially miss out when other institutions may opt in in the future. That's just completely unfair to victims. Again, we need to make this process as easy as possible for them. To have to make that decision—a decision as simple as that—will be incredibly difficult for many.[59]

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57 Dr Cathy Kezelman, Director, Blue Knot Foundation, *Committee Hansard*, 16 February 2018, p. 12.

58 Miranda Clarke, Royal Commission Liaison and Sexual Assault Counsellor, Centre Against Sexual Violence Inc, *Committee Hansard*, 16 February 2018, p. 12.

59 Caroline Ronken, Bravehearts, *Committee Hansard*, 16 February 2018, p. 22.

1.119 While understanding that the decision to limit the number of applications which could be made to the Scheme was made to avoid the unnecessary re-traumatization of Survivors by requiring multiple applications for Redress,[60] Labor Senators are of the view that the practical effect of this decision may be counter-productive.

1.120 Labor Senators on the committee call on the Government to reconsider the one application rule, balancing the importance of not re-traumatizing Survivors in their engagement with the Scheme, with the need to provide fair, and sometimes fast, access to the Redress Scheme.

## Funder of last resort

1.121 The Royal Commission recommended that a Redress Scheme include broad funder of last resort provisions so that where the responsible institution was bankrupt, defunct or otherwise no longer exists, a Survivor would still be able to access Redress.[61]

1.122 Labor Senators on the Committee understand that the funder of last resort provisions included in the legislation being considered are significantly tighter than this, and would only apply where there is a close link between the responsible institution for the abuse and the Government.

1.123 Maurice Blackburn characterized the funder of last resort provisions in the legislation as follows:

> …a sporting club, where the Australian Defence Force may take cadets to a program, and the sporting club no longer exists and abuse occurred there. In that scenario, the Commonwealth would step in and be the funder of last resort because there is a connection to the original institution in which the abuse occurred. That's not what was recommended by the royal commission. In our submission, that would simply serve to create categories of abuse survivors; that is, if your abuse happened to occur in an institution that continues today, and that institution signs up to the redress, then you will be eligible. If, on the other hand, your abuse happened to occur in institution that, for whatever reason, no longer exists and has signed up to the redress, then you won't be eligible.[62]

1.124 Labor Senators on the Committee note the evidence of the Department of Social Services that these matters are not yet finalised.[63]

1.125 Labor Senators on the Committee call on the Government to implement the funder of last resort recommendation put forward by the Royal Commission.[64]

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

61 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendations 36 and 37, 69.

62 Michelle James, Maurice Blackburn, *Committee Hansard*, 6 March 2018, p. 54.

63 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard*, 6 March 2018, p. 72.

## Child applicants to the Redress Scheme

1.126 Some witnesses to the Inquiry raised the issue of fairness for Survivors who themselves are currently still children when making an application for redress.

1.127 In particular, these concerns centred on the appropriateness of deciding a quantum of redress for child survivors based on the impact of their abuse, when the full impact of that abuse may not yet be known.

1.128 The YMCA explained as follows:

> While an assessment may be able to be made as to the severity of the abuse suffered, an assessment as to the impact of the abuse may not be possible at this time because they are minors. The impact of the abuse may not be known yet. Given that this is likely to form a significant part of any redress offer, children and young people may be significantly disadvantaged. It also follows that they will be significantly disadvantaged by the requirement to sign a deed of release. Redress can offer a proactive support mechanism for minors who may not yet be experiencing the full impact of the abuse due to their age and sexual maturity. Yet the current way the scheme is proposed may result in minors not being appropriately compensated for the impact of the abuse through redress or civil litigation.[65]

1.129 In addition, Labor Senators on the committee note that the legislation before the committee is silent on what arrangements would apply when making a redress payment to a person who is not yet 18 years of age.

1.130 Labor Senators are of the view that further work should be done before the implementation of the Scheme, to ensure the fair treatment of child applicants.

