



Ms Apolline Kohen
Acting Secretary
Senate Standing Committee on Community Affairs
Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

your ref:
our ref: PSA::2082551

21 October 2020

By Email: community.affairs.sen@aph.gov.au

Dear Ms Kohen,

Inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020

We wish to make a submission regarding the Senate Standing Committee on Community Affairs Legislative Committee's Inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020 ("the Bill").

We note that the Bill proposes to make a number of technical amendments to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* (the Redress Act), and that a substantive second anniversary review of the operation of the National Redress Scheme ("the Scheme") is underway. RCT has made a submission to the second anniversary review of the Scheme which is available at:

<https://rctlaw.com.au/assets/downloads/RCT%20Submission%20to%20Redress%20Scheme%20Dated%2025%20September%202020.pdf>

The purpose of this submission is to address the proposed Bill.

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Introduction

Ryan Carlisle Thomas (RCT) is Victoria's largest law firm representing survivors of institutional abuse. Since the late 1980s we have secured compensation for more than 3,500 survivors of abuse in government, non-government and religious institutions. Over thirty years later, we are still fierce advocates for the rights of those abused as children. We have also acted for clients who appeared at public hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse ("The Royal Commission").

1. Part 1 – Associates of participating institutions

RCT supports the clarification of how participating institutions that are associates of a responsible institution are to be determined and specified, provided there is transparency around which participating institutions form a participating group.

We propose that participating institutions that are associates of a responsible institution be identified on the Scheme's website in a similar manner to the way in which participating institutions are identified. This will ensure transparency in relation to associate institutions.

In addition, we consider that abuse survivors should be clearly informed as to which associates of the responsible institutions they are releasing when being provided with acceptance documents. In relation to the proposed subparagraph 42(2)(c)(ii), it is essential that abuse survivors releasing institutions from civil liability are aware of the full extent of such releases.

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2. Part 2 – Funder of last resort provisions

RCT supports clarification around the amount for which a funder of last resort is liable in relation to a responsible defunct institution being based on the number of funders of last resort in relation to that institution.

We consider any measures to ensure maximum coverage of, and participation in, the Scheme, by providing funding of last resort for defunct institutions, and the sharing of responsibility for abuse between funders of last resort where appropriate – through shared liability for redress payments, counselling and psychological services, and Scheme administration costs – should be encouraged.

3. Part 3 – Engaging independent decision-makers

RCT supports the operation of an efficient Scheme. However, we have concerns in relation to the proposal to provide greater efficiency in engaging independent decision-makers (“IDMs”). We do not support the omission of section 185 of the Act to remove the requirement to obtain ministerial consent and to consult the appropriate ministers from the participating states and territories in accordance with the National Redress Scheme Agreement before appointing IDMs.

In our view, the proposed devolving of responsibility for engaging IDMs to the Operator, together with the proposed devolving of consultation to Senior Executive Service employees, does not provide sufficient scrutiny, notwithstanding the duties of officials under the *Public Governance, Performance and Accountability Act 2013*.

It is imperative to ensure that IDMs who are appointed are appropriately qualified in administering the Scheme and that there is confidence in the independence and accountability of the Scheme from abuse survivors and the general public. Decisions made

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by IDMs ensure the integrity of Scheme, and IDMs should remain appointed at ministerial rather than departmental level.

To the extent that the proposed amendments are expressed as being aimed at engaging IDMs more conveniently when required, in order to respond to peaks in the number of and/or complexity of applications under the Scheme, we consider that increasing the number of IDMs more generally under the current regime could also address this apparent problem.

4. Part 4 – Protected names and symbols

RCT welcomes the introduction of protections for the names and symbols used in connection with the Scheme against unauthorised use.

For example, the media has reported of “a circling pack of law firms” seeking to profit from applications to the Scheme by charging abuse survivors for work for which they’re entitled to receive for free via Knowmore Community Legal Centre.¹

At RCT Law, when abuse survivors approach us for advice, we consider and discuss all legal options available with them, including the Scheme, civil litigation and out of court settlements. Where we recommend the Scheme as their best option, we strongly encourage survivors to approach Knowmore Legal Service.

