SUBMISSION

to the

HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

in the matter of the

NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE BILL 2018

9 July 2018

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National Redress Scheme for Institutional Child Sexual Abuse Bill 2018

Section 3

Objects of this Act

(1) The main objects of this Act are:

(a) to recognise and **alleviate** the impact of past institutional child sexual abuse and related abuse; and,

(b) to **provide justice** for the survivors of that abuse.

Section 10

General principles guiding actions of officers under the scheme

(2) Redress should be survivor-focussed

(3) Redress should be **assessed**, **offered** and **provided** with appropriate regard to:

(a) what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular; and

(b) the cultural needs of survivors; and

(c) the needs of particularly vulnerable survivors.

(4) Redress should be **assessed**, **offered** and **provided** so as to avoid, as far as possible, further harming or traumatising the survivor.

(5) Redress should be **assessed**, **offered** and **provided** in a way that protects the integrity of the scheme.

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ATTACHMENT - Health Care Deed

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1. Executive Summary - recommended amendments to the bill

- Queensland Parliament pass legislation enacting Recommendations 89 – 94 of the *Redress and Civil Litigation Report* prior to commencement of this bill.

- The Assessment Framework must be subject to community review prior to implementation. Sections 102 – 104 be deleted and sections 32 and 33 amended to require publication of the Assessment Framework and Assessment Framework Policy Guidelines.

- Prohibit the Operator from including Medicare reimbursements or legal fees in the calculation of the ***relevant payment*** or ***original amount*** at section 30 and elsewhere.

- Require the Operator to facilitate an applicant to submit their application (or their response to an offer or their request for review) in the "approved form".

- All time limits imposed on survivors to be removed or to be not less than 12 months.

- Health Care to be provided for the life of the survivor not just the life of the scheme.

- Health Care be offered by means of a Non Liability Health Care Card or Health Care Deed

- Care Leavers should be eligible for redress even if not sexually abused.

- Redress maximum should be $200 000.

- Section 59(1) and (2) offer same rights as sections 58 and section 59(3) and (4) and section 60. Alternatively, insertion of a section 60A or a 59(2A) so as to afford the Operator *discretion* for the executor of the estate to determine the response to the offer.

- A review be empowered to consider 'any information' included 'new information'.

- Prohibit the provision by the Operator to the institution of any medical records or information pertaining to the survivor.

- Provide survivors with rights to access information held about them by institutions.
- Operator to assess on a case by case basis redress applications by any child sex offender.
- Operator to assess on a case by case basis applications by a person subject to a Security Notice
- The Committee acknowledge the identified conflict of interest of the Social Services Minister
- The Minister's powers be limited to require a mandatory period of public consultation as well as facility to review of any rule created by the Minister.
- The bill include a clearer framework for accountability of decisions made by the Delegate.
- The bill be amended to require conflict of interest declaration by any Delegate and to prohibit any person from being a Delegate if they are affiliated with an institution.
- The bill be amended to prohibit any person affiliated with an institution from being appointed as an ***independent decision maker***.
- The bill be amended with a note to section 156 offering examples of ordinary institution business that would not be considered 'exceptional' grounds for a waiver.

2. Request for anonymity/non-publication of identity

I request that the Committee make this submission public so that stakeholders are able to read the contents, provide responses and contribute to debate on the bill; however, I ask the Committee to redact all identifying personal details (eg, name, age, occupation) to respect my privacy and also to comply with relevant privacy legislation including, among others:

- Section 10(1)(a) of the *Criminal Law (Sexual Offences) Act 1978* (Qld)
- Section 15YR of the *Crimes Act 1914* (C'wth)

Any person reading this Submission who knows me or is able to identify me from its contents is hereby reminded of their obligations under law including:

Section 10(1)(a) of the *Criminal Law (Sexual Offences) Act 1978* (Qld) prohibits **any person** from disclosing to **any person, at any time,** my:

- name, address or employment;
- **any other particular** that is likely to lead to my identification

An offence is punishable by 2 years imprisonment.

Section 15YR of the *Crimes Act 1914* (C'wth) prohibits **any person** from disclosing to **any person, any matter** that may identify me.

An offence is punishable by 12 months imprisonment.

My request for anonymity is because I would like for my life to be defined by what I achieve as an adult, not by what was done to me as a child against my will. I accept full accountability for my evidence and am available to give direct testimony to the Committee (*in camera* requested).

3. Credentials to provide a submission

3.1 Background, qualifications and experience

My name is [redacted], I am [redacted] years old and am a qualified [redacted].

Legislation Review and Law Reform

I have assisted with drafting legislation and amending legislation which has been passed by the Parliament. I have contributed to policy formulation including briefing Members of Parliament (Government, Opposition and Independents/Cross Benchers) both State and Federal and providing evidence-based submissions and testimony (*in camera*) to Parliamentary Committees.

I have provided background briefings to media including print, television and radio. I have provided evidence to the Royal Commission and Working Parties advocating that the redress scheme focus on health care and assist survivors with managing any monetary payment.

Provision of health care

This comes from a combination of direct personal experience, observations of the experiences of other survivors, and professional training and experience in my role as a [redacted]. I put myself forward as a credible witness on such matters.

Supporting survivors

I have provided direct personal support for other survivors including being requested to act as support person when they gave evidence to the Royal Commission, when giving testimony in criminal prosecution, and when making statements to media. Further insight to the needs of many survivors has been gained from working closely with the leaders and members of key advocacy organisations. I have formal qualifications and experience as a [redacted].

Abuse

As a child I was regularly assaulted over a number of years in a religious institution. The offender's primary focus was sexual assaults although to achieve this he used psychological abuse as well as physical assaults, some having left permanent scarring on my body.

I attempted to report the assaults to a senior official and was silenced – the Royal Commission later made formal findings that this person already knew of the offender's widespread behaviour (hence why this official silenced my attempt to report) and had protected another offender.

In fact the offender's assaults on other children had been repeatedly reported for a ten year period before the assaults upon me commenced; a number of children reported the assaults upon them to senior staff who took no action to stop the offenders and took no action to report the offenders to police. Those who disclosed were silenced and punished for disclosing. All of this is the subject of formal findings of fact by the Royal Commission including a multitude of adverse findings against staff, the institution and senior leadership within the church.

All of the guilty adults have enjoyed a lifetime of income, title and status from the church. I am aware of current criminal investigations into senior officials for perverting the course of justice or aid and abet offences but so far charges are yet to be laid by Queensland Police Service.

For twenty years senior officials of the institution ignored written medical advice - that victims would likely suffer psychiatric injuries and that these were best treated as early as possible. The institution was advised that, without treatment, injuries would likely become entrenched and resistant to treatment. The institution chose to not offer health care to any of the victims. This denial of health care continued to be policy of the institution for over two decades causing – as the medical advice had predicted – the entrenchment of pathology in many victims, myself included.

It is important for the Committee to know that at no time in my life have I ever applied for or accepted any category of welfare or unemployment benefits. I have never applied for Centrelink funding or support.

My symptoms recur on an *episodic* basis highlighting the need for health care to reflect this.

3.2 Consultation with key stakeholders

In preparation of this submission I have consulted with a wide range of stakeholders including:

Legal:

Law associations

Senior lawyers (barristers and solicitors) and legal academics

Government:

Members of Parliament (Federal and State)

Senior Government Policy Advisors

Religious Institutions

Archbishops and Bishops of Catholic and Anglican diocese

Lay managers, staff responsible for child protection and grass roots members

Whistleblowers (people who care about the rights and safety of children)

Survivors:

Individual survivors from various institutional backgrounds

Survivors of non-institutional abuse

Prominent advocacy organisations – leaders and members

I have reviewed a range of documents including:

Royal Commission Case Study reports

Reports of various official inquiries into child abuse

Legislation of various jurisdictions – past and current

Government departmental policies

Australian Institute of Criminology papers

Law Reform Commission reports

Medical, psychological and scientific literature

Church Canon, risk management policies and protocols for responding to child abuse

Victim impact statements in which the child's disclosures to adults were not acted upon

Parliamentary Committee submissions by various parties, including institutions

3.3 Conflict of interest statement

My Conflict of Interest

I have no intention of applying for redress under the National Redress Scheme, or any other tax-payer subsidised redress scheme.

Therefore, as I will not ever be a beneficiary of the scheme or this bill, the Committee may have every confidence in the integrity of my evidence in this submission and that all criticisms of the bill are offered free of any fear or favour and devoid of any self-interest.

This is more than can be said of the institutions who have an obvious vested interest in watering down the redress scheme and who wield great influence on Parliamentarians.

Government conflict of interest

Even without the influence of religious institutions there is substantial conflict of interest with the government holding liability for government run institutions – Directors-General and senior bureaucrats of culpable government departments have significant influence over Government MPs who hold the voting majority in the Parliament.

This creates the ultimate conflict of interest that the Government has the power to establish the redress scheme, set the 'rules' for the scheme, and determine to what extent and how it is, itself, to be bound (or not) to deliver restitution for its own liability – the only vaccine is *accountability* so the Committee is reminded that it carries a unique burden to act *and to be seen to act,* through its Committee Report, in the genuine interest of the victims of the government, and not in the interest of the government itself.

I caution the Committee that the conflict of interest is **not** well managed by this bill, but is exacerbated, such as by the secrecy provisions relating to the Assessment Framework (sections 102 – 104, in conjunction with sections 32 and 33).

4 General Matters

4.1 Financial management support for vulnerable survivors

I ask the Committee to recommend that the scheme includes an embedded program to provide financial management support to survivors to assist with management of their monetary payment.

The purpose of such support would be to assist vulnerable survivors with protecting their monetary payment from diversion against the survivor's wishes, which might otherwise occur as a result of their pathology or other factors.

To avoid paternalism the competence of each survivor must be assumed and participation in such a service must be at the discretion of each survivor.

It is the responsibility of the architects and administrators of the scheme to make every effort to maximise the positive and healthy outcomes of the scheme for survivors. This is consistent with the bill's policy objective that the scheme not cause harm to any survivor.

Such a service is also surely good politics as it makes monetary payments far more acceptable to the broader tax-payer base who are ultimately funding the scheme.

Advice should be given to survivors in early literature about the scheme including application literature informing the survivor of the opportunity to meet with a scheme-provided financial support worker to assist with having a conversation about such matters as: identifying goals for their monetary payment, identifying any vulnerabilities that might divert the monetary payment away from their identified goals, identifying protective measures.

Survivors may opt for protective measures such as placing the monetary payment in Guardianship or Trust particularly for a temporary period such as to undergo drug or alcohol treatment. A survivor may seek payment in installments. A survivor not at risk may seek financial help such as how to put the money towards buying their home, or funding their children's education, etc.

This is in the joint interest of the survivor, their family and the broader community and tax-payer.

4.2 Redress versus Litigation – why many survivors lack capacity to litigate

As the Committee are aware, the 2015 Redress and Civil Litigation Report of the Royal Commission detailed 99 recommendations for establishing a redress scheme and for improving legislation providing survivors appropriate rights to pursuing legal restitution directly (litigation).

Redress and Litigation are of course distinct alternative options for survivors to pursue justice.

Litigation should better provide full restitution, but comes with legal risk, challenge and expense (none of which would exist if the institution honestly admitted its liability, as opposed to using legal defences despite knowing of their own guilt). The Committee is reminded that institutions do not restrict defending themselves to only cases where they may genuinely believe they are not liable – in fact in many instances the institution defends itself despite being fully aware of its liability, using legal loopholes and its superior resources, rather than evidence.

Legal defences – provided by the Parliament – such as time limits, have been used to deprive victims of proper rights to pursue restitution. The use of a time limit defence is the last refuge of the guilty. They know they are guilty and have no defence other than an immoral legal loophole.

Redress is offered for the many victims who may not have the ability to mount a legal claim through litigation – this could be for many reasons, including lack of psychological capacity or emotional resilience as a result of the injuries themselves or destruction of evidence by the institution. In most cases today, 2018, institutions have available to them the opportunity to claim a stay of proceedings based on the 'passage of time', namely the death or old age of witnesses, or the destruction – proper and otherwise – of supporting records despite the institution causing the passage of time to occur through their practice of concealment for decades.

Much publicity has been given to the medical reasons that cause delays to a victim reporting (the Royal Commission finds on average 23 years). But what of the many victims who *did* report as children, while the abuse was still occurring? What is the reason for the passage of time in their cases?

I draw the Committee's attention to the simple fact that is the very behaviour of institutions – silencing victims, moving offenders around, destroying evidence, and then ultimately using the

time limits defence against adult survivors – that has the created the passage of time in a great many cases. Even with the time limits defence removed, this passage of time, now deprives survivors of effective legal rights to litigation and forces them into the redress scheme.

