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22 August, 2018

Committee Secretary
Joint Select Committee on the Royal Commission into
Institutional Responses to Child Sexual Abuse -
oversight of redress related recommendations
Department of the Senate
PO Box 6100
Canberra ACT 2600

By Email: institutionalresponsestoabuse.sen@aph.gov.au

Dear Sir/Madam,

We welcome the opportunity to provide feedback in relation to the Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse - oversight of redress related recommendations.

Please do not hesitate to contact me and my colleagues on or at if we can further assist with the Committee's important work.

Yours faithfully,

Michelle James
PRINCIPAL, ABUSE LAW
MAURICE BLACKBURN

SUBMISSION IN RESPONSE TO:
Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse - Oversight of Redress Related Recommendations.

August 2018

Joint Select Committee on the Royal Commission into Institutional Responses to Child Sexual Abuse - Oversight of Redress Related Recommendations.

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Introduction

Maurice Blackburn Pty Ltd is a plaintiff law firm with 31 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free. The firm also has a substantial social justice practice.

Maurice Blackburn's Abuse Law Practice has 17 lawyers and 20 support staff representing around 500 survivors of abuse across all States and Territories. All staff in the practice are specially trained to observe trauma informed care and practice principles when dealing with survivors.

Overall Comments

We understand that the Committee is inquiring into:

(a) the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission), including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and

(b) any matter in relation to the Royal Commission's redress related recommendations referred to the committee by a resolution of either House of the Parliament.

The number one recommendation of the Royal Commission in relation to redress was:

> "*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*."[1]

We note in section 3 (2)(d) of the *National Redress Scheme for Institutional Child Sexual Abuse Act* 2018 that the Act seeks: "*to implement the joint response…. to the recommendations of the Royal Commission into Institutional Responses to Child Abuse" in relation to redress".*

We believe that the Act is a disappointing response to the recommendations of the Royal Commission. In many crucial areas, the drafters of the legislation have strayed from the considered recommendations of the Commissioners, which we believe will result in a less just result for survivors.

[1] Royal Commission into Institutional Responses to Child Sexual Abuse. Redress and Civil Litigation Report (2015): p.4

We further note in section 10 (2) of the Act that one of the general principles guiding actions of officers under the scheme is that: "*Redress under the scheme should be survivor focused*".

Maurice Blackburn is disappointed that the vast majority of the variations between the provisions of the Act and the recommendations of the Royal Commission have been for the benefit of institutions and not survivors.

We are also disappointed that many recommendations offered to the Senate Standing Committees on Community Affairs during their intensive consultation process around the drafting of the legislation, designed to help the Committee produce a more survivor focused piece of legislation, were ignored. In fact the majority of that Committee's own recommendations are not reflected in the Act.

It is hard to draw any conclusion other than that differences between the provisions of the Act and the considered recommendations of the Royal Commissioners have been driven by two factors:

i. The need to encourage States, Territories and major national charities to agree to sign on to the scheme; and/or

ii. The base need to appease political ideologies.

We urge the Joint Select Committee to continue to advocate for the changes necessary for the Act, and thereby the scheme, to be and remain truly survivor focused.

To this end, we have structured our submission to the Committee in two parts:

i. Comments in relation to the *National Redress Scheme for Institutional Child Sexual Abuse Act* 2018

ii. Comments in relation to broader legislative and policy matters related to redress and the support of survivors.

Comments in relation to the *National Redress Scheme for Institutional Child Sexual Abuse Act* 2018

- We believe that the Act is a disappointing response to the recommendations of the Royal Commission. In many crucial areas, the drafters of the legislation have strayed from the considered recommendations of the Commissioners, which we believe will result in a less just result for survivors.

- Maurice Blackburn has been a strong advocate for the development of a national redress scheme, as a cost effective alternative to common law processes for achieving recourse for wrongs committed against children.

