The Senate

Community Affairs Legislation Committee

Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 [Provisions]

Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 [Provisions]

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TABLE OF CONTENTS

Chapter 3

Chapter 4

Dissenting Report by the Australian Greens

Appendix 1

Appendix 2

ABBREVIATIONS

ADJR Act	*Administrative Decisions (Judicial Review) Act 1977*
Advisory Council	Independent Advisory Council on Redress
AHRC	Australian Human Rights Commission
ALHR	Australian Lawyers for Human Rights
CLAN	Care Leavers Australasia Network
Committee	Community Affairs Legislation Committee
Compensation Act	*Health and Other Services (Compensation) Act 1995*
Consequential Bill	Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017
CYDA	Children and Young People with Disability Australia
Defence Abuse	Defence Abuse Response Task Force
Department	Department of Social Services
DRCA	*Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*
Explanatory Memorandum	Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, Explanatory Memorandum
Human Rights committee	Parliamentary Joint Committee on Human Rights
knowmore	knowmore legal service
Law Council	Law Council of Australia
Minister	Minister for Social Services
NATSILS	National Aboriginal and Torres Strait Islander Legal Services
NGIs	Non-government institutions
NSSRN	National Social Security Rights Network

PWDA	People with Disability Australia
Redress Bill	Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017
Redress Scheme	Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
Royal Commission Redress Report	Royal Commission into Institutional Responses to Child Sexual Abuse, 'Redress and Civil Litigation Report'
Royal Commission Report	Royal Commission into Institutional Responses to Child Sexual Abuse, 'Final Report'
RSS	Redress Support Services
SAMSN	Survivors & Mates Support Network
Scrutiny committee	Senate Standing Committee for the Scrutiny of Bills
Survivors	Survivors of institutional child sexual abuse
VAADFA	Victims Of Abuse In The Australian Defence Force Association Inc.
VACCA	Victorian Aboriginal Child Care Agency
VALS	Victorian Aboriginal Legal Service
VEA	*Veterans' Entitlements Act 1986*
YMCA	Young Men's Christian Associations of Australia

LIST OF RECOMMENDATIONS

Recommendation 1

4.6 The committee recommends the Australian Government should consider reducing the two year deadline for institutions to opt in to the Redress Scheme, and should consider options to encourage greater participation in the Redress Scheme, as outlined in chapter two.

Recommendation 2

4.8 The committee recommends the Department should ensure that planned consultations on the rules of the Redress Scheme include survivors' representative groups, and ensure information on rules is communicated as it becomes available.

Recommendation 3

4.12 The committee recommends the Department should actively engage with survivors' representative groups to provide clear communications for survivors, the community and media on how decisions will be made and matters that will be taken into account in making those decisions. Where necessary communication should reference the average payment amount rather than focussing on the maximum redress payment.

Recommendation 4

4.17 The committee recommends that, in further developing the operational assessment elements of the Redress Scheme, the Department take into consideration the long-term impact of non-sexual abuse on survivors, including the needs of Aboriginal and Torres Strait Islander survivors.

Recommendation 5

4.21 The committee recommends the Government consider mechanisms to ensure ongoing counselling is available to survivors, should they need it.

Recommendation 6

4.23 The committee recommends the Redress Support Service incorporate referral of affected family members, in cases where it is necessary to meet the critical needs of the survivor, to existing counselling services.

Recommendation 7

4.26 The committee recommends that in developing the minimum timeframes in the Redress Scheme, for the provision of documents or answers to an offer of redress, the Department should consider the special circumstances of survivors in remote communities, those with functional communication barriers and survivors experiencing trauma or mental health episodes linked to their abuse.

Recommendation 8

4.27 The committee recommends that the government consider changing the period of acceptance for redress from three months to six months, including provision for survivors to request an extension to this acceptance period where circumstances warrant.

Recommendation 9

4.29 The committee recommends that in finalising the position on the exclusion of serious criminal offenders from the Redress Scheme, the Australian, state and territory governments should consider the value of the Redress Scheme as a tool for the rehabilitation of offenders, and that excluding criminal offenders can have the unintended consequence of institutions responsible for child sexual abuse not being held liable.

Recommendation 10

4.31 The committee recommends that the annual report to Parliament on the operation of the Redress Scheme should include detailed data to understand the experiences of people going through the Redress Scheme and to provide a basis of any necessary refinements to the Scheme, including details of the number of applications received, average processing times and average payments offered.

Recommendation 11

4.34 The committee recommends these bills be passed.

Chapter 1

Introduction and background

> Over the course of the royal commission, more than 16,000 individuals made contact with the commission and the commission has heard more than 8,000 personal stories. More than 1,000 survivors provided a written account…Now that those stories have been told, now that they are on the record, we must do everything within our power to honour those stories and to act. I am committed and my government is committed to doing everything possible to make sure that this national tragedy is never repeated.[1]

Purpose of the bills

1.1 The focus of this inquiry by the Community Affairs Legislation Committee (committee) is to review the two bills currently before the Senate, which together establish a Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (Redress Scheme).

1.2 The Redress Scheme proposed by these bills would only include Commonwealth or territory institutions and participating non-government institutions (NGIs) operating in a territory.[2] The implementation of a national scheme which would include state government institutions and NGIs located in states—as opposed to territories—is discussed below in the 'bill as a first step' section.

1.3 The Redress Scheme will provide survivors of institutional child sexual abuse (survivors) with three key elements of redress, comprising:

- a monetary payment of up to $150 000;[3]
- access to counselling and psychological services; and
- a direct personal response from the responsible institution.[4]

1.4 The two bills under review are 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).

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1 The Hon. Malcolm Turnbull, MP, Prime Minister of Australia, *House of Representatives Hansard*, 8 February 2018, p. 1.

2 Department of Social Services, *Submission 27*, [p. 1].

3 The Redress Scheme payment is proposed to be capped at $150 000, lower than the Royal Commission recommendation of $200 000. However, while the average payment recommended by the Royal Commission was $65 000, the proposed average under the Redress Scheme is significantly higher at $76 000 per survivor.

4 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, Explanatory Memorandum (Explanatory Memorandum), p. 1.

1.5 In introducing the bills, the Minister for Social Services, the Hon. Christian Porter, MP (Minister), stated:

> Children placed in the trust of our society's institutions were some of the most vulnerable members in our community and the fact that must be confronted is that many children were sexually abused by the very people charged with their care and protection. No child should ever experience what we now know occurred. That is why it is time for all institutions and all governments to take responsibility for what has happened.
>
> The establishment of the scheme is an acknowledgement by the Commonwealth government that sexual abuse suffered by children in institutional settings; operated by a number of governments state, territory and federal and by a number of non-government institutions was wrong, a shocking betrayal of trust; and simply should never have happened.[5]

Nature of proposed Redress Scheme

1.6 The Redress Scheme these bills seek to establish is not intended to replicate a civil law process, but is intended to provide an alternative pathway for people who are unable or do not wish to undertake a civil law pathway for a variety of reasons, such as:

- Some survivors have been unable to seek redress because of the nature and impact of their abuse.
- Many survivors take years, even decades, to disclose their experience of child sexual abuse, by which time the institution may no longer exist or the ability to pursue common law damages is not feasible or may no longer be available.
- The evidentiary burden of civil litigation can be high.
- The emotional and psychological toll of civil litigation can be traumatic.

1.7 The Redress Bill establishes General Principles for the Redress Scheme, which includes:

- Redress under the scheme should be survivor-focussed.
- Redress should be assessed, offered and provided so as to avoid further harming or traumatising the survivor.[6]

Report structure

1.8 In acknowledgement of the complexity and importance of the two bills establishing the Redress Scheme, this report is broken down into four chapters:

- Chapter one is an introductory chapter, providing an overview of the provisions in the bills, as well as background information on the development

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5 The Hon Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12128.

6 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill), Division 2, Clause 13.

of the Redress Scheme, the stakeholder consultations, and the proposed governance structure which will underpin the operation of the Redress Scheme, should the bills be passed.

- Chapter two discusses the administrative issues of the Redress Scheme, such as the use of delegated legislation, as well as the application process for the Redress Scheme and ongoing operational matters.
- Chapter three focuses on the three Redress Scheme elements of the payment, counselling and the institutional apology, discussing the concerns raised by submitters and witnesses with the nature of the redress elements.
- Chapter four provides the committee's views and recommendations.

Royal Commission

1.9 The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) was established in January 2013 in response to allegations of the sexual abuse of children in institutional settings, which had been emerging in Australia for many years. The Royal Commission worked for just under five years, heard more than 8000 personal stories in private sessions, and received over 1000 written accounts from survivors.[7]

1.10 The Royal Commission released its *Redress and Civil Litigation Report* in September 2015[8] which formed the basis of the recommendations made in its December 2017 *Final Report* (Royal Commission Report).[9] The Royal Commission report contained 409 recommendations, of which 84 relate to the Redress Scheme.

1.11 In discussing the Australian Government response to the Royal Commission Report, the Attorney-General, the Hon. Christian Porter, MP, outlined the number and nature of the Royal Commission Report recommendations, and the whole-of-government response being taken:

> The breadth and scope of the royal commission report is enormous. If I can just, in that spirit of bipartisanship, offer some indication as to how we are progressing with those recommendations. There are 409 recommendations in total, with 189 new recommendations. Of those new recommendations, 67 are directed at the Commonwealth. We've established and provided for a task force inside my department which will coordinate the implementation and the responses from states and territories towards a consistent national response. It will report regularly and transparently via a website for all Australians to track our performance in this area.

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7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Website homepage*, https://www.childabuseroyalcommission.gov.au/ (accessed 5 March 2018).

8 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, September 2015.

9 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report*, December 2017.

> Part of that, and critical, is the redress scheme. That itself addresses 84 of those 409 recommendations, so it is utterly critical.[10]

1.12 The Department of Social Services (Department) informed the committee that in drafting the bills, the Department has been mindful of the need to ensure the provisions of the bills reflect the recommendations and principles established by the Royal Commission:

> [W]e have, to the best of our ability, stayed true to the recommendations of the royal commission about what redress is: about it being survivor focused, about it not being highly legalistic and about taking it on a lower evidentiary requirement than would occur in civil proceedings.[11]

Bills as a 'first step' to a national redress scheme

1.13 The Commonwealth does not have the constitutional power to legislate for a national scheme.[12] The Department has noted the two bills are intended as a 'first step' towards the implementation of a truly national Redress Scheme, and is drafted in anticipation of the participation of state governments and NGIs located in states, should a referral of powers be achieved. The Department has submitted that:

> If a state government agrees to provide a referral and participate in the Scheme from its commencement, the Commonwealth Bill will be replaced with a National Redress Scheme for Institutional Child Sexual Abuse Bill (National Bill) prior to the Scheme's commencement.[13]

1.14 The Prime Minister, the Hon. Malcolm Turnbull, MP, in making a statement on the Royal Commission Report to Parliament, stated:

> [T]he scheme will fulfil its promise of justice only if we have maximum participation across all jurisdictions. For this to occur, the states must take urgent action and refer the appropriate power to the Commonwealth in order for them to participate from 1 July. We have been working closely with each jurisdiction to encourage their participation in the scheme. Unless the states agree to participate, institutions within their jurisdictions will not be able to join. Survivors deserve much better and I urge the premiers in all the jurisdictions to prioritise this work and join the redress scheme without further delay. I also urge the non-government institutions to commit now to joining the scheme.[14]

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10 The Hon. Christian Porter MP, Attorney-General, *House of Representatives Hansard*, 8 February 2018, p. 788.

11 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 66.

12 A referral of powers from the states to the Commonwealth under section 51 (xxxvii) of the Australian Constitution would be required for the Australian Government to administer a national redress scheme.

13 Department of Social Services, *Submission 27*, p. [1].

14 The Hon. Malcolm Turnbull, MP, Prime Minister of Australia, *House of Representatives Hansard*, 8 February 2018, pp. 1–2.

1.15 The Department told the committee that negotiations with the states and NGIs are ongoing. At the committee's public hearing on 16 February 2016, the Department advised:

> We have been working closely with state and territory governments to encourage their participation in the scheme, and, while no state has opted in, we remain hopeful they will take this step and that we'll be able to have a national redress scheme and a national bill introduced.[15]

1.16 The Department also acknowledged provisions within the Redress Bill may require some amendment, to reflect the continuing discussions with stakeholders on the nature of the Redress Scheme:

> The bill before you requires some updates. The Commonwealth bill represents a point in time while detailed discussions continued with state and territory governments, non-government institutions and survivor groups. The best outcome, we recognise, for survivors is for the redress scheme to be national in its coverage, with maximum participation from all responsible institutions in all jurisdictions.[16]

1.17 On 9 March 2018, the New South Wales and Victorian Governments announced they will be joining a national Redress Scheme. However the exact details of the agreement between those states and the Commonwealth have not yet been made public, and there is still no agreement on the 'funder of last resort' provisions which ensure relevant governments will pay redress when the institution responsible for redress no longer exists or is insolvent.[17]

1.18 A more detailed discussion on progress with the states on referral of powers, and how that may impact the details of an amended bill, is found in chapter two.

Overview of bills

Redress Bill

1.19 The Redress Bill will establish the Redress Scheme with the following key elements:

> A person will be eligible for redress under the Scheme if the person was sexually abused as a child in an institutional setting and a Commonwealth institution is primarily or equally responsible, or where it occurred in a Territory or outside Australia and a participating institution was primarily or equally responsible for the abuse. The sexual abuse must also have occurred prior to the 1 July 2018, the date of the Scheme's commencement.[18]

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15 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 66.

16 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 66.

17 David Crowe, 'NSW, Victoria sign up to child abuse redress scheme, with bill to reach hundreds of millions of dollars', Sydney Morning Herald, 8 March 2018.

18 Explanatory Memorandum, p. 1.

1.20 Redress will include three elements: a redress payment of up to $150 000, access to counselling and psychological services, and a direct personal response.[19]

1.21 Additional elements of the Redress Scheme include:

- Survivors will be able to choose whether to accept one, two or all three of the components of redress.
- Eligibility for redress will be assessed on whether there was a reasonable likelihood the person suffered institutional sexual abuse as a child, and which occurred before the cut-off date of 1 July 2018.
- Non-sexual abuse in connection with the child sexual abuse will be taken into consideration as an aggravating factor.
- The amount of the redress payment will depend on the level of sexual abuse and related non-sexual abuse that a survivor suffered.
- Applications for redress are limited to one application per survivor. Survivors will be able to include multiple episodes of sexual abuse and related non-sexual abuse suffered in multiple institutions in the one application.
- A person who accepts an offer of redress must release the institution from civil liability for the abuse and related non-sexual abuse.
- Applicants must be an Australian citizen or Australian permanent resident, although the rules may provide for other persons to apply, such as former child migrants who no longer reside in Australia or children abused in Australian institutional settings outside Australia.
- Applicants will have access to legal advice services.
- Reviews of decisions made under the Redress Scheme are limited to internal review.
- Funding arrangements are based on the principle that the responsible entity pays.
- Any prior payments made by a participating institution in relation to the abuse suffered by a survivor that is within the scope of this Redress Scheme, will be deducted from the amount payable by that participating institution.
- The amount of the redress payment cannot be used to recover debts due to the Commonwealth and will not be subject to income tax.
- Redress Scheme Rules will set out additional requirements, and are proposed to include a bar on eligibility for persons convicted of sex offences, or sentenced to prison terms of five years or more for crimes such as serious drug, homicide or fraud offences.[20]

19 Explanatory Memorandum, p. 4.

20 Explanatory Memorandum, pp. 1–7 and Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 81–82.

Consequential Bill

1.22 The Consequential Bill supports the establishment of the Redress Scheme through proposed amendments to Commonwealth legislation relevant to the operation of the scheme.