RCT Law wholeheartedly endorses the valuable work performed by Knowmore, both during the life of the Royal Commission into Institutional Responses to Child Sexual Abuse, and in representing survivors to help them navigate the Scheme.

In all but the most exceptional circumstances, we do not assist survivors applications to the Scheme. We have assisted a very small number of clients with claims at their insistence due

¹ See eg <https://www.abc.net.au/news/2020-06-19/lawyers-target-redress-abuse-clients-in-new-cottage-industry/12006878?nw=0>

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to exceptional circumstances, despite having first advised them of the free Knowmore alternative, and have also assisted a survivor with issues arising from a finalised application to the Scheme on a pro bono basis on referral from Knowmore.

RCT Law is proud to be part of a panel of trauma-informed specialist law firms to whom Knowmore refers abuse survivors for legal advice regarding their civil options to consider as an alternative to pursuing an application to the Scheme.

RCT Law is opposed in principle to the use of protected names and symbols associated with the Scheme without prior consent in relation to a business, trade, profession or occupation or application as a trade mark to goods where use of such a name or symbol is likely to lead to confusion. In particular, we are opposed to the use of protected names and symbols associated with the Scheme being used by private law firms to confuse abuse survivors and seek to profiteer from work abuse survivors are entitled to receive for free through Knowmore Legal Service.

It is, however, important for law firms to be able to refer to the existence and operation of the Scheme in communications with prospective clients, including on firm websites and in social media. For example, it is important to let abuse survivors know that redress is available under the Scheme when advising of alternative civil litigation pathways. However, communications from any businesses, trades, professions or occupations that refer to the Scheme should make it clear that they are not providing services under, or in connection with, the Scheme so as to avoid any confusion or mistake.

RCT also supports the use of protected names and symbols associated with the Scheme being used by abuse survivors and/or their support groups in the context of any robust debate and/or protest about the Scheme. It is important to ensure that abuse survivors and their supporters are not gagged in relation to any criticism of the Scheme through the operation of the proposed Part 4 of the Bill.

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5. Part 5 – Payment of redress payments etc.

RCT supports the proposed amendments to permit redress payments and payment of counselling and psychological services to be made to a person who has been appointed by a court, tribunal or board as an administrator to manage the financial affairs of a person entitled to redress under the Scheme.

We consider limiting an administrator for these purposes, to someone who has been appointed by a court, tribunal or board or other entity prescribed by rules under a law of the Commonwealth, a State or Territory to make decisions on an abuse survivor's behalf about financial management, provides sufficient protection for abuse survivors against undue influence, duress and unconscionable conduct.

We endorse the proposed Note to the proposed Part 5, which clarifies that the proposed provisions do not apply where a simple power of attorney has been signed by an abuse survivor.

6. Part 6 – Due date for funding contributions

RCT supports the proposed amendments to permit the Scheme Operator to extend the timeframe for payment of a funding contribution by an institution, provided it is stipulated that this does not affect the timing of any redress payments or payments for counselling and psychological services to survivors.

7. Part 7 – Disclosure to encourage institutions to participate in the scheme

RCT supports measures to encourage non-participating institutions to join the Scheme prior to 31 December 2020, or any such later date prescribed by the Minister. For this reason, we

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support the authorised disclosure of protected information about a non-participating institution for the purpose of encouraging that institution to participate in the Scheme.

However, we consider that in so far as any information about a non-participating institution is disclosed to a third party for this purpose, any protected personal information relating to abuse survivors should be appropriately redacted unless their informed consent has been obtained.

Conclusion

We thank you for the opportunity to provide our feedback and welcome the opportunity to discuss any aspect of this submission.

Yours sincerely,

Ryan Carlisle Thomas

Penny Savidis
Partner
RYAN CARLISLE THOMAS

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