In other words, it is a direct consequence, and indeed continuation, of the bastardisation of victims for so many decades that all the necessary witnesses and evidence that would have been available 20 or 30 years ago are lost, and with it most plaintiff's rights to pursue justice through the courts.

The institutions evade their responsibility yet again.

So redress must be seen in the proper light. It is not a loose system, contrary to the scaremongering of institutions and conservative policy advisors. In fact it is nothing more than the bare minimum that should be offered to reflect that the need of a victim to claim through redress, and any paucity of evidence available to a victim, is the result of the direct willful misconduct of the institution. In fact the redress scheme should go further in recovering liability from private wealthy institutions.

Any lack of evidence should be seen as a damning criticism of the institution, not the victim.

4.3 Survivors versus institutions - balancing interests

Any redress scheme must subordinate the interests of institutions to the interests of survivors. This is not borne of any belief that survivors are somehow 'special' or 'entitled' but the need for this is commanded by the behaviour that institutions have chosen to employ for decades.

Institutions have chosen to profit from corrupt and dishonest behaviour, so it is only right that through a redress scheme institutions should experience consequences of their chosen behaviour. For the Parliament to now, in 2018, subordinate the interests of institutions in preference for the interests of survivors would not 'disadvantage' institutions nor would it 'advantage' survivors – it would merely temporarily (for the life of the redress scheme) equalise the long-standing and on-going power, resource and legislative imbalance that favours institutions.

In considering subordinating the interests of institutions in preference for the interests of survivors I ask the Committee not to lose sight of the fact that these institutions, who continue to capitalise on the generosity of the people and the Parliament and trade on a myth of charitable intent or practice, have in fact behaved no differently from criminal or outlaw organisations. Senior officials have knowingly concealed serious indictable offences, have perverted the course of justice, have done so knowingly and repeatedly, not as isolated events but as systemic organisational culture approved tacitly by other senior officials.

(If Committee members find it difficult to reconcile this description of an institution such as a church with your own experience of your church – if you have had only happy and positive experiences – then I remind you that this merely means that you were lucky, and the truth of your experience does not negate the truth of the experience of the many who were not so fortunate).

Consider, for example, the massive fraud against the Commonwealth perpetrated by religious and private schools who received millions of dollars per year (per school) in funding *at the same time as* knowingly concealing criminal offending – the sexual assault of children in care must surely amount to non-compliance with the regulatory requirements to maintain registration as a school?

Here we see the true cause behind the wide-spread systemic concealment of child sexual abuse in institutions – money. The senior officials were not concealing child abuse and protecting child molesters because they were child molesters themselves (although some were); by and large the

senior officials who knowingly protected active child molesters and in so doing caused so many children to be harmed had one simply motive – protect the money.

They are still at it.

These institutions, in receipt of so much tax-payer funding, now cry poor and have demanded that the Commonwealth *negotiate* their involvement in a redress scheme and give generous conditions (such as the Commonwealth covering 100% of private institutions counselling costs).

When the Committee understands the true criminality of the behaviour of institutions then the Committee will understand why it is so offensive that the institutions even have a seat at the table in determining the construct of a redress scheme – let alone seem to be given privileged access to the head of that table, in what merely appears to be a continuation of the long-standing unhealthy collusion between institutions and individual Parliamentarians or political parties.

4.4 Recovering damages from private institutions

It matters where the money comes from - understanding the survivor's perspective on justice

Survivors are not seeking for an unrelated third party (such as the tax-payer, unrelated from a private institution) to pay to the survivor a random quantum of money.

Survivors are seeking justice. Justice can only be achieved through the healing of injuries – by the provision of adequate health care – and by any monetary payment coming from the institution liable for perpetrating, enabling and concealing the abuse.

Survivors would prefer the monetary payment, and cost of health care, to be borne by the offending institution because survivors, quite rightly, want the guilty institution to experience real consequence for their knowing corruption.

Monetary payments which come from a source other than the liable party is an offensive insult to survivor – it symbolises the congoing evasion of true liability by the institution.

Two-thirds of liability is private

Official estimates anticipate that of the 60 000 survivors eligible to apply for redress, 40 000 were abused in private institutions (mostly church owned and operated) while 20 000 were abused in Government owned and operated institutions.

Therefore two thirds of the total final cost of the redress scheme should ultimately be recovered from private institutions and not simply dumped on the tax-payer.

In this, the interests of survivors in true justice aligns exactly with the interests of tax-payers to not be forced to bail out corrupt and wealthy private institutions.

Institutions' true wealth needs to be in the spotlight

This bill does not do enough to investigate, expose and pursue the true wealth of the private institutions – both asset and income wealth – which is considerable.

The following are two clear examples of the asset and income wealth of institutions who claim that participating in the redress scheme will place them under financial distress:

- Anglican Diocese of Grafton – hidden asset wealth
- Anglican Diocese of Brisbane – enormous annual income from private and Commonwealth funding

Anglican Diocese of Grafton – hidden asset wealth

The Royal Commission has found (Case Study 3) that the Anglican Diocese of Grafton denied reparations and health care to victims citing as its reason that it did not have enough funds.

Specifically, they claimed to have only $1.5 million – when in fact they had over $200 million.

Page 9 of Case Study 3 – Anglican Diocese of Grafton:

> *"We found that representatives of the Diocese, including the bishop, restricted financial settlements for former residents because of concern as to the financial position of the Diocese. Some* ***individual claimants were denied financial compensation because the Diocese's representatives said it could no longer afford such claims****.*
>
> *The Diocese's net assets were relatively stable between 2005 and 2007.* ***It reported*** *total current assets of $1.3 million, $950,000 and* ***$1.5 million in*** *2005, 2006 and* ***2007*** *respectively.*
>
> *The Corporate Trustees' net* ***assets reached almost $209 million in 2007****."*

Anglican Diocese of Brisbane – enormous annual income from Commonwealth funding

Taking one institutional example, the Anglican Diocese of Brisbane – this institution has been named in the Royal Commission as being responsible for the largest number of victims of all Anglican Diocese. The official figure of *reported* abuse is 371 victim reports.

The Anglican Diocese of Brisbane owns and operates 13 expensive fee-charging private schools.

From the official records (websites, annual reports, etc) of each of these schools the current enrollment figures for all schools combined is approximately 16 000 students.

Figures from the Parliamentary Library (2013) and Productivity Commission (2017) confirm that these institutions receive:

Direct Commonwealth funding to the institution	- average $5 581 per student
Direct State Government funding to the institution	- average $1 961 per student
"Private sources" (school fees)	- average $6 177 per student

Looking only at the Commonwealth (tax-payer) contribution to this one culpable institution:

16 000 X $5 581 = $89 296 000 (*per annum, repeated every year*)

Therefore, in one year, every year, the Commonwealth is paying – to just one institution, the Anglican Diocese of Brisbane - $89 296 000. That is just **one year** of direct payment of tax-payer's money to an institution found to have raped children and knowingly concealed it and protected offenders in multiple schools for 30 years. That amount is repeated **every year.**

$89 296 000 ÷ 371 = $240 690

Given this institution admits to 371 victims, that money could fund every single victim a monetary payment of $240 690 and the entire monetary payment component of redress would have been recovered by the Commonwealth **in a single year.**

The institution would NOT go bankrupt much as they may like to claim.

For example, the entire redress example above is covered by only *one year* of withholding funding. During that time the institution would continue to receive $8 138 of 'other' funding – the identified State Government funding and direct school fees.

16 000 x $8 138 = $130 208 000

That is a very healthy operating income of $130 208 000 for the Diocese for that one year. It very neatly approximates about $10 million for each of the 13 schools.

If a school can't operate on $10 million for 12 months then they are not very good financial managers – perhaps the BMW driving Headmasters could take some lessons from the average State School Principal on 'how to educate a school full of children on $10 million or less'.

Perhaps some of the wealthy non-abused alumni, who seem to invest more money in naming buildings and building bronze statues could direct their donations towards actual education expenses to help survive those 'lean' 12 months during which they only receive $130 million?

The above figures do not even include the enormous asset base of land owned by these institutions which was itself originally gifted by the Crown usually for 'one pound' or similar administrative arrangement. The land assets are now worth hundreds of millions of dollars – enough to fund proper liability for long-standing criminal behaviour and still have enough left to survive and operate (non-criminally) into the future.

So why does the institution cry poor and why do the institutions and the Government ask victims to discount their entitled redress (from $200 000 to $150 000) – when the institution is not discounting the salaries of its senior staff?

The Archbishops, CEOs and General Managers of private institutions continue to presume to collect one hundred percent of their 'entitlements' without any suggestion of reduction despite profiting from the concealment of crimes.

In the case of churches, too many of the leaders still in place today have fingerprints all over the concealment of child sexual abuse for the past few decades. In this time they have collected

millions of dollars in salary, superannuation and other benefits; those still employed continue to collect their salaries while those retired continue to collect their pensions. In the case of senior personnel with proven direct culpability of concealing crimes, at what point are their incomes not the 'proceeds of crime'?

The Commonwealth and Queensland Government have substantial negotiating power – the withholding of funding as payment of a liability debt – all the governments seems to lack is the willpower to take decisive action against corrupt institutions.

Morally, withholding government funding to an institution found to have breached its regulatory obligations is in fact only right and proper (as compared to continuing to fund an institution known to be in serious breach).

Suggested options for cost recovery from non-government institutions

The 'opt-in' nature of this bill creates the scenario where wealthy organisations are freed of responsibility for what is the criminal behaviour akin in scope and severity to organised crime. Where churches have colluded for decades to protect abusive staff and leave known victims without support or healthcare these institutions are now being 'bailed out' by the tax-payer when they often hold millions of dollars in property assets. A superior scheme would embrace the Governments existing powers and create any new powers as necessary to apportion responsibility and then sue or debt recover from the culpable institution.

The Commonwealth and Territories have multiple options to recover debt or liability from institutions such as by litigating, or simply withholding payment of funding until debt or liability is recovered. Options might include:

- Direct issuance of debt and debt recovery proceedings formally;

- Seizure of land assets (usually land gifted to the church by the Crown in the first place – particularly poignant in the case of Indigenous survivors of institutional abuse that the Crown has acquired First Nation land, given it to the institution, and now the Crown is tip-toeing around its right to seize back the same land);

- With-holding of funding (according to Productivity Commission 2017 data the Commonwealth pays $12.8 billion to private schools – often the very institution responsible for sexually abusing children and concealing it. The Commonwealth could simply withhold such funding until the debt was recovered in full – the same way the Commonwealth is quick to recover debts from an individual on Centrelink benefits. In fact, many of these institutions will have likely breached their regulatory requirements for maintaining registration or accreditation by concealing wide spread child abuse for so many years – if they argue the cost recovery mechanisms the alternative is they be investigated for fraud for claiming Commonwealth funding for years while breaching regulatory requirements failing to maintain a safe environment);

- Application of taxes (a crack down on institutions claiming tax exempt status on profit making arms of its business – such as private hospitals, private schools and property investment arms. For example church owned private hospitals are tax exempt as charities but they are not charitable – they refuse to treat any patient without private health insurance and send poor people to the government hospital. They are private corporations who then avoid paying a tax contribution to the Commonwealth.

The sections of the bill relating to institutions who claim to have no assets is too soft and needs to be strengthened. Many institutions claim to have no assets but in fact have minimal assets in operating funds but large assets in trust. Such assets should be available to the Scheme.

What lesson is taught to culpable institutions if, after so many years of cover-up and concealing crimes, they are allowed to escape penalty and to be bailed out by the tax-payer, all the time while holding on to millions of dollars in assets in trust and receiving direct funding from the tax-payer? What will be the credibility of the institutions? What will be the credibility of the Scheme?

5 Specific feedback on the bill

5.1 Royal Commission Recommendations breached by this bill

Recommendation 1

> A process for redress must provide **equal access** and **equal treatment** for survivors – regardless of the location, operator, type, continued existence or assets of the institution in which they were abused – if it is to be regarded by survivors as being capable of delivering justice

This bill discriminates against survivors in rural or remote locations, indigenous communities or in unstable housing situations by imposing unnecessary and draconian time limits to respond to requests for information, respond to the assessment offer, request a review, etc.

Survivors of abuse in non-government institutions who wind themselves up and are not connected with government institutions risk being ineligible for redress despite those non-government institutions being associated with some of the wealthiest corporations in the world.

Recommendation 4(a)

> Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
>
> a. Redress should be **survivor focused**.

Inclusion of any amount of an 'original payment' that was not actually ever received by the survivor (such as amount for Medicare reimbursement or amount paid in legal fees) to be included as if it were received by the survivor is a gross injustice and is not 'survivor focused'.