- We have consistently argued that such a scheme would enable survivors to achieve redress more efficiently, and without the potential to retraumatise the victim. The reduced burden of proof, coupled with the focus on independent case analysis and decision making, we believe, should offer victims some much needed choice in how they go about seeking redress.

- The nature and construction of the scheme described by the Royal Commissioners in their report into Redress and Civil Litigation, we believe, ticked many of the boxes that would ensure that the scheme was survivor focused, transparent and fair.

- This is a long way from the scheme that is described in the Act.

- Our specialist lawyers are finding it increasingly difficult to recommend the Commonwealth Redress Scheme as a preferred course of action for a number of survivors. This is due to a number of limitations inherent in the scheme, including the cap on maximum monetary payments, the limitations placed on eligibility, and the extinguishing of common law rights that follows the acceptance of an offer of redress.

- It would be disappointing if the Redress Scheme merely became the scheme of last resort for victims.

- Below, we note some of our specific concerns in relation to the Act – and in particular how it has failed to implement the Royal Commission's carefully considered recommendations.

i. <u>Concerns Relating to the Principles Underpinning the Scheme</u>

- Section 10 of the Act sets out the general principles guiding the actions of officers under the scheme. It lists those principle as:

    1) *This section sets out the principles that must be taken into account by the Operator and other officers of the scheme when taking action under, or for the purposes of, the scheme.*

    2) *Redress under the scheme 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.

- Principles 2, 3 and 4 directly reflect the wordings in Recommendation 4 in the Redress and Civil Litigation Report.

- Maurice Blackburn is concerned that Principle 5 has been added as a means for justifying the exclusion of certain classes of survivors – survivors that the Government does not want to give money to - for example prisoners, convicted sex offenders and those who suffered abuse in immigration detention centres.

- Elsewhere in the Act, the denial of eligibility for the abovementioned classes of survivor is justified by way of arguing that those survivors are likely to bring the scheme into disrepute.

- Maurice Blackburn submits that the Royal Commissioners did not include in their recommended principles for the scheme that redress should be dependent on the victim's capacity to protect the integrity of the scheme.

- Maurice Blackburn is appalled by this apparent politicisation of the scheme.

- Specific comments in relation to scheme eligibility appear in the next section.

ii. <u>Concerns Relating to Scheme Eligibility</u>

- As mentioned above, the number one recommendation of the Royal Commission in relation to redress was:

  "*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."

- Maurice Blackburn remains concerned that several sections of the Act do not provide an adequate reflection of this most basic of Royal Commission recommendations. Our specific concerns are outlined below:

- Section 13 (1) (e) of the Act specifies that a person can only be eligible for redress under the scheme if the person is an Australian citizen or a permanent resident at the time of making their application for redress.

- Maurice Blackburn submits that this blanket exclusion of all non-citizens was not contemplated by the Royal Commissioners in their recommendations. We are concerned that a number of groups who *should* be eligible for Redress may miss out due to the insertion of this requirement. Some of these are detailed in the paragraphs below:

- Non-citizen children who are abused during a visit to Australia should be eligible to claim redress. This may include, for example, children on exchange programs, school visits, or even children visiting on holidays with their family – if they satisfy the other four eligibility criteria set out in s.13 (1), then they should be eligible to claim redress through the scheme.

- Section 13(1)(e) would also rule out any child who was an Australian citizen or permanent resident at the time of the abuse, but has since relinquished their Australian citizenship status.

- Maurice Blackburn is also concerned that this section intentionally sets out to make redress unavailable to victims of child abuse in Australian detention facilities, which have been clearly identified by the Royal Commission as places where abuse occurred.

- Our concern is based on the findings of the Royal Commission, for example:
    - Volume 15, section 4.1 of the Royal Commission's Final Report[2] says: "*Our commissioned research suggests that detention environments generally present higher levels of risk of child sexual abuse when appropriate safeguards are not in place, and identifies immigration detention as a specific institutional context carrying an elevated risk*" (p. 162).