1.23 The Consequential Bill is structured in three schedules, as follows:

- Schedule 1—proposes payments made under the redress scheme will be exempt from income tests for social security and veterans' payments;[21]
- Schedule 2—proposes payments made under the redress scheme will be excluded as property divisible among creditors for a bankrupt person;[22] and
- Schedule 3—proposes decisions made in the Redress Scheme will be exempt from judicial review.[23]

1.24 In his second reading speech, the Minister stated the amendments in Consequential Bill 'are essential to implement and maintain the integrity of the scheme' and further stated the Consequential Bill 'will ensure the scheme remains survivor focused and trauma informed by being a non-legalistic process for survivors'.[24]

Consultations

1.25 The development of the Redress Scheme and the two bills to enact it have been the subject of extensive consultation with survivor groups, legal representatives, advocacy organisations, counselling services, relevant institutions and state and territory governments.

1.26 An Independent Advisory Council on Redress (Advisory Council) was established in December 2016 to provide expert advice on the policy and implementation considerations for the Redress Scheme. The 15 member Advisory Council included 'survivors of institutional abuse and representatives from support organisations, as well as legal and psychological experts, Indigenous and disability

21 Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Consequential Bill), Schedule 1.

22 Consequential Bill, Schedule 2.

23 Consequential Bill, Schedule 3.

24 The Hon Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12136.

experts, institutional interest groups and those with a background in government'.[25] The Advisory Council has met formally on seven occasions.[26]

1.27 The terms of reference for the Advisory Council are to provide advice on:

- the governing principles that underpin the scheme;
- elements of the scheme's design, that may include eligibility and the principles around the processes of application, assessment, psychological counselling and direct personal response;
- how to best encourage state, territory and non-government institution participation in the scheme; and
- how the Commonwealth scheme will interact with other redress schemes.[27]

1.28 The provisions of the two bills were also subject to 'extensive consultations and workshops' with survivor groups,[28] and various drafts of the bills were provided at different times to relevant organisations to make comment.[29]

Governance arrangements

1.29 The planned governance arrangements for the Redress Scheme ensure that continued consultation with survivors and their relevant representative groups is embedded in the implementation of the Redress Scheme.

1.30 Governance arrangements include a Ministerial Redress Scheme Board comprising Ministers from participating state and territory governments, which must agree to any legislative or key policy changes required over time. A Redress Scheme Committee will be established, including NGIs, which will provide the Redress Scheme operator with advice on operational and implementation matters.[30]

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25 Senator the Hon. George Brandis, QC, Attorney-General, 'Redress for survivors of institutional child sexual abuse: members of Independent Advisory Council announced', Media release, 16 December 2016. The Independent Advisory Council on redress includes representatives from Alliance for Forgotten Australians, Ballarat Centre for Sexual Assault, Blue Knot Foundation, Care Leavers Australasia Network, Healing Foundation, knowmore legal service, Truth Justice and Healing Council and Uniting Care Queensland.

26 Department of Social Services, *Answers to questions taken on notice*, 16 February 2018, p. 21 (received 2 March 2018).

27 'Redress for survivors of institutional child sexual abuse: members of Independent Advisory Council announced', *Media release*, 16 December 2016, p. 2.

28 Survivor groups were consulted on the text of the Bill via the Independent Advisory Council on Redress. See Department of Social Services, *Answers to questions taken on notice*, 16 February 2018, p. 5 (received 2 March 2018).

29 Text of the Bill was sent to the Independent Advisory Council on Redress on 25 October 2017. All state and territory governments were provided with copies of the draft Bill on 19 July 2017, 22 September 2017 and 7 February 2018. Key non-government organisations were provided with copies of the draft Bill on 22 September 2017. See Department of Social Services, *Answers to questions taken on notice*, 16 February 2018, p. 6 (received 2 March 2018).

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

1.31 The Department has also presented evidence that policy and practice guidelines will be developed in consultation with stakeholders. Additionally, Redress Scheme data will be made public to allow for public scrutiny of the operation of the Redress Scheme.[31]

Financial impact

1.32 The Australian Government has committed $33.4 million in the 2017–18 Budget to establish the Redress Scheme. The Explanatory Memorandum outlines that expenditure beyond 2017–18 was not for publication at the time of the 2016–17 Budget due to legal sensitivities, and that the financial impact of the bills over the forward estimates would be announced as part of 2017–18 Mid-Year Economic and Fiscal Outlook.[32]

1.33 The Department informed the committee that the current estimate for the operation of the Redress Scheme was $3.8 billion, which included both Redress Scheme payments and the administration costs.[33] The Department has also provided evidence that the total quantum of payments to be paid out by responsible governments and NGIs is not yet known, and will be dependent on:

- which states, territories and non-government institutions opt into the Scheme
- how many eligible survivors will apply for the Scheme
- the final policy parameters of the Scheme.[34]

Reports of other committees

1.34 The Redress Bill and the Consequential Bill have been considered by the Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) and the Parliamentary Joint Committee on Human Rights (Human Rights committee).

1.35 The key concerns of the Human Rights committee include:

- The Redress Scheme is restricted to Australian citizens and permanent residents.
- There is a lack of detail in the primary legislation, which is intended to be provided for later in delegated legislation in the form of rules.
- Applicants must provide a waiver of future civil liability to participating institutions.
- The information sharing provisions raise privacy concerns.

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

32 Explanatory Memorandum, p. 2.

33 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 70.

34 Department of Social Services, *Answers to questions taken on notice*,16 February 2018, p. 4 (received 2 March 2018).

- The absence of external merits review and removal of judicial review.[35]

1.36 The key concerns of the Scrutiny committee include:

- There is a lack of detail in the primary legislation, which is intended to be provided for later in delegated legislation in the form of rules. This does not facilitate proper scrutiny of the proposed scheme, nor allow for the usual parliamentary disallowance processes.
- The standing appropriation does not allow for parliamentary approval and control of costs.
- Protected information disclosure powers for the Redress Scheme operator are too broad.
- The delegation of administrative powers is too broad.
- The lack of merits review and limitations on judicial review.
- Key information provided by the Minister to the Scrutiny committee is not included in the Explanatory Memorandum to assist with interpretation of the Bill.[36]

1.37 Detailed discussions of these concerns are contained in chapters two and three.

Conduct of inquiry

1.38 On 26 October 2017, the Minister introduced the bills in the House of Representatives.

1.39 Pursuant to a resolution of the Senate, the provisions of the Bill were referred to the committee on 30 November 2017, for inquiry and report by 13 March 2018.[37] On 13 March 2018, the Senate granted an extension of time for reporting until 28 March 2018.[38]

1.40 Information regarding the inquiry was placed on the committee's website.

Submissions

1.41 The committee wrote to relevant organisations and invited them to make a submission to the inquiry by 2 February 2018. Submissions continued to be accepted after this date.

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35 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017*, 6 December 2017, pp. 2–16.

36 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, 15 November 2017, pp. 8–36.

37 Selection of Bills Committee, *Report No. 14 of 2017*, pp. 3, 5–6.

38 Senate Community Affairs Legislation Committee, *Progress report: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017*, 13 March 2018.

1.42 The committee received 86 public submissions which were published on the committee's website. A further 6 submissions were accepted as confidential. A list of submissions received is at Appendix 1.

Witnesses

1.43 Public hearings for the inquiry were held on 16 February 2018 in Canberra and 6 March 2018 in Melbourne.

1.44 The committee heard evidence from 32 organisations and 13 individuals who identified as survivors. A list of witnesses is at Appendix 2.

Note on references

1.45 References to the *Committee Hansard* are to the proof *Hansard*. Page numbers may vary between the proof and official *Hansard* transcripts.

1.46 References to the Minister is to either to the Hon. Christian Porter, MP, who was Minister for Social Services at the time of the bills being introduced into the House of Representatives or to the Hon. Dan Tehan, MP, current Minister for Social Services. References to the Attorney-General refer to comments made by the Hon. Christian Porter, MP, in his current Ministerial role.

Acknowledgments

1.47 The committee would like to thank the organisations which made submissions to the inquiry and provided evidence at its public hearings. In particular, the committee would like to honour the bravery of all survivors who made submissions or appeared as witnesses at a hearing.

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]

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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]

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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]

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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…

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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]

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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:

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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.

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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]

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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

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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

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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.

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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:

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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]

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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

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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.

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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]

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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

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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

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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]

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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

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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
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> (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]

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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:

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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]

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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

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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:

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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]

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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.

Chapter 3

Redress elements, reviews and reporting

> While no amount can truly compensate survivors for the trauma experienced, financial compensation has the potential to provide survivors with a means to improve their life and wellbeing through avenues that are specific to and relevant to their own needs.[1]

3.1 This chapter will highlight the key concerns raised in evidence presented to this inquiry relating to the three elements of redress being offered to institutional child sexual abuse survivors (survivors) under the Commonwealth Redress Scheme for Survivors of Institutional Child Sexual Abuse (Redress Scheme), and the supports to access and review mechanisms related to those elements of redress.

3.2 Subclause 18(1) of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill) sets out the three elements of redress that can be provided to a person:

(a) a redress payment of up to $150 000;

(b) access to counselling and psychological services; and

(c) a direct personal response from each of the participating institutions determined to be responsible for the person's abuse.[2]

3.3 Under subclause 18(2), a person can choose to accept one, two or all three of these elements of redress.

3.4 Part 2-6 of the Redress Bill sets out the provision of these aspects of redress under the scheme.

Redress payments

3.5 The first of the three elements of redress provided under the proposed Redress Scheme is the redress payment to survivors. The amount of this payment, the mechanisms for its calculation and its equitable administration to survivors was a key issue in evidence from submitters and witnesses.

Amount of money to be paid

3.6 The Explanatory Memorandum to the bills describes that:

> The amount of the redress payment will depend on the level of sexual abuse and related non-sexual abuse that a survivor suffered and will be an amount

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

2 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill), subclause 18(1).

up to a maximum of $150,000. The intention of this payment is to recognise the wrong the person has suffered.[3]

3.7 The Department of Social Services (Department) has stated the decision to cap the Redress Scheme at $150 000 was made by the Australian Government ahead of the design and development of the scheme.[4]

3.8 There is also an indication that a future national scheme would give states the ability to set their own compensation cap under their own 'mirror' legislation, although both states which have agreed to join such a scheme have expressed their intention to meet the Australian Government's $150 000 cap.[5]

3.9 A large number of submissions have commented that the $150 000 cap on redress payments proposed is substantially less than the cap which was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) in the *Redress and Civil Litigation Report* (Royal Commission Redress Report).[6] The Royal Commission Redress Report recommended a minimum payment of $10 000 and a maximum payment of $200 000, with an average payment of $65 000.[7]

3.10 Many witnesses and submitters have recommended that the Royal Commission levels of payment be adopted by the proposed Redress Scheme without variation.[8] The Department told the Community Affairs Legislation Committee (committee) that it had attempted to replicate the payment matrix used by the Royal Commission, but it was not able to replicate the same average and cap payments through any of its modelling or testing.[9]

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3 Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, Explanatory Memorandum (Explanatory Memorandum), p. 5.

4 Ms Barbara Bennett, Deputy Secretary, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 67.

5 David Crowe, 'Political row over redress scheme for child sexual abuse', *Sydney Morning Herald*, 12 March 2018, https://www.smh.com.au/politics/federal/political-row-over-redress-scheme-for-child-sexual-abuse-20180312-p4z3yr.html (accessed 20 March 2018).

6 Anglicare WA, *Submission 10*, p. 4; Mrs Christine Foster, *Submission 15*, p. 5; Shine Lawyers, *Submission 25*, [p. 6]; Relationships Australia, *Submission 29*, [p. 8]; knowmore legal service, *Submission 31*, p. 25; Victorian Kids in Care Advocacy Service, *Submission 41*, p. 1; Mr Frank Golding OAM, *Submission 42*, p. 6; Waller Legal, *Submission 52*, p. 19; Centre for Excellence in Child and Family Welfare, *Submission 56*, [p. 2]; among others.

7 Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report* (Royal Commission Redress Report), September 2015, p. 66.

8 Anglicare WA, *Submission 10*, p. 4; Mrs Christine Foster, *Submission 15*, p. 5; Shine Lawyers, *Submission 25*, [p. 6]; Relationships Australia, *Submission 29*, [p. 8]; knowmore legal service, *Submission 31*, p. 25; Victorian Kids in Care Advocacy Service, *Submission 41*, p. 1; Mr Frank Golding OAM, *Submission 42*, p. 6; Waller Legal, *Submission 52*, p. 19; Centre for Excellence in Child and Family Welfare, *Submission 56*, [p. 2]; Ms Joan Isaacs, *Submission 13*, p. 2; among others.

9 Dr Roslyn Baxter, Group Manager, Families and Communities Reform, Department of Social Services, *Committee Hansard*, 16 February 2018, pp. 67–68.

3.11 The Department explained to the committee that in determining a payment matrix, it focused on the average payments as being the more important number as it would impact more survivors. In the payment matrix proposed by the Department for the Redress Scheme, while the maximum payment available is lower than the recommendation of the Royal Commission, modelling has shown that survivors will receive a higher payment on average of approximately $76 000 per survivor. This average payment is $11 000 higher than the Royal Commission recommendation.[10]

3.12 The modelling for payments under the Redress Scheme has been thoroughly tested across a series of circumstances, based on data from the Royal Commission and the Redress WA scheme,[11] to ensure an accurate average and distribution based on the proposed cap:

> We've tested that from a number of different angles, including running a number of scenarios from the royal commission through that to stress-test those numbers, and we're confident—to the degree that we can be, not actually having run the scheme yet—that they're as robust as we can get.[12]

3.13 Throughout this inquiry, Professor Kathleen Daly, an expert on redress schemes, presented the committee with a significant amount of evidence showing that the average payment made under any redress scheme is far more important than the cap or maximum payment. Professor Daly noted that 'very few [survivors] will get the maximum' and that the average proposed by the Redress Scheme would be in the top five average payments of any studied redress scheme worldwide.[13]

Concerns about payment levels

3.14 The Redress Scheme as proposed does not include a minimum payment level. Dr Vivian Waller of Waller Legal told the committee:

> I think it should have a minimum, because, for trauma informed reasons you would want someone if they are able to make out that they have been abused to be eligible for some payment. I think it might be a distressing experience for there to be a finding of fact or acceptance that someone was harmed and yet no redress is given to them.[14]

10 Department of Social Services, *Submission 27*, pp. 1–2.

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

12 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 16 February 2018, p. 68.