Recommendation 4(b)

> Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
>
> > b. There should be a **'no wrong door'** approach for survivors in gaining **access to redress.**

The bill's requirements for an application and other correspondence to only be in an "approved form" or else the application may be rejected creates a "Wrong Door" approach and in fact wrongly creates a single door entry point to the scheme.

If the bill is going to insist on the use of an "approved form" then the bill should oblige the Operator to assist every survivor applicant who submits an application not in the "approved form" to resubmit their application in the "approved form".

Recommendation 4(c) and (d)

> Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
>
> > c. All redress should be offered, assessed 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 to the cultural needs of survivors.
> >
> > d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.

The time limits and single door entry approach similarly breach these principles.

Recommendation 9(a)

> Counselling and psychological care should be supported through redress in accordance with the following principles:
>
> a. Counselling and psychological care should be **available throughout a survivor's life**

The bill only provides for health care for the life of the scheme (ten years under section 193) not the life of the survivor. The bill offers zero guidance as to the substance of how health care will be provided – presumably another of the Minister's secret rules at section 179? As a guide to the inadequacy of health care offered via the bill, the bill only offers $5000 for health care where an applicant resides in a non-participating jurisdiction.

Recommendation 9(b)

> Counselling and psychological care should be supported through redress in accordance with the following principles:
>
> b. Counselling and psychological care should be available on an **episodic basis**.

Same criticism as above.

Recommendation 9(c)

> Counselling and psychological care should be supported through redress in accordance with the following principles:
>
> c. Survivors should be allowed **flexibility and choice** in relation to counselling and psychological care.

Same criticism as above.

Recommendation 9(d)

> Counselling and psychological care should be supported through redress in accordance with the following principles:
>
> > d. There should **be no fixed limits on the counselling and psychological care** provided to a survivor.

Same criticism as above. Ten year scheme, limit of $5000 payment, etc are all ‘fixed limits’.

Recommendations 16, 17 and 18

> *Recommendations relating to formulation of the Assessment Matrix*

The bill makes the Assessment Framework and the Assessment Framework Policy Guidelines secret. This deprives survivors, institutions and the tax-payer the right to see the mechanism that is at the heart of the redress scheme – in breach of sections 3 and 10 of the bill (and in breach of Recommendation 4).

Recommendation 19(b)

> The appropriate level of monetary payments under redress should be:
>
> > b. a maximum payment of $200,000 for the most severe case

The bill reduces the maximum to $150 000.

Recommendation 46

> Those who operate the redress scheme should specify the cut-off date as being the date on which the Royal Commission's recommended reforms to civil litigation in relation to **limitation periods** and the **duty of institutions** commence.

This bill will have the effect of commencing the Redress Scheme prior to the commencement in Queensland of legislation enacting the duty of institutions under Recommendations 89 – 94. Queensland Parliament has removed the limitation periods (Recommendations 85 – 88) but not yet passed legislation regarding the duty of institutions. This bill therefore imposes unreasonable duress on survivors by forcing them to choose between the redress scheme or litigation with unreasonable barriers to litigation still unremoved by the Parliament.

Recommendation 48

> A redress scheme should have no fixed closing date.

Section 193 sets a fixed closing date at ten years from commencement.

Recommendation 52

> A redress scheme should fund support services and community legal centres to assist applicants to apply for redress

The bill does not expressly make provision for this funding or service.

Recommendation 59

> An offer of redress should remain open for acceptance for a period of **one year**

Section 40(1) states the acceptance period is limited to exactly 6 months.

Recommendation 60

> A period of **three months** should be allowed for an applicant to seek a review of an offer of redress after the offer is made

Sections 34 and 73 work together to provide for a time period at the discretion of the operator as short as **28 days** and no longer than 6 months – 28 days is not 3 months.

Recommendation 62

> A redress scheme established on an administrative basis should be made subject to oversight by the relevant ombudsman through the ombudsman's complaints mechanism

Nothing in the bill provides for this. In fact, the only review mechanism is confined to an 'independent decision maker' and they are constrained from considering any new information in the review (which defeats the purpose of the review).

Given the number of instances in which the bill breaches the Royal Commission recommendations, and given that the bulk of the operating 'rules' of the redress scheme are undefined in the bill, are at the sole discretion of one single Australian – the Minister – and given the secrecy provisions prohibiting community consultation or discussion of the 'rules' – external ombudsman oversight is essential to delivering justice to survivors (one of the bill's policy objectives) and maintaining the integrity of the redress scheme (another of the bill's policy objectives).

Recommendation 69(a)

A redress scheme should take the following steps to improve **transparency** and **accountability**:

a. In addition to publicising and promoting the availability of the scheme, **the scheme's processes** and time frames **should be as transparent as possible**.

Same criticism as above.

5.2 Royal Commission Recommendation requested be set aside

Recommendation 24(a)

> The amount of the monetary payments that a survivor has already received for institutional child sexual abuse should be determined as follows:
>
> > a. monetary payments already received should be counted on a **gross** basis, **including** any amount the survivor paid to reimburse Medicare or in legal fees

I request that the bill be amended to ignore this recommendations, as the recommendations are themselves in breach of Recommendation 4(a) to be 'survivor focused'.

The Committee is asked to amend the bill to specifically oblige the Operator to ignore Medicare reimbursements and legal fees when calculated the ‘relevant payment’ or ‘original amount’.

5.3 COAG versus Parliamentary independence

Serious Question of National Redress Scheme Agreement interfering with Democratic and Independent function of the Parliament

If the COAG agreement entered into by all states and territories to pass nationally consistent legislation has the effect of the Parliament being prevented from accepting community or stakeholder recommendations for amendment of the bill then this raises serious questions about the legitimacy of such agreements in so far as they limit the independence of the Parliament.

Presumably, as the Government holds the majority in the House it may simply vote as a block to pass the cut and paste bill as a matter of policy – in which case the so-called opportunity for stakeholders to provide input or influence during the Committee process is a farce and an insult.

6. Critique of the Bill

6.1 Bill is in breach of Recommendation 46 of the *Redress and Civil Litigation Report*

Recommendation 46 states:

Those who operate the redress scheme should specify the cut-off date as being the date on which the Royal Commission's recommended reforms to civil litigation in relation to ***limitation periods*** *and the* ***duty of institutions*** *commence.*

The recommendations on limitation periods and duty of institutions are described at Recommendations 85 – 94 of the Royal Commission Report.

At time of writing Queensland has enacted legislation which addresses recommendations 85 – 88 (time limits) but has failed to pass any legislation which addresses recommendations 89 – 94 (duty of institutions).

Therefore, when this bill comes into operation and the Parliament continues to have failed to have legislated the Royal Commission recommendations in relation to the duty of institutions, then the bill will create unreasonable duress upon survivors by forcing them to choose between the redress scheme and unjust legal barriers obstructing fair access to civil litigation.

The intent of Recommendation 46 is clear: that existing unjust barriers to accessing civil litigation be removed for all survivors and that the redress scheme only come into effect once that has occurred. Only in this way can survivors truly have fair and reasonable choice to pursue justice via the redress scheme or direct litigation of culpable institutions.

It is in the best interest of the scheme and tax payers for the Parliament to comply with Recommendation 46 (by passing legislation enacting Recommendations 89 – 94) because any survivor who pursues restitution via direct litigation reduces burden upon the scheme.

The scheme as created by this bill will have no legitimacy if survivors are perceived to be 'forced' into the scheme by virtue of having no fair or reasonable alternative civil litigation rights.

This is particularly unfair and unreasonable given that acceptance a redress payment requires a survivor waive all their legal rights to civil litigation (sections 42 and 43)

Queensland Parliament are creating a grave injustice (and the Government with majority vote in the House are failing to be 'model litigants' in breach of Royal Commission Recommendations 96 – 99) if they require a survivor to waive legal rights to litigation prior to having properly legislated those very same recommended legal rights.

Recommendation:

Queensland Parliament pass legislation enacting Recommendations 89 – 94 of the *Redress and Civil Litigation Report* prior to commencement of this bill.

6.2 Assessment Framework & Assessment Framework Policy Guidelines

Sections 32 & 33

Sections 102 – 104

A significant omission which undermines the credibility of this bill is the absence of disclosure of any detail pertaining to the Assessment Framework. This bill creates that the Assessment Framework is a matter of Ministerial decree without any mandatory consultation or review.

In fact the bill makes the Assessment Framework secret in sections 102 – 104 creating an offence punishable by 2 years in prison for any person who discloses Assessment Framework Policy Guidelines.

To put this into perspective – this is longer than some offenders have gone to jail for sexually assaulting children. I recently supported a survivor through their court process and the offender was found be a jury to have sexually assaulted a number of children – they were sentenced to 6 months in prison.

The offence at section 104 is not for releasing private information of a survivor but is an offence for releasing *policy* information about the Assessment Framework itself. The detail of the Assessment Framework should be made public and *this bill should make it mandatory* that the Assessment Framework Policy Guidelines be made public.

Such policy should be public for a defined period of consultation in their development prior to operation.

The community has a right to know the detail of a scheme of such national importance as the redress scheme following from a half a billion dollar Royal Commission that has been the largest in the nation's history.

- Survivors of abuse – applicants under the scheme – have a right to know the detail of the Assessment Framework to which they are being subjected. This is a matter of Natural Justice and Due Process.

- Institutions have a right to know the Assessment Framework being applied that results in a liability quantum assessment.

- The Tax Payer has a right to know how their money is being spent.

Secrecy of the Assessment Framework will result in injustice and creates an absolute vacuum of accountability – where a Spotlight is needed, this bill intentionally creates dark shadows. This is in direct breach of section 3 and section 10 and will likely undermine community acceptance of the scheme.

The success or failure of this scheme, and whether or not the Scheme is fair and reasonable, and has community acceptance will depend heavily on the detail of the Assessment Framework and the quality of the underlying assumptions that form the Assessment Framework. Not all assumptions that seem reasonable at first glance are found to be reasonable upon deeper inspection (see below section – Medical observations relevant to any Assessment Framework).

The Assessment Framework and the Assessment Framework Policy Guidelines must be subject to community review to have any legitimacy. Otherwise $4 billion will be spent on the redress scheme and the final result will be that all parties will be dissatisfied – survivors will interpret that they have been redressed unfairly, institutions will interpret that they have had liability assessed unfairly and the tax payer will interpret that they have footed the bill for an ineptly run scheme lacking in transparency.

Therefore it is essential that the Committee amend the Bill to delete sections 102 – 104 and to impose a requirement upon the Minister to publish the Assessment Framework for a minimum 90 day period of public scrutiny and consultation allowing for amendment of the Assessment Framework as indicated by the consultation process prior to application of the Assessment Framework upon any application for redress. For example, insertion of (or similar):

> 33A The Minister must publish the Assessment Framework for a period of no less than 90 days and undertake public consultation and must amend the Assessment Framework in accordance with any recommendations arising from public consultation prior to any implementation of the Assessment Framework.

33B The Minister must publish the Assessment Framework Policy Guidelines for a period of no less than 90 days and undertake public consultation and must amend the Assessment Framework Policy Guidelines in accordance with any recommendations arising from public consultation prior to any implementation of the Assessment Framework Policy Guidelines.

To be truly survivor focused (as per Recommendation 4(a) of the Royal Commission Redress and Civil Litigation Report) the Assessment Framework should include provision for an applicant to submit a Medical Report as part of the evidence provided to the Operator to inform on the impact of the abuse and any aggravating factors on that particular survivor. The Assessment Framework should oblige the Operator to have regard to that report.

The Assessment Framework should include a multiplier for any child with inherent increased vulnerability (for example doubling the calculated redress monetary payment), including for example but necessarily limited to:

- Any indigenous child
- Any child who is a care leaver
- Any child for whom the institution was acting *in loco parentis*
- Any child with a medically defined physical or intellectual disability
- Any child with status of asylum seeker

Public consultation in the development of the Assessment Framework

The bill should be rejected until the actual detail of the 'Assessment Framework' and 'Assessment Framework Policy Guidelines' under sections 32 and 33 are made available for public scrutiny and feedback. Alternatively, the bill should be amended to require that any 'Assessment Framework' and 'Assessment Framework Policy Guidelines' undergo a defined period of public consultation before implementation.

Simply empowering the Minister or the Operator to construct rules is too much power to be so centralised – particularly given that the state is itself an entity facing liability under the scheme and so has a significant conflict of interest.

This is particularly so, given that the Minister (Social Services Minister Dan Tehan) revealed significant bias and conflict of interest with his publication in the Weekend Australian 7 – 8 July 2018 of his delivery of the Thomas More, outing himself as a Catholic and stating the "*we have woken up to a nightmare where the value of your contribution to a debate depends on what you claim to be a victim of".*

This is hardly appropriate language for the Minister with the sensitive task of guiding the nation through the redress of the systemic rape of children in institutional care. It is highly questionable that a Minister who is taking particular pride in representing himself publicly as Catholic (as opposed to keeping his faith a private matter, separate from his public official duties) has been placed in charge of the redress scheme when his organisation has been found by the Royal Commission to be responsible for more child sexual abuse than any other institution.

