



Submission to the Second Anniversary Review of the National Redress Scheme for Institutional Child Sexual Abuse

Dear Ms Kruk

Thank you for the opportunity to contribute to the Second Anniversary Review of the National Redress Scheme. The Alliance for Forgotten Australians appreciates the importance of the Review, despite the challenges posed by its timing now coinciding with the Covid-19 pandemic.

1. Introduction

Throughout the years since the seminal 2004 report of the Senate Inquiry, *Forgotten Australians*, the Alliance for Forgotten Australians (AFA) has made many submissions and three appearances at Senate Committees to give evidence, aiming to inform the design and implementation of what has become the National Redress Scheme for Institutional Child Sexual Abuse. Our members have also made many individual contributions. We trust that you have copies of all of those materials, which go to many of the matters covered by the Terms of Reference for your Review. In particular, we ask you to consider AFA's previous submissions that relate to:

- (b) the extent to which survivors who are eligible for redress under the Scheme have applied for redress;
- (c) the extent to which redress has been provided to survivors who are entitled to redress under the Scheme;
- (d) the application, assessment and decision-making process, including user experiences of the process;
- (e) redress payments;
- (f) access to counselling and psychological services under the Scheme;
- (h) the availability of, and access to, support services under the Scheme;
- (i) the implications of the Scheme's design for survivors (including Indigenous and child migrant survivors, as well as survivors who are still children or who have a criminal conviction);
- (j) the operation of the Scheme's funding arrangements (including a review of the Scheme administration element of funding contribution);
- (l) the extent to which the Scheme has been implemented as proposed in the National Redress Scheme Agreement;
- (m) the views of key stakeholders on the Scheme (including representatives from survivor groups, non-government institutions, advocacy groups, support services provider groups, the Independent Advisory Council, the Commonwealth, the States and the Territories);

The cases made in relation to these matters have been well covered by many advocates, and we do not intend to repeat them here. Rather, we wish to focus on four issues that we urge you to consider as part of your work to address the final term of reference for the Second Anniversary Review, namely, 'any other matter relevant to the operation of this Act or the Scheme'. AFA's interests for this Review relate to four needs:

1. To give prime importance to the voices of Forgotten Australians and others with lived experience of institutional abuse;
2. To sustain and strengthen the current National Redress Scheme;
3. To recognise and address the fundamental problem in the scope of the National Redress Scheme – that it is limited to dealing only with institutional abuse of a sexual nature, and
4. To accelerate provision of key supports for Forgotten Australians and other survivors who face additional risks from Covid-19 because of the life-long impacts of their experiences of abuse.

2. The voice of those with lived experiences

The most important thing is that the Review is primarily informed by the voices of those with lived experience. This is crucial for evidentiary and practical, as well as moral, reasons.

People with lived experiences are the experts in 'what works'. They are the key sources of evidence for, as well as recipients of the results of, the Review.

AFA appreciates the effort that the Second Anniversary Review is making to obtain feedback from people who experienced institutional abuse. We have encouraged our members to participate in the Review's feedback study, and they have contributed to this Submission. However, history tells us that more is required.

At the individual level, people fear that the Review will merely hear the words of survivors without truly listening to what they have to say, and reflecting on its significance. That was done to many of us by people in positions of trust while we were in 'care'.

History at the institutional level also makes us cautious. Overwhelmingly, the design of the Scheme has prioritised the interests of institutions, governments and the operator over the interests of Forgotten Australians and other survivors. Problems with the scoping of the National Redress Scheme, which are discussed below, are one prime example. More generally, there is now a body of expert analysis that reveals the extent to which the interests of survivors have been discounted.

We draw your attention to the article *Unravelling Redress for Institutional Abuse of Children in Australia* by Kathleen Daly and Juliet Davis published in the University of New South Wales Law Journal 42(4) which concludes that:

Of 17 matters, 14 saw moderate or significant change in the NRS from what the Royal Commission had recommended. Such change can be explained by the economic and political interests of governments and institutions and by operator convenience.

And

Of 14 matters that saw change, departure from three of the Royal Commission's redress principles was typical. All 14 departed from the principle of being survivor focused, six from the principle of having regard to the nature and impact of child sexual abuse, and nine from the principle of having regard to the needs of particularly vulnerable survivors

Concerns about the assessment matrix and definitions of abuse have been well documented by advocates and won't be repeated here.

What matters now is that the Second Anniversary Review recognises that there has been a material loss of faith in the process, and in the design, of the National Redress Scheme.