13 Professor Kathleen Daly, personal capacity, *Committee Hansard,* 16 February 2018, p. 42.

14 Dr Vivian Waller, Principal Solicitor, Waller Legal Pty Ltd, *Committee Hansard,* 6 March 2018, p. 51.

3.15 Several witnesses and submitters supported the introduction of a minimum redress payment at the Royal Commission recommended level of $10 000,[15] while Berry Street recommended a higher minimum payment of $20 000.[16]

3.16 Concerns have also been raised that a focus throughout much of the debate about the proposed Redress Scheme on the amount of the maximum payment—rather than on the amount of the average payment or on payments at the lower end of the spectrum—is giving survivors unrealistic expectations about the amount of money they may receive as a redress payment.[17] Dr White from Tuart Place summarised this issue:

> What do we think is likely to happen when an authority such as the federal government announces a redress scheme with a top payment of $150,000, especially when the media prominently reports it over a period of time? It's not hard to imagine, is it? The most abused and most damaged survivors start to think they're going to receive $150,000 in July, this year.[18]

3.17 Managing the expectations of survivors is discussed further below in relation to the assessment matrix and calculation of redress payments.

3.18 Another concern raised by survivors and their representative groups was that the maximum payment under the Redress Scheme could be reduced after implementation. This concern was related to the experience of the Redress WA scheme, as that scheme was initially announced with an $80 000 maximum payment but was subsequently reduced by nearly half to $45 000 after nearly 6000 people had already made applications:[19]

> This decision caused a great sense of injustice for many actual and potential claimants. In order to guarantee that this is not repeated, processes must be employed to ensure that expected payment levels are not reduced during the operation of the scheme, as this would significantly undervalue the experiences of those survivors and victims.[20]

How do you put a financial value on abuse?

3.19 Many submitters and witnesses throughout this inquiry have raised concerns that the calculation of a redress payment will be seen as effectively putting a financial

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15 Law Council of Australia, *Submission 82*, p. 155; Maurice Blackburn Lawyers, *Submission 28*, p. 6; Waller Legal, *Submission 52*, p. 19; Mr Francis Sullivan, CEO, Truth Justice and Healing Council, *Committee Hansard*, 6 March 2018, p. 65.

16 Berry Street, *Submission 58*, p. 10.

17 Ms Caroline Carroll, Chair, Alliance for Forgotten Australians, *Committee Hansard*, 16 February 2018, p. 18; Mr Mark King, private capacity, *Committee Hansard*, 16 February 2018, p. 48.

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

19 Ms Karly Warner, Executive Officer, National Aboriginal and Torres Strait Islander Legal Service (NATSILS), *Committee Hansard*, 6 March 2018, p. 6; Tuart Place, *Submission 19*, p. 1.

20 Ms Karly Warner, NATSILS, *Committee Hansard*, 6 March 2018, p. 6.

value on a survivor's abuse and that this may cause the Redress Scheme to be perceived as an unfair or inequitable process.[21]

3.20 The recommendations from submitters as to how to manage these concerns have been wide-ranging, such as to offer a flat rate of redress payment to all applicants,[22] or to provide a higher payment to members of certain survivor groups (such as care leavers) in recognition of their circumstances.[23]

3.21 Many submitters have also noted that the amount of redress payment being offered under the scheme (or indeed any amount of money) is insufficient compensation for the trauma that many survivors have suffered[24] and that the value of compensation from civil cases has been higher than payments proposed under the Redress Scheme.[25]

3.22 However, as discussed throughout this report, the intention of the Redress Scheme is to provide a 'lower evidentiary hurdle than civil justice proceedings'.[26] It is not the intention of the Redress Scheme to offer compensation at a level commensurate with figures seen in civil cases, but to provide an avenue to redress for survivors who are unable or unwilling to access civil processes. Furthermore, the Department has explained that a compensation payment from civil justice proceedings takes into consideration a number of other factors, which makes any comparison with a redress payment impossible:

> As much as we know—and some of it's drawn on reference from the royal commission, and some institutions have been a bit more open to us about payments—it is variable depending on whether it went through civil litigation. We know that that's been a much higher amount paid to people but that the evidentiary space is much more highly contestable. We know that some of the settlements that were directly done by some of the institutions were higher, but we also heard from some of the survivors that

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21 Miss Miranda Clarke, Royal Commission Liaison, Centre Against Sexual Violence Inc., *Committee Hansard*, 16 February 2018, p. 5; Mr Simon Gardiner, Berry Street, *Committee Hansard,* 6 March 2018, p. 14; Mr Mark King, *Committee Hansard*, 16 February 2018, p. 48; knowmore legal service, *Submission 31*, p. 33; Professor Kathleen Daly, *Submission 44.1*, p. 3; PeakCare Queensland Inc, *Submission 51*, p. 5; among others.

22 Mr Mark King, *Submission 40*, [p. 3]; Mr Frank Golding OAM, *Submission 42,* p. 7; Victorian Aboriginal Legal Service (VALS), *Submission 14*, p. 2; Mr Robert House, *Submission 75*, [p. 1].

23 Care Leavers Australasia Network (CLAN), *Submission 60*, p. 12.

24 Child Migrants Trust, *Submission 33*, p. 2; CLAN, *Submission 60*, pp. 10–11; Mr Vince Mahon, *Submission* 23, [p. 1]; Mr Les Johnson, *Submission 18*, [p. 1].

25 Mr Mark King, *Committee Hansard,* 16 February 2018, p. 48; Mr Matt Jones, *Submission 6*, p. 3; Victims Of Abuse In The Australian Defence Force Association Inc. (VAADFA), *Submission 22*, p. 3; Relationships Australia, *Submission 29*, [p. 7]; Waller Legal, *Submission 52*, p. 8; Mr David O'Brien, *Submission 77*, [pp. 1–2]; Restorative Justice International, *Submission 77*, p. 3; among others.

26 Department of Social Services, *Submission 27*, p. 12.

> they were much lower. In fact, the nature of some of the payments wasn't really redress. They might've been payments for health support or dental work, and they won't count in any of that. We don't have that information. We can only draw on what the royal commission collected publicly and those institutions that shared a bit with us. But it was really clear that redress is not compensation. The royal commission extensively said that it can never be compensation, that it's about a payment that recognises harm; whereas civil litigation does take into account things like loss of income, medical expenses and legal expenses—much richer factors. So it is not possible for us to do a comparison about where that sits.[27]

Calculating the redress payment

3.23 Clause 33 of the Redress Bill sets out how the scheme operator must make a determination of:

(a) the amount of the redress payment for a person; and

(b) the amount of each liable institution's share of the cost of that payment.[28]

3.24 This clause also includes, under subclause 33(2), a method statement outlining the steps for calculating a redress payment. In brief, this method statement includes:

- applying the assessment matrix to work out the maximum amount of redress payment that could be payable to the person;
- working out the gross liability amount for each responsible institution;
- working out the amount of any relevant prior payments made by that institution to that person, and indexing those amounts for inflation (by a simple formula), and adding those amounts together into a single reduction amount; and
- working out the institution's share of the cost of redress by reducing the gross liability amount by the reduction amount. The amount of redress payment owed by each may be nil but not less than nil.

3.25 The Explanatory Memorandum provides a number of examples for how these calculations would work in various circumstances where multiple institutions are responsible for varying amounts of a person's redress payment.[29]

3.26 Prior payments which will be taken into consideration under clause 33 will not include payments that are prescribed in the rules as not being relevant.[30] The Department clarified in its submission that the prior payments that would not be considered under clause 33 would be:

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27 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, pp. 76–77.

28 Redress Bill, subclause 33(1).

29 Explanatory Memorandum, pp. 23–25.

30 Redress Bill, subclause 33(2).

- payments provided to support access to counselling and psychological services;
- routine payments for treatment, medical or dental bills; or
- one-off payments, not in recognition of harm, for specific purposes, even if the specific purpose (such as covering rent or consumer items) was requested by the survivor.[31]

3.27 The Law Council of Australia has also recommended that prior payments considered under clause 33 should exclude any legal costs and outlays paid as part of a previous compensation payment.[32]

3.28 Some submitters have noted that while the redress payment calculation takes inflation into account when assessing relevant payments, it does not in turn factor inflation into the proposed maximum level of redress payment, so the maximum amount of redress available to an individual will diminish over the lifetime of the scheme.[33] Submitters have also noted the importance of considering the financial literacy of survivors who may not understand why the payments they received in the past are being indexed.[34] Angela Sdrinis Legal explained to the committee the way in which inflation was calculated in the Catholic Church's Melbourne Response:

> …caused enormous distress to victims who didn't always understand the formula and how it was applied and felt that [adjusting] in this way was penny pinching and cruel.[35]

3.29 While some submitters recommended that the Redress Bill be amended so that prior payments are not adjusted,[36] the Victorian Aboriginal Child Care Agency (VACCA) has recommended that supporting documents for survivors should instead make clear how any prior payments will be indexed and counted under the Redress Scheme.[37]

The assessment matrix

3.30 As mentioned in chapter two of this report, the assessment matrix to work out the amount of a redress payment is not included in the Redress Bill and is subject to

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31 Department of Social Services, *Submission 27*, pp. 7–8.

32 Law Council of Australia, *Submission 32*, p. 17.

33 Maurice Blackburn Lawyers, *Submission 28*, p. 6; Kimberley Community Legal Services Inc., *Submission 63*, [pp. 5–6]; Ms Penny Savidis, Partner, and Head of Institutional Abuse Department, Ryan Carlisle Thomas, *Committee Hansard*, 6 March 2018, p. 48. See also: Australian Lawyers Alliance, *Submission 47*, p. 5; Survivors & Mates Support Network (SAMSN), *Submission* 66, p. 3.

34 Connecting Home, *Submission 34*, p. 6; Mr Andrew Collins, *Submission 57.1*, p. 3; Victorian Aboriginal Child Care Agency (VACCA), *Submission 36*, pp. 7–8.

35 Angela Sdrinis Legal, *Submission 46*, p. 7.

36 Angela Sdrinis Legal, *Submission 46*, p. 7; In Good Faith Foundation, *Submission 55*, p. 4.

37 VACCA, *Submission 36*, p. 8.

declaration by the Minister for Social Services (Minister) in delegated legislation under proposed clause 34.

3.31 While this matrix has not yet been declared or released, the committee is aware that the Independent Advisory Council on Redress (Advisory Council) has been consulted on a confidential draft.[38]

3.32 At the inquiry hearing on 6 March 2018, the Department confirmed to the committee that a form of the assessment matrix would be publicly available once it has been declared and that survivor-focused communication materials would be developed to explain it. The Department recognised the importance of 'transparency in the version of the matrix that is declared…and the communications materials', however noted that:

> …it may be that there are some materials that are not public facing because of the nature of the content that is in them, the very detailed [sic] of the policy guidance. Again, that would be on the basis of advice we received from the independent advisory council that some of the language, particularly where it goes to really working through particular acts, may be very triggering for survivors.[39]

3.33 Professor Kathleen Daly told the committee that providing this kind of transparency about the assessment matrix and the assessment process for the public and for survivors, even at a high level, will promote trust in the scheme:

> It needs to be sufficiently robust but of a general nature, so the detail of what the calculation is going to be is not what's required at a public level—the guidelines of what's done on the inside—but the general shape of what is going to be assessed and how, in the sense of its weight and so forth. I think it's important to show that, otherwise it just looks like anything goes or we don't know what the judgement will be based on.[40]

Exemption from income tests

3.34 Clause 45 of the Redress Bill provides for the protection of the redress payment:

> (1) Despite any law of the Commonwealth, a State or a self-governing Territory:
>
> (a) a redress payment is not to be treated as being a payment of compensation or damages; and
>
> (b) a redress payment is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise; and

38 Mr Simon Gardiner, Senior Consultant, Public Policy, Berry Street, *Committee Hansard,* 6 March 2018, p. 14; Mr Francis Sullivan, Truth Justice and Healing Council, *Committee Hansard,* 6 March 2018, p. 66.

39 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard,* 6 March 2018, pp. 68–69.

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

(c) an amount must not be deducted from a redress payment.[41]

3.35 Clause 46 of the Redress Bill also protects the redress payment from garnishee orders.[42]

3.36 The Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Consequential Bill) seeks to amend existing Commonwealth legislation to enable the support of the scheme. Specifically, the Consequential Bill proposes to amend the:

(a) *Social Security Act 1991*—to insert paragraph (8)(8)(jc) which, in effect, will exclude payments made under the Redress Scheme from the definition of income for the purposes of that Act;[43]

(b) *Veterans' Entitlements Act 1986* (VEA)—to insert paragraph 5H(8)(mb) which, if effect, will exclude a payment made under the Redress Scheme from the definition of income for the purposes of that Act;[44] and

(c) *Bankruptcy Act 1966*—to insert paragraph 116(2)(g) which, in effect, will exclude a Redress Scheme payment from being classified as property of a bankrupt that is divisible by creditors under that Act.[45]

3.37 The Explanatory Memorandum explains that the proposed amendments to the *Social Security Act 1991* and the VEA will ensure that Redress Scheme payments 'will be exempt from the income test' under those acts and 'will not reduce income support payments to a person who receives redress'.[46] Furthermore, it is explained that payments under the Redress Scheme will not be divisible among creditors for the recovery of money during the course of bankruptcy proceedings.[47]

Income support protection

3.38 Submitters to the inquiry did not comment extensively on the provisions of Consequential Bill. However, the evidence which was received focused on income support protections for individuals included in Schedule 1.

3.39 Shine Lawyers' submission, whilst supportive of the Consequential Bill's role in ensuring Redress Scheme payments do not contribute to income tests, expressed concern regarding income support protections:

> …it is still open to the Department of Veterans' Affairs to reduce income support payments by revoking liability for psychiatric illnesses already

41 Redress Bill, subclause 45(1).

42 Redress Bill, clause 46.

43 Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (Consequential Bill), Schedule 1.

