16 May 2018

Community Affairs Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Inquiry into the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and related bill

To Whom It May Concern:

The Victorian Aboriginal Legal Service ("**VALS"**) welcomes this opportunity to make a submission to the Standing Committee on Community Affairs.

VALS supports in principle the introduction of the *National Redress Scheme for Institutional Child Sexual Abuse Bill 2018* (the Bill) as a means to provide an avenue of justice for survivors of institutional child sexual abuse. VALS also supports in principle the objects of the proposed Act, being "to recognise and alleviate the impact of past institutional child sexual abuse and related abuse; and to provide justice for the survivors of that abuse."[1] VALS also supports in principle the principle that the redress scheme be "survivor-focussed" and that any application "be assessed, offered and provided with appropriate regard to: the cultural needs of survivors; and the needs of particularly vulnerable survivors."[2]

However, certain provisions of the Bill do not adhere to these principles, most notably with respect to prisoners and the homeless. In fact, VALS is of the view that instead, the Bill is inherently discriminatory against Aboriginal and Torres Strait Islander people. As VALS has submitted in previous responses during the drafting and discussion of the redress scheme, we are firmly opposed to the blanket exclusion of people serving sentences of over 5 years in length.[3]

We are also strongly opposed to the provision that people who are currently serving a custodial term are prevented from applying for the scheme, regardless of the nature of their offence or length of sentence.[4] As has been well documented, the rate of Aboriginal and Torres Strait Islander people in prison across the country far exceeds that of non-Indigenous people. A recent report by Price Waterhouse Cooper states that while Aboriginal and Torres Strait Islander people represent "only 3

[1] Part 1 Division 2 s3
[2] Part 2-1 Division 2 s10
[3] Part 3-2 Division 2 ss 63(5)
[4] Part 2-3 Division 2 s20

per cent of Australia's total population, they make up more than 27 per cent of our prison population."[5]

That same report states that "on any given day, there are around 10,000 Indigenous adults in prison (including roughly 1,000 women)."[6] As such, the blanket exclusion of eligibility of people with sentences of over 5 years in length, as well as the provision that prevents people currently serving custodial terms from applying, will affect Aboriginal and Torres Strait Islander people in far greater rates than the non-Indigenous population. As such, the Victorian Aboriginal Legal Service considers the Bill to be fundamentally discriminatory.

While we understand that provisions can be made whereby persons with sentences of 5 years or longer may be considered for eligibility (dependent on approval by the Operator)[7] this provision is at odds with the fundamental principles of the proposed Act which is to provide a survivor-focussed redress scheme which will "avoid further harming or traumatising the person."[8] Furthermore, the blanket provision that people in prison cannot apply for redress is also at odds with the aforementioned principles of the proposed Act. In fact, as the Royal Commission into Institutional Responses to Child Sexual Abuse ("**the Royal Commission"**) ascertained, the likelihood of an institutional child sexual abuse survivor engaging in criminal offending and being incarcerated is extremely high.

It is also unclear in the Bill why prisoners are unable to apply for the scheme. While understandably, a prisoner may apply upon release, it is often likely that life pressures – such as finding housing and employment, or complying with parole orders – take precedence, and that the supports required to make an application for redress are not readily accessible or known to the exiting prisoner. In fact, arguably it is while a person is in custody that the right supports and stability are in place which would allow an abuse survivor could have the time and assistance to make an application for redress.

VALS are also concerned about the provision that, in order to apply for redress, the application must "specify where the person lives."[9] Many institutional child sexual abuse survivors are faced with the challenges of homelessness and are unable to provide a permanent home address. The experience of homelessness is often compounded by the experiences of being released from prison unsupported. This is especially the case for Aboriginal and Torres Strait Islander women. The recent report by the Human Rights Law Centre and Change the Record 'Over-represented and overlooked' states that "Aboriginal and Torres Strait Islander women in prison are more likely than non-Indigenous women in prison to be survivors of … sexual violence" and to "be homeless, living in public housing or insecure housing."[10]

[5] Price Waterhouse Cooper, 'Unlock the Facts', May 2017 p 4
[6] Price Waterhouse Cooper, 'Unlock the Facts', May 2017 p 5
[7] Part 3-2 Division 2 ss 63(5)
[8] Part 1 Division 3 s4
[9] Part 2-3 Division 2 ss19(2)(b)
[10] Human Rights Law Centre and Change the Record 'Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment' (May 2017) p16

Once again, the very people whom the redress scheme is designed to benefit are at risk of exclusion, as the scheme in its current form does not take into account the "cultural needs of survivors" or "the needs of particularly vulnerable survivors" as the stated principles of the proposed Act.

VALS also takes this opportunity to reiterate our core point of advocacy: that cultural abuse – the denial and cessation of elements of cultural practice, such as language and custom due to institutionalisation – must be included as an assessable head of damage for Aboriginal and Torres Strait Islander people.

We also take this opportunity to advocate once again for the maximum payable cap to be lifted to $200 000 as per the Royal Commission recommendation. Given that the scheme is designed to redress both sexual abuse and related physical abuse, a maximum cap of $200 000 is not unreasonable.

The Victorian Aboriginal Legal Service therefore recommends that the following amendments be made