Frank Golding OAM

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Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

- **National Redress Scheme for Institutional Child Sexual Abuse Bill 2018-**
- **National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018**

Dear Committee

I appreciate that the issues associated with these Bills have been in the public arena for some time, and further delays would not be popular. However, making small amendments to Parliamentary Bills is not enough when the unintended consequence of passing them will be to create a great injustice and cause further harm to many vulnerable people. These Bills should be withdrawn and reconceptualised.

In this short submission I make just four critical points.

1. The Bills exclude survivors who are victims of abuse, but not the narrow definition of abuse in the Royal Commission's mandate

The core problem stems from the Terms of Reference handed to the Royal Commission, which were confined to sexual abuse which, in turn, set up a spurious hierarchy of suffering, and consequently led it to recommend a one-dimensional, sexual-abuse-only model of redress.

The Royal Commission was well aware of the impact of having its mandate restricted to child sexual abuse only. It acknowledged that

> *…the requirement that we examine child sexual abuse in an institutional context gives us a narrower focus than most government and non-government institution redress schemes have had (Redress and Civil Litigation Report*, 2015, p. 5).

And that

> *Most previous and current redress schemes cover at least sexual and physical abuse. Some also cover emotional abuse or neglect".* (*Redress and Civil Litigation Report*, p. 102).

2. While sexual abuse is abhorrent, so are other forms of child abuse

In its submission to the Senate Community Affairs Legislation Committee, the Victorian Aboriginal Service (VALS) reported

> *Generally speaking, sexual abuse did not occur in isolation to these other forms of abuse [physical, emotional, psychological and cultural abuse], and for Aboriginal*

> *community members, the cultural abuse that occurred was as devastating as another other kind of abuse.* (VALS 24 January 2018)

This is consistent with a mountain of evidence given by Care Leavers to your Senate Committee inquiry years ago (*Forgotten Australians* 2004). The bulk of care leaver testimony then was not about sexual abuse. In their submissions to that inquiry, care leavers reported 889 incidents of abuse, of which only twenty-one per cent were about sexual abuse. Physical abuse constituted thirty-six per cent of reported incidents, emotional abuse thirty-three per cent, and child labour exploitation and neglect made up the other ten per cent (*Forgotten Australians* 2004, p. 410). Your Committee summarised the damning evidence Care Leavers provided:

> *Their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault. Their stories also told of neglect, humiliation and deprivation of food, education and healthcare. Such abuse and assault was widespread across institutions, across States and across the government, religious and other care providers* (*Forgotten Australians* 2004, p. xv).

When the then Prime Minister Rudd issued an apology on behalf of the Parliament and the nation in 2009, he did not limit the substance of the apology to sexual abuse. He said

> *Sorry—for the physical suffering, the emotional starvation and the cold absence of love, of tenderness, of care…We look back with shame that many of these little ones who were entrusted to institutions and foster homes instead, were abused physically, humiliated cruelly, violated sexually*.

One Care Leaver put it bluntly: "In a place so full of brutality, sexual abuse did not rank as highly as other forms of abuse—such as mental and emotional torture…and the strings of punishment that never seemed to end." (Community Affairs References Committee, *Forgotten Australians,* submission 141). That was a common sentiment then—and still is.

A recent large survey of care leavers confirms that emotional, verbal and physical abuse were all more prevalent than sexual abuse (Elizabeth Fernandez et. al, *No Child Should Grow Up Like This: Identifying Long Term Outcomes of Forgotten Australians, Child Migrants and the Stolen Generation*, University of NSW, 2016, Ch. 4).

At the time the Royal Commission was announced, official child protection statistics in Australia showed that emotional abuse (thirty-eight per cent) and neglect (twenty-eight per cent) were the most common types of substantiated maltreatment. These were followed by physical abuse (twenty per cent) and sexual abuse (thirteen per cent) (Australian Institute of Health and Welfare, *Child protection Australia: 2012–13*, Child Welfare series no. 58. Cat. no. CWS 49, AIHW, 2014, p. 19).

The community is outraged by sexual abuse of children—and rightly so. However, it has to be said that reputable research challenges the view that child sexual abuse is more damaging than other forms of child maltreatment (e.g. David Vachon, et al., Assessment of the Harmful Psychiatric and Behavioral Effects of Different Forms of Child Maltreatment**,** *JAMA Psychiatry*, 72(11), October 2015, pp. 1135-1142).

3. It is the right thing to do, and totally within the powers of the Parliament, to include other forms of abuse in a national redress scheme

Because of its mandate, the Royal Commission was not able to recommend redress for other than sexual abuse—but no such obstacle stands in the way of the Australian Parliament. The Law Council of Australia argues quite properly:

> *... while the Royal Commission was restricted by Letters Patent to only make recommendations about sexual abuse, governments and institutions are not so limited and can and should extend the findings to all forms of child abuse, including serious physical abuse that occurred in or around institutions and caused serious and long-term damage. The Law Council suggests that the Government should consider appropriate reform so that victims of severe physical abuse and neglect, deprivation of education or separation from culture, which can also have lifelong implications, can access appropriate redress.* (Submission 82 to Senate Community Affairs Legislation Committee, March 2018, p. 5)

Many other submissions made a similar point. Precedents are common. For example, although the current UK Independent Inquiry into Child Sexual Abuse is focused on sexual abuse, its first full report in 2018 recommends that survivors of a post-war child migration scheme should be paid compensation by the government at state-run orphanages and church-run institutions for suffering that included

- medical neglect,
- physical mistreatment
- exploitation of labour
- separation from their families and
- sexual exploitation.

There are other precedents closer to home. Previous Australian state redress schemes have dealt with institutional abuse in the following terms.