This highlights more than ever the importance that the minimum vaccine against the potential for corruption of the redress scheme by government self-interest or religious institution influence is public and open accountability and wide-spread consultation regarding the 'Assessment Framework' and 'Assessment Framework Policy Guidelines', followed by significant mechanisms for appeal and review of the 'Assessment Framework' and 'Assessment Framework Policy Guidelines' and all decisions and application of the 'Assessment Framework' and 'Assessment Framework Policy Guidelines'.

Any restrictions upon public accountability prior to implementation of the 'Assessment Framework' and 'Assessment Framework Policy Guidelines' and any restriction upon review and appeal of decisions should be regarded as **total illegitimacy of the scheme**.

Medical observations relevant to any Assessment Framework

Whether or not the scheme is fair and reasonable will depend heavily on the detail of the Assessment Framework and the quality of the underlying assumptions that form the Assessment Framework. Not all assumptions that seem reasonable at first glance are found to be reasonable upon deeper inspection. Three elements and assumptions already flagged include, *inter alia*:

1. Duration of abuse, with the assumption that prolonged abuse is more harmful than isolated sexual assault;
2. The age abuse occurred, with the assumption that younger onset equates to greater harm;
3. Whether there was associated physical violence or threat of physical violence with the assumption that this exacerbates the harm of the underlying sexual assault.

To the lay person these may seem like reasonable assumptions on face value. However, the medical reality is that abuse impacts *different* people in *different* ways and a 'hierarchy of abuse' is extremely simplistic, paternalistic, judgmental, and prone to inaccuracy resulting in injustice and harm to survivors. It is not 'survivor focused' as recommended by the Royal Commission and does not 'provicde justice' as required by section 3(1)(b) of the bill and the redress will not be 'provided with appropriate regard to:….what is known about the nature and impact of child sexual abuse' as required by section 10(3)(a) and will not be 'provided so as to avoid …further harming or retraumatising the survivor' as required by section 10(4).

A hierarchy of abuse or formula approach to an Assessment Framework is contrary to being 'survivor focused' as it places more emphasis on the *assumed infallibility of a formula* than the voice and true lived experience of each individual survivor. Abuse affects different people in different ways. The same abuse does not necessarily effect two different people equally. Different people have different innate resilience, or different background circumstances defining the context within which the abuse then occurs, that can shape the impact of that abuse upon the individual. As well, different responses from adults to reporting of the abuse can shape the individual's trajectory post-abuse. For example, lets analyse the three seemingly uncontroversial assumptions listed above.

Firstly, sexual assault can impact a person deeply when it occurs only once. It is not necessarily true to state that a person suffering one hundred sexual assaults is harmed exactly one hundred

times greater than a person suffering one assault – so much depends on other variables including the person, the assault, the context, the eventual response on non-offending adults, etc.

Recall that I offer this view as a person who suffered a number of assaults over time, yet I don't make any claim that the challenges I experience are necessarily any greater than the challenges experienced by a child assaulted once, merely based on the comparison on number of assaults.

For example, if the child is assaulted once, but then the institutional context creates the real threat of repeated assault, the impact on the child's psyche and brain development, living in anticipation of the next assault, can be similar to if the assault were repeated. Similar response is seen in adults in conflict zones, or domestic violence and so is certainly true of developing children.

Secondly, people assaulted at different ages are impacted *differently*, not necessarily predictably more or less than each other according to a slide rule. For example the person's experiencing of the abuse includes the age of development and cognitive and neurological development. Different ages are associated with *different* understanding and experiencing of the abuse not necessarily more or less harmful experiencing. Younger children may have less cognitive understanding and so suffer less cognitive distortion but be likely to suffer more ingrained experiential trauma. Older children might be experience more cognitive processing association with the abuse and subsequent trauma from that. Clearly, the harm caused at different ages is different harm and is not so simplistic as a 'sliding scale'. How can a formula predict if one child's abuse is to be valued more or less than another child's?

Thirdly, it may seem intuitive that the use or threat of physical violence would cause more harm than a sexual assault without such an element. However survivors who have been assaulted sexually as children without the presence of physical violence, where the assaults were perpetrated by coercion or simply by exploiting the power and knowledge difference inherent between an adult and a child, have reported deeply entrenched guilt for *the very reason that there was no violence* – they express sentiments such as self-blame for not running away or defending themselves against the offender and some have expressed sentiments that they feel they would carry less shame if there had been an element of violence as at least they would feel they had an excuse for not defending themselves from the offender. This sentiment is found particularly predominantly in male victims of child sexual assault, where there is social conditioning of males to be perceived and to self-perceive as being independent, strong and not being 'victims'.

I posit that *all* sexual assaults are acts of violence as they deprive the victim of ownership and control of their own body and mind, whether or not perpetrated by threat of physical violence.

Remember that I say this having myself had physical violence inflicted upon me in order to reinforce compliance with the sexual assaults. Yet I do not claim that my experience was necessarily worse than the abuse experienced by the child who was not physically assaulted or threatened. I suggest that the moment the child is aware that they cannot leave the situation of their own free will, but they desperately want to leave, the act of violence has occurred.

So I hope the Committee may now understand that what at first seemed an entirely reasonable list of assumptions upon which to base an Assessment Framework rapidly becomes much more complicated when a true 'survivor focus' is adopted, actual survivors are listened to and the facts of each individual are assessed.

Recommendation:

The Assessment Framework must be subject to community review prior to implementation.

Sections 102 – 104 must be deleted and sections 32 and 33 amended to require publication of the Assessment Framework and Assessment Framework Policy Guidelines.

6.3 Calculation of the *relevant payment* or *original amount*

Section 30

Warning: This is a potential scandal that may undermine public acceptance of the scheme.

The term ***relevant payment*** and ***original amount*** needs to be defined in the bill clarifying whether or not the amount includes legal fees paid out a past settlement amount by the survivor to their lawyers.

This is highly significant as it has the potential to exclude a significant number of survivors in an unjust manner and contrary to the policy objective of the bill to 'deliver justice' (section 3).

It is important that the Committee understands the movement of money that occurred with a survivor's past redress settlement.

There is the amount that was **paid by** the institution.

This was then divided into different amounts:

- An amount received by the lawyer (sometimes as much as half)
- An amount deducted as reimbursement of Medicare
- An amount **received by the survivor**
    - This is either a 'global sum' or may be defined under heads of damage included a distinct head for 'medical treatment costs'

As the Committee can see, the amount **received by the survivor** is a much smaller portion of the amount **paid by the institution**.

Therefore how the scheme defines the 'relevant payment' will dictate whether or not a survivor applying for redress under the scheme ever receives it.

Recommendation 24(a) of the Royal Commission does inexplicably recommend that lawyers fees and Medicare reimbursements be *included* in the amount adjusted for inflation, as a 'grossed up' amount. The reasoning behind this is unclear as the recommendation is actually quite bizarre

when in read in the context of the entire report as it is inconsistent with Recommendation 4(a) and elsewhere that they redress scheme be 'survivor focused'.

By taking the grossed up amount of lawyers fees and Medicare reimbursements, the redress scheme would in fact be 'institution focused' as the scheme would be focusing on what the institution paid rather than what the survivor received.

This approach to including Medicare reimbursements at Recommendation 24(a) is inconsistent with Recommendation 20 which states to not reduce redress assessment to account for any past Medicare services.

It is also inconsistent with Recommendation 24(b) which states that the Redress amount should not be reduced by the value of any services provided to the survivor, such as counselling services.

How to resolve these inconsistencies? By returning to Recommendation 4(a) – and section 3(1)(b) of the bill – and holding the policy against those policy objectives namely 'is it survivor focused?' and 'dos it deliver justice to survivors?'.

Given that the bill breaches so many Royal Commission recommendations already, to the disadvantage of the survivor applicant, the Committee is requested to recommend amendment of the bill to oblige the definition of 'relevant payment' or 'original amount' as not including any fees paid to lawyers or the Medicare reimbursement but exclusively only being ***the amount actually received by the survivor***.

The ethical reason for excluding lawyers fees from the amount of a survivors original payment is because survivors were only obliged to engage lawyers and engage in expensive litigation as a result of the misconduct of the institution in the first place. For example the institution invoked statutory time limits or denied liability despite knowing the fact of their liability.

It would be a cruel injustice for the Parliament to now include those legal costs in the survivor's ***relevant payment*** or ***original amount*** – and then adjust that for inflation and deduct it from the survivor current redress assessment.

For the Committee's benefit a common standard example is provided:

Where a survivor has undertaken civil litigation or participated in a former redress scheme and a settlement figure was paid, that amount will usually contain a proportion that was paid to the survivor's legal representative. The legal fees were often substantial, **as much as half of the settlement amount**, and this itself was a consequence of institutions invoking the time limits defence and lawyers providing services on a speculative fee structure basis.

The sums involved happen to now be exactly in the zone that will cause a survivor to be completely excluded from the redress scheme depending on the determination of the Parliament in defining ***relevant payment*** or ***original amount***.

Consider the following example

- Survivor of institutional abuse litigates abusive institution in 2001, time limits are invoked and 'settlement' negotiated by lawyers of payment of $60 000 by the institution to the survivor, Medicare deducts 10% to reimburse services provided to date, and the lawyer takes up to 50% in legal fees and other costs.

- In 2018 the Operator assesses the survivor is to be offered the scheme average of $65 000

- There are two ways the Committee can recommend that the Queensland Parliament dictate that the survivor will now be treated under the redress scheme.

  Option 1 – the grossed up amount inclusive of Medicare deduction and legal fees is adjusted for inflation and deducted from the Assessed Amount

  Option 2 – only the amount the survivor actually received (not including Medicare deduction and legal fees) is adjusted for inflation and deducted from the Assessment Amount.

Lets examine the real figures:

Option 1 – the grossed up amount inclusive of Medicare deduction and legal fees is adjusted for inflation and deducted from the Assessed Amount

Option 1: Including Medicare and legal fees in ***original amount***

Scheme operator assesses applicant as eligible for $65 000

Institution paid **$60 000** in 2001 (17 years ago)

Medicare received $6 000

Lawyers fees were $24 000

Survivor actually received $30 000

Formula:

$60 000 x (1.019)^17

= $82, 625 in 2018 dollar value

$82 625 is greater than $65 000

SURVIVOR NOT ELGIBLE FOR ANY REDRESS PAYMENT

Option 2 – only the amount the survivor actually received (not including Medicare deduction and legal fees) is adjusted for inflation and deducted from the Assessment Amount.

Option 2: Excluding Medicare and legal fees in ***original amount***

Scheme operator assesses applicant as eligible for $65 000

Institution paid $60 000 in 2001 (17 years ago)

Medicare received $6 000

Lawyers fees were $24 000

Survivor actually received $30 000

Formula:

$30 000 x (1.019)^17

= $41, 312 in 2018 dollar value

$65 000 - $41 312 = $23 688

SURVIVOR ELGIBLE FOR REDRESS PAYMENT OF $23,688

This is a significant detail that threatens the legitimacy and community acceptance of the Scheme if not addressed in favour of survivors such as by amendment of the bill.

Recommendation:

The bill be amended however necessary to prohibit the Operator from including Medicare reimbursements or legal fees in the calculation of the ***relevant payment*** or ***original amount***

6.4 Draconian 'Approved Form' and time periods restrictions

Restriction to 'Approved Form' too harsh – bill should place obligation on Scheme Operator

Sections 19, 42, 45 and 73

These sections all state that either the application, or acceptance of an offer or rejection of an offer or request for a review of an assessment "must" be in the "approved form". The consequences for a survivor 'failing' to submit their application or correspondence in the "approved form" is not trivial – it is absolute loss of the right for their application for redress to continue. This is disproportionate penalty for what would amount to an administrative issue and is in breach of the Sections 3 and 10 of the bill.

There is almost no scenario where cancellation of a survivor's application on such technical grounds would be appropriate to the circumstances and in almost all such instances the operation of these provisions would likely result in significantly backlash against the scheme undermining community confidence in the integrity of the scheme.

Recommendation:

The bill be amended to create an obligation upon the Operator to facilitate an applicant to submit their application (or their response to an offer or their request for review) in the "approved form".

Such an approach is more consistent with the policy objectives of the bill as defined at sections 3 and 10 of the bill. While Recommendation 51 of the Royal Commission empowers the redress scheme to make an approved form it merely states "A redress scheme should rely primarily on completion of a written application form" however that recommendation says nothing about the Operator excluding applicants on purely technocratic grounds.