    - Section 4.2.3 contains the following finding:
      "The Australian Government and its contracted service providers are responsible, directly or indirectly, for the safety and wellbeing of children in immigration detention who have been detained, sometimes for prolonged periods. This includes children in community detention. The department is responsible for maintaining adequate supervision of its contractors, to ensure proper care is provided" (p.172)

  The report notes the Royal Commissioners' exposure to authoritative reports and case studies where children were sexually abused in detention facilities.

- We believe it was not the intention of the Commissioners to exclude those who were abused whilst held in immigration detention, due to their citizenship status. This belief is based on the following:

    - In their discussion on scheme eligibility in the Redress and Civil Litigation Report, the Commissions note: "*We see no need for any citizenship, residency or other requirements, whether at the time of the abuse or at the time of application for redress*". (p.347)

    - A significant proportion of Volume 15 of the Final Report of the Royal Commission is dedicated to improving the child safe status of immigration detention facilities. Recommendations 15.11 to 15.15 of the Final Report are specifically targeted at improving child safety in immigration detention facilities.

    - Recommendation 50 (g) of the Redress and Civil Litigation Report mentions how the scheme should take into account the needs of children who suffered

[2] Royal Commission into Institutional Responses to Child Abuse, Final Report, Contemporary detention environments

abuse in detention facilities, and thereby by implication, in immigration detention centres.

- Australia is a signatory to a number of international human rights treaties that confer obligations relevant to the treatment of children in immigration detention – especially UNCRC and United Nations Convention Relating to the Status of Refugees. Maurice Blackburn remains concerned that restricting scheme eligibility to Australian citizens or permanent residents may put Australia at odds with its international obligations.

- The Explanatory Memorandum to the Act notes that the citizenship requirement has been included in the legislation:

> "… *to mitigate the risk of fraudulent claims and to maintain the integrity of the scheme. It would be very difficult to verify the identity of those who are not citizens, permanent residents or within the other classes who may be specified in the rules. Removing citizenship requirements would likely result in a large volume of fraudulent claims which would impact application timeliness for survivors*". (p.20)

Maurice Blackburn continues to dispute this assessment for the following reasons:

  - To deny eligibility to apply for redress by people who have been abused as children in Australian Immigration Detention facilities is in direct contravention of the spirit and intent of Recommendation #1 of the Royal Commission,

  - To deny eligibility for a particular cohort of victims to apply for redress on the basis that others may apply fraudulently is flawed in logic and morality,

  - To deny eligibility for a particular cohort of victims to apply for redress on the basis that others may cause issues with the timeliness of processing claims is also flawed in logic and morality,

  - Regardless of citizenship status, an applicant would still need to satisfy the entitlement requirements set out in the Act. Fraudulent applications would not make it past this step.

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

- Section 20 (1) (b) excludes people who have a 'security notice' in place. This disqualifies from eligibility any survivor that the Home Affairs Minister decides may use their redress payment "*for a purpose that might prejudice the security of Australia or a foreign country*".

- Not only was this not contemplated by the Royal Commissioners, it was not contemplated in earlier drafts of the legislation.

- It is difficult not to see this merely as a means for the government to perpetuate its 'strong borders' rhetoric. To choose to do this through the enabling legislation of the redress scheme is reprehensible.

- Section 20 (1) (d) specifically excludes anyone who is in gaol from applying for redress. Clause 63 describes the special assessment process for applicants with serious criminal convictions.

- Maurice Blackburn remains concerned about the potential exclusion of such persons. We believe that any such exclusion demonstrates a lack of understanding about the role childhood abuse can play in the causality of future criminal behaviour.

- We lend our voice to the many survivor groups which have expressed profound disappointment in this apparently populist course of action.

- Maurice Blackburn has been unable to identify any evidence that the proposed exclusions were considered or recommended by the Royal Commissioners. There is no recommendation or commentary to that effect in either the Redress and Civil Litigation Report, nor the Final Report.