That loss of faith has arisen in part because of inexplicable policy decisions on Scheme parameters, which have created a National Redress Scheme that is not consistent with what was recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse. The Joint Select Committee on oversight of implementation of the Royal Commission's redress-related recommendations had good reasons to title its report *Getting the National Redress Scheme right: An overdue step towards justice*. The subsequent *failure* to provide a meaningful Government response to the Committee's report exemplifies why survivors and advocates have lost faith in the National Redress Scheme.

For example, the Australian Government's February 2020 response to the Joint Select Committee merely noted, but did not genuinely engage with, some fundamental concerns about the design of the Scheme. Many of the Australian Government's responses to the Committee's recommendations are sadly bureaucratic, and even sadly predictable. We are losing faith because the National Redress Scheme's future is now in the territory of 'Will further consider', 'Would require...', and 'The Government **notes.**'

Examples include:

"The committee recommends that the government clearly and openly explain how the maximum payments came to be set at \$150 000 rather than \$200 000, and the rationale for this decision.

The Government **notes** this recommendation.

The maximum payment of \$150,000 was agreed upon to offer both maximum recognition to people who experienced institutional child sexual abuse and maximum opportunity for institutions to opt in to the Scheme. The average payment is currently higher than the amount estimated by the Royal Commission.

In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to increase the maximum redress payment from \$150 000 to \$200 000.

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. Consideration will also need to be given to the financial implications and any potential unintended impact on financial viability and the ability of NGOs to participate in the Scheme.

That latter response reveals the extent to which the interests of survivors have been discounted, and explains why there is now declining faith in the National Redress Scheme.

Recommendation Six is at the heart of our concerns. The response to this recommendation is so vague as to be meaningless, if not deliberately evasive:

6. The committee recommends that the Parliament consider referring an inquiry to a parliamentary committee into the adequacy of state and territory responses for survivors of institutional child non-sexual abuse, including consideration of the redress models that could be available to these survivors.

The Government **notes** this recommendation.

This is a decision for the Parliament.

All this, while survivors are suffering and dying. Despite best intentions, institutions and governments perpetuate stigma and abuse.

The Second Anniversary Review is a crucial opportunity to rectify that, if it can truly place the voices of Forgotten Australians and other survivors at the centre of its considerations.

3. Sustaining and strengthening the National Redress Scheme

The National Redress Scheme was a noble idea, hastily built, on poor foundations. That doesn't mean it shouldn't have been built. Rather, it means the Scheme's foundations need to be reinforced and where required rebuilt.

AFA has worked very hard to be a constructive and balanced advocate. We see no strength in the toxic advocacy that has been practised by some. We are committed to continuing to work with Governments, institutions and other stakeholders, to sustain and strengthen the Scheme. As will be discussed below, the Covid-19 pandemic adds extra urgency to that task.

Since its inception, AFA's priority has been to lobby for a National Redress Scheme. We had many internal debates about whether to support a Scheme that covered only sexual abuse. Overwhelmingly, our members agreed that the Scheme was a good start. We put faith in politicians and policy makers, hoping that the Scheme would evolve over time. We acknowledge that significant improvements have been made. The personal leadership of Minister Ruston is evident. Institutions have been named and shamed to join. Additional assessors have been appointed. Those with health issues have been prioritised. And a

number of Forgotten Australians have told us that Redress payments and direct personal responses have been important for justice and healing, and have made a difference in their lives.

We also acknowledge that the application process has taken longer where applicants were placed in more than one institution, and complexities have arisen that were not initially envisaged.

4. The deserving and undeserving abused

There is a tragic irony in the fact that the current National Redress Scheme is limited to those who experienced *sexual* abuse. It means that many Forgotten Australians have yet again been forgotten because the institutional abuse that they suffered was of a form other than explicitly sexual.

AFA will never accept that this eligibility criterion is valid, much less, just. What may be defined as sexual in an intellectual, legal and eligibility context needs to acknowledge, with the support of overwhelming evidence, that all forms of abuse in an institutional context are connected.

Australia is out of step in its approach to redress. No other redress scheme in the world limits eligibility to sexual abuse. The United Kingdom's Independent Inquiry into Child Sexual Abuse (1 March 2018) found that the British Government failed to ensure that there were in place sufficient measures to protect children from sexual abuse, as well as other forms of abuse and neglect. Children were placed in environments where they were exposed to a range of risks, including the risk of sexual abuse, and where sexual abuse was less likely to be prevented, identified, reported or stopped. While this Inquiry focussed on Former Child Migrants, as children they were placed in the many of the same institutions in Australia as Forgotten Australians.