- Tasmania: Included sexual abuse, physical abuse and mental or emotional abuse while in state care (but not those placed in Homes voluntarily). The Tasmanian ex gratia payment was "a payment in recognition of the alienation claimants have felt, the feeling of being inferior and unworthy and their separation from society and community, support, schools and employers." (Royal Commission Redress report p. 553)
- Queensland: Categories of harm were listed as physical injury, physical illness, psychiatric illness, psychological injury and loss of opportunity, with applicants able to include other types of harm in Homes covered by the Forde Inquiry 1999.
- WA: Included physical and emotional abuse and neglect as well as sexual abuse.[1]

At the time when redress schemes were opened to Care Leavers in the above jurisdictions, New South Wales and Victoria did not introduce such schemes. Subsequently, following its own Parliamentary inquiry the Victorian *Betrayal of Trust* report 2013 recommended redress in relation to "criminal abuse of children" including "unlawful physical assaults, sexual abuse offences…acts of criminal neglect, and the facilitation of such offences by others." The Victorian Government gave an undertaking that it would implement all the recommendations

[1] It should be noted that, if past payments are to be taken into account in the Scheme as proposed, there arises the question of how the national scheme will determine what part of the previous payment was made in respect of sexual abuse and what parts in respect of other forms of abuse or neglect? This will create a dilemma particularly in regard to the calculation of indexation.

of that report—and issued a consultation paper on redress which gave no indication a Victorian scheme would be restricted to sexual abuse only. Far from it.

Meanwhile, the Australian Parliamentary Joint Committee on Human Rights specifically drew attention to the UN Convention on the Rights of the Child (CRC) and other relevant rights charters to which Australia is a signatory. The Joint Committee endorsed the compatibility of the Bills with respect to redress of past sexual abuse by referring to Article 19 of the CRC, which requires governments to take

> *measures to protect the child from* all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, *while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." (Emphasis added)*

And to Article 39 which reinforces the point.

> *States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. (Emphasis added)*

It is disappointing to note that the Joint Committee ignored all the other forms of abuse cited in the very clauses it cited (Explanatory Memorandum, Statement of Compatibility with Human Rights 2018, pp. 113-127). That's rubbing salt into the wounds for those who were brutalised as children in institutions—but not sexually used.

Senator Claire Moore foresaw the problem when she addressed the Senate in July 2014: "*The creation of a royal commission into sexual abuse is not the full extent of the support that people who went through institutional care need to have."* (Commonwealth of Australia Parliamentary Debates, 'Care Leavers Australia Network,' 8 July 2014, 4430.)

The question remains: if they are excluded from redress simply because they were excluded from the Royal Commission, what will bring justice to those who "only" experienced

- cruel physical assault
- emotional abuse
- the use of solitary confinement
- exploitation of unpaid labour
- neglect of health and education
- subjection to unauthorised medical trials or placement in adult mental health facilities
- and those vast numbers who were stripped of personal identity and were terminally separated from their parents and siblings?

Care Leavers who were not sexually abused were deprived of the opportunity to give voice to their abuse at the Royal Commission. They feel that their abuse is considered subordinate, and inconsequential. The nation regards them as inferior because they were not sexually abused. Many have been re-traumatised by being sidelined for the five years of the Royal Commission and now, in the matter of redress, being totally excluded by a government they thought would "do the right thing" by them.

To make matters worse, throughout the life of the Royal Commission—and since—the public media have been fixated on sexual abuse and particularly on clergy sexual abuse and the role of eminent Catholic Church leaders. Issues that Care Leavers have struggled with for years have all but disappeared from the public arena. Many Care Leavers who were not sexually

abused have had to put their traumatic childhood lives on hold for the five years of the commission's tenure—and hold a deep-seated feeling of being betrayed by government.

Let's be clear: there is no impediment—legal or moral—to the Parliament including all forms of abuse in a national redress scheme. It's not for want of research-based evidence or grounded recommendations. Politicians and others have accumulated a mountain of incontrovertible evidence which can be found now in all the major reports of the past two decades and more:

- The *Bringing Them Home* report published in 1997
- Senate Committee report on *Child Migrants* 2002
- Senate Committee report on *Forgotten Australians* 2004
- Senate Committee report on the progress on the implementation of recommendations of the Child Migrants and Forgotten Australians reports 2009
- Senate Committee report on *Government Compensation Payments* 2010
- Not to forget the various State-based inquiries—Forde (1999), Mullighan (2008), Cummins (2012), Crozier et al (2013).

The problem is not lack of evidence of the need. It's there in abundance. The Royal Commission was asked to shine a spotlight on child sexual abuse—and it did so powerfully. But that brilliance should not blind us to the other destructive ways in which children were abused in Australia.

4. There are ways of addressing the oversight

If the Parliament of Australia is blind to the case of Care Leavers not sexually abused to be included in a national redress scheme, there are other ways it can acknowledge and support these forgotten survivors of the "care system".

Redress is usually conceived of as personal and individualised. But it can also be in the form of communal or collective resources and activities that complement individual redress. This would be something more imaginative that recognises and acknowledges policy wrongs.

For example:

- Funding the national orphanage museum (an initiative of CLAN) as a way of capturing an important chapter in the nation's history
- Support for Care Leaver services managed by Care Leavers, not by charities and certainly not by churches
- Priority access card for dental, medical and housing services
- Aged care programs that are sensitive to the institutional experiences of Care Leavers
- Access to unredacted personal records through an independent agency that is survivor-focused rather than agency-focused
- Support for Care Leavers to tell their stories to the nation in their own words
- Educational scholarships and programs for Care Leavers and their children.

Benefits such as these generic services could be funded through a redress foundation supported by all State and Australian governments with contributions from the major churches and charities. These benefits would be accessible by the Care Leaver community across the nation, regardless of the abusive nature of each individual's experience.