- Maurice Blackburn understands the possibility of public concern arising from redress payments being made to survivors serving lengthy custodial sentences. We do not, however, believe that should mitigate their right to eligibility under the stated principles of the scheme.

- We recommend instead examining ways through which redress payments may be held in trust for those serving custodial sentences.

- We further believe such survivors should be eligible for the other forms of redress described in section 16 of the Act, even if access to monetary redress is made unavailable to them.

- Clause 63 (5) tells us that: "*The Operator may determine that the person is not prevented from being entitled to redress under the scheme if the Operator is satisfied that providing redress to the person under the scheme would not:*
  (a) bring the scheme into disrepute; or
  (b) adversely affect public confidence in, or support for, the scheme".

  Maurice Blackburn submits that the thing most likely to bring the scheme into disrepute, or adversely affect public confidence in the scheme is the creation of differing classes of survivors.

- The objects of the Act are clearly laid out in section 3 – to recognise and alleviate the impact of institutional child sexual abuse, and to provide justice for survivors. These objects are in line with the outcomes of the Royal Commission. The objects do not qualify the provision of justice with arbitrary exclusions based on an interpretation of public sentiment.

iii. <u>Concerns Relating to Redress Provided to Survivors</u>

- Maurice Blackburn is pleased that the Act accurately reflects the recommendations of the Royal Commission in terms of the types of redress offered to survivors. Recommendation 2 of the Redress and Civil Litigation Report reads as follows:

  "Appropriate redress for survivors should include the elements of:
  a. direct personal response
  b. counselling and psychological care

c. monetary payments".[3]

- We address each of these elements below:

a. Direct Personal Response:

- We are satisfied that the provisions in the Act in relation to the Direct Personal Response are a reasonable reflection of the Royal Commission recommendations.

b. Counselling and Psychological Care

- Maurice Blackburn notes the additional transparency in the Act in relation to articulating the processes for the provision of counselling, compared to the earlier iterations of the then Bill.

- We note that previous iterations have listed the principles which underpin the provision of counselling as part of redress, and that these principles no longer appear in the Act. We believe this is a shame, as the previously stated principles were a good reflection of those developed by the Royal Commission.

- We believe that clear principles underpinning the provision of counselling should be part of the scheme, if not in the Act. The statement of principles should draw from those developed by the Royal Commission, which appear as Recommendation 9 in their final report, namely:
  - Counselling and psychological care should be available throughout a survivor's life.
  - Counselling and psychological care should be available on an episodic basis.
  - Survivors should be allowed flexibility and choice in relation to counselling and psychological care.
  - There should be no fixed limits on the counselling and psychological care provided to a survivor.
  - Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma.
  - 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.
  - Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.

- Maurice Blackburn continues to advocate that it is important that institutions understand that if the abuse has caused life-long impact, then the support needs to be life-long as well. Similarly, if the impact is episodic, the need for counselling support may be episodic as well.

- Maurice Blackburn notes the Minister's choice of words in his second reading speech, where, in reference to this element of redress, he referred to it as "*access to*

[3] Ibid, p.9

counselling or psychological services of their choice throughout their lives."[4] Maurice Blackburn is disappointed that this is not reflected in the legislation.

- Sections 16 (1)(b)(ii) and 31 (2) seem to impose an arbitrary maximum value of $5,000 on counselling provided. Maurice Blackburn is unaware of where this figure has come from, and the Explanatory Memorandum is silent on its derivation.

- Maurice Blackburn submits that the imposition of this cap in the Act is at odds with the principles of the provision of counselling as described by the Royal Commission, and in the Minister's second reading speech (refer above).

c. Monetary Payments.

- Maurice Blackburn notes that the cap on redress payments, as stipulated in section 16 (1)(a) of the Act of $150,000 differs from the recommendations of the Royal Commission.

- Recommendation 19 of the Redress and Civil Litigation Report reads as follows:
  19. The appropriate level of monetary payments under redress should be:
  a. a minimum payment of $10,000
  b. a maximum payment of $200,000 for the most severe case
  c. an average payment of $65,000.

