

## National Redress Scheme for Institutional Child Sexual Abuse Bill 2018

### Executive Summary

The Aboriginal Health & Medical Research Council of NSW (AH&MRC) welcomes the opportunity to comment on the ***National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill***.

The AH&MRC is the peak representative body and voice of Aboriginal communities on health in NSW, and represents its members to deliver culturally appropriate comprehensive primary and other related health care in their communities.

The AH&MRC promotes systemic change to support enhanced and holistic quality outcomes for Aboriginal children, and for ending the current cycle of disadvantage that continues to impact generations of Aboriginal families. In supporting our children to become resilient, independent and productive members of society, we are guided by the principles of prevention and early intervention as key to improving outcomes for vulnerable children and their families.

The forced removal and institutionalisation of Aboriginal children remains one of the least understood aspects of Australian post-colonial history, however, it is now generally accepted that these actions have had devastating consequences in terms of social and cultural dislocation, and further the health and wellbeing of subsequent generations. The legacy of these policies lives through the contemporary over-representation of Aboriginal children in the child protection and out-of-home care (OOHC) system at a state and national level.

A key recommendation of the *Royal Commission into Institutional Responses to Child Sexual Abuse* was a National Redress Scheme to support people who were sexually abused as children while in the care of an institution. While the AH&MRC supports the recommendation for a redress scheme, we concede that the scheme must acknowledge the sexual abuse of Aboriginal survivors was often in the context of historical and racially motivated policy, and thus bears far greater consequences.

While supporting the recommendation for the National Redress Scheme, a culturally sensitive approach is essential to better achieve an all-encompassing justice response for Aboriginal people.

### The AH&MRC makes the following recommendations:

- i. That NACCHO, the AH&MRC and other affiliates engage with Government to provide support to Aboriginal communities engaging with the redress scheme
- ii. That there is consistent collaboration between Government, the ACCHS sector and relevant representatives to ensure optimal outcomes for Aboriginal claimants
- iii. Ongoing promotion and advocacy for the scheme to consider culturally appropriate supports for Aboriginal victims and survivors who wish to engage with the scheme
- iv. Appropriate consultation is required to ensure the Aboriginal community have a comprehensive understanding of the application process
- v. Support and advocacy for initiatives to be tailored to engage and provide access to all Aboriginal people accessing the scheme, and that the scheme remains a simple process to avoid additional trauma
- vi. Advocate for the redress scheme to be audited regularly for its effectiveness, to identify any gaps, and solutions to increase experience for those engaging with the scheme
- vii. In recognising the current rates of Aboriginal children in out-of-home care, and the associated impacts on families and communities, there be advocacy for the scheme to extend beyond historical survivors to acknowledge contemporary and future abuse
- viii. The ACCHS sector provide ongoing support to victims and survivors in accessing their institutional and out-of-home care records
- ix. Advocate and promote that early intervention support for families should be available as best practice with respect to child welfare, but also as a form of redress

### **The effects of institutionalisation**

History has demonstrated an overt government control on the lives of Aboriginal people. Historically, child welfare services played a vital role in the enforcement of policies, and were very much involved in the large scale forcible removal and institutionalisation of Aboriginal children. The devastating impact of these policies still resound across the lives of Aboriginal people today.

In the last twenty years, multiple accounts have documented the impact of the forcible removal and institutionalisation of children. The *Bringing Them Home* report suggests majority of the children were removed as young as infants, and that prior to 1969 the greater majority of these removals were under the guise of assimilation. The report concluded that between 1910 and 1970, between one-in-three and one-in-ten Aboriginal children were forcibly removed; this figure is believed to be much greater during particular periods in specific regions of Australia<sup>i</sup>.

Both individually and collectively, the effect of these removal practices have been immeasurable. Whilst systemic research on the effects is lacking, precise accounts of the overwhelming impacts have described the trauma experienced as profoundly debilitating<sup>ii</sup>, and despite claims the policies were fundamentally benevolent in resolve, or the children were placed in institutions 'for their own good', the separation from their families has had long-term adverse effects<sup>iii</sup>.