I remind the Committee of Recommendation 4 of the Royal Commission which states:

> 4. Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
>
> a. Redress should be survivor focused.
>
> b. There should be a 'no wrong door' approach for survivors in gaining access to redress.
>
> c. All redress should be offered, assessed 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 to the cultural needs of survivors.
>
> d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.

The bill's requirement for an application to be only in the approved form breaches these recommendations. There are many reasons why survivors may struggle with complying with an "approved form" including:

- Psychological injury impacting cognitive capacity to tackle complex government forms;
- Traumatic decompensation caused by the nature of the content of the "approved form";
- Lack of education as a consequence of their institutionalisation and abuse;
- Effect of medications including psychiatric medications on cognition;
- Lack of access to legal or support services (rural, remote or other social isolation);
- Other medical conditions impacted by early childhood institutionalisation;
- Many other foreseeable reasons.

Draconian time limits throughout the bill are unduly restrictive and breach Royal Commission

Sections 24, 40, 41 and 45

These sections all include time limits imposed upon survivors to respond to requests for information or to reply to the assessment.

The time limits breach sections 3 and 10 as they put the administrative convenience of the scheme above the rights of survivors to take the time they need to make a complex and life-changing and irreversible decision.

There is no need for these time limits – if a survivor takes a little longer to make a decision then so be it. The person is merely delaying their own access to a redress outcome – that is their right.

Royal Commission Recommendation 59 states:

> *An offer of redress should remain open for acceptance for a period of one year.*

However Section 40 only offers 6 months, so in direct breach of the Royal Commission. It is a vast improvement on the 90 days first put forward by the Commonwealth draft legislation but is still inconsistent – for no good reason – with the Royal Commission.

The consequences of missing this deadline are terminal – section 45(2) decrees that failure to offer an answer one way or the either by 6 months results in default termination of the application irreversibly.

Section 24(4) creates the most harsh and least equitable time limit, requiring an applicant to provide additional information upon request in as little as **8 weeks**, or **4 weeks** if the Operator decrees the request to be 'urgent'.

Given that survivors have waited **twenty years** or more for this redress scheme the Operator can wait as long as an applicant needs to reply to a request for information. After all the only consequence of the applicant not providing the requested information is that the applicant's application stalls and stagnates at that point in the process until the requested information is provided.

It is pure bureaucratic convenience – at the expense of survivors dignity and rights – to impose such unjustifiable time restrictions. The time periods at Section 24(4) are in breach of sections 3 and 10 of the bill. It is not a good look for legislation to breach itself and this must be amended.

A time frame of **4 weeks** or **8 weeks** does not reasonably allow for a survivor to seek legal advice taking into account such factors as:

- Emotional avoidance and confronting nature of dealing with abuse matters;
- Lower education levels of many survivors needing help to understand legal or administrative matters;
- Distrust in authority or government acting as impediment or delay;
- Mental health issues that may cause delay;
- Survivors who live in rural or remote Australia (such as Indigenous Australians) without ready access to adequate mail services, legal advice or other supports necessary;
- The person may work away on contract (rural nurse, FIFO mining, truck driver);
- the person may be in hospital;
- the person may have family carer duties inhibiting ability to focus on redress matters;
- the person may be homeless or itinerant or in public housing where mail is difficult to receive or access to facilities to respond to mail are limited;
- the person may be overseas.

All of these are ordinary, predictable, human factors likely to be factors for a number of survivor applicants and it is neither onerous nor burdensome for the redress scheme – which is set up for survivors – to honour and respect these potential factors.

Provisions for applications for extension to time limits are inadequate remedy as they are worded so as to require the applicant to have requested an extension *before* the expiry of the time limit which completely fails to address the situation of survivors not receiving or being in a position to confront the document until a time *after* the time limit has expired.

Section 26(1) does not adequately obligate the Operator to recommence the assessment once the information is provided. It does at least not permanently terminate the application (which was the original effect of the proposed Commonwealth Bill at First Reading) but this section needs to more clearly obligate the Operator to make a determination once the requested information is received, even if after the expiry of the ***production period***.

Recommendation:

The bill be amended to remove all time limits imposed on survivors or all time limits should be amended to be not less than 12 months.

6.5 Health care provisions breach Recommendations of Royal Commission & too vague

Sections 16(1)(b)(ii), 29, 31 and 193(1)

Health care provisions breach Royal Commission Recommendation 9

A significant failure of this bill is health care to the life of the Scheme. The scheme only runs for ten years until 2028 under section 193(1).

By contrast the Royal Commission Recommendation 9 states:

> *Counselling and psychological care should be supported through redress in accordance with the following principles:*
>
> *(a) Counselling and psychological care should be available* ***throughout a survivor's life***
>
> ...
>
> *(d) There should be* ***no fixed limits*** *on the counselling and psychological care provided to a survivor*

The bill fails to provide for essential services past the ten year conclusion of the Scheme.

Health care provisions are inadequate or are too vague

Section 31

The bill fails to adequately set out how survivors will gain prioritised, streamlined or enhanced access to health care services. The bill as it stands only seems to imply that funding for health care will be administered via the scheme (as opposed to Medicare or other arrangements).

There is nothing to indicate that survivors will not still be subjected to unhelpful wait times to access services, or that rural or remote survivors, such as Indigenous Australians will be provided with any greater access to services either through increased services locally or increased access to travel.

There is nothing in the bill to establish increased maintenance care services or promotion of multi-disciplinary team care to reduce demand on acute crisis services.

This could be remedied by the provision of a Health Care Card mirroring the structure of the DVA Gold or White Cards or a Health Care Deed (attached).

$5000 is insufficient provision for health care

Section 31(2) provides for a maximum of $5,000 as payment for health care for applicants in a jurisdiction where provision of health care is not able to provided through a service provider.

This is an insufficient amount for providing counselling and psychological care in any area – let alone an area identified as having no health care facilities (therefore requiring travel to health care).

Recommendation 9 of the Royal Commission recommendations identified that counselling and psychological care should be available on an ***episodic basis*** and ***throughout the life*** of the survivor.

Clearly that is not provided for by $5,000.

A single inpatient admission to a specialist psychiatric unit can be $20,000 for a single admission.

Specialist psychiatrist can charge $200 to $300 per treatment session. If the person was requiring one session per month this would only provide less than 2 years worth of health care.

This does not include cost such as prescribed medication or psychologist counselling sessions.

To put this redress scheme offer into perspective an example of a recent and relevant court judgement which is the case of Erlich v Adass Israel School: **health care costs awarded by the court were approximately $160,000.** This was court awarded costs based on detailed assessment of evidence of treatment costs to the standard required of a court.

Clearly for a survivor with similar health care costs the redress scheme fails to offer a viable alternative to civil litigation.

Getting health care right is vital:

- **to the survivor,**
- **to the survivor's family, breaking the intergenerational impact of abuse,**
- **to the wider community by promoting health and productivity of survivors to decrease burden on the health care and welfare system**
- **to the health care system itself, to more efficiently manage already strained resources.**

Importance – for the community – of effective redress Counselling and Psychological Care

The provision of health care is receiving the least focus from governments, institutions and media despite being the most important element. This is perhaps because it is the most complex, difficult to prescribe on a broad scale – one size does not fit all – it requires longitudinal commitment and outcomes are difficult to measure.

It is easy to see why government and media prefer to focus discussion on the 'handing over of a cheque' which occurs in a single moment and marks a defined event carrying with it the absolving of further liability through written undertaking.

Perhaps also it is because of the sense that if health care offered through a redress scheme fails then survivors can and will fall back on the public health system, so there is no need to get health care right through the redress scheme. This would be a short sighted and dangerous approach.

The redress scheme (if done correctly) offers two vital health care opportunities for the tax-payer.

First, it is a unique and symbolic opportunity for survivors to trust that they now have a genuine opportunity to commence properly funded, structured care with clear treatment goals – in other words designed to succeed, whereas in the past survivors' access to health care has often been poorly funded, unstructured, and without clear treatment goals – in other words designed to fail, and fail it has. So this is a great opportunity for as large a number of survivors as possible to engage with targeted health care to achieve best possible recovery – the result being healthier survivors with reduced or absent need for ongoing engagement with the public health system.

Secondly, it the best opportunity for cost recovery of health care expenses from private institutions. While the liability of state run institutions will remain a tax-payer funded liability, the redress scheme is an obvious and key opportunity for health care provided to victims of private and religious institutions to be billed back to those guilty institutions. Failure to maximise health care through the redress scheme resulting in survivors falling back on to the public health system will serve merely to relieve private institutions of their proper liability placing the burden for health care costs once more upon the tax payer.

Ironically, the main churches operate large profit making private hospitals (while avoiding tax on their profits on the basis of being a 'charity'). These hospitals are not 'charitable hospices' by any stretch of the imagination: a patient's entry through the hallowed doors requires private health insurance or a very fat cheque book. On top of this (making a profit and not paying tax) private church-owned hospitals still swipe the patient's Medicare Card in addition to their Health Insurance Card – directly billing the tax payer once again… Patients without private health insurance or a fat cheque book are turned away from church-owned hospitals and sent to the public hospital waiting room.

As previously described, there are two main failures of this bill with respect to health care – the time period and the complete absence of any detail of how health care is to be delivered. In the following section I offer to the Committee perspective on the human impact of limiting health care to ten years and the changing health care needs of survivors of child abuse as they age.

I then propose a solution to the vexing problem of how to offer best quality health care.

The human cost of only providing health care for ten years

As previously stated, the Royal Commission recommends that health care should be available *throughout a survivor's life* and there should be *no fixed limits*. Yet, the bill offers no provision for providing essential services past the ten year conclusion of the scheme.

While it would be hoped that – with effective health care – many survivors would experience substantial health improvement over the ten years of the scheme, the fact is that many factors are relevant that mean that health care cannot simply be abandoned on an arbitrary date. These factors include:

- While ten years may sound like a long time to undergo treatment the reality is that most survivors applying for redress under this scheme – because of the criminal mistreatment by the institution and false denials by the institutions – have not received early intervention, ie intervention close in time to the assaults. Most survivors will be receiving treatment after decades of entrenchment of injury. Such delay significantly exacerbates injury and complicates treatment and reduces recovery prognosis. So ten years does not sound like such a long time after all.

- Another factor is that entrenched psychological injuries are not as simplistic as 'undergo some treatment and get cured'. It is not like having a broken leg and after a few months all is well again. It is more like having a chronically injured joint that never fully recovers and even after surgery requires extensive physiotherapy and has notably reduced function and capacity and remains vulnerable to repeat injury. In other words, ongoing maintenance care when people are apparently well is every bit as important to maintaining functionality as is crisis response care. In fact it is healthier.

- Another factor, recognised appropriately by the Royal Commission, is that health needs may be 'episodic' – this is very important and must be part of any redress health care scheme. People may undergo long periods of wellness, particularly with maintenance supports, but may experience moments of acute exacerbation – such as triggering of symptoms by a life event, emotional trigger, etc. This could occur at different times or

frequency for different survivors. Some report their own children reaching the age that they were when abused is one such a trigger; some report having to deal with a church such as at a wedding or funeral, or seeing an elderly relative in a nursing home, dependent on the care of an institution; some report hospitalisations for a medical illness trigger psychological symptoms as the hospital admission replicates the institutionalisation as a child. The key point is that at such a time, an otherwise hard working and well survivor will require additional health supports to remain well or recover from an exacerbation – this may happen well after the expiry of the scheme in ten years' time.

- Another factor will be the increasing needs of survivors of institutional abuse as they approach geriatric age and require institutionalisation all over again. This will be long after ten years of redress scheme. Survivors consistently report fear and anxiety at being institutionalised and the triggering or exacerbating impact of their childhood experiences. Survivors will require additional care in the form of additional nursing cares or medical or support services – these will have to be funded somehow, and survivors of abuse with dementia after a lifetime of underemployment are not going to be in a position to fund such services themselves.

- Another factor is that the scheme offers ten years of health care to a survivor applying in Year One but only one year of health care to a survivor applying in Year Nine of the scheme. This is bizarrely inequitable. **The survivor applying in year nine of the scheme (2027) may be someone who is currently a child and being abused right now.** Therefore they are not in a position to apply for the scheme in year one of the scheme. Why are they disadvantaged by the scheme and contrary to the express recommendation of the Royal Commission that health care be for the life of the survivor?

This is a complete failing of the bill to be consistent with itself or its own stated objectives and must set up provision (such as Health Care Deed, Special Health Care Card, or similar as outlined below) for health care delivery that continues beyond the life of the scheme.

As it stands section 31 breaches sections 3 and 10… not good practice for a bill to breach itself.