## Reporting to Parliament

1.131 Labor Senators on the committee note the proposal by Maurice Blackburn, that parliamentary reporting of the redress scheme include an ability for institutions which do, and do not, participate in the redress scheme to be highlighted.

1.132 Maurice Blackburn explained further the importance that the community have:

> …faith in the scheme – particularly for those who have eligibility to access it, the survivors – that there is transparency. We are of the view that the Australian public and the Australian community deserve to know the institutions that won't do the right thing and sign on to redress.

1.133 Labor Senators on this committee agree with this remark.

## The Assessment Matrix

1.134 A number of witnesses to the Inquiry noted the importance of the Assessment Matrix.

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64 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, recommendations 36-37.

65 Melinda Crole, YMCA, *Committee Hansard*, 6 March 2018, p. 59.

1.135 Professor Kathleen Daly noted in her evidence to the committee that it was:

> …very disappointing to see that no information provided…[the assessment matrix] should not be in the rules…and it should be made public.[66]

1.136 Labor Senators on this committee believe that the Assessment Matrix should be available for parliamentary scrutiny, and publicly released prior to the passage of legislation.

## Extension of the Scheme to Survivors of non-sexual abuse

1.137 Labor Senators on the Committee note the deeply personal testimony provided to the Committee by Survivors who did not experience sexual abuse, and are therefore not eligible for redress under the national scheme put forward by the Royal Commission.

1.138 It is the view of Labor Senators that this Redress Scheme should be implemented in line with the recommendations of the Royal Commission.

1.139 Labor Senators note and support the comments of the majority report, that this issue requires greater thought and focus by Government.

### Recommendations

1.140 Labor Senators on this committee are unequivocally supportive of the establishment of a national Redress Scheme, and are strongly of the view that this Scheme should be in line with the recommendations made by the Royal Commission, and implemented as soon as possible.

1.141 Labor Senators note the recommendations, and support for a national redress scheme, demonstrated in the majority report. However, it is the view of Labor Senators that these recommendations do not go far enough.

1.142 Further, Labor Senators on this committee make the following recommendations to ensure that the Redress Scheme is capable of delivering a credible alternative to the litigation process for Survivors and is adequate to meet their needs.

**Recommendation 1:**

**The Government should immediately comply with all requests for further information from all States, Territories and Institutions to facilitate their opting in to the Redress Scheme.**

**Recommendation 2:**

**The Bill be amended to restore the maximum cap for monetary payments to $200,000, as recommended by the Royal Commission.**

66 Professor Kathleen Daly, *Committee Hansard*, 16 February 2018, p. 41.

**Recommendation 3:**

**The Bill be amended to specify that Survivors be given a year to decide whether or not to accept an Offer of Redress, as recommended by the Royal Commissions.**

**Recommendation 4:**

**The Bill be amended to specify that there will be adequate access to culturally competent services to assist Survivors interact with the Redress Scheme in all areas of Australia.**

**Recommendation 5:**

**The Bill be amended to specify that counselling offered through redress packages be available for the life of the Survivor, as recommended by the Royal Commission.**

**Recommendation 6:**

**All Survivors of institutional child sex abuse be eligible for redress, including those who do not live in Australia and those with criminal convictions, as recommended by the Royal Commission.**

**Recommendation 7:**

**The Bill be amended to reflect the funder of last resort provisions that were recommended by the Royal Commission.**

**Recommendation 8:**

**The rules regarding the number of applications which Survivors are permitted to submit to the Scheme be reconsidered by Government, with a view to balancing the need to avoid the retraumatising of Survivors, with the need to provide fair access to the Redress Scheme, which is cognizant of potential time pressures faced by Survivors.**

**Recommendation 9:**

**Further consideration be given to the interaction of child applicants with the redress scheme, and any safeguards that this cohort may require.**

**Recommendation 10:**

**The Assessment Matrix should be released by the Government, prior to the passage of legislation.**

**Senator the Hon Lisa Singh** **Senator Murray Watt**

**Senator Claire Moore** **Senator Sue Lines**