Historical policies have left a legacy of disadvantage disproportionate to the rest of Australian society, and have been observed as the underlying reason for the level of unresolved trauma within the Aboriginal community, influencing the social, physical, emotional, cultural and spiritual wellbeing, and overall quality of life<sup>iv</sup>. It remains less than surprising that Indigenous organisations and commentators incessantly draw attention to the historical continuity in the removal of Indigenous children and young people; their experiences are a contemporary reflection of their historical treatment.

### **Abuse in care**

The Royal Commission found that Aboriginal and Torres Strait Islander children were a population more likely to encounter circumstances that increased their risk of abuse in care. Of the 6, 875 survivors the Royal Commission heard in private sessions, 14.3 per cent identified as Aboriginal or Torres Strait Islander; the majority (79.8 per cent) said they were first sexually abused before 1990; more than one third said they were sexually abused for between one and five years; and three-quarters said they were sexually abused in out-of-home care, the majority of whom were abused in a historical residential institution<sup>v</sup>.

The data collected and reported about the extent of abuse in out-of-home care is limited. The *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) reported that whilst witnesses to this specific Inquiry were not directly asked whether they had experienced physical abuse, 28% reported they had suffered severe physical brutality. Stories of sexual exploitation and abuse were common; nationally, one in every six (17.5%) witnesses to the Inquiry reported such victimisation<sup>vi</sup>.

Like many others who attended private sessions of the Royal Commission, most Aboriginal and Torres Strait Islander survivors told the Commissioners they had experienced other forms of abuse before, during and after being sexually abused, including physical and emotional abuse. Additionally, they spoke of racism and cultural abuse<sup>vii</sup>.

Reporting the number of substantiated incidents of abuse in care remains 'under-researched and under-reported'<sup>viii</sup>. The Royal Commission identified that almost one-fifth of Aboriginal and Torres Strait Islander survivors who talked about who they had disclosed to; told they had disclosed for the first time to the Royal Commission.

State inquiries and research have continued to find that predominantly Aboriginal children, with a tendency to remain in care for longer periods than non-Aboriginal children, continue to remain at significant risk of sexual abuse in out-of-home care<sup>ix</sup>.

### **Historical records**

Prior to the 1980s, majority of institutions were not under any statutory legal obligation to create or maintain records about their provision of care; any records that were created were often low quality and part of an ad hoc recordkeeping practice<sup>x</sup>. Additionally, in many instances records have been destroyed.

In accessing the redress scheme, a test of 'reasonable likelihood' will be the standard applied to assess applications; in doing so, the Department of Social Services highlight a survivor focus, with a 'lower evidentiary threshold...than civil proceedings' to minimise survivor trauma and to expedite the decision-making process<sup>xi</sup>. It is a person's choice if they wish to provide additional supporting information, such as records or documents from their time in care<sup>xii</sup>.

Additional information may be requested where there are 'reasonable grounds to believe that the person has information...that may be relevant to determining the application'<sup>xiii</sup>. Many victims and survivors told the Royal Commission that the absence of records, or lack of details in records, has made seeking redress difficult or impossible, and compounded their sense of disempowerment and being believed<sup>xiv</sup>.

Clear examples were identified in the Royal Commission where records have minimised and obscured the extent of institutional knowledge and many details of abuse<sup>xv</sup>. This has aggravated distress and trauma for many survivors, and will undeniably influence the redress process for many.

### **An ongoing issue**

The historical acts of forcible removal and institutionalisation are arguably why Aboriginal families continue to remain susceptible to child welfare interventions, and contributes to the current over-representation of Aboriginal children in the child protection system. Between July 1 2015 and June 30 2016, Aboriginal children were 9.8 times more likely to be in out-of-home care than non-Aboriginal children<sup>xvi</sup>. Despite major reforms to out-of-home care, Aboriginal children are likely to face more risk factors and less protective factors than non-Indigenous children, with research suggesting these children remain more likely to face the risk of child sexual abuse in care<sup>xvii</sup>.