Health care solution

Both the issue of providing health care for the life of the survivor and the issue of providing the correct type of health care are resolved by delivering health care by one of the following mechanisms:

- Health Care Deed
- Health Care Card (similar to DVA White Card – Non-Liability Health Care Card)

Either of these approaches has the benefit of simplicity for the Operator of the scheme – it places power and control (and responsibility) to access health care in the hands of the survivor. It facilitates access to health care rather than impose a bureaucratic barrier. Under either proposal survivors have the confidence that they can access health care promptly and service providers have reassurance they will be paid for their services.

Health Care Deed

In consultation with legal advice I have developed a Health Care Deed. The document is only five pages and completely encompasses the Royal Commission Recommendation 9 (Health Care), outlines the rights and responsibilities of institutions and survivors and clarifies certain variables which are undefined in Recommendation 9.

In the case of institutions which are still in operation and likely to remain in operation (governments and all major churches) the use of a Health Care Deed, signed by the institution, guarantees health care for the life of the survivor. In cases where an institution has ceased to exist, then they were never going to contribute to the redress scheme in any event and the funder of last resort can be signatory to the Health Care Deed.

A copy of the Health Care Deed is attached to this submission.

Recommendation:

Applicants meeting a threshold assessment under the Assessment Framework should be issued a **Non Liability Health Care Card**, similar to the DVA White Card. Certainly all Care Leavers should qualify for such a health care card. Alternatively institutions could be required to sign a **Health Care Deed** (example attached).

6.6 Limiting the scheme to only sexual abuse

The Royal Commission made official statements in handing down their findings, that while they are restricted by Letters Patent to only make recommendations about sexual abuse that Governments and Institutions are not so limited and can and should extend the findings to all forms of child abuse.

This bill abandons victims of severe physical abuse and neglect, deprivation of education or separation from culture, which can have life-long implications every bit as much as sexual abuse.

The Parliament has the duty to represent all Australians and not only sexual abuse survivors. This bill is an opportunity to achieve that by expanding the bill to provide redress to include serious physical abuse, the definition of serious physical abuse to be a matter of fact determined by the Operator in each case and to include deprivation of education.

The impact on orphans of being deprived an education and sent to work farms as slave labour has been lifelong and intergenerational. Remember that such orphans were often the victims of government policy such as singled mothers, war orphans or Indigenous Australians and might otherwise have had stable loving lives – indeed today the criteria for removal from one's kin is very different.

The suffering of children from such early ages and for entire childhoods in "care" is of such an enormous consequence that 'Care Leavers' deserve special recognition under the redress scheme such as by insertion of a Division 4 – Care Leavers under Chapter 3 Part 3-1 entitling Care Leavers to redress for ***abuse*** as defined at section 6 and exempting from the eligibility test at section 13, or alternatively by inserting at Section 13(1):

> (f) if the person is assessed by the Operator as a 'Care Leaver'

An appropriate definition of Care Leaver could be inserted as required.

This would afford justice to Care Leavers who have suffered enormously in the absence of sexual abuse specifically. It would achieve this in a way that restricts such eligibility to a small sub-set of survivors managing any concerns about the scale of the redress scheme becoming unwieldy.

I make this recommendation not being a Care Leaver and so not standing to gain anything personally (also noting that I have no intention of making an application under the redress scheme).

Recommendation:

Care Leavers should be eligible for redress based on having been a Care Leaver and be exempt the eligibility criteria of having suffered sexual abuse specifically.

6.7 Maximum quantum is in breach of Royal Commission recommendations

Section 16(1)(a), Section 30

Recommendation 19(b) of the Royal Commission recommended $200 000 as maximum redress based on evidence.

The government has offered no evidence in support of the arbitrary reduction to $150 000.

The Royal Commission on 15 December 2017 when handing up its Final Report to the Governor-General reiterated the recommendation that the maximum cap be $200 000.

It is highly unusual for Royal Commissions to still be operating *after* initial legislation has been commenced arising from recommendations of the commission (and occurred on this occasion as a consequence of the size, scale and duration of the Royal Commission).

There can be no greater feedback to the Committee that the maximum provided by this bill is in error than the Royal Commission reiterating its recommendations after the introduction of legislation.

Narrow sighted politics to reduce the maximum

It is simply bad politics to reduce the maximum quantum as the reputational damage caused (to government and institutions and the scheme) far exceeds the true financial saving.

As the maximum payment is only provided to survivors who meet the most severe threshold, the saving to the scheme of $50 000 only applies to those survivors. By definition, this will be only a subgroup within the total number of applicants. The amount is not saved on all anticipated 60 000 eligible applicants.

There is ample evidence that both government and private institutions can afford the maximum.

Firstly, in relation to Government affordability, I draw to the Committee's attention to the Federal Government's commitment of almost four billion dollars to fund speculative and likely unenforceable loans – essentially underwriting private debt with public money – called the Export Finance and Insurance Corporation. In a single and largely overlooked announcement the Federal Government allocated the same expenditure as the anticipated value of the entire redress scheme.

As well, I ask the Committee to compare the miserly reduction of a maximum redress cap for survivors of abuse with the ongoing salary and entitlements paid to institutional abusers and concealers of crime. Recall that all of the officials in institutions – government, church and other private institutions – all received salaries for decades while concealing child sex crimes.

By way of example, in just one institution there have been 16 offenders convicted or self-confessed in just the past few decades. Involved in the protection of each offender was at least two local senior staff, various junior staff, and in head office a half dozen senior officials have been identified as having knowledge of offending and the institutional response of not reporting.

Each of these staff continued to be employed by the institution, promoted and rewarded for their participation in the concealment. Over forty years dozens of staff have received salaries, superannuation and other benefits and they have evaded punishment. One senior official alone has received over seven million dollars in 'entitlements' despite multiple adverse findings from a court decision, institutional inquiry and the Royal Commission. The institution enjoys tax exempt status as well as receiving direct Commonwealth funding worth $90 million per year.

One offender of this institution, having made admissions *in the 1970s* to offending against children, was continued in his employment with primary responsibility for children and was only convicted 40 years later (with the institution providing assistance to his criminal defence and senior officials providing character references long after his admission of offending). Despite knowing he was an offender the institution employed him for decades, in a position of trust in a school, and over that time he received over $2 million in salary. He should have been sent to jail in the 1970s and at minimum fired from any employment involving children.

That offender was not the exception – there is evidence of many other known offenders being similarly employed by this institution. This has been a pattern seen in most institutions.

So if it is good enough to pay a lifetime of salary to known offenders and to pay a lifetime of salary to staff who knowingly protected offenders (including offenders who openly made admissions) then why is it not now good enough for the same institutions to pay the full Royal Commission recommended maximum quantum to victims whose abuse and injuries are so severe as to meet the criteria of the maximum monetary payment? The same institutions who claim to have insufficient funds to pay victims always have sufficient funds to pay themselves.

Recommendation:

Redress maximum should be $200 000.

6.8 Death of an applicant during redress application

Sections 58, 59 and 60

An anomaly is created by the application of section 59(1) and (2) in contrast with sections 58, 59(3) and (4) and 60.

It appears to arise from a pedantic adherence to Recommendation 47: "*An offer of redress should only be made if the applicant is alive* <u>*at the time the offer is made*</u>"

This has resulted in the enforcement by section 59(1) and (2) of a bizarre narrow window whereby if an applicant dies after lodging an application, their estate remains eligible to receive a redress payment, and if an applicant dies after accepting a redress assessment, or requesting a review of the assessment, then the estate remains eligible to receive a redress payment – but if the unlucky applicant dies in the narrow window between the assessment offer being made and an answer being provided, then the assessment is withdrawn immediately and permanently by the Operator.

It is inevitably, statistically, that just such an occurrence will occur, when the Committee recalls there are an estimated 60 000 eligible applicants nationally, and many are known to be in poor health (physically and/or psychologically) including many of advanced age (due in part to having waited twenty years or more for the Royal Commission to eventually happen).

There are many predictable reasons why a person may die during this window such as advanced ill health (cognitive decline, deteriorating physical health, ICU admission, etc) during which the Operator's offer arrives in the mail, but the applicant is incapacitated and carers distracted by the daily tasks of caring for a declining loved-one and the offer goes unopened until post mortem.

Clearly this fails the 'fair go' test – yet the bill offers no provision for the Operator to show leniency. Care should be taking in amending this not to assume that the executor of the estate would opt to accept the redress offer (as the estate may prefer to reserve rights to civil litigation) therefore the obvious and simple remedy is for the bill to be amended for the executor of the estate to be the decision maker such as under section 42.

Recommendation:

Firstly, but not only, I ask the Committee to confirm to its satisfaction that the current ***nominee*** provisions provided under sections 81 – 90 are sufficient to allow for a ***nominee*** to provide the response required under section 59(1).

Secondly, section 59(1) and (2) should simply be removed or amended to afford the same rights to the estate as is afforded by sections 58 and section 59(3) and (4) and section 60. Alternatively, insertion of a section 60A or a 59(2A) so as to afford the Operator *discretion* for the executor of the estate to determine the response to the offer.

6.9 Review Mechanism inadequate

Section 75(3)

The bill is overly restrictive in its approach to internal review of an assessment decision. Section 75(3) prohibits the internal reviewer from considering any material other than what was available to the original decision maker. This is needlessly bureaucratic and not in keeping with the intent of the bill which is to 'deliver justice' as per section 3 and to take account of the needs of survivors as per section 10, it will cause 'further harm and traumatisation' of survivors in contravention of section 10(4) and it will also undermines the integrity of the scheme in contravention of section 10(5).

There are many scenarios in which new information would be appropriate to consider during a review of an assessment decision that was not made available to the Operator for the original decision. For example, the very nature of institutional child sexual abuse is that many children were abused in the same institution and therefore as evidence from survivors becomes available it may be relevant to the assessment of another survivor. Information not known to an applicant at the time of application but that may be material to their application but not become known until after the assessment decision.

Clearly under such circumstance it would be manifestly unjust and contrary to the policy objectives of the bill for the reviewer (independent decision maker) to be prohibited by the legislation from considering material that the reasonable person on the street would expect the scheme should review.

This has the very likely potential of public scandal undermining community acceptance of the scheme.

Another scenario is that of a survivor applicant who has accidently omitted material information from their application for reasons of cognitive, psychology or cultural disadvantage.

Given that the bill only makes mandatory that the Scheme Operator inform an applicant of their right to access legal and support services *after* the assessment decision has been made – section 39(l) and (m) – but the bill does not require the Scheme Operator to inform the applicant of these

rights or services *at the time of application* or *prior to accepting the application* then it is highly foreseeable that many survivors – particularly the more disadvantaged survivors – will receive legal or other support advice for the first time *after* the assessment decision has been made.

This is the time when the legal or support service is likely to identify that the survivor has, through misunderstanding, omitted material information from their application. A review of the complete material would of course be fair and reasonable at such time, and be consistent with the policy objectives of the bill and the fair running of a scheme designed to deliver justice to victims of childhood abuse.

If a decision is reviewed but is restricted to only the same information then predictably the same outcome will arise – this is bureaucratic nonsense. As the famous quote says: it is insanity to do the same thing and expect a different outcome. By this measure section 75(3) is insanity.

Section 75(3) also operates contrary to other provisions of the bill which make it mandatory for the applicant to provide material information – of the applicant only becomes aware of information or only becomes aware that information is material information *after* a review decision, and the bill prohibits the review from considering that information, then the bill is making it impossible for the applicant to comply with the bill.

Recommendation:

That this section be amended to allow the internal reviewer to consider 'whatever information they consider relevant'. The desired outcome is for a Scheme that can be seen to have afforded every opportunity for justice, as opposed to a Scheme that binds survivors in inflexible bureaucracy.

6.10 Privacy concerns and survivors right to information about themselves

Sections 96, 99 and 101

Undue consideration is given to the needs of institutions (who have been responsible for heinous crimes against children) potentially resulting in traumatic breaches of privacy for survivors.

These sections creates the 'right' of an institution to be handed every intimate detail of a survivor's application such as for the purposes of that institution seeking to recover its funding liability from an insurer. A Scheme that is 'survivor focused' would enshrine the survivor's privacy as superior to the desire of a culpable institution to reduce its own liability for its wrong doing.

The Operator has a clear right to request any and all information required to properly assess the application by a survivor. However, that information should never be handed over to the institution without the survivor's express consent and even then be limited only to information essential for the institution to assist the Operator, not the Operator assisting the institution.

It is well intentioned that this bill includes offences for disclosure of personal information however the wording of the circumstances in which information may be shared is so broad as to make almost any information exchange at any time interpretable as authorised under the legislation and rendering the privacy protections of survivors redundant.

The Committee is informed that these institutions have a long history of ignoring survivors rights (including the Office of the Australian Information Commissioner) fining a church institution for breaching the right to privacy of a survivor of abuse.