44 Consequential Bill, Schedule 1.

45 Consequential Bill, Schedule 2.

46 Explanatory Memorandum, p. 64.

47 Explanatory Memorandum, p. 65.

> accepted under the VEA or the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988* (DRCA) on the basis the psychiatric illness results from abuse and not from other service incidents.[48]

3.40 Shine Lawyers provided an example of contact it had with a survivor who reported they felt unable to pursue redress 'on the basis that the veteran's hard-fought pension for war-caused PTSD under the VEA may be compromised'.[49] Consequently, Shine Lawyers recommended that further consideration be given to ensuring existing entitlements are not impacted as a result of Redress Scheme payments and those veterans' pensions paid under the DRCA receive the same protections as those whose pensions are paid under the VEA.

3.41 In its submission, the National Social Security Rights Network (NSSRN) highlighted the importance of Redress Scheme payments being used at survivors' discretion, without impacting on other social security entitlements. NSSRN expressed support for the Consequential Bill's proposed amendment to the *Social Security Act 1991*.[50]

3.42 Mr Duncan Storrar, Director of the Victorian Kids in Care Advocacy Service queried whether survivors' redress scheme payments would be liable to be paid to Medicare under the *Health and Other Services (Compensation) Act 1995*.[51]

3.43 The Department provided clarity on this issue at the request of the committee, outlining that a universal protection for Redress Scheme payments is included in clause 45 of the Redress Bill.[52]

Committee view

3.44 Setting an appropriate amount for redress payments is an extremely difficult issue, with many competing voices and views, even within the survivor communities. The committee has deep sympathy with the views expressed by survivors that no amount of redress can truly recompense a survivor for the suffering caused by institutional child sexual abuse.

3.45 The committee notes the purpose of establishing the Redress Scheme is not to replicate a civil litigation pathway, but to create an alternative for survivors who do not wish, or are unable, to go through lengthy and often traumatic legal proceedings.

3.46 The committee is highly cognisant of evidence presented by the Minister and the Department that the more the Redress Scheme replicates civil litigation, the less

48 Shine Lawyers, *Submission 25*, p. 10 (italics added).

49 Shine Lawyers, *Submission 25*, p. 10.

50 National Social Security Rights Network, *Submission 38*, p. 3.

51 Mr Duncan Storrar, Director, Victorian Kids in Care Advocacy Service, *Submission 41*, p. 2; Note: Section 8 of the *Health and Other Services (Compensation) Act 1995* (Compensation Act) provides for the recovery of past Medicare benefits from compensation made to a compensable person. Section 4 of the Compensation Act defines compensation payments the purposes of the act.

52 Department of Social Services, Answers to written questions on notice, received 8 March 2018.

motivation there is for institutions to opt in, many of whom may view a decision to opt in through a prism of financial liabilities. Should institutions elect not to opt in, survivors for whom civil litigation is not an option will have no recourse such as a Redress Scheme, and will miss out not only on a redress payment, but on the accompanying counselling and direct personal response.

3.47 The committee notes the evidence from the Department that in establishing a payment matrix, greater focus was placed on the average that will be paid to a majority of survivors, than on the cap amount which will impact only a few. The committee is highly supportive of the Redress Scheme's $11 000 increase to the average payment compared to the average proposed by the Royal Commission. The committee also notes the overall cost of the Redress Scheme being proposed by the Australian Government is higher than the costs proposed by the Royal Commission.

3.48 The committee notes the Royal Commission recommendation for a minimum payment amount of $10 000 has not been explicitly incorporated into the Redress Bill. Without seeing details of the assessment matrix, it is unknown if such a minimum payment is implicitly included. The committee believes that greater clarity on this issue would be helpful.

3.49 The committee notes concerns raised about indexing the cap amount, and believes the Department should take this into consideration to ensure that the value of payments made near the end of the 10 year Redress Scheme operation are not significantly reduced by inflation.

3.50 The committee also recognises the concerns raised by survivors and legal groups that the assessment matrix is not intended to be publicly available. However, the committee notes the Advisory Council was consulted in the development of the assessment matrix. The committee believes the justification provided by the Department—the need to protect the Redress Scheme from fraudulent claims— is reasonable and the committee is supportive of the Department's plan to make a high-level version of the matrix available to the public.

3.51 The committee notes that prior payments made for the same abuse being assessed by the Redress Scheme, are intended to be reduced from the Redress Scheme payment. The committee approves of the proposal that prior payment amounts specifically made for items such as medical care or counselling services will not be deducted from the final Redress Scheme payment. The committee believes that legal costs included within a prior payment should also be excluded.

3.52 The committee agrees with the provisions that provide exemptions from income tests and provide a blanket quarantine for Redress Scheme payments from being considered compensation.

Counselling and psychological services

3.53 Part 2-6, Division 3 of the Redress Bill relates to the provision of counselling and psychological services following a successful application for redress.

3.54 Clause 48 of the Redress Bill sets out that rules may prescribe matters related to counselling and psychological services provided under the scheme,[53] while clause 49 includes general principles to guide these services, including:

- empowering survivors to make decisions about their own care;
- supporting survivors to maintain existing therapeutic relationships; and
- ensuring that services provided through redress supplement, rather than compete with, existing services.[54]

3.55 Counselling has been universally acknowledged by submitters and witnesses as a critical element of redress, particularly in how it will assist survivors in their trauma recovery. A significant number of questions and concerns were raised about how the counselling element will operate.

3.56 A number of submitters and witnesses pointed to the need for counselling to be available for the lifetime of the survivor, not the lifetime of the scheme.[55] Miss Miranda Clarke from the Centre Against Sexual Violence Inc., explained the need for lifetime counselling:

> For someone who goes through childhood sexual abuse, particularly when that's in the context of a care-giving relationship, the effect for that person is something which extends beyond their lifetime. And, because it affects their ability to develop as a child and they miss key developmental stages, it means that that's something that can't necessarily be fixed. As the royal commission acknowledged, it's not something that can be cured with appropriate treatment, and it's something that will be triggered throughout their lifetime, for example, when they have their own children or grandchildren; if they were to run into someone from their past; a redress scheme; having to talk about what's happened—it's something which is constantly coming up for those people. The royal commission has done all this research already—it is the body that has said that this is something that is needed throughout their lives.[56]

3.57 Conversely, Care Leavers Australasia Network (CLAN) told the committee 'Some care leavers don't want counselling. They've been counselled and they've had enough'. However, CLAN said this view was not universal:

> 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

53 Redress Bill, clause 48.

54 Redress Bill, clause 49.

55 Shine Lawyers, *Submission 25*, [p. 5]; knowmore legal service, *Submission 31*, p. 35; Waller Legal, *Submission 52*, p. 16; Law Council of Australia, *Submission 82*, p. 22; among others.

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

> soldiers. We were in a war zone. We didn't have a gun, but we lived with fear every day of our lives. We've just had to suck it up.[57]

3.58 The Department informed the committee that the duration of counselling was an issue that had not been finalised. The Department further stated that in coming to a position, a number of other issues need to be taken into consideration, such as that survivors wanted the responsible institution to be financially responsible for the three redress elements, but conversely also wanted no further contact with the responsible institution once the redress application was finalised. It should also be noted that appropriation for the Redress Scheme is only for the 10-year period of the scheme. The financial management of ongoing counselling was an issue of continuing consideration by the Department.[58]

3.59 Submitters and witnesses also discussed the need for trauma-informed training for counselling services to ensure they are appropriate to survivors of institutional child sexual abuse. The need for culturally appropriate services is discussed later in this chapter.

3.60 CLAN told the committee that counsellors 'need to be not only trauma informed but that they need to be care leaver informed—and so does the redress scheme'.[59]

3.61 Ms Jennifer Jacomb from Victims of Abuse in the Defence Force Association Inc. (VAADFA) agreed with this view, and also raised concern that Redress Scheme counselling only begins once an application has been finalised:

> In that respect, I endorse the remarks of CLAN earlier. It just can't be a normal shrink or a normal counsellor. It has to be one who's had expertise in the area of dealing with child abuse victims; that's our recommendation. We strongly encourage the bill to be modified to provide funding so we can pay for the right sort of counselling. The national redress team, to their credit, are doing the best they can. They're aware of the problem and they're empathetic to the problem. But, as the bill stands at the moment, they don't have the money. The money's only authorised once the claim's admitted.[60]

3.62 Another issue raised was the need for survivors to be able to choose their counselling service.[61] In his second reading speech, the Minister stated:

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57 Ms Leonie Sheedy, Chief Executive Officer, CLAN, *Committee Hansard*, 6 March 2018, p. 24.

58 Ms Barbara Bennett, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 76.

59 Ms Leonie Sheedy, CLAN, *Committee Hansard*, 6 March 2018, p. 24.

60 Ms Jennifer Jacomb, Secretary, Victims of Abuse in the Australian Defence Force Inc., *Committee Hansard*, 6 March 2018, p. 31.

61 Anglicare WA, *Submission 10*, pp. 5–6; Centre Against Sexual Violence Inc., *Submission 21*, [p. 2]; Western Australian Council of Social Service, *Submission 24*, [p. 3]; Maurice Blackburn Lawyers, *Submission 28*, p. 9; Relationships Australia, *Submission 29*, [p. 8]; VACCA, *Submission 36*, p. 5; Australian Psychological Society, *Submission 59*, [p. 1]; among others.

> Consistent with the royal commission's recommendations, the scheme will provide survivors with flexibility to access the counselling or psychological services of their own choice. This will empower survivors to make decisions about their own counselling needs and will support them to maintain existing therapeutic relationships.[62]

3.63 The Department informed the committee that it was seeking to ensure continuity of care and that counselling services would be expert in this field by 'working out how the support services that are in place for this group of survivors at the moment, which have largely been to support them through the Royal Commission process, can be built upon to support people through this different process of applying for and going through that redress journey'.[63]

3.64 A further concern raised by a number of submitters and witnesses is the issue of intergenerational trauma, and whether counselling would be extended to family members who may also be experiencing trauma. Mr Rohan Collins-Roe from VAADFA described the impact which trauma can have on a family:

> [T]his national redress scheme, done properly, is one really good way of stopping what I would call generational curses dead in their tracks. Because I got abused, I take it out on my wife. Because I got abused, I take it out on my kids. I wasn't potentially a very good father to my kids. I didn't teach my boy how to be a father. He becomes a father, and he didn't listen to what I said; he watched what I did. So he goes and treats his kids bad, and then his kids get in trouble. It's not some super-spiritual oogie-boogie concept here; generational curses exist and we pass them down to our children by what we do, what happened to us, and what we do to other people.
>
> The kinds of generational curses…multiply out by the generations very, very quickly. You start with a few thousand people, and they start having two or three or four kids and partners—there's a lot of pain going on out there.[64]

Committee view

3.65 The committee concurs with the universal view expressed by submitters and witnesses that the inclusion of counselling services is of vital importance to assist survivors. The committee is aware that throughout the process of developing and negotiating the form that the Redress Scheme should take, the amount of counselling being proposed has changed and that a final view has not been formed.

3.66 The committee acknowledges the operational difficulty in providing lifetime counselling through a scheme intended to function for 10 years. Notwithstanding that, the committee is of the view that counselling should be available to survivors for as

62 The Hon Christian Porter MP, Minister for Social Services, *House of Representatives Hansard*, 26 October 2017, p. 12128.

63 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 71.

64 Mr Rohan Collins-Roe, Treasurer, VAADFA, *Committee Hansard*, 6 March 2018, p. 32.

long as individuals are being impacted by the institutional child sexual abuse they experienced. This is not necessarily delivered under the guise of the Redress Scheme.

3.67 The committee also acknowledges the intergenerational impacts that institutional child sexual abuse can have on family members of survivors. These impacts can be on partners, children, siblings and the parents of survivors.

3.68 The committee notes the Redress Scheme is limited to providing redress to the direct survivors of institutional child sexual abuse. The committee also notes the Redress Scheme Support services could be modified to include a process to identify the various forms of intergenerational trauma that can be present in families where a person was a victim of child sexual abuse, and provide a referral to existing specialist counselling and mental health services.

Direct personal responses

3.69 Part 2-6, Division 4 of the Redress Bill relates to the provision of direct personal responses from liable participating institutions following a successful application for redress where a survivor wishes to receive such a response.

3.70 The Explanatory Memorandum describes that:

> The survivor will have the chance to have their abuse acknowledged, tell the personal story of the abuse they suffered and how the sexual abuse impacted them. The format of the direct personal response may include an apology, an opportunity to meet with an appropriately senior person from the relevant institution and an assurance as to the steps the institution has taken to protect children in their care against further abuse.[65]

3.71 Clause 51 of the Redress Bill provides that rules may prescribe matters related to direct personal responses, such as the timeframes, form and manner in which these responses are given.[66] The Explanatory Memorandum states that these rules will 'ensure that direct personal responses are of a consistent standard for each person receiving a…response under the Scheme'.[67]

3.72 Clause 52 also provides several general principles guiding the provision of direct personal responses, including:

- engagement between survivors and participating institutions, including feedback to institutions from survivors about the response;
- encouraging clarity about the content of responses and responsiveness to survivor's needs;
- outlining what should be offered to survivors in a response;
- outlining appropriate training for staff delivering a response; and

65 Explanatory Memorandum, p. 6.

66 Redress Bill, clause 51.

67 Explanatory Memorandum, p. 32.

- consideration from institutions already offering broader direct personal responses than set out by the Redress Scheme to continue offering those responses.[68]

3.73 While the guiding principle under subclause 52(6) states that people delivering direct personal responses should receive training about the needs of survivors where relevant, submitters have raised concerns about the risk of re-victimisation and re-traumatisation of survivors where staff are not appropriately trained about or understanding of the survivor's needs.[69] Submitters have recommended specific areas which they believe should be required training for any person giving personal responses on behalf of an organisation, including:

- cultural awareness training;[70]
- disability awareness training, including training about communicating effectively with people with disability;[71] and
- trauma-informed sensitivity training about stress responses, emotional regulation, physical and emotional safety, and issues of power and control.[72]

3.74 Young Men's Christian Associations of Australia (YMCA) have also recommended that a monitoring and compliance system should be put in place under the Redress Scheme to ensure that staff from participating institutions are appropriately trained before delivering direct personal responses.[73]

3.75 The Department also provided some further clarification about the direct personal response framework and training for staff during the hearing on 6 March 2018:

> While the direct personal response framework for how these are provided has not yet been concluded and, because we are moving, we think, very quickly to try to establish this scheme, we are necessarily having to do the pieces that we need to do in order. We certainly have principles for how we will do that but the framework itself has not yet been concluded. While that is the case, it will include things like the type of training that we expect people who are delivering a direct personal response will have and the principles that will underpin that—that it will be survivor driven, that it will be at the survivor's choice and how that is delivered. So, while that has not been concluded, I can certainly tell you that we haven't been prescriptive in saying that organisations cannot continue to talk to or deal with survivors if

68 Redress Bill, clause 52.

69 Relationships Australia, *Submission 29*, [p. 12]; Waller Legal, *Submission 52*, pp. 20–21; Young Men's Christian Associations of Australia (YMCA), *Submission 37*, pp. 9–10; among others.