### **Redress in response to abuse**

While no monetary amount can truly compensate survivors for the trauma experienced, financial compensation has the potential for survivors to improve their life and wellbeing through avenues specific and relevant to their needs<sup>xviii</sup>. The AH&MRC promotes support for Aboriginal Community Controlled solutions to address the underlying effects of institutional abuse, and promotes the principle of self-determination as essential to the redress scheme. It must be acknowledged that past and present sexual abuse of Aboriginal children in institutional settings is not confined to the Stolen Generations, and as a result the redress scheme must be responsive to the cultural needs of Aboriginal survivors.

Research<sup>xix</sup> and previous submissions to the Commission have emphasised the most effective way to deliver holistic healing services is to work with Aboriginal communities and support the development of services which are community controlled. It is only fitting that all governments, as well as institutions which caused harm, participate fully in helping to make amends for the past and supporting survivors to seek justice.

The introduction of the national redress scheme is a welcome step for survivors, and is likely to achieve better outcomes and be more cost-effective than separate state schemes. However, understandably there is great confusion and uncertainty around key aspects of the proposed scheme. The AH&MRC addresses some key concerns:

### **Capped payments**

Payments will be assessed on a case-by-case basis, reflecting the severity and impact of abuse experienced with a maximum of \$150, 000 – despite recommendation from the Royal Commission to cap payments at \$200

000. Accepting an offer will remove any rights an applicant has to pursue their claim for compensation through litigation, hence the amount of redress must be adequate.

### **Acceptance period**

Concern exists for allowing survivors three months (90 day period) to consider whether they will accept compensation through the scheme, while the Royal Commission had made recommendation for 12 months. It is critical that survivors have sufficient time to consider the decision, which for many will be an emotional and overwhelming process.

### **Reluctance to engage**

The Royal Commission has estimated that a potential 60 000 survivors of sexual abuse will be eligible for the scheme, however, experience suggests Aboriginal people may be reluctant to initiate engagement with the scheme. Applying for redress is undeniably a painful process, and Aboriginal people will require appropriate support.

### **Compensation for other forms of abuse**

While understanding the role of the Royal Commission was to investigate occurrences of institutional sexual abuse, there indeed remains a need for the compensation for other forms of abuse, including physical, psychological, emotional and cultural. Additionally, the Commission's redress discussion paper focuses on redress for historical survivors, excluding processes to address contemporary and future abuse, which the AH&MRC believes is integral to a comprehensive redress scheme.

### **Language barriers**

Significant language barriers for Aboriginal survivors have been identified in seeking legal advice, and this should be taken into consideration when determining deadlines for providing information or accepting an offer of redress<sup>xx</sup>.

### **Conclusion**

As has been identified, the effects of institutionalisation and the abuse experienced were, and continue to remain devastating for Aboriginal children, families and communities. The ongoing effects include poverty, high rates of poor mental and physical health, lower standard of education and employment, lower life expectancy, and an over-representation in out-of-home care, youth detention, and incarceration.

In recognising the effects of the abuse experienced by many in care, the acknowledgement of reparation is not new. There have been several recommendations in multiple enquiries that have highlighted the need for redress; the 1991 *Royal Commission into Aboriginal Deaths in Custody* and the 1997 *Bringing Them Home* report both made recommendation.

The AH&MRC recognises that what has been a nation-wide failure to protect children from institutional abuse, remains Australia's shared responsibility for the ongoing suffering and trauma experienced by the survivors. We understand that no reparation measures can fully compensate for the effects of abuse, however, as part of an ongoing healing process, the redress scheme assists people to feel that their pain and suffering has been recognised. For this, we welcome and support a consistent national redress scheme to ensure equitable processes for all survivors of abuse in care.

