



26 October 2020

Senator Wendy Askew
Chair
Senate Standing Committee on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: community.affairs.sen@aph.gov.au

Dear Chair

RE: National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020

People with Disability Australia (PWDA) welcomes the inquiry into the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020* ('the Bill').

PWDA is leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation and we represent the interest of people with all kinds of disability. We are a non-profit and non-government organisation.

Our policy positions in this submission are informed by our Redress-related work. PWDA's Redress project is funded by the Department of Social Services (DSS) to provide timely and seamless access to trauma informed and culturally appropriate community-based support services to enable people to engage with the National Redress Scheme ('the Scheme'). One way we perform this role is by providing advice and assistance to the Scheme Operator and staff, and Redress Support Services so that they can effectively support people with disability to engage with the Scheme. Our Redress team has been engaging with service providers, including providers of group homes, disability advocacy organisations, government agencies, health, justice, housing and homelessness services and other sectors to promote awareness of the scheme and PWDA's Redress

Postal address:

PO Box 666
Strawberry Hills NSW 2012

Street address:

Level 8
418a Elizabeth Street
Surry Hills NSW 2010

Phone: 02 9370 3100

Fax: 02 9318 1372

Toll Free: 1800 422 015

NRS: 1800 555 677

TTY: 02 9318 2138

TTY Toll Free: 1800 422 016

TIS: 13 14 50

Email: pwd@pwd.org.au

ACN: 621 720 143



support options. PWDA also provides information and assisted referral through a telephone helpline. And we have individual advocates who are assisting people directly with the application process in New South Wales and Queensland.

Part 1 – Associates of participating institutions

The Part 1 provisions will amend certain sections of the Bill providing for decisions and notifications about participating groups. These changes will ensure these processes reflect the initial determination made by the Minister under section 134(1), declaring that 2 or more participating institutions form a participating group. They include repealing and replacing section 39(g) to clarify the institutions to be identified as comprising a participating group in a redress offer.

One function of the participating group provisions is to establish which institutions will be released from all civil liability for abuse of the person on accepting an offer of redress. Even though the relevant participating group for an application is decided by the Operator once they consider that there is a reasonable likelihood the applicant is eligible for redress, the applicant is not given a list of these institutions until they receive a written offer of redress. Although the Bill does not change the timing of giving this notice, PWDA urges the Committee to consider including an amendment to ensure survivors are provided with this information at an earlier stage in the application process. It is crucial that survivors are given a complete list of institutions they will no longer be able to take civil action against early in the application process to enable them to make informed choices about how (and whether) to proceed with their application.

Recommendation – That the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020* includes a provision requiring that redress applicants to be informed about the institutions they must release from civil liability for abuse shortly after the Operator has made a determination under section 29(2)(g) about the relevant participating group (if any).

Part 5 – Payment of redress payments

Part 5 will provide for payment of redress compensation and payment of the counselling and psychological component of redress to be made to an administrator of a person entitled to redress, such as a public trustee or guardian. We note that this will enable survivors whose finances are subject to administration orders to access and use their redress payment. However, we are concerned about the intent and outcomes of this proposed amendment to the Act. In particular, we are opposed to an approach which treats redress payments no differently to a person's general finances and which may unduly restrict their access to this money. Redress payments deliver justice to survivors for



horrific abuses they have suffered, providing much needed material and psychological support. PWDA strongly believes that survivors should be entitled to use their monetary compensation when it suits them and to spend the money as they see fit.

Financial administration is a form of substitute decision-making that is prohibited under Article 12 the *Convention on the Rights of Persons with Disabilities* (CRPD),¹ which states that States Parties shall:

- ‘recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life’, and
- ‘take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.’

This provision has been interpreted by the Committee on the Rights of Persons with Disabilities as requiring States Parties to repeal legislation providing for substitute decision-making, such as guardianship and financial management arrangements where one party makes decisions *on behalf of* a person with disability on the basis of ‘perceived or actual deficits in mental capacity’.² Instead of substitute decision-making mechanisms, measures to support individuals to exercise their inherent legal capacity should be established, with their consent.³ Where consent cannot be obtained, decisions should be made on the basis of “the best interpretation of [the person’s] will and preferences” instead of best interest determinations.⁴

Consistent with this authoritative interpretation, PWDA is opposed to all forms of substitute decision-making as it deprives people with disability of autonomy and the ability to make our own choices, and which therefore violate human dignity.

Australia has maintained interpretive declarations stating its position that substitute decision-making regimes do not breach the CRPD’s provisions,⁵ thereby denying people with disability our rights as full citizens. Despite this, PWDA believes that Australian governments should take action to implement Article 12 to the furthest extent possible. This means that consideration should always be given, when enacting new legislation and

¹ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008)

² *General Comment No 1: Article 12: Equal Recognition before the Law*, 11th sess, UN Doc CRPD/C/GC/1 (11 April 2014) [13] [15] (General Comment No 1) [13].

³ *General Comment No 1* [7], [17], [26]-[28], [50].

⁴ *Ibid* [21].

⁵ For example, Australia, Ratification (with Declarations), registered with the Secretariat of the United Nations 17 July 2008, 2527 UNTS 289 (date of effect 16 August 2008).



reviewing existing laws, on how to minimise deprivations of legal capacity as well as how to enable and facilitate supported decision-making measures.

Pending repeal of guardianship and administration legislation, PWDA is of the view that redress payments should not form part of the general pool of funds subject to financial management by an administrator. Instead, PWDA would like to see redress payments being administered so as to recognise their unique value and meaning for survivors, allowing them to access and use the funds freely except in extenuating circumstances.

Currently there is no indication that redress payments will be treated as special and separate. In some jurisdictions, such as New South Wales, this will mean that administrators automatically have complete control over a person's finances under plenary, ongoing orders. PWDA is of the view that conditions should only be placed on a person accessing and using their redress payment where their consent cannot be obtained, or there is a risk of undue influence or financial exploitation. In these situations, it would be appropriate for safeguards to be put in place, such as provision for regular payments to be made to them rather than allowing upfront access to the full sum, and decisions based on the best interpretation of will and preferences.

Recommendation – That the Committee consider options for the new provisions regarding payment of redress payments in the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020* to ensure these payments are treated as a special category of finances that survivors can use and access without restriction, unless there are extenuating circumstances.

Part 6 – Due date for funding contributions

The Bill will amend section 153 to allow for the Operator to give the participating institution an extension of time within which to pay a funding contribution. Section 153 currently provides that payment must be made within 30 days after the date of notice. The proposed change grants the Operator complete discretion over the length of any extension given. PWDA is deeply concerned that this change could result in lengthy extensions being given that would further compound existing delays associated with the Scheme. This would be especially problematic for many survivors with disability who are in desperate need of financial or counselling assistance, and for elderly and sick applicants for whom time is of the essence. The psychosocial trauma associated with child sexual abuse is often extreme; timely access to counselling and psychological care provides a vital net of support for many survivors. PWDA urges the Committee to consider recommending that a timeframe be specified for the extended payment period.



Recommendation – That new subsection 153(2) of the *National Redress Scheme for Institutional Child Sexual Abuse Amendment (Technical Amendments) Bill 2020* provide only for a time limited extension period, considering that survivors already face long delays in accessing redress and that redress payments will provide essential financial and psychosocial support for many survivors with disability.

Should you require any further information or require PWDA to provide evidence in a hearing to the Committee, please contact our Director of Policy and Advocacy, Romola Hollywood,

Kind regards

Romola Hollywood

Director of Policy and Advocacy

Prepared by Senior Policy Officer: Fleur Beaupert