70 Blue Knot Foundation, *Submission 1*, [pp. 3–4].

71 People with Disability Australia (PWDA), *Submission 16*, [pp. 5–6].

72 Blue Knot Foundation, *Submission 1*, [pp. 3–4].

73 YMCA, *Submission 37*, p. 9.

> they are approaching them or if they wish to have a discussion with them. There is nothing in the material that we have provided them that suggests that they can't do those things.[74]

3.76 Submitters have also noted the importance for many survivors that direct personal responses are delivered by a prominent figure within the responsible institution,[75] and this is supported in the Department's submission that a response can include 'an opportunity [for the survivor] to meet with appropriate senior persons from the relevant institution'.[76]

Committee view

3.77 A direct personal response can provide an opportunity for engagement and healing between a survivor and the institution or institutions responsible for their abuse.

3.78 The committee recognises and agrees with the concerns of submitters that any staff delivering responses on behalf of participating institutions should be appropriately trained to recognise and meet the needs of survivors.

3.79 The committee is satisfied that the provisions of the Redress Bill, including the general guiding principles and the ability to prescribe rules about delivery, will ensure a high standard of responses under the Redress Scheme.

Redress for affected family members

3.80 As redress under the Redress Scheme is only for the eligible survivors, the Redress Bill does not make any provisions for redress for the family or next of kin of a survivor, except in relation to a deceased survivor who had applied to the scheme before their death.

Families of deceased survivors

3.81 Part 5-1 of the Redress Bill allows for redress in exceptional cases where a survivor dies either:

(a) after making their application but before receiving an offer of redress (clause 113); or

(b) after receiving an offer of redress but before accepting or declining that offer (clause 114).

3.82 While a person is not entitled to redress after their death, under these clauses and in accordance with clause 115, a redress payment should still be made to the person or persons who are entitled to the deceased person's property.

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

75 Connecting Home, *Submission 34*, p. 7; Professor Kathleen Daly, *Submission 44*, p. 5; Relationships Australia, *Submission 29*, [p. 12].

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

3.83 The Law Council of Australia has recommended that, in these exceptional circumstances, the counselling and psychological services aspect of redress should also be made available to deceased applicant's family.[77]

3.84 Some submitters also recommended that the Redress Scheme be expanded to allow family members to apply for redress on behalf of deceased person, particularly where the death was a direct result of the survivor's trauma.[78]

Families of living survivors

3.85 As discussed earlier in this chapter, many witnesses and submitters raised concerns about intergenerational trauma and the need for counselling for the families of survivors.

3.86 A large number of submissions recommended that the families of survivors should be eligible for counselling as part of the Redress Scheme.[79] Additionally, some recommended that direct personal responses also be made available to the families of survivors as part of the healing process.[80]

Other redress proposals

3.87 Submitters and witnesses to this inquiry raised ideas about services or programs which could complement the Redress Scheme to improve the lives of survivors. These included:

- A 'wrap around' case management approach taken to address the needs of survivors to liaise with and conduct referrals to health, housing, financial and family support services.
- The psychological impacts of being abused in care as a child being taken into account for survivors who are applying for the Disability Support Pension, or the establishment of a separate pension similar to the Veterans disability pension.
- A 'white card' which identifies a survivor, similar to Department of Veterans' Affairs program: this would give priority access to fully funded health care and allied health services, and can also be used to identify their needs in other program contexts, such as social security or housing.

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77 Law Council of Australia, *Submission 82*, p. 24.

78 Mrs Laurel Sellers, CEO, Yorgum Aboriginal Corporation, *Committee Hansard*, 16 February 2018, p. 2; Bravehearts Foundation, *Submission 26*, [p. 3]; Relationships Australia, *Submission 29*, [p. 5]; Mr Andrew Collins, *Submission 57*, [p. 2].

79 VACCA, *Submission 36*, p. 6; Australian Association of Social Workers, *Submission 76*, p. 7; Anglicare WA, *Submission 10*, p. 5; Centre Against Sexual Violence Inc., *Submission 21*, [p. 3]; Shine Lawyers, *Submission 25*, [p. 5]; Bravehearts Foundation, *Submission 26*, [p. 3]; Maurice Blackburn Lawyers, *Submission 28*, p. 9; Angela Sdrinis Legal, *Submission 46*, p. 10; among others.

80 Australian Association of Social Workers, *Submission 76*, p. 8; Bravehearts Foundation, *Submission 26*, [p. 3]; among others.

- Prioritising on surgery wait-lists for health issues caused by abuse or neglect within out-of-home care, and other medical costs assistance such as prescriptions.
- Educational and vocational training packages.
- Ensuring that survivors do not have to take aged care places with church or institutional groups who were responsible for child sexual abuse, and are prioritised for assessment.
- Prioritising on state and territory housing wait-lists.
- Training provided to doctors and nurses on Forgotten Australians, child migrants and survivors, similar to training provided for Stolen Generations.[81]

Committee view

3.88 The committee received a wide range of ideas from submitters and witnesses to this inquiry about services, programs and alternative pathways for redress. While these are outside of the scope of the Redress Scheme as proposed, the committee considers that the provision of additional services and programs to complement the Redress Scheme merits further consideration.

Specific groups accessing the Redress Scheme

3.89 Submitters and witnesses discussed the needs of particularly vulnerable groups who will be accessing the Redress Scheme, in particular Aboriginal and Torres Strait Islander people, people with disability and child applicants.

Aboriginal and Torres Strait Islander survivors

3.90 Submitters and witnesses raised the need to ensure the Redress Scheme was culturally appropriate for Aboriginal and Torres Strait Islander survivors.

3.91 The Victorian Aboriginal Legal Service (VALS) noted there were significant language barriers for Aboriginal and Torres Strait Islander survivors in seeking appropriate legal advice, and this should be taken into account in determining deadlines for providing information or accepting an offer of redress.[82]

3.92 National Aboriginal and Torres Strait Islander Legal Services (NATSILS) noted the need for a specific communication strategy for Aboriginal and Torres Strait Islander peoples' communities:

> We strongly support the proposition that there should be specific strategies for Aboriginal and Torres Strait Islander communities and for regional and

81 See for example: Anglicare WA, *Submission 10*, p. 5; Berry Street, *Submission 58*, p. 9; Ms Mary Brownlee, *Submission 45*; Ms Ellen Bucello, private capacity, *Committee Hansard*, 6 March 2018; Mr Andrew Collins, *Submission 57.1*; Law Council of Australian, *Submission 82*, p. 22; Ms Carol Ronken, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 20; Mr Duncan Storrar, *Committee Hansard*, 16 February 2018, pp. 48–49 and Victorian Kids in Care Advocacy Service, *Submission 41*.

82 Mr Alistair McKeitch, Senior Project and Policy Officer, VALS, *Committee Hansard*, 6 March 2018, p. 4.

> remote communities. Additional funding for community legal education will ensure the development of effective and culturally appropriate written materials, websites, social media content, use of local radio, information, DVDs, community forums and, importantly, outreach. This needs to occur in regional and remote communities as well as urban areas. Specific funding to enable material to be produced in various Aboriginal languages would be an essential aspect of this education and awareness raising component.[83]

3.93 VALS also noted the need for specific communication strategies for Aboriginal and Torres Strait Islander peoples' communities, and suggested:

> Given that many Aboriginal and Torres Strait Islander people do not have stable accommodation, or are at times homeless, incarcerated, at medical appointments or attending to funeral or other family business, it will be necessary for ATSILS to act as a potential point of correspondence for clients.
>
> Localised community networks are a major asset held by the ATSILS that will prove vital to ensure that Aboriginal and Torres Strait Islander survivors will have the highest chance of accessing redress by receiving and understanding any correspondence related to their application.[84]

3.94 VACCA noted that the criminal exclusion provisions may disproportionately impact Aboriginal and Torres Strait Islander survivors, due to the overrepresentation of Aboriginal people in the justice and prison systems.[85]

3.95 Multiple submitters and witnesses argued that, as non-sexual physical abuse is taken into account in assessing the redress payment amount, cultural abuse should also be taken into account:

> The sexual abuse of Aboriginal children must be seen in tandem with the cultural abuse that occurred when children were removed on the basis of their Aboriginality, deliberately ensuring disconnection from family, community, culture and land—removing critical, protective and resilient features from Aboriginal children.[86]

People with disability

3.96 Communication barriers for people with disability was raised by People with Disability Australia (PWDA), which noted that requires supports 'could include independent individual advocates, interpreters, augmentative or alternative communication devices, or other decision-making supports'. PWDA pointed out the

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83 Ms Karly Warner, NATSILS, *Committee Hansard*, 6 March 2018, p. 7.

84 VALS, *Submission 14*, p. 6.

85 Ms Megan Van Den Berg, Executive Manager, Royal Commission into Institutional Responses to Child Sexual Abuse Support Service, VACCA, *Committee Hansard*, 6 March 2018, p. 2. This issue was also raised by the Law Council of Australia and VALS.

86 Ms Megan Van Den Berg, VACCA, *Committee Hansard*, 6 March 2018, p. 2. This issue was also raised by VALS.

importance of ensuring good access to the Redress Scheme for 'people with disability who have experienced numerous barriers when attempting to access other justice system responses'.[87]

3.97 Children and Young People with Disability Australia (CYDA) agreed with this view, and submitted 'it is critical to ensure that all elements of the Scheme are accessible to people with disability. This includes specific supports to access information and support regarding the Scheme and during the application and response stages'. [88] CYDA recommended a review be undertaken to ensure all aspects of the Redress Scheme is accessible to people with disability.[89]

3.98 PWDA also recommended that Redress Scheme staff should receive 'trauma informed disability awareness training and education', submitting:

> This training would emphasise the importance of clear communication and using plain English, even when the topic at hand is quite complex. This would help to communicate what the Redress Scheme is, how decisions are made, and what the process involves. This may in turn help to manage the expectations of survivors with disability enquiring about the Redress Scheme.[90]

3.99 PWDA further recommended that where people providing direct personal responses will be required to have received cultural awareness training, sensitivity training and training about the nature and impact of child sexual abuse and the needs of survivors, these individuals should also receive disability awareness training.[91]

3.100 The Department noted to the committee that existing Royal Commission services, which would be incorporated into the Redress Scheme, included some specialist services that work with Indigenous people, in remote areas and with people with a disability.[92]

Child applicants

3.101 YMCA submitted that the use of the assessment matrix and the civil liability release are of particular relevance when considering the applications of minors for redress. YMCA submitted that the assessment of abuse severity, the scheme operator is required to consider issues such as 'permanent or non-permanent physical injury; infertility; mental health problems such as chronic PTSD; substance abuse; sexual dysfunction; chronic unemployment; and difficulty with intimacy'. YMCA contends a 'determination with respect to these impacts cannot be made in the circumstances of a minor applying for redress. The potential long-term impacts of child sexual abuse

87 PWDA, *Submission 16*, p. 2.

88 Children and Young People with Disability Australia (CYDA), *Submission 50*, pp. 3–4.

89 CYDA, *Submission 50*, pp. 3–4.

90 PWDA, *Submission 16*, p. 3.

91 PWDA, *Submission 16*, p. 5.

92 Dr Roslyn Baxter, Department of Social Services, *Committee Hansard*, 16 February 2018, p. 71.

such as the elements to be considered in making an assessment as to impact cannot be fully realised, known or identified until adulthood'.[93]

3.102 YMCA further submitted that executing a deed of release against future civil proceedings 'prevents child recipients of redress from seeking damages for future impact through civil proceedings, at a time when the future impact cannot be known'.[94] YMCA has recommended including a provision that will exempt minors from the requirement to provide a deed of release when accepting an offer of redress.[95]

Defence veterans

3.103 VAADFA raised a number of issues with the Redress Scheme concerning former defence force members and their applications for redress.

3.104 VAADFA discussed the issue whereby former child sexual abuse compensation payments are intended to be subtracted from the Redress Scheme payment total. VAADFA submitted that Defence Abuse Response Task Force (Defence Abuse) payments should not be subtracted from the final Redress Scheme payment for a number of reasons. Firstly, VAADFA submitted the Defence Abuse Reparation Scheme Guidelines limit the power to take the Defence Abuse payments into account when assessing other forms of compensation or damages to only be exercised by a tribunal or court.[96]

3.105 VAADFA further pointed out that the Defence Abuse payments covered issues outside of the Redress Scheme, and were not apportioned. It would therefore be impossible to correctly determine what proportion of the Defence Abuse payment would be relevant to subtract from a Redress Scheme payment.[97]

Supports to access the Redress Scheme

3.106 The Redress Bill contains provisions to ensure survivors are provided with legal advice throughout the application process. Additionally, survivors will have access to support services and financial advice. The Australian Government has announced it will contribute $130 million to fund redress support services, legal support services, and financial support services.[98] These are discussed below.

Redress Support Services

3.107 The aim of the Redress Support Services (RSS) is for survivors to have timely and flexible access to trauma-informed and culturally appropriate support services while engaging with the Scheme. The Department has submitted that the Australian

93 YMCA, *Submission 37,* p. 4.

94 YMCA, *Submission 37,* pp. 4–5.

95 YMCA, *Submission 37,* p. 5.

96 VAADFA, *Submission 22,* p. 1.

97 VAADFA, *Submission 22*, p. 4.

98 Department of Social Services, *Submission 27*, p. 11.

Government funded RSS will be run by community-based providers with the relevant skills and experience in supporting survivors of institutional child sexual abuse. Support will be provided during the application and assessment period, following receipt of the application outcome, and where required, continue to support the survivor if they seek review of the determination of their application. RSS will also refer applicants to appropriate services such as legal support organisations which provide help in accessing records, and other community-based supports.[99]

Legal advice

3.108 Many submitters and witnesses discussed the need for legal advice to be provided to survivors throughout the application process.

3.109 The Department submitted that Legal Support Services will 'provide survivors with access to free, trauma-informed, culturally appropriate and expert legal advice throughout the Scheme' and these would be available at four key stages of the application process:

- prior to application so survivors understand eligibility requirements and the application process of the Scheme;
- during the completion of a survivor's application;
- after a survivor has received an offer or redress and elects to seek an internal review; and
- on the effect of signing the acceptance document, which contains the release of future civil liability for participating responsible institutions and its impact on the prospect of future litigation.[100]

3.110 Multiple submitters and witnesses raised the need to ensure the funded legal advice provided applicants with legal advice on their options for civil litigation as an alternative to redress, not just advice regarding the impact to future civil litigation should the applicant sign a deed of release.[101]

3.111 As outlined above, the Department submitted the legal advice will include advice on how the acceptance of an offer of redress would 'impact on the prospect of future litigation'.[102]

3.112 Shine Lawyers submitted that many survivors would need assistance in preparing their applications due to a 'limited level of literacy coupled with alcohol and other substance abuse' and argued the 'consequences of consulting lawyers only

99 Department of Social Services, *Submission 27*, p. 11.

100 Department of Social Services, *Submission 27*, p. 12.

101 See for example: Mr Alistair McKeitch, VALS, *Committee Hansard*, 6 March 2018, p. 4; Angela Sdrinis Legal, *Submission 45*, p. 4.

