

**Submission to the Senate Community Affairs Legislation Committee inquiry into
the National Redress Scheme for Institutional Child Sexual Abuse Amendment
(Technical Amendments) Bill 2020**

Angela Sdrinis Legal is a specialist legal firm based in Victoria and Tasmania with a strong interest and focus on institutional abuse claims.

This submission has been prepared by David Longano and Angela Sdrinis. David Longano provides advice to claimants on the National Redress Scheme and has authored articles on the scheme and prepared submissions. Angela Sdrinis is a personal injuries accredited specialist with over 20 years' experience in handling sexual and institutional abuse claims.

Angela Sdrinis is a recognised expert in the area of institutional abuse. She has been called to give evidence before two Senate Inquiries, the Victorian Parliamentary Inquiry into Institutional Responses to Complaints of Abuse of Children, written journal articles and is a regular speaker and commentator on institutional and sexual abuse issues. Angela has also participated in the Royal Commission Round Tables on Redress and Civil Litigation.

Angela Sdrinis Legal represented survivors in public hearings conducted by the Royal Commission into Geelong Grammar, the Catholic Church, the Australian Defence Force and the Salvation Army.

Angela Sdrinis Legal has successfully pursued claims against dozens of institutions including Commonwealth and State Governments in most jurisdictions, the Salvation Army, the Catholic Church and its religious orders including the Christian Brothers, the Franciscan Friars, Sisters of Mercy, Sisters of Nazareth, Sisters of St Joseph and the Good Shepherd Sisters. Angela has also pursued claims against the Uniting Church, the Anglican Church, the Lutheran Church, Glastonbury Inc, the Gordon Boys Home and many other institutions involved in out of home care for children.

Angela Sdrinis Legal also acts for people who were abused in the Scouts, the Defence Force, sporting clubs, private and state schools and in the media and entertainment industries.

Since its inception in 2014, Angela Sdrinis Legal has acted for approximately 2,000 victims of institutional abuse.

Angela Sdrinis Legal

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We refer to your invitation to provide a written submission addressing issues of relevance in relation to the National Redress Scheme and the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020*.

We advise that we do not have any objections in relation to the changes proposed by the Senate's Bill and wish to endorse the proposed changes.

We also note that Angela Sdrinis Legal has separately provided a submission to the Ms Robyn Kruk AO who is conducting the Scheme's second anniversary independent review. We say that the issues raised in our submission to Ms Kruk have not been addressed in the Senate's Bill and kindly request that due consideration be given to the following issues arising out of the National Redress Scheme:

Time Period for Acceptance of Offer

We note that currently survivors have an acceptance period of six months from the date of offer to decide whether to accept an offer of redress. An extension of 6 months can be made upon request for survivors requiring additional time.

We submit that a period of 12 months should be provided to all survivors from the date of offer to determine whether to accept an offer of redress, with scope, as per the current system, to allow for an extension of 6 months. We submit that this reform is particularly relevant given the recent legislation passed by the State of Victoria (and a number of other States), which allows victims to apply to the Court to have prior deeds of settlement in institutional abuse claims to be set aside. Advising a claimant on whether to accept a redress offer involves complex issues which may require considerable investigation and analysis. In the absence of getting meaningful advice, claimants may be signing away their common law rights for very modest amounts of compensation.

To properly advise a claimant, it may be necessary to obtain documentation, locate witnesses and obtain witness statements in thoroughly investigating a potential common law claim. The capacity to advise claimants on the viability of any potential common law claim will be impacted by the period that an offer remains open. We believe that this additional period at first instance will allow survivors to have a greater opportunity to assess their legal rights and options to ensure the best outcome for survivors. Extending the time of acceptance to a period of 12 months will also reduce administrative costs to the scheme which is no doubt dealing with numerous requests for extensions.

Independent Review System

We note that currently, survivors have the ability to request a review of an offer received from the National Redress Scheme. We understand that upon review, a different Independent Decision Maker, is required to use the same information that was previously available when completing the review.

We submit that the current system adopts an ad-hoc and inconsistent approach which makes it difficult for claimants and their advisors to determine whether a review should be requested and what the possible outcomes of a review might be particularly given that written reasons are not required and cannot be provided. The failure to give reasons also creates a lack of transparency which has the capacity to cause distress to survivors.

We say that it is imperative that as a matter of natural justice, written reasons should be provided with every decision following an internal review.

Winlaton – Medically Invasive Procedures

We note that the Royal Commission has heard evidence that many girls were subjected to the brutal vaginal examinations. This evidence included that such checks were routinely undertaken in a manner that was abusive and invasive. BDC, who was at Winlaton from May 1963 until May 1965 gave evidence that whenever she was returned to Winlaton after absconding she was forced to have an internal medical examination. She said that she spoke with other girls about the medical examinations and that they nicknamed the doctor, “Dr Finger.”

Ms Gabrielle Short, who was at Winlaton from May 1970, gave evidence that she was forced to undergo a venereal disease examination upon arrival at Winlaton at the Fitzroy clinic, despite being a virgin. She said that she was held down whilst the examination was carried out, that she bled afterwards, and that she was made to undergo the same procedure ten days later.

BHE, who was at Winlaton on and off over the period June 1971 to February 1977 gave evidence that every time she was returned to Winlaton after absconding she had to undergo a VD check. She said it was painful and she was never told why she had to go through them.

Ms Karen Hodgkinson gave evidence that within the first or second week of arriving at Winlaton she was taken to the VD clinic in Fitzroy and forced to undergo an internal medical examination. She stated that her understanding was that girls had to undergo this procedure every time they were returned to Winlaton. Ms Hodgkinson gave evidence that prior to undergoing the procedure she did not receive any explanation, her permission was not obtained, but that a sexual history was taken. She said that despite screaming that she was a virgin, four people physically held her down and the examination was conducted.

We say that the practice around internal medical examinations, in circumstances where residents did not consent, were not told what the examination entailed, or where the doctor or officer appeared to use the pretext of a medical examination to sexually assault residents, goes beyond “inappropriate” treatment and in itself constitutes sexual abuse.

It has been our experiences with the National Redress Scheme, that victims of medically invasive procedures suffered at Winlaton are not assessed under the criteria of ‘Penetrative Abuse’ as defined in Section 4 of the NRS Assessment Framework 2018.

We have received correspondence from the National Redress Scheme that such abuses are not deemed to fit under the category of ‘Penetrative Abuse’ as there is no evidence to show that the medical procedures were sexual in nature or provided perpetrators with sexual gratification. We submit that this view held by the Scheme is a gross misrepresentation of the assaults experienced by many survivors and should be viewed and assessed under the category of ‘Penetrative Abuse’.

Delays

The NRS advise that they require a period of between 3 and 12 months to consider the material provided and to undertake its own investigations, including obtaining a response and relevant information from the institution who we say was responsible for your abuse.

Whilst there has been some improvement in the processing of claims and time taken for claimants to receive decisions regarding the outcomes of their claims, processing times continue to fall short of these estimates.

Documentation

We note that as part of the claims process, the relevant institution must provide documentation to the scheme regarding the claimant.

The *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* prohibits the disclosure of all information that the Department obtains for the purpose of the Scheme, except in very limited circumstances.

We submit again in the interests of transparency and natural justice, claimants should be provided with a list of all documentation to the scheme by a relevant institution and have the capacity to request copies of documentation provided should they or their advisers wish to do so. The capacity to request and receive documentation is particularly important in any review process.