- Maurice Blackburn believes that transparency in the process for how monetary claims are assessed will be central to survivors' perception that the scheme is delivering justice.

- The Royal Commissioners, in their Redress and Civil Litigation Report note that:

  "*There is a tension between the need for fairness, equality and transparency for survivors – and indeed for institutions – and an individualised approach to assessing monetary payments. We are satisfied that fairness, equality and transparency should be favoured and that a matrix should be used to determine ranges of monetary payments*" (p.21).

- Maurice Blackburn is concerned that the Act allows for the development and implementation of the Assessment Framework to be done without consultation or transparency, and thereby contrary to the findings of the Royal Commission.

- Maurice Blackburn notes that the Assessment Framework does not appear in the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 document.

- Maurice Blackburn argued in its submissions in relation to the various iterations of the Bill that some level of oversight – be that parliamentary or public – is important in people understanding:
  - The process for designing the framework,
  - The content of the framework,

[4] Refer www.parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F6598e913-3fd0-4f8e-ba21-f6772226d702%2F0011%22

- The process for calculating the type and quantity of redress using the framework,
- The process for authorising claims using the framework,
- The process for reviewing claims determined using the framework,
- The process for reviewing the content of the framework, and
- The process for disputing the content of the framework, or its application.

- Importantly, it would be impossible for legal practitioners to provide appropriate and accurate advice on whether the client should proceed with their redress claim through the scheme if they have no understanding of how assessments are made.

- Maurice Blackburn is bewildered that, far from moving toward a more transparent approach to the calculation of redress, the legislation actually makes the assessment framework more secretive. Section 104 has made it an offence, punishable with incarceration, for the contents of the assessment process to be made public.

- This is clearly at odds with Recommendations 16 to 18 of the Redress and Civil Litigation Report.

- After decades of abuse and recalcitrance from institutions to accept claims and silence survivors, it defies logic that institutions and victims alike are now required to keep secret the frameworks that will apply to assess claims under the national redress scheme.

iv. <u>Concerns Relating to the Acceptance of Offers of Redress</u>

- Section 40 (1) of the Act sets the acceptance period for offers of redress as 6 months, with the ability for the Operator to extend that period in exceptional circumstances.

- Maurice Blackburn notes that this is an improvement on the 3 month acceptance period noted in the first draft of the legislation. It still falls short, however, of the 12 months that Maurice Blackburn believes is a reasonable period for acceptance.

- We note that the Royal Commissioners made the following recommendations in their Redress and Civil Litigation Report:

  - *Recommendation 59. An offer of redress should remain open for acceptance for a period of one year.*
  - *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.*

- Maurice Blackburn further notes that, according to section 45 (2) of the Act, an offer is deemed to be declined if acceptance has not been notified within the acceptance period. Once an offer is declined, the survivor is deemed ineligible to make another claim for redress.

- Maurice Blackburn is unclear as to why the drafters have chosen a different offer / acceptance timeframe to that recommended by the Royal Commissioners.

- Both the Act and the Explanatory Memorandum are silent on the requirement for reminders, or the need to proactively follow up offers that have been made but not as yet accepted.

- Maurice Blackburn adds its voice to the many community organisations that have expressed concern in relation to the relatively short acceptance period spelled out in the legislation.

- We are concerned about the capacity of people living with the impacts of childhood sexual abuse to make an informed decision within a short, arbitrary timeframe.

- We are concerned that the Act does not take into account the periods of time in which a survivor, suffering a period of illness, may not be able to make an informed decision.

- We are concerned that this short, arbitrary timeframe may add unnecessary anxiety and trauma to a process which is designed to alleviate both.

- Maurice Blackburn maintains that the overriding consideration must be that survivors are able to make an informed choice as to whether accessing redress via the scheme is likely to be the best option for them, in deriving recourse for the abuse they have endured.