102 Department of Social Services, *Submission 27*, p. 12.

towards the end of a matter is that survivors may lose the opportunity to present parts of their story which might have resulted in a higher payment'.[103]

3.113 However, as outlined above, the Department has provided advice that the legal advice service is intended to provide advice at key points throughout the application process, including 'during the completion of a survivors application'.[104]

3.114 The Department further submitted it will seek contributions of $1000 per successful application from responsible institutions.[105]

Committee view

3.115 The committee recognises the extensive evidence received from submitters and witnesses on the importance of good quality, independent legal advice. The committee is satisfied that appropriate legal supports will be made available to applicants throughout the key stages of the Redress Scheme application process. Confirming the commitment to independent legal advice, this legal advice service has been funded up front by the Australian Government.

3.116 The committee particularly notes that applicants will receive legal advice on the impact that accepting a Redress Scheme payment will have on civil litigation options.

Financial advice

3.117 The need for financial advice to be provided to Redress Scheme applicants was raised by a number of witnesses and submitters. Connecting Home Limited submitted that:

> Vulnerable survivors should have the availability and option to access financial counselling and support in relation to offers made that are then accepted. Survivors are not obligated to take up the offer as they may not require financial advisement however due to the traumatization of the process may find it extremely beneficial to have this support.[106]

3.118 CLAN strongly agreed with this view, and submitted that because of 'poor treatment and neglect in child welfare, a large number of Care Leavers did not receive adequate schooling, if any'.[107] CLAN recommended 'it is vital for Care Leavers and survivors of abuse that are receiving Redress, to have access to financial counselling if they wish. A large number of Care Leavers are receiving Centrelink Support

103 Shine Lawyers, *Submission 25*, p. 7.

104 Department of Social Services, *Submission 27*, p. 12.

105 Department of Social Services, *Submission 27*, p. 12.

106 Connecting Home Limited, *Submission 37*, p. 5. See also: Professor Kathleen Daly, *Submission 44*, p. 7; Mr Mark Glasson, Anglicare WA, *Committee Hansard*, 16 February 2018, p. 31; knowmore legal service, *Submission 31*, p. 42; VALS, *Submission 14*, p. 3.

107 CLAN, *Submission 60*, p. 9.

Payments as a means of survival, and for many, large sums of money will be a foreign feeling'.[108]

3.119 The Department has submitted that the Redress Scheme 'will support referrals for survivors to access existing Commonwealth funded financial counsellors. Survivors will also have access to information about how to deal with large sums of money through the MoneySmart website and redress website'.[109]

Communication strategies

3.120 An important mechanism to assist survivors to access the Redress Scheme raised by submitters and witnesses was an appropriate communication strategy. This was raised as a particular concern for vulnerable groups, such as Aboriginal and Torres Strait Islander peoples' communities, remote communities, people with disabilities, people with low literacy and people with functional communication barriers such as a lack of regular phone access.[110]

3.121 Anglicare WA pointed to the experience in the Western Australian redress scheme, Redress WA, where many people did not hear about the scheme and failed to apply in time.[111]

3.122 It was noted that in relation to the Commonwealth Redress Scheme, many survivors misunderstand the scheme at this point. Dr Philippa White of Tuart Place told the committee:

> 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 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. It's a serious problem, and we'd like to talk about how to deal with it later.[112]

3.123 Professor Daly also noted the importance of open communication between various support services and the scheme operator:

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108 CLAN, *Submission 60*, p. 9.

109 Department of Social Services, *Submission 27*, p. 12.

110 Law Council of Australia, *Submission 82*, p. 29; South Australian Commissioner for Victims Rights, *Submission 72*, p. 4; VALS, *Submission 14*, p. 6; Waller Legal, *Submission 52*, pp. 17–18.

111 Mr Mark Glasson, Anglicare WA, *Committee Hansard*, 16 February 2018, p. 26.

112 Dr Philippa White, Tuart Place, *Committee Hansard*, 16 February 2018, p. 23.

> During the early phases of implementation, there must be open lines of communication, including complaints and feedback, by legal and support services to the operator on these requirements. This information flow, along with posted information on a website, will provide a measure of transparency and accountability. It will also aid the operator's receiving strong applications.[113]

3.124 The Department told the committee that the communication materials being planned 'will be a range of materials that has been informed by some research we have been doing with survivor groups about what those materials should cover and what kind of language and format they should be in'.[114]

Deeds of release

3.125 Under clause 40 of the Redress Bill, a person who accepts an offer of redress will be required to release responsible participating institutions from liability for the sexual abuse (and related non-sexual abuse) for which redress is being provided.[115]

3.126 This deed of release will prevent the survivor, either as an individual or within a group, from bringing or continuing any civil claim against those responsible institutions relating only to that abuse.[116]

3.127 The Minister has stated the importance of including a deed of release provision within the Redress Bill to ensure participation by non-government institutions (NGIs) in the Redress Scheme:

> The deed of release is perhaps the most important feature in terms of encouraging those critical institutions to opt in to the scheme and thus it is a mechanism by which we can ensure greater coverage for survivors as without it institutions may be exposed to paying compensation through civil litigation in addition to providing redress under the scheme and so might decline to opt in to the scheme.
>
> The release will never preclude any criminal liabilities of the institution or alleged perpetrator, nor provide release in relation to any other abuse outside the scope of the scheme.[117]

3.128 The Minister also explained that a previously signed deed of release would not exclude a survivor from making an application under this Redress Scheme:

> A survivor may have previously signed a deed of release for money received in relation to institutional child sexual abuse. Importantly, the rules of the scheme will contain, as a foundational principle for entry, that

113 Professor Kathleen Daly, *Submission 44*, p. 6.

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

115 Redress Bill, clause 40.

116 Explanatory Memorandum, p. 29.

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

institutions will need to waive reliance on a prior deed of release signed by a survivor.[118]

3.129 Some submitters raised concerns about the operation of the deed of release and whether it sufficiently considers matters of future liability, particularly in relation to individuals associated with the responsible institution,[119] while a small number of submitters did not support the inclusion of deed of release provisions in the scheme.[120]

3.130 However, the Department has confirmed that the Redress Scheme's approach to releasing civil liability aligns with the recommendations of the Royal Commission.[121]

Committee view

3.131 Noting that some survivors have received very low payments from institutions in past redress schemes, the committee is pleased by the Minister's comments that past deeds of release will be waived by participating institutions and that these survivors will be included by the Redress Scheme.

Reviews

3.132 The Redress Scheme is proposed with a provision allowing for an independent internal review of decisions, but no provision allowing for external merits review and a bar on judicial review. Decisions made by the scheme operator will not be eligible for review in the Administrative Appeals Tribunal or eligible for appeal in the court system, either by individual applicants or by the responsible institution.[122]

3.133 In its submission, the Department affirmed that is was the Advisory Council's recommendation that survivors be provided access to an 'internal review process, but no rights to external merits of judicial review'.[123] The Department's submission provided that, in summary, the proposed limitation of external merits and judicial review is intended to ensure the Redress Scheme is not legalistic in nature, as such a scheme could be expensive, time consuming and could re-traumatise survivors.[124]

3.134 The Parliamentary Joint Committee on Human Rights (Human Rights committee) considered that the reasoning presented in the Explanatory Memorandum, regarding the objective of preventing the re-traumatisation of survivors, 'is likely to be

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

119 Scouts Australia, *Submission 35*, p. 3; Anglican Church of Australia, the Salvation Army and Uniting Church in Australia, *Submission 30*, p. 2; Truth Justice and Healing Council, *Submission 79*, p. 11.

120 Victorian Kid in Care Advocacy Service, *Submission 41*, p. 2; Berry Street, *Submission 58*, p. 7; Historical Abuse Network, *Submission 64*, [p. 3].

121 Department of Social Services, *Submission 27*, p. 8.

122 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, pp. 94–95.

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

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

a legitimate objective under international human rights law'. However, the Human Rights committee questioned whether preventing survivors from accessing external merits or judicial review—in instances where the survivors themselves may choose to do so—would be an effective means of preventing the re-traumatisation of survivors.[125] These concerns are discussed further below.

Internal review

3.135 Under proposed section 87 of the Bill, a Redress Scheme applicant may request an internal review of the decision which will be undertaken by the Redress Scheme operator, or an independent decision-maker with appropriately delegated power. The Explanatory Memorandum highlights the proposed independence of this internal review mechanism:

> To ensure full independence, neither the Operator nor independent decision-maker is permitted to have been involved in the making of the decision under review.[126]

3.136 The Senate Standing Committee for the Scrutiny of Bills (Scrutiny committee) reviewed the provisions allowing for internal review of a decision of the scheme operator. The Scrutiny committee found that proposed subclause 88(3) limits the review to the information and documents that were available to the person who made the original determination. Conversely, merits review, such as at the Administrative Appeals Tribunal, allows for the consideration of material that was not before the original decision maker.[127]

3.137 In response to the Scrutiny committee, the Minister provided context relevant to the Consequential Bill's judicial review exemptions:

> The [Independent Advisory Council on Redress] recommended the Scheme provide survivors with access to an internal review process, but no rights to external merits or judicial review as they considered that providing survivors with external review would be overly legalistic, time consuming, expensive and would risk further harm to survivors.[128]

3.138 The Scrutiny committee noted the Minister's statement that the above limit on new information was included to reduce the administrative burden on individuals and associated re-traumatisation of survivors, and to reduce high operational costs which might preclude broad opt in from jurisdictions and NGIs. However, the Scrutiny committee recommended that additional information should be allowed to be considered during the internal review process.[129]

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125 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017*, p. 15.

126 Explanatory Memorandum, p. 66.

127 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, p. 28.

128 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017: Ministerial responses*, pp. 10–11.

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

3.139 Maurice Blackburn Lawyers also suggested that subclause 88(3) may restrict the review of new information at the internal review stage, submitting that the 'clause is silent on a review process for circumstances where new information is necessary to the delivery of justice – for example, if incorrect information was inadvertently given to the Operator during the initial application, or if circumstances have changed during the decision making period'.[130]

3.140 VACCA also raised the need for the internal review process to be culturally-informed.[131]

3.141 Angela Sdrinis Legal raised a number of concerns and recommended the internal review process should: take no more than 90 days, ensure that a redress offer cannot be reduced on review and allow the applicant a period of 60 days to make submissions if the applicant so wishes.[132]

3.142 NATSILS was supportive of the goal to create a review process 'which reduces the exposure of survivors to overly legalistic, time consuming, expensive procedures' but had concern with the 'absence of transparency and accountability available through internal review processes'. NATSILS recommended a complaints mechanism be available 'for ensuring accountability with regard to internal review processes'.[133]

3.143 Additionally, the Truth Justice and Healing Council argued that participating institutions should have a right to seek a review of decisions particularly to review the determination of responsibility.[134]

External merits review

3.144 In responding to concerns about the lack of provision for review by the Administrative Appeals Tribunal, the Minister pointed to the expertise that independent decision makers will have in matters relating to institutional child sexual abuse:

> Members of the Administrative Appeals Tribunal are appointed based on their judicial experience, not recruited for the skillset and understanding of the survivor cohort that will be required of Independent Decision Makers. The Administrative Appeals Tribunal must make a legally correct or preferable decision, while Independent Decision Makers 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…Utilising the Administrative Appeals

130 Maurice Blackburn Lawyers, *Submission 28*, p. 10. This was also raised as an issue of concern by CYDA, the Commonwealth Ombudsman, VACCA and Waller Legal.

131 VACCA, *Submission 36*, p. 9.

132 Angela Sdrinis Legal, *Submission 46*, pp. 2–3.

133 NATSILS, *Submission 68*, p. 4.

134 Truth Justice and Healing Council, *Submission 79*, p. 15.

> Tribunal for merits review under the Scheme risks inappropriately imposing a legalistic lens on a non-legalistic decision making process.[135]

3.145 The Human Rights committee found 'the internal review mechanism may be capable of ensuring that survivors have adequate opportunities to have their rights and obligations determined in a manner that is compatible with the right to a fair hearing', but recommended this mechanism be monitored.[136]

3.146 The Australian Lawyers Alliance argued that the lack of external review could cause harm to survivors:

> A survivor who believes that a decision has been wrongly made according to the law, and cannot appeal that decision to an external tribunal, is likely to feel that the powerful are again operating to rob them of their rights.[137]

3.147 Angela Sdrinis Legal recommended that should an external review by the Administrative Appeals Tribunal not be allowed, then a review could be undertaken by the Commonwealth Ombudsman.[138] The Commonwealth Ombudsman noted he has existing jurisdiction to receive complaints about the administration of the Redress Scheme.[139]

3.148 Australian Lawyers for Human Rights (ALHR) questioned the entire premise of 'protecting survivors' being used as a basis for restricting external review citing the following issues:

> (a) In the situation where the Operator rejects the applicant's claim that they have been subject to sexual abuse, then it would appear that the applicant is not a survivor in which case recourse to an external review will not be harmful to them as a survivor;
>
> (b) it is illogical to deny a right to an external review on the basis of time and cost where the refusal then means that expensive, time-consuming litigation is the only other option open to the applicant;
>
> (c) it is not for the Independent Advisory Council but for the applicant to make the call as to which of various options would be more harmful to them as a survivor.[140]

3.149 ALHR argued it would be reasonable to exclude external review where there has been the acceptance of an application, but not where an application has been rejected.[141]

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135 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 96.

136 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 96.

137 Australian Lawyers Alliance, *Submission 47*, p. 13.

138 Angela Sdrinis Legal, *Submission 46*, pp. 2–3. This was also recommended as an alternative by the Australian Lawyers Alliance.