It is important that to promote equitable, holistic and culturally appropriate outcomes, NACCHO, the AH&MRC and other affiliates work to support Aboriginal people engaging with the scheme. Advocacy for Aboriginal victims and survivors needs to be consistent and collaborative between Government and the ACCHS sector to ensure optimal outcomes for claimants, and to avoid additional trauma.

The AH&MRC acknowledges that as with the Royal Commission, the redress scheme does not cover victims of neglect, emotional and physical abuse while in the care of institutions. It remains certain that for many the campaigning, the suffering, and the pain will continue.

---

<sup>i</sup> Human Rights And Equal Opportunity Commission (HREOC). 1997. *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*.

<sup>ii</sup> Dudgeon, P. and Hirvonen, T. 2014. *Dark chapters in Australian history: adopted children from the Stolen Generations*, *InPsych*

<sup>iii</sup> Short, D. 2016. *Reconciliation and Colonial Power. Indigenous Rights in Australia*, Routledge: New York

<sup>iv</sup> Human Rights and Equal Opportunity Commission (HREOC) 1997. *Bringing Them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Sydney: HREOC

<sup>v</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2017. Final Report: Contemporary out-of-home care. Volume 12. Commonwealth of Australia

<sup>vi</sup> Human Rights and Equal Opportunity Commission (HREOC) 1997. *Bringing Them Home. Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Sydney: HREOC

<sup>vii</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. A brief guide to the Final Report: Aboriginal and Torres Strait Islander communities.

<sup>viii</sup> Uliando A and Mellor D. 2012. Maltreatment of children in out-of-home care: A review of associated factors and outcomes. *Children and Youth Services Review*, Vol. 34, No. 12

<sup>ix</sup> Anderson P, Bamblett M, Bessarab D, Bromfield L, Chan S, Maddock G, Menzies K, O'Connell M, Pearson G, Walker R and Wright M. 2017. *Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney

<sup>x</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2016. Consultation Paper: Records and recordkeeping practices. Commonwealth of Australia

<sup>xi</sup> Department of Social Services, *Submission 27*, [p. ii]

<sup>xii</sup> <https://www.dss.gov.au/families-and-children/programs-services/children/redress-scheme-for-people-who-have-experienced-institutional-child-sexual-abuse/national-redress-scheme-frequently-asked-questions>

<sup>xiii</sup> Redress Bill, paragraph 69(1)(b)

<sup>xiv</sup> Royal Commission into Institutional Responses to Child Sexual Abuse. 2016. Consultation Paper: Records and recordkeeping practices. Commonwealth of Australia

<sup>xv</sup> Ibid.

<sup>xvi</sup> Australian Institute of Health and Welfare [AIHW]. 2017. *Child Protection Australi 2015-2016*. Canberra: AIHW

<sup>xvii</sup> Anderson P, Bamblett M, Bessarab D, Bromfield L, Chan S, Maddock G, Menzies K, O'Connell M, Pearson G, Walker R and Wright M. 2017. *Aboriginal and Torres Strait Islander children and child sexual abuse in institutional contexts*, report prepared for the Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney

<sup>xviii</sup> Ms Carol Ronken, Director of Research, Bravehearts Foundation, *Committee Hansard*, 16 February 2018, p. 14

---

<sup>xix</sup> Briskman L. 2014. *Social work with Indigenous communities: A Human Rights Approach* (Federation Press, 2nd ed); McGlade H. 2012. *Our Greatest Challenge: Aboriginal Children and Human Rights* (Aboriginal Studies Press); Libesman T. 2014. *Decolonising Indigenous Child Welfare – Comparative Perspectives* (Routledge)

<sup>xx</sup> Mr Alistair McKeitch, Senior Project and Policy Officer, VALS, Committee Hansard, 6 March 2018, p. 4.