- Maurice Blackburn is pleased to note the provisions of section 39 (l) which mandates that the letter of offer must give applicants information on how to access legal services prior to making a decision about whether to accept the offer of redress. We believe it is essential that applicants are given thorough and independent advice in relation to:

    - The ramifications of accepting the offer of redress,
    - The ramifications of declining the offer,
    - The ramifications of taking no action in response to the letter of offer, and
    - The opportunity cost of accepting the offer – including an estimation of the damages the applicant could receive through exercising their common law rights.

- Maurice Blackburn notes, however, that Recommendation 66 of the Royal Commission suggests that financial counselling should be offered to survivors who are granted a monetary payment. We are disappointed to note that this appears in neither the Act, the Explanatory Memorandum nor the Rules.

v. <u>Concerns Relating to Funder of Last Resort Provisions.</u>

- Maurice Blackburn applauds the inclusion of the provision for Commonwealth and State/Territory Governments to be funders of last resort in certain circumstances.

- We are concerned, however, that section 29 (2)(i)(i) of the Act seems to imply that Governments would only be called upon to fulfil their funder of last resort responsibilities in circumstances where the government and a defunct institution are equally responsible entities in the claim.

- Our concern is reinforced by the Minister's second reading speech, where he noted that a government might be called upon to be funder of last resort "*in cases where a government is considered equally responsible.*"[5]

- Maurice Blackburn believes that this is contrary to the tenor of the Redress and Civil Litigation Report, in which the Commissioners note:

> "*We are satisfied that governments should act as funders of last resort on the basis of their social, regulatory and guardianship responsibilities discussed above*."[6]

The discussion in the report makes no reference to a requirement that governments must be deemed to be equally responsible for the abuse before being required to fulfil a funder of last resort function.

- Maurice Blackburn is keen to ensure that the Commonwealth would still be the funder of last resort even if it had no direct involvement with the claimant, or the defunct institution at all. Failure to do so creates a class of survivor who misses out on redress merely because the abuse occurred in an independent institution which is now defunct.

vi. <u>Concerns relating to the provision and use of information</u>

- Maurice Blackburn remains concerned about the requirements implicit in the application form for Redress, in potentially enhancing the power asymmetry between the victim and the institution.

- The application form[7] clearly states that:

> *"Some of the information you provide in your application will be shared with the institution(s) responsible for the abuse. This exchange of information is so that we can assess your application and the responsible institution(s) can provide you with redress.*
>
> *From Part 1: Your name and date of birth will be shared.*
>
> *From Part 2: Your experience of sexual abuse and Part 3: The impact sexual abuse has had across your life, will be shared with the responsible institution(s) your answers are relevant to". (p.5)*

- We understand the need for the institution(s) to be provided with the specified information from Parts 1 and 2 of the application form, in order for them to determine the plausibility of the claim.

- We are concerned, however, with the provision of impact statements (Part 3) at this point in the process. We would suggest that, until the offer of redress has been

[5] Refer to http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansardr%2F6598e913-3fd0-4f8e-ba21-f6772226d702%2F0011%22
[6] Page 32
[7] National Redress Scheme. Application for Redress. https://www.nationalredress.gov.au/sites/default/files/documents/2018-07/NRS001_180702.pdf

accepted, there are unacceptable risks associated with the institution(s) having access to this information.

- Notwithstanding the provisions of section 37 of the Act, we believe that the provision of Part 3 to institution(s) at the application stage provides them with a significant source of private information that they could use should the offer of redress not be accepted, or the application withdrawn.

- A requirement for the provision of this information at this point of the application process does not appear to be reflected anywhere in the Act or the Rules, nor in any of the recommendations of the Royal Commission.

- We ask the Committee to encourage the scheme operator to adjust its processes, to reduce the implicit power imbalance and ensure the application process is truly survivor focused.

Comments in relation to broader legislative and policy matters related to redress and the support of survivors.