139 Commonwealth Ombudsman, *Submission 69*, p. 4.

140 Australian Lawyers for Human Rights, *Submission 49*, p. 3.

141 Australian Lawyers for Human Rights, *Submission 49*, p. 3.

Judicial review

3.150 The provision barring judicial review is contained in the Consequential Bill, which seeks to amend the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to insert paragraph (zg) to Schedule 1 which, in effect, will exempt decisions made under the Redress Scheme from being subject to judicial review under that Act.[142]

3.151 The Explanatory Memorandum stipulates that decisions under the scheme will not be subject to judicial review under the ADJR Act as:

> …the [Redress] Scheme is not intended to be legalistic in nature and is intended as an alternative to civil litigation with a low evidentiary burden.[143]

3.152 The Explanatory Memorandum reasons that the 'protections of the ADJR Act are unlikely to be required' because the Redress Scheme's 'reasonable likelihood' threshold is a lower burden of proof than a civil litigation process, resulting in a survivor being 'more likely' to access redress.[144]

3.153 The Scrutiny committee reviewed the exclusion of decisions made under the redress scheme from judicial review under the ADJR Act. The Scrutiny committee noted that the ADJR Act is beneficial legislation and drew scrutiny concerns to the attention of senators, considering that 'from a scrutiny perspective, the proliferation of exclusions from the ADJR Act should be avoided'.[145]

3.154 The Human Rights committee reported that the Consequential Bill's proposed exemption of a form of judicial review may 'limit the right to a fair hearing, as it limits survivors opportunities to have their rights and obligations determined by an independent and impartial tribunal'.[146]

3.155 Advice was sought from the Minister by the Human Rights committee regarding whether the removal of judicial review pursues a legitimate objective with reference to compatibility of the measure with the right to a fair hearing.[147] The Minister explained that redress is not intended to be a legal process:

> The Scheme has taken many steps to ensure that all aspects are developed in accordance with a trauma-informed approach and the judicial review process has not been developed for these reasons. If judicial review avenues were available, many survivors may have unrealistic expectations of what could be achieved given the low evidentiary barrier to entry to the Scheme

142 Consequential Bill, Schedule 2.

143 Explanatory Memorandum, p. 64.

144 Explanatory Memorandum, p. 65.

145 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2017*, pp. 20–21.

146 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017*, p. 15.

147 Parliamentary Joint Committee on Human Rights, *Report 13 of 2017*, p. 16.

> compared to civil litigation, and that therefore the judicial review process is likely to re-traumatise a survivor.[148]

3.156 The effect of Schedule 3 of the Consequential Bill to exempt judicial review under the ADJR Act was also the subject of some concern amongst submitters.

3.157 The Australian Human Rights Commission (AHRC) recommended that the Commonwealth Government amend the Consequential Bill to permit judicial review under the ADJR Act.[149]

3.158 The AHRC explained that whilst the Consequential Bill, as drafted, excludes judicial review under the ADJR Act, survivors may still seek to access judicial review 'through the more complex and cumbersome avenue protected by the Constitution'.[150] This was also noted by the Human Rights committee in its report.[151] The AHRC highlighted the importance of judicial review:

> It is central to the rule of law, as well as international human rights law, that judicial review is readily available to ensure that the executive branch of government acts lawfully. There is a clear public interest, as well as a personal interest, in there being a clear and simple means of ensuring that the Scheme acts lawfully. By excluding access to the ADJR Act, this would not exclude judicial review altogether; rather, it would simply make it harder for an individual to correct that legal error.[152]

3.159 Other submitters also suggested that the Consequential Bill should include provisions for judicial review.[153]

Committee view

3.160 The committee notes the concerns of submitters and witnesses around the lack of traditional forms of external review, such as administrative review in a tribunal or judicial review. The committee is also very aware of the overarching goal of the Redress Scheme to be an alternative to civil litigation, with a lower burden of proof and a lower burden of 'legalistic process' on applicants. The committee further notes the comments from the Minister, that a costly administrative process may become a barrier to universal opting-in from jurisdictions and relevant NGIs.

3.161 The committee notes the findings of the Joint Parliamentary Committee on Human Rights, which looked at this issue in depth and found that the proposed internal review mechanism was capable of achieving the dual goal of a reduced legal burden on applicants, while providing the appropriate checks and balance of independent review.

148 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 95.

149 Australian Human Rights Commission (AHRC), *Submission 32*, p. 4.

150 AHRC, *Submission 32*, p. 12.

151 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018*, p. 96.

152 AHRC, *Submission 32*, p. 12.

153 See: Waller Legal, *Submission 52*, p. 22; Australia Lawyers Alliance, *Submission 47*, p. 13.

3.162 The committee believes the goal of reducing the legal burden on applicants could be achieved by ensuring the internal review process contained within the legislation is an effective substitute for external review and is appropriately robust and transparent.

3.163 The committee further notes that while the legislation requires the internal review to be undertaken by an 'independent decision maker', it does not provide a restrictive definition of what constitutes an 'independent decision maker'.

Reporting to Parliament

3.164 Clause 122 of the Redress Bill sets out provisions for an annual report to Parliament on the operation of the Redress Scheme.

3.165 In accordance with these provisions, the annual report must:

(a) be presented as soon as practicable after the end of each financial year;

(b) provide information on the failure of institutions to provide information to the scheme operator as required under section 70;

(c) provide information on the failure of institutions to deliver direct personal responses as directed under subsection 50(1); and

(d) comply with any other requirements for annual reporting prescribed by rules.[154]

3.166 The Explanatory Memorandum notes that allowing for 'rules to be made…will allow the Operator to specify matters that may be of interest to Parliament that arise over the 10 year course of the Scheme'.[155]

3.167 Submitters have recommended that data about the operation of the Redress Scheme also be reported annually, particularly data relating to the number of applications received, offers made, offers accepted or declined, processing times, and payments made under the scheme.[156] This reflects the recommendation of the Royal Commission relating to the publication of annual data for a redress scheme.[157]

Committee view

3.168 The committee agrees with recommendations from submitters that data relating to applications and offers made under the scheme should be included in each annual report. The Department should consider the Royal Commission's recommendations about data reporting in deciding what data should be reported.

3.169 Given that the redress payment amount has been a point of significant discussion and debate, providing data about the average payment provided under the

154 Redress Bill, clause 122.

155 Explanatory Memorandum, p. 60.

156 Maurice Blackburn Lawyers, *Submission 28*, p. 12; Professor Kathleen Daly, *Submission 44*, p. 7; Truth Justice and Healing Council, *Submission 79*, p. 21.

157 Royal Commission Redress Report, September 2015, p. 74.

scheme each year would offer an opportunity to assess whether payments are meeting the levels modelled when the assessment matrix was developed and whether any adjustments should be made to ensure that the average payment is as close as possible to the $76 000 quoted by the Department.

Chapter 4

Conclusions and recommendations

Concluding committee view

4.1 The committee agrees with the universal view put forward by witnesses and submitters that a Redress Scheme for Survivors of Institutional Child Sexual Abuse (Redress Scheme) is a vital step in addressing cases of historical child sexual abuse. The committee also believes the Redress Scheme will help to ensure institutions become 'child safe' for future generations.

4.2 The committee is strongly supportive of the 'Objects for the Act' of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Redress Bill), which are to recognise and alleviate the impact of past institutional child sexual abuse and to provide justice for the survivors of that abuse. The committee further supports the inclusion of the guiding principle that redress under the scheme should be survivor focussed. Enacting these goals will assist Redress Scheme decision-makers, whenever necessary, to return to the basic principle of justice for survivors.

4.3 The committee believes it is important for all parties to the Redress Scheme to act in accordance with those principles. There is no higher duty for the Australian Parliament than the protection of our nation's children. There is no greater obligation on the Australian legal system than seeking justice for our most vulnerable victims. There is no deeper responsibility for institutions liable for child sexual abuse than to shoulder the burden of making reparations to the children they so terribly failed.

4.4 The recommendations of this committee are made in accordance with the principles enshrined in the Redress Bill.

Comments on provisions

4.5 The committee recognises the deep concerns of survivors that the voluntary nature of the Redress Scheme, combined with a two year deadline for non-government institutions (NGIs) to opt in, creates a traumatic waiting period for survivors. Should an NGI decide not to participate, this could leave survivors for whom civil litigation is not an option with no opportunity for redress.

Recommendation 1

4.6 The committee recommends the Australian Government should consider reducing the two year deadline for institutions to opt in to the Redress Scheme, and should consider options to encourage greater participation in the Redress Scheme, as outlined in chapter two.

4.7 The committee heard concerns from submitters and witnesses about the range of matters to be contained in the rules of the Redress Scheme, which have not yet been finalised. The committee acknowledges that the Australian Government is in active negotiations with the states and territories and NGIs around Australia about their participation in the Redress Scheme. As such, it is difficult for the Department of

Social Services (Department) to publish rules, some of which are still very much in flux. Notwithstanding this, the Department should take the earliest possible opportunity to provide greater clarity on potential rules, such as those impacting non-citizen survivors, and the proposed exclusion of serious criminal offenders.

Recommendation 2

4.8 The committee recommends the Department should ensure that planned consultations on the rules of the Redress Scheme include survivors' representative groups, and ensure information on rules is communicated as it becomes available.

4.9 The amount of the redress payment and the assessment matrix is also of great concern to survivors. A great deal of focus in evidence to the inquiry was on the perceived payment cap reduction to $150 000 from the $200 000 cap proposed by the Royal Commission. The committee further notes evidence that many potential applicants may believe they would receive a maximum payment, and that discussion of the payment cap raises expectations in the community which may lead to further trauma.

4.10 The committee notes the views of Professor Kathleen Daly, an expert on redress schemes, that in designing a redress payment, the average payment is of greater importance than a higher payment cap. Professor Daly also informed the committee that an international review of similar scheme shows the proposed Redress Scheme average payment is in the upper level of scheme payments worldwide.

4.11 The committee supports the proposal by the Department that in designing a payment matrix, the focus should be on the average payments of the Redress Scheme, not the maximum payment. This focus will ensure a higher payment to more people overall. The committee supports the Department's planned average payment which is calculated to be $11 000 higher than the average payments proposed by the Royal Commission.

Recommendation 3

4.12 The committee recommends the Department should actively engage with survivors' representative groups to provide clear communications for survivors, the community and media on how decisions will be made and matters that will be taken into account in making those decisions. Where necessary communication should reference the average payment amount rather than focussing on the maximum redress payment.

4.13 Concern was expressed throughout the inquiry on the range of related non-sexual abuse that would be taken into account during the assessment process. Survivors reported that, in many cases, this abuse had as deep an impact as sexual abuse and should form a significant proportion of the final redress determination.

4.14 Further concerns were raised by many submitters and witnesses that the Redress Scheme excludes children who were subjected to non-sexual abuse only. Abuse suffered by tens of thousands of children in care included heinous physical, psychological, emotional and cultural abuse.

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

4.16 The committee is strongly supportive of the establishment of this Redress Scheme to address historic cases of institutional child sexual abuse. However, the committee is also of the view that the non-sexual abuse of children in care requires greater thought and focus from all levels of government and Australian society in general.

Recommendation 4

4.17 The committee recommends that, in further developing the operational assessment elements of the Redress Scheme, the Department take into consideration the long-term impact of non-sexual abuse on survivors, including the needs of Aboriginal and Torres Strait Islander survivors.

4.18 The inclusion of counselling services as part of redress was universally acknowledged by submitters and witnesses as being of vital importance to assist survivors. There was confusion as to the amount of counselling that the Redress Scheme would provide whether a financial cap would be placed on counselling, whether it would be for the lifetime of the Redress Scheme or whether it would be for the lifetime of the survivor.

4.19 The committee acknowledges the Minister has confirmed a final decision on the amount of counselling to be provided under the Redress Scheme has not yet been determined.

4.20 In forming a recommendation on this issue, the committee recognises that counselling for the lifetime of the survivor cannot be delivered by the current framework of the Redress Scheme, which is financed through a 10-year appropriation.

Recommendation 5

4.21 The committee recommends the Government consider mechanisms to ensure ongoing counselling is available to survivors, should they need it.

4.22 The wider impacts of child sexual abuse that can affect family members of survivors were discussed by a number of witnesses and submitters. Concern was expressed that the Redress Scheme did not include counselling for affected family members. The committee recognises the intergenerational impacts that child sexual abuse can have, and the positive effect that family counselling can have. The committee is also cognisant of the Minister's comments that expanding the scope of the Redress Scheme risks a lower opt in by NGIs.

Recommendation 6

4.23 The committee recommends the Redress Support Service incorporate referral of affected family members, in cases where it is necessary to meet the critical needs of the survivor, to existing counselling services.

4.24 The committee notes concerns raised by advocates and legal groups on difficulties survivors may face with many aspects of the application process. The committee is satisfied the Department remains highly conscious of the needs of

survivors. The three elements of support—general redress support, legal advice and financial advice—will assist survivors through a difficult pathway. The committee stresses the need for the Department to continue the range of consultations already underway in designing the operational elements of the Redress Scheme, and to ensure that wherever possible, user experience feeds back into the design. The committee is highly supportive of the Australian Government's early announcement of $130 million of funding for these Redress Support Services.

4.25 However, even with these supports taken into account, concerns were raised with specific elements, such as the proposed timeframes for applicants to produce documents or respond to an offer of redress, and the limit of application per person. The committee notes the Department has indicated these issues are still under consideration, and may be modified.

Recommendation 7

4.26 The committee recommends that in developing the minimum timeframes in the Redress Scheme, for the provision of documents or answers to an offer of redress, the Department should consider the special circumstances of survivors in remote communities, those with functional communication barriers and survivors experiencing trauma or mental health episodes linked to their abuse.

Recommendation 8

4.27 The committee recommends that the government consider changing the period of acceptance for redress from three months to six months, including provision for survivors to request an extension to this acceptance period where circumstances warrant.

4.28 The proposed exclusion of criminal offenders was raised as a serious concern, by survivor groups, legal organisations and by the NGIs. The committee notes the Attorney-General has indicated that while this issue was originally raised in negotiations with the states and territories, a final position has not yet been determined. More recently, the Attorney-General has indicated that a discretionary approach to exclusions could be considered.

Recommendation 9

4.29 The committee recommends that in finalising the position on the exclusion of serious criminal offenders from the Redress Scheme, the Australian, state and territory governments should consider the value of the Redress Scheme as a tool for the rehabilitation of offenders, and that excluding criminal offenders can have the unintended consequence of institutions responsible for child sexual abuse not being held liable.

4.30 The committee is supportive of the reporting functions included in the Redress Bill, as an appropriate way of ensuring oversight of an important program, and way of holding non-participating responsible institutions to public account. The committee believes an expansion of this reporting function could further strengthen public trust in the operation of the scheme.

Recommendation 10

4.31 The committee recommends that the annual report to Parliament on the operation of the Redress Scheme should include detailed data to understand the experiences of people going through the Redress Scheme and to provide a basis of any necessary refinements to the Scheme, including details of the number of applications received, average processing times and average payments offered.

4.32 The committee believes that while there are still certain provisions within this bill under consideration by the Australian Government, or under negotiation with relevant participating entities, the Redress Scheme is an important mechanism to provide redress and some closure to survivors of some of the worst crimes that can possibly be inflicted. The Redress Bill provides an appropriate framework under which those final negotiations can occur, particularly noting the inclusion of survivor representative groups in the consultative group.