The Senate Inquiry report of 2004, *Forgotten Australians*, recommended that 'the Commonwealth Government establish and manage a national reparations fund for victims of institutional abuse in institutions and out-of-home care settings.' (Recommendation 6). It did *not* limit its recommendation to a Scheme which only covered sexual abuse.

The Royal Commission recommended a redress Scheme for survivors of sexual abuse in institutional 'care' in accordance with its terms of reference. It didn't recommend *against* a Scheme which included all forms of abuse. Governments put boundaries around policies to rein in costs without sufficient consideration of the impact of their decisions. Governments have defended the establishment of a non-inclusive Scheme on the basis that the Royal Commission's terms of reference covered only sexual abuse, without acknowledging that such terms of reference were drafted and expedient for minimising costs. Therefore, the meanness of social policy which created two classes of survivors – the deserving and undeserving abused – endures as a legacy of successive governments with insufficient vision and compassion.

The Australian Government has long maintained that constitutionally welfare is a matter for the states. While this may be true, the inherent contradictions in this position – given that the Commonwealth paid child endowment which was collected by institutions and never benefited the children – are conveniently overlooked.

5. Covid-19 – a new reality

We recognise that the Covid-19 pandemic has vastly changed the world since the National Redress Scheme was launched. Funding and policy attention have rightly been directed to dealing with the pandemic. Despite that – and, indeed, because of that – our hope remains that this Second Anniversary Review will do more than examine micro-policy and implementation issues.

The pandemic has exposed fault lines that make the disparity between those who are surviving and even doing well, with those who are unlikely to make it through, one of the biggest social policy challenges we will face in generations. Forgotten Australians are disproportionately affected by the pandemic. They may be homeless or borderline homeless. They may suffer a range of health issues. They are likely to lack social support structures that would assist with their mental health. Survivors' experiences of institutional abuse mean that Covid-19 poses challenges over and above those of many other vulnerable people: complying with enforceable directives, and the potential need to be hospitalised.

As governments have demonstrated, the pandemic is a time for investment, not a time for savings. Borrowing a phrase from the Government's February 2020 response to the Joint Select Committee, AFA **notes** that the Government **supports in principle** the Committee's Recommendation 19 that all governments 'ensure that survivors have life-long access to counselling and psychological care that is available on an episodic basis, is flexible and is trauma-informed'.

We urge the second anniversary review to advise Governments on additional counselling supports to assist survivors to manage their unique risks from Covid-19.

More generally, the Second Anniversary Review is a crucial opportunity to ensure that justice is not put aside due to fiscal restraints.

We note that as at 26 June 2020, the Scheme had received 7,261 applications and made 3,382 decisions. Finity Consulting's actuarial report for the Royal Commission estimated that 60,000 applicants may be eligible for redress over ten years under the proposed Scheme. There appears to be a substantial gap between this estimate and the number of applicants, let alone approvals, to date. It suggests that if the Australian Government used this figure in its projections, there are significant cost savings being made. If that is the case, why can't such savings be used to enhance aspects of the Scheme such as limitations on counselling – limitations that are contrary to the Royal Commission's recommendations?

6. Conclusion

The Joint Select Committee on oversight of implementation of the Royal Commission's redress-related recommendations recommended that 'any amendment to the scheme proceed on the principle of 'do no further harm' to the survivor, be subject to proper consultation with key survivor groups, and appropriately incorporate feedback from those consultations', and the Australian Government agreed to this recommendation.

Within the context of this recommendation and the recommendation of the Royal Commission that, 'Redress should be assessed, offered and provided with appropriate regard to: what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular; and the cultural needs of survivors; and the needs of particularly vulnerable survivors', the second anniversary review must privilege the voices of Forgotten Australians and other survivors, *not* the needs of institutions, providers, governments or the scheme's operator. Responses based on cost savings without considering the impact of Covid-19 on those who are most vulnerable are unacceptable to us.

Most of us are in our 60s to 90s, facing the terrifying prospect of being re-institutionalised within the aged care system. It brings us existential fear. We know what it's like – we've already been there.

We Forgotten Australians are where we are today because you – Commonwealth, state and territory governments put us there. Or, as many of us believe, are we an inconvenient truth? And that you are waiting for us to die?

I appreciate the opportunity to provide input into the submission. I would also appreciate the opportunity to discuss this with you personally, perhaps via a zoom meeting. My contact details are below.

Yours sincerely



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Chair

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