- The Royal Commission into Institutional Responses to Child Sexual Abuse, in its final report, found that:
  "*It is now apparent that across many decades, many of society's institutions failed our children. Our child protection and criminal and civil justice systems let them down*."[8]

- Whilst Maurice Blackburn acknowledges that the introduction of the Redress scheme is a positive response to this finding, there are other adjustments to the criminal and civil justice systems, across jurisdictions, which would give comfort to existing survivors and help reduce the number of future victims.

- One of the Royal Commission's recommendations was that "*State and territory governments should establish nationally consistent legislative schemes…. which oblige heads of institutions to notify an oversight body of any reportable allegation, conduct or conviction involving any of the institution's employees*". We encourage the Committee to give consideration as to what a nationally consistent 'reportable conduct scheme' might achieve.

- Maurice Blackburn notes the decision of Newcastle Magistrate's Court to find Archbishop Philip Wilson guilty of covering up child abuse in the 1970s. We submit that the only reason the Newcastle Magistrates Court could find Archbishop Wilson guilty is that in NSW it is a crime to deliberately conceal knowledge of child abuse. We draw the Committee's attention to reports[9] that that is not the case in other states and territories. We encourage the Committee to take on a leadership role in encouraging like legislation across jurisdictions.

- As an addition to making deliberate concealment a criminal offence across the country, Maurice Blackburn also suggests that the Committee might also give

[8] Royal Commission into Institutional Responses to Child Sexual Abuse, Final Report Preface and Executive Summary: p.3
[9] https://www.theaustralian.com.au/national-affairs/states-to-review-child-sex-abuse-coverup-laws/news-story/2d718d2947a21439c9c3b9c0c5c88b89

consideration to making "failing to report child abuse" a specific offence. We understand that NSW is planning to adopt such legislation.

- The Royal Commission made some serious recommendations about whether abuse that is revealed as part of a religious confessional should be part of mandatory reporting processes. We note that both ACT and SA are taking positive steps to ensure that the confessional is no longer to be exempt, and that the Opposition in Victoria has indicated it is a position they will take into the upcoming election[10]. As part of its purview to providing ongoing support of survivors, the Committee is well placed to agree that not giving church employees that 'out' would bring them in line with community expectations.

  It is widely accepted that the Catholic Church's response to the Royal Commission recommendations will reject the recommendations related to the confessional[11]. This makes the introduction of legislation such as that in ACT and SA (and potentially Victoria) all the more important. If church staff choose to prioritise canon law over the laws of the state, they must be willing to face the consequences.

- We note that both Victoria and WA have passed legislation that removes the Ellis Defence – a legal technicality used by churches to reduce redress compensation payouts to their clients. Under the Ellis Defence, a church argues that its assets are held in trusts that cannot be sued for abuse, so it effectively leaves victims with no-one to sue. We believe this would be an initiative worthy of national harmonisation.

- We also submit that the Committee should consider linking an organisation's charitable status, with their ability to prove that they are child safe. There are significant concessions and benefits available to charities at both at the state and federal levels. We believe that the threat of missing out on some of those benefits might encourage institutions to focus more on satisfying the child safe ideals spelled out by the Royal Commission. The Government has been threatening to remove charitable status from charities that spend too much time doing advocacy work. If they can remove charitable status for advocacy, surely they can find a way to remove it for not being child safe.

- Maurice Blackburn recognises that one of the issues associated with discussions around harmonisation of laws between states and territories is that the community usually ends up with the lowest common denominator – a set of minimum standards designed to not upset whichever jurisdiction has the weakest set of rules to begin with. We encourage the Committee to take the opposite approach, and seek out the gold standard, and hold that up as what others should aspire to.

[10] http://www.abc.net.au/news/2018-08-14/child-abuse-revealed-in-confession-reported-to-police-coalition/10119190
[11] http://www.abc.net.au/radio/programs/am/catholic-churchs-response-to-royal-commission-set-for-release/10073472