Institutions have a long history of doing as they please, including having staff working on multiple internal 'committees' or 'boards' with access to information across multiple functions transgressing boundaries. If an institution wishes to improperly share personal privacy information they need only invent a 'Royal Commission Review Committee' or similarly plausible sounding title for the information to be shared and the truth obscured sufficiently to render the protection provisions in this bill redundant.

No right to access own information

Survivors should have an absolute right to access information held about them by any organisation and this right should be enshrined in this legislation.

Recommendation:

That the bill be amended to require institutions to identify to the Scheme Operator, at the commencement of the scheme, the staff within the institution who are assigned to working on the scheme and who therefore have a proper purpose to access privacy information.

That the bill be amended to restrict the Operator from passing privacy information to the institution, limited for example to passing on the name, date of birth, for the purpose of the institution locating records relating to the survivor and providing those records to the Operator.

That the bill be amended to prohibit the provision by the Operator to the institution of any medical records or information pertaining to the survivor. Such records are required by the Operator to assess the survivor's eligibility against the Assessment Framework – but once that assessment has been made, the institution's only right to information should be the assessment decision itself.

That the bill be amended to specify the survivors right to access information from the institution itself and be given copies of all information held by the institution about the survivor.

6.11 Exclusion from Redress for serious criminal convictions

Section 63

General Support for 63(5)

This is a complex issue and prone to polarisation.

On the one hand is the view that the redress scheme is intended to redress a person for the abuse they experienced as a child, not to judge them as an adult. If the person has committed crimes as an adult their court-imposed sentence is the lawful penalty: exclusion from accessing redress would act as a sort of 'double jeopardy'. Hand in hand with this perspective is the acknowledgement that child abuse by its nature deprives children of a stable upbringing and is a risk factor for developing criminal misconduct as an adult – in essence the conviction is a sequelae or symptom of the child abuse itself.

On the other hand is the view that the integrity of the redress scheme may be undermined if large numbers of convicted criminals were to apply and receive redress. Part of the consideration seeming to be that the threshold test for eligibility, or standard of proof, is lower than that of a court and could open the opportunity for false claims. As well are concerns about the public acceptance, and emotional impact on survivors of abuse (non-offending) of large numbers of convicted sex offenders receiving a redress payment.

I offer no strong opinion towards either pole as I share concerns regarding both aspects.

I commend to the Committee that section 63(5) appears to strike the appropriate balance between the two as it provides the Operator flexibility to consider an application on a case by case basis guided by the facts and merits of the case. If paragraph (5) were not in the bill I would withdraw support for section 63 in total, however the presence of paragraph (5) makes the remainder of section 63 acceptable.

Section 63 might be better enhanced by inclusion of a mechanism for a review of any decision made under 63(5).

Concern about lack of coverage of the exclusion

In fact, the question raised by section 63 is who exactly it is likely to cover – given that the definition of 'serious criminal convictions' is 'sentenced to imprisonment for 5 years or longer' this will exclude most child sex offences from section 63 (ie being eligible to apply for redress unchallenged) as such offenders usually receive prison sentences well under 5 years.

The most potential concern to survivors will be to see sex offenders receiving redress, particularly since many sex offenders claim to have been victims of child sexual abuse themselves.

It in fact might be more palatable to the community that this section include insertion of a paragraph that any person convicted of a child sex offence have their eligibility for application assessed by the Operator with the same considerations as 63(5) and (6). This would ensure assessment on a case by case basis meaning that instances where a persons conviction was genuinely assessed as a sequalae of their abuse would remain eligible for redress.

Recommendation:

Inclusion in the bill of a provision for the Operator to assess on a case by case basis, any application for redress by an application who has been convicted of any child sex offence regardless of sentence

For the Committee's edification – a comment on 'risk' of adult offending caused by child abuse

On this topic I wish to inform the Committee of the medical evidence that while child abuse is an identified risk factor for perpetration of child abuse crimes as an adult, a 'risk factor' is not the same as a predetermined inevitability.

In fact it is two vastly different things to, on the one hand, examine a prison population of convicted sex offenders and look backwards as to how many experienced sexual abuse as a child, compared to, on the other hand, taking a population of child abuse survivors and following them forwards into adulthood to determine how many do *not* commit offences (prospective study).

Another way of looking at it is this: the retrospective study of prison populations has caused the misinterpretation of data by non-statisticians to assume that the high levels of child abuse among convicted offenders means that people abused as children are likely to become abusers.

Also there is a difference between Relative Risk and Absolute Risk.

Relative Risk means that being abused as a child might twice, or double, the likelihood of becoming an abuser compared to a person not abused as a child. Sounds scary – twice the risk. However if the risk of a non-abused person becoming an abuser (the Absolute Risk) was only 1:10 000 to begin with then *twice* that risk, ie the risk of an abused child becoming an abusive adult is now still only 2:10 000. This is the Absolute Risk. Same risk only it doesn't sound quite so scary as *twice* or *double* does it?

Also the medical evidence is that not all abuse is the same – many convicted offenders experienced physical abuse but not necessarily sexual abuse. Their eventual sexual offending as adults is more an act of aggression than of sex necessarily (not that this makes it any less traumatic for their victims or any less serious offending, it's a distinction of causality not severity).

Also not all sexual abuse is the same or leads to the same adult offending risk – for example sex offending where the behaviour is normalised (ie the person grows into adulthood without clear boundaries relating to the offending behaviour) may have a very different risk profile from the person abused as child who knew it was wrong and harmful.

There is a great role to be played by the development of empathy. The child whose abuse is such that it interferes with development of empathy is at greater identified risk of adult offending than the child who is abused but nonetheless develops empathy – and is protective of others.

There is great evidence that in fact a common sequelae of child abuse is that many survivors develop heightened protection awareness or sensitivity of children (and indeed empathy for any vulnerable person including vulnerable adults) and has been seen to manifest such as being very vigilant of the safety of children and vigilant of the behaviour of other adults. This common phenomenon is overlooked by glib references to 'risks' of adult offending.

The medical evidence is clear that the overwhelming majority of people sexually abused as children *do not* go on to be child abusers as adults.

6.12 Exclusion from Redress for a Security Notice

Sections 64 – 71

Caution must be taken to ensure that these sections do not act to exclude the rights of asylum seekers who have been held in institutions by virtue of government policy from making a claim for eligible sexual abuse that they have been subjected to while a child in institutional care.

A child is a child.

If security notices are issued too freely – for example purely on the basis of being an asylum seeker as opposed to any genuine evidence-based assessment of actual security risk – then these sections will potentially perpetrate a grave injustice to any child sexual assaulted while in the care of the Australian government as an asylum seeker. The Committee is reminded of the Australian Government's blanket assessment of all Tamil asylum seekers as security risks. This is despite Australia having a vibrant, law abiding Tamil community including professionals such as medical doctors.

It will bring great shame upon Parliamentarians for these sections to be so used, merely months after a half a billion dollar Royal Commission – the largest Royal Commission into the mistreatment of children in institutions in this nation – if the legislators have learnt nothing from 4 years of evidence as to the grim reality of the lived experience of a child abused in care, and that a child's experience in 'immigration detention' is not exception.

Asylum seeker children are not guilty of any crime. Why would they potentially be treated with the same severity reserved for Australian adults who have committed a serious crime with a penalty greater than 5 years imprisonment? This would reflect poorly on Australian as a nation, the legislators themselves and the integrity of the redress scheme, in breach of section 10(5).

What is the crime committed by child brought to Australia as an asylum seeker by their parents?

The royal commission has well described the appalling plight of Australian children born of parents incapable of caring for them, or children born into situations deemed unfavourable to the

moral standards of the government of the day such as single parents, war orphans, indigenous families, etc who therefore ended up in state or religious institutions and were abused as a result. These children did not choose their birth nor their method, timing or context of their arrival.

This bill should afford equal rights to a child abused in such institutional care regardless of whether they arrived in that institutional care by birth or by boat.

Recommendation:

That the bill be amended to include a section similar to 63(5) that would address this issue and allow for flexibility of the scheme to account for individual circumstances.

6.13 Managing Conflicts of Interest

Sections 179, 184, 185

The Minister

Section 179 gives the Minister absolute power to make certain rules about the operation of the scheme – this includes such fundamental core aspects of the scheme as the Assessment Framework.

The section does not require the Minister to engage in any public consultation in developing the rules and does not place any accountability or review mechanism upon those powers.

This is particularly concerning given that the Minister in this instance is Social Services Minister Dan Tehan – published in the Weekend Australian just passed, 7 – 8 July 2018 identifying as a Catholic and stating:

> *"…we have woken up to a nightmare where the value of your contribution to a debate depends on what you claim to be a victim of"*

The quote alone displays bias to a magnitude that the Minister can no longer be trusted to exercise his powers under section 179 impartially or independently and his ongoing position as the Minister in fact undermines the integrity of the redress scheme in contravention of section 10(5).

His further public identification as a Catholic and the particular context of his identification of his partisan loyalty as being to rabidly criticise victims of abuse for standing up for their rights, also renders his ongoing position as Minister untenable. Recall that the Royal Commission found the Catholic Church to have been the organisation responsible for the greatest amount of offending, more than any other single institution.

What hope to a fair go under the redress scheme do survivors of abuse have when the Minister placed at the top with Absolute Power to determine the rules under section 179 is frothing at the mouth in the Weekend Australian in support of the largest child abusing institution and denigrating victims of abuse?

This section should include a statutory obligation upon the Minister to conduct effective community and stakeholder consultation in developing any rules and a mandated statutory time period for the proposed rules to be published and made available for community feedback.

Failure to do this breaches the stated policy objectives of the bill, in particular section 3 and section 10 and application of rules by the Minister with no consultation with the people affected by those rules is in complete violation of Natural Justice and Due Process. As such it will likely undermine community acceptance of the scheme and undermine the integrity of the redress scheme in contravention of 10(5).

This is particularly relevant to the creation of the Assessment Framework as in section 179(3) and secrecy surrounding the Assessment Framework Policy Guidelines as sections 102 – 104.

Recommendation:

That the Committee formally acknowledge this matter in their report and to amend the bill to limit the Minister's powers to require a mandatory period and method of public consultation and review of any rule implemented by the Minister.

The Delegate

Section 184(4) allows for the Delegate to be free from interference by the Operator it is essentially gives unaccountable power to the Delegate which is inappropriate for the effective administration of the scheme and protection of the rights of survivors subject to the scheme. All power should be accountable.

As well there is nothing in this section to prohibit a person who is associated with an institution from being appointed a Delegate. It would undermine community confidence in the scheme for it to emerge that Delegates were affiliated with institutions yet there is nothing in this bill to prevent this.

> Recommendation:
>
> That the bill be amended to include a clearer framework for accountability of decisions made by the Delegate. That the section be amended to require conflict of interest declaration by any Delegate and to prohibit any person from being a Delegate if they are affiliated with an institution.

The Independent Decision Maker

Section 185(4) makes a good start at attempting to introduce management of conflict of interest via the *Public Governance, Performance and Accountability Act 2013*.

However section 185(4) does not go far enough as it merely requires a person to 'disclose interests' – it does not outright prohibit a person with a conflict of interest from being an ***independent decision maker***.

The gravity of this national scheme and the scale of the criminal misconduct of institutions documented by the Royal Commission over decades in abusing and concealing abuse and the affiliation of senior officials such as judge's and government officials affiliated with offending institutions in their private capacity and that affiliation being alleged to have influenced their private and public duties resulting in the ongoing concealment or child sexual abuse and the ongoing protection of the culpable institutions is of such a significant nature that the scheme

merits absolute prohibition of any person with an affiliation with an institution from being appointed an ***independent decision maker***.

This is not a theoretical problem – the very people likely to be appointed to such roles are going to be senior persons with legal or administrative experience such as retired Judges or QCs or even current Judges on secondment. A review of the various Catholic and Anglican dioceses around the country reveals a pattern that Judges and QCs often occupy senior positions in churches such as Chancellors (legal advisors), Deputy Chancellors etc and have other embedded relationships such as sitting on church Boards of Triers, Professional Standards Review Boards, or earn lucrative retirement contracts as mediators in child sexual abuse matters (paid for by the institution so of questionable independence) or performing other church Boards of Inquiry for remuneration.

This is a very common pattern across Australia and the bill must include provision to protect survivors – and to protect the integrity of the scheme – from such conflicts of interest.

Given the documented widespread scale of this type of collusion which victims of abuse have been up against their entire life it is insufficient to merely impose a standard of independent as being a **duty to disclose** interests.

This section of the bill must be amended to include an absolute statutory bar to any individual with a conflict of interest from being an Independent Decision Maker; it is not sufficient merely for the person with the conflict of interest to have declared a conflict of interest but to continue on being selected and working as an independent Decision Maker. This would undermine the integrity of the scheme in contravention of section 10(5).