4.33 As stated by the Prime Minister and the Attorney-General, and affirmed by the Leader of the Opposition, it is time to take action on behalf of the victims of institutional child sexual abuse.

Recommendation 11

4.34 The committee recommends these bills be passed.

Senator Slade Brockman

Chair

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**

Dissenting Report by the Australian Greens

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

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

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

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

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

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

Significant items in rules

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Elements of redress under the Redress Scheme

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

Monetary Payment

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

1.15 There is no minimum monetary payment amount for the Redress Scheme. The Royal Commission recommended the minimum redress payment be $10,000.[7] The Australian Greens support the calls of a number of submitters and witnesses[8] that the Redress Scheme includes a minimum redress payment amount of $10,000.

Counselling and psychological services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> … family members carry a really heavy load. Often, the parents don't know about, this at the time, yet they're watching their children really struggle in life. They also become traumatised by this. They're living with the same levels of anxiety. One of the women we work with described it as having an octopus living in the family. It's hiding in the corners. You don't know when it's going to come out and grab you or any other member of the family. You can't get rid of it. It's always there.
>
> The reality is that support for partners—particularly important for guys, because men have a smaller support circle; they don't have the long-term confidant that women often have. What happens is, the first person they disclose to, typically, is the partner. The second thing they say to the partner is, 'Don't tell anyone.' The partner is now isolated from all their support structures. For our service, when we're working with guys, we have groups for partners and groups for parents. Those people are very isolated so, in a sense, they learn they're not going mad. But they're the ones that are there 24/7; they're the ones that are there to pick up the pieces. The children, in growing up, want their parents, and the guys want to be the best parents they can; but, in a sense, they need support as well. This is not necessarily long-term support. It may be very focused support around this. There's diversity amongst all of this.
>
> Absolutely, people live and breathe in context. Sexual abuse is a relational crime committed by one person against another. Healing is through building strong relationships. Support for families in helping the person means the victim is supported. It helps deal with the trauma for the victim and the vicarious trauma for the family.[17]

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

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

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

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

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

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

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

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

Direct personal response

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

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

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

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

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

1.33 YMCA stated in its submission:

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

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

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

Scope of eligibility for the Redress Scheme

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

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

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

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

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

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

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

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

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

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

1.40 She went on to say:

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

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

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

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

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

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

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

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

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

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

1.43 Mr Golding continued:

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

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

Exclusions of certain groups of survivors

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

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

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

1.47 She went on to say at the hearing that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.58 The Australian Lawyers Alliance said in its submission:

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

1.59 The Explanatory Memorandum for the bills says:

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

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

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

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

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

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

43 *Explanatory Memorandum*, p. 13.

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

Redress claim process

Single application

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

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

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

1.64 Dr Kezelman, Blue Knot Foundation, said:

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

1.65 Mr Strange, knowmore legal service, said:

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

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

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

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

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

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

Statutory declaration

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

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

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

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

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

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

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

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

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

Timeframe for accepting or rejecting an offer

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

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

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

> I understand that for someone who's gone through a fairly normal life, for someone who hasn't experienced complex trauma, three months would be an appropriate time frame to get legal advice and counselling and to talk with their family. For someone who's gone through complex trauma, getting that offer is going to be highly traumatic for them. It's going to bring up maladaptive core beliefs. It's going to be basically placing a value on the abuse that they suffered, and that's going to be really challenging for that person to process.
>
> People who go through childhood sexual abuse are often plagued by suicidal ideation and self-harm, mental health issues, financial distress, unstable living environments and homelessness, abusive relationships and issues with drugs and alcohol, as well as relationship issues. It's highly 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.[51]

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

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

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

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

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

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

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

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

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

1.78 Mr Bowden, People with Disability Australia, said:

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

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

Discharging liability

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

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

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

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

External review

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

1.84 Mr Strange, knowmore legal service, said:

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

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

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

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

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

1.85 Miss James, Maurice Blackburn Lawyers, said:

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

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

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

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

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

Disclosure

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

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

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

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

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

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

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

Implementing the Redress Scheme

Support services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.98 Ms Hillan, the Healing Foundation, said:

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

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

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

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

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

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

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

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

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

1.102 Dr Foster, Anglicare Southern Queensland, continued:

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

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

Supported decision making

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

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

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

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

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

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

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

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

Funder of last resort

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

1.108 Mr Strange, knowmore legal service, said:

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

1.109 Professor Daly said:

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

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

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

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

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

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

Recommendation 1

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

Senator Rachel Siewert

APPENDIX 1

Submissions and additional information received by the Committee

Submissions

1 Blue Knot Foundation

2 Alliance for Forgotten Australians

3 Australian Childhood Foundation

4 Sexual Assault Support Service

5 Ryan Carlisle Thomas (plus an attachment)

6 Mr Matt Jones

7 Ms Ellen Bucello

8 Mr Trevor Adams

9 Confidential

10 Anglicare WA

11 Mr David Brabender

12 Name Withheld

13 Mrs Joan Isaacs

14 Victorian Aboriginal Legal Service

15 Ms Chrissie Foster

16 People with Disability Australia

17 Mr Ian Gibson

18 Mr Les Johnson

19 Tuart Place (plus a supplementary submission)

20 Mr Robert Mackay

21 Centre Against Sexual Violence Inc.

22 Victims Of Abuse In The Australian Defence Force Association Inc.

23 Mr Vince Mahon

24 Western Australian Council of Social Service

25 Shine Lawyers

26 Bravehearts

27 Department of Social Services

28 Maurice Blackburn Lawyers

29 Relationships Australia

30 Anglican Church of Australia, Salvation Army Australia & Uniting Church in Australia

31 Knowmore

32 Australian Human Rights Commission

33 Child Migrants Trust Inc

34 Connecting Home Limited

35 Scouts Australia

36 Victorian Aboriginal Child Care Agency (plus an attachment)

37 YMCA Australia

38 National Social Security Rights Network

39 Confidential

40 Mr Mark King

41 Victorian Kids in Care Advocacy Service

42 Mr Frank Golding OAM

43 Mr Peter Fox

44 Professor Kathleen Daly (plus an attachment and a supplementary submission)

45 Ms Mary Brownlee

46 Angela Sdrinis Legal

47 Australian Lawyers Alliance (plus a supplementary submission)

48 Anglicare Australia

49 Australian Lawyers for Human Rights

50 Children and Young People with Disability Australia

51 PeakCare Queensland Inc.

52 Waller Legal

53 Mr Paul Holdway

54 Setting the Record Straight for the Rights of the Child Initiative

55 In Good Faith Foundation

56 Centre for Excellence in Child and Family Welfare

57 Mr Andrew Collins (plus an attachment)

58 Berry Street (plus a supplementary submission)

59 Australian Psychological Society

60 Care Leavers Australasia Network (CLAN) Inc

61 Open Place

62 Royal Australian and New Zealand College of Psychiatrists

63 Kimberley Community Legal Services Inc.

64 Historical Abuse Network

65 International Association of Former Child Migrants and Their Families

66 Survivors and Mates Support Network

67 Mr John van Raay

68 National Aboriginal and Torres Strait Islander Legal Services

69 Office of the Commonwealth Ombudsman

70 Name Withheld

71 Name Withheld

72 Commissioner for Victims' Rights, South Australia

73 Confidential

74 Name Withheld

75 Mr Robert House

76 Australian Association of Social Workers

77 Mr David O'Brien (plus two attachments)

78 Restorative Justice International

79 Truth Justice and Healing Council - Catholic Church

80 Government of South Australia

81 Ms Carolyn Frawley

82 Law Council of Australia

83 Department of Home Affairs

84 Jane Norris

85 Name Withheld

86 Confidential

87 Confidential

88 Mr Christopher Whelan

89 Loud Ballarat No More Silence and Loud Fence Movement (plus two attachments)

90 Law Society of New South Wales

91 Confidential

92 Mr Brian Cherrie

Answers to Questions on Notice

1 Answers to Questions taken on Notice during 16 February public hearing, received from Salvation Army Australia, 23 February 2018

2 Answers to Questions taken on Notice during 16 February public hearing, received from Bravehearts, 1 March 2018

3 Answers to Questions taken on Notice during 16 February public hearing, received from Department of Social Services, 2 March 2018

4 Answers to Questions taken on Notice during 16 February public hearing, received from Uniting Church in Australia, 2 March 2018

5 Answers to Questions taken on Notice during 6 March public hearing, received from Victims Of Abuse In The Australian Defence Force Association Inc., 8 March 2018

6 Answers to Questions taken on Notice during 6 March public hearing, received from People with Disability Australia, 14 March 2018

7 Answers to Questions taken on Notice during 6 March public hearing, received from Department of Social Services, 16 March 2018

8 Answers to Questions taken on Notice during 6 March public hearing, received from National Aboriginal and Torres Strait Islander Legal Services, 19 March 2018

9 Answers to Questions taken on Notice during 6 March public hearing, received from Department of Social Services, 26 March 2018

10 Answers to written Questions on Notice, received from Department of Social Services, 8 March 2018

Tabled Documents

1 Supporting Aboriginal and Torres Strait Islander Survivors of Institutional Child Sexual Abuse – A Way Forward, tabled by The Healing Foundation, at Canberra public hearing, 16 February 2018

2 Restoring our Spirits – Reshaping our Futures, Discussion paper, tabled by The Healing Foundation, at Canberra public hearing, 16 February 2018

3 Australian Government: Defence Abuse Reparation Scheme Guidelines, tabled by Victims of Abuse in the Australian Defence Force Association Inc, at Melbourne public hearing, 6 March 2018

Correspondence

1 Letter, received from Attorney-General of Victoria, 1 February 2018

APPENDIX 2

Public hearings

Friday, 16 February 2018

Parliament House, Canberra

Witnesses

Blue Knot Foundation
KEZELMAN, Dr Cathy, AM, President

Centre Against Sexual Violence Inc.
CLARKE, Miss Miranda, Royal Commission Liaison/ and sexual Assault Counsellor

Yorgum Aboriginal Corporation
SELLERS, Mrs Laurel, Chief Executive Officer, Yorgum Aboriginal Corporation

Living Well – Anglicare Southern Queensland
FOSTER, Dr Gary, Manager

Alliance for Forgotten Australians
CARROLL, Ms Caroline, Chair
KASPIEV, Mr Boris, Executive Officer

Bravehearts Foundation
RONKEN, Ms Carol, Director of Research

Tuart Place
LOVE, Mr Ron, Chairperson, Forgotten Australians Coming Together (FACT)
WHITE, Dr Philippa, Director

AnglicareWA
GLASSON, Mr Mark, Director, Services
JENKINS, Ms Linda, Manager, South East Metro Services

The Healing Foundation
WESTON, Mr Richard, Chief Executive Officer
HILLAN, Ms Lisa, Director, Programs, Policy & Knowledge Creation

McGLADE, Dr Hannah, Senior Indigenous Research Fellow, Curtin University

knowmore legal service
STRANGE, Mr Warren, Executive Officer

DALY, Professor Kathleen, Private capacity

KING, Mr Mark, Private capacity

Victorian Kids In Care Advocacy Service
STORRAR, Mr Duncan, Board Member

Anglican Church of Australia
HYWOOD, Ms Anne, General Secretary
BLAKE, Mr Garth, AM, SC, Chair, Royal Commission Working Group

The Salvation Army Australia
MERRETT, Lieutenant-Colonel Kelvin, National Secretary for Personnel
GEARY, Mr Luke Patrick, Solicitor

Uniting Church in Australia
COX, Reverend John, Executive Officer, Royal Commission Task Group
GILLIES, Ms Katrina, Member, National Redress Task Group

Scouts Australia
TOMKINS, Mr Neville, National Co-ordinator (Redress)
MORCOM, Mrs Cathy, National General Manager

Department of Social Services
BENNETT, Ms Barbara, Deputy Secretary
BAXTER, Dr Roslyn, Group Manager, Families and Communities Reform
CREECH, Mrs Tracy, Branch Manager, Redress Implementation
HARTIGAN, Ms Brooke Emma, Branch Manager, Redress Policy and Legislation
GRINSELL-JONES, Mr Alan, Deputy Chief Counsel; and Branch Manager, Legal Services Branch

Department of Human Services
BRIDGER, Ms Maree, General Manager, Child Support and Redress
CARTWRIGHT, Ms Susan, National Manager
RYAN, Ms Melissa, Acting Deputy Secretary

Tuesday, 6 March 2018

Radisson on Flagstaff Gardens Hotel, Melbourne

Witnesses

Victorian Aboriginal Legal Service
McKEICH, Mr Alister, Senior Project and Policy Officer

National Aboriginal and Torres Strait Islander Legal Service
WARNER, Ms Karly, Executive Officer

Victorian Aboriginal Child Care Agency
VAN DEN BERG, Megan, Executive Manager, Royal Commission into Institutional Responses to Child Sexual Abuse Support Service
McINTYRE, Jeannie, Manager, Royal Commission into Institutional Responses to Child Sexual Abuse Support Service

People with Disability Australia
BOWDEN, Mr Matthew, Co-Chief Executive Officer
LEA, Ms Meredith, Senior Policy Officer

Berry Street
GARDINER, Mr Simon, Senior Consultant, Public Policy

Care Leavers Australasia Network
SHEEDY, Ms Leonie Mary, Chief Executive Officer

GOLDING, Frank, Private capacity

Victims of Abuse in the Australian Defence Force Association Inc.
JACOMB, Ms Jennifer Belinda, Secretary
COLLINS-ROE, Mr Rohan, Treasurer

COLLINS, Mr Andrew, Private capacity

FOSTER, Ms Chrissie, Private capacity

BUCELLO, Ms Ellen, Private capacity

JONES, Mr Matt, Private capacity

Ryan Carlisle Thomas

SAVIDIS, Ms Penny, Partner, and Head of Institutional Abuse Department
John, Witness

Waller Legal Pty Ltd

WALLER, Dr Vivian, Principal Solicitor

Maurice Blackburn Lawyers

JAMES, Miss Michelle, Principal

Law Council of Australia

BAILES, Mr Morry, President
MOLT, Dr Natasha, Deputy Director of Policy

Truth, Justice and Healing Council – Catholic Church

SULLIVAN, Mr Francis John, Chief Executive Officer

YMCA Australia

CROLE, Mrs Melinda, Chief Executive Officer
WHITWELL, Ms Jacki, Executive Manager Social Policy

Department of Social Services

BAXTER, Dr Roslyn, Group Manager, Families and Communities Reform
HARTIGAN, Ms Brooke, Branch Manager, Redress Policy and Legislation Branch
CREECH, Mrs Tracy, Branch Manager, Redress Implementation
GRINSELL-JONES, Mr Alan, Branch Manager, Legal Services Branch