Recommendation:

The bill be amended to prohibit any person affiliated with an institution from being appointed as an ***independent decision maker***.

6.14 Tax payer recovering liability from private institutions

Sections 151, 152, 156, 159, 163, 165

Counselling Costs – taxpayer footing 100% of the bill

Under sections 151 and 152 only the redress amounts and scheme administration costs are recoverable from culpable private institutions. Under section 159 the entire liability of wealthy churches for the counselling cost of victims of abuse is paid for by the Commonwealth.

On the one hand this is an enormous gift to rich churches by the tax-payer (another in a long line of such gifts). On the other hand it removes any administrative barrier to health care being delivered by means of a Non Liability Health Care (NLHC) Card – as the Commonwealth is the sole decision maker and funder for the delivery of health care. No State Government nor private institution can interfere or be required to give their approval for the method of delivery of health care via a NLHC card. Use of a NLHC Card or Health Care Deed is still recommended to guarantee survivors' access to effective health care throughout their life on an episodic basis consistent with Recommendation 9 of the Royal Commission. The NLHC or Health Care Deed would outlive the expiry of the redress scheme.

Loophole for institutions to evade obligations

Section 156 creates a substantial loophole whereby the Operator may *waive* the 'funding contributions' of the culpable institution.

A waiver requires 'exceptional circumstances' however no definition is provided in the bill of exceptional nor is any example provided by the bill of what would be considered exceptional – and what would not be considered exceptional.

It must be remembered by the Committee that the proof on the record of the behaviour of these institutions is that they are by their nature 'tricky' and seek to evade their true liability at every opportunity. Institutions spend hundreds of thousands of dollars on lawyers for this very purpose

in addition to having free access to Queens Counsel and Judges who are office bearers in the institution. Therefore clear, unequivocal and binding rules are required. Why are institutions given such lenience and generous treatment when survivors are subjected to irreversible decisions, draconian time limits, and required to waive all legal rights? The bill is not sounding very 'survivor-focused'.

Recommendation:

That the bill be amended with a note to section 156 offering examples of ordinary institution business that would not be considered 'exceptional' grounds for a waiver.

Funders of last resort – possible oversight in scope of the bill

Sections 163 – 165 inadequately addresses the scenario where only a non-government institution was liable and that non-government institution has ceased to operate or refused to participate in the scheme, despite it being connected to a multi-billion dollar international organisation. This is a significant loophole and failure of the bill to provide redress to survivors as it leaves survivors of such institutions with no avenue for redress.

There are provisions under corporate law for pursuing subsidiary entities and 'related' entities connected to wealthy multinational corporations. Similar provision should be made in this bill for a defunct institution clearly connected (such as by brand, logo or name or other evidence) to a still existing wealthy institution such as Catholic Church diocese, Anglican Church diocese, Salvation Army, etc.

It would be ridiculous for the Parliament to treat a small Catholic institution as 'defunct' and for the survivor to receive no redress while the parent body, the Catholic Church, is wealthier than most nations.

ATTACHMENT

HEALTH CARE DEED

Benefits of Health Care Deeds

- **health benefits**
- **economic benefits**
- **political benefits**

Health benefits:

- greater access to appropriate health care
- more treatment available to focus on 'maintenance' and maintaining wellness and functionality; as opposed to lurching from expensive and reactive acute crisis care to acute crisis care
- maintenance treatment is often private (GP, psychiatrist, psychologist) and would be covered part by Commonwealth Medicare Rebate and part by the Health Care Deed provision - this is significant cost saving to State Health Services who currently carry burden of acute crisis care for survivors who are not receiving adequate maintenance care
- healthier survivors has flow-on effect of healthier families and improved intergenerational health: better community outcomes

Economic benefits:

- institutions (including via NRS) only pay for health care that is *actually* used

  ie if the survivor does not attend appointments, there is no cost
- institutions (including via NRS) only pay for health care *as* it is used

  ie there is no up front lump sum payment estimated to cover a lifetime of health care costs (the old/litigation system), reducing up front cost to institutions
- proper provision of health care should improve prognosis, therefore reduce estimated future economic losses attributed to exacerbation of symptoms from the abuse and therefore the cost of healthcare could be offset by a commensurate reduction in payment for future economic losses. This is only the case if health care is provided adequately, such as via a signed binding undertaking (health care deed for example). It is not the case if a lump sum is paid and diverted due to untreated pathology (eg addiction or abusive relationship) which is the current system.
- healthier survivors less likely to be on welfare; more likely employed, productive, tax-paying
- cost saving to State Health Services
- cost saving through improved family health arising from improved survivor health

Political benefits:

- all of the above economic benefits plus:
- budget allocation to effective health care more palatable to voters than lump sum compensation
- it is better financial management to be spending money knowing it will be targeted to the intended purpose (ie the money actually going to healthcare provision rather than lump sum)
- no risk of lump sum payment for health care going to 'at-risk' victims (eg addiction issues, exploitative personal relationships, etc) the money being diverted, leaving the survivor without health care (current litigation model) and therefore still a cost to state health services

Recommendation 2 from 2015 Redress and Civil Litigation Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

See also Recommendation 9.

2. Appropriate redress for survivors should include the elements of:

a) direct personal response

b) counselling and psychological care

c) monetary payments

Recommendation 9 from 2015 Redress and Civil Litigation Report of the *Royal Commission into Institutional Responses to Child Sexual Abuse*.

See also Recommendation 2(b).

9. Counselling and psychological care should be supported through redress in accordance with the following principles:

a) Counselling and psychological care should be available throughout a survivor's life.

b) Counselling and psychological care should be available on an episodic basis.

c) Survivors should be allowed flexibility and choice in relation to counselling and psychological care.

d) There should be no fixed limits on the counselling and psychological care provided to a survivor.

e) Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma.

f) Treating practitioners should be required to conduct ongoing assessment and review to ensure treatment is necessary and effective. If those who fund counselling and psychological care through redress have concerns about services provided by a particular practitioner, they should negotiate a process of external review with that practitioner and the survivor. Any process of assessment and review should be designed to ensure it causes no harm to the survivor.

g) Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.

INSTITUTION NAME

AND

SURVIVOR'S NAME

DEED OF AGREEMENT

This Deed is made:

BETWEEN **INSTITUTION NAME** of address (“**……..**”)

AND **SURVIVOR’S NAME** of [insert address] (“**………..**”)

BACKGROUND

A. [statement of fact that survivor attended …the institution… with dates of attendance]

B. [statement of fact that offender was in X role at …the institution… and employed by the …the institution…]

C. [statement of fact as to the Sexual Abuse]

D. The …the institution… failed to take reasonable steps to prevent the Sexual Abuse.

E. The …the institution… has agreed to abide by the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, in particular paragraph 9 of the Final Report titled ‘Redress and Civil Litigation Report’.

F. The …the institution… agrees to pay for ...Survivor’s name...’s Counselling and Psychological Care Costs for Medical Conditions on the basis of the Terms set out in this Deed.

G. The …the institution… has a right to review ongoing Counselling and Psychological Care and the exercise of this right is described and limited in the Terms of this Deed.

THE PARTIES AGREE:

1. DEFINITIONS

In the interpretation of this Deed the following definitions shall apply:

The Institution… means the …the institution…, and includes its subsidiaries, substitutes and assigns.

Family Member means the spouse, partner, parent, child, sibling, grandparent, grandchild of ...Survivor’s name....

Counselling and Psychological Care Costs means the costs of Counselling and Psychological Care for Medical Conditions including but not limited to psychological and psychiatric care, counselling, Medical Practitioner’s fees, hospital fees, costs of medication, and the costs of parking at or costs of public transport to and from attendances at medical appointments.

Medical Condition means any medical condition caused or exacerbated by the Sexual Abuse.

Medical Practitioner means 'health practitioner' as that term is defined by section 5 of the Health Practitioner National Law and for the purposes of this Deed includes counsellors.

Report means the 2015 Final Report of the Royal Commission titled 'Redress and Civil Litigation Report'.

Royal Commission means the Royal Commission into Institutional Responses to Child Sexual Abuse.

Sexual Abuse means the criminal sexual abuse perpetrated by XXXX against ...Survivor's name....

2. TERMS

(a) The …the institution… will pay ...Survivor's name...'s Counselling and Psychological Care Costs for Medical Conditions suffered by ...Survivor's name..., for the term of his life, commencing from the date of the Sexual Abuse.

(b) The …the institution… agrees that ...Survivor's name...'s need for Counselling and Psychological Care may be on a continuous basis or may be on an episodic basis depending on the Medical Condition.

(c) The …the institution… agrees that ...Survivor's name... is allowed flexibility and choice in relation to Counselling and Psychological Care. This includes, but is not limited to, flexibility as to choice of practitioner, frequency and modality of Counselling and Psychological Care.

(d) The …the institution… agrees there are no fixed limits on the Counselling and Psychological Care to be provided to ...Survivor's name.... This includes, but is not limited to, there being no fixed limits on cost, frequency or modality of Counselling and Psychological Care.

(e) The …the institution… will pay the Counselling and Psychological Care Costs of a Family Member of ...Survivor's name... if a Medical Practitioner confirms the Counselling and Psychological Care is necessary for ...Survivor's name...'s Counselling and Psychological Care.

(f) The …the institution… will pay the Counselling and Psychological Care Costs upon receipt of a tax invoice from a Medical Practitioner, or if required by the Medical Practitioner, prior to the provision of the Counselling and Psychological Care.

(g) The …the institution… agrees that payment by The …the institution… of the Counselling and Psychological Care Costs confers no right of access by The …the institution… to ...Survivor's name...'s medical records in whole or in part and the …the institution… waives all rights of access to medical records express or implied, conferred by any other Act, law, or rule of law.

(h) ...Survivor's name... agrees that The …the institution… is entitled to request a review of ...Survivor's name...'s Counselling and Psychological Care and The …the institution… agrees that this entitlement is limited to one request every

two years. The …the institution… agrees that its request for a review will be satisfied upon receipt of a letter from ...Survivor's name...'s Medical Practitioner stating words to the effect "...Survivor's name... requires ongoing Counselling and Psychological Care for Medical Conditions caused or exacerbated by the Sexual Abuse". The …the institution… agrees that requesting or receiving a review confers no right of access by The …the institution… to ...Survivor's name...'s medical records in whole or in part.

(i) ...Survivor's name... agrees that The …the institution… is entitled to request a second opinion of ...Survivor's name...'s Counselling and Psychological Care and The …the institution… agrees that this entitlement is limited to one request every five years. The …the institution… agrees that ...Survivor's name... will choose the Medical Practitioner who will perform the second opinion. The …the institution… agrees its request for a second opinion will be satisfied upon receipt of a letter from the Medical Practitioner performing the second opinion stating words to the effect "...Survivor's name... requires ongoing Counselling and Psychological Care for Medical Conditions caused or exacerbated by the Sexual Abuse". The …the institution… agrees that requesting or receiving a second opinion confers no right of access by The …the institution… to ...Survivor's name...'s medical records in whole or in part.

(j) The parties agree to be bound by the terms of this deed, and agree that any amount due under this deed is enforceable as a debt.

(k) The parties agree this deed does not in any way affect or limit rights or entitlements ...Survivor's name... has or may have under the law or pursuant to recommendation 2(c) of the Report as this Deed is limited to providing for payment of ...Survivor's name...'s Counselling and Psychological Care pursuant to recommendations 2(b) and 9 of the Report.

3 GENERAL

(a) This deed may be executed in counterparts. An exchange of signed counterparts of this deed by email or facsimile shall constitute a valid and binding deed between the parties.

(b) This deed shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the courts of that state.

(c) In the event that any provision of this deed, or any part thereof, is held to be void or invalid, such provision or part thereof shall be severed from the whole and the balance of the deed or the provision (as the case may be) shall remain in full force and effect.

(d) Each party must take all steps, execute all documents and do everything necessary or desirable to give full effect to the terms of this deed.

(e) This deed is the entire agreement between the parties on the subject of payment for ...Survivor's name...'s Counselling and Psychological Care Costs pursuant to recommendations 2(b) and 9 of the Report, and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties in respect of the matters that are the subject of this deed.

EXECUTED AS A DEED ON DAY OF 2016

SIGNED SEALED & DELIVERED BY THE INSTITUTION NAME by its authorised officer in the presence of:	))	
		.... Signature of authorised officer
.... Signature of witness		Authorised officer's name:
.... Print name of witness		Authority of officer:

SIGNED SEALED & DELIVERED BY SURVIVOR NAME in the presence of:	))	
		.... Signature
.... Signature of witness		
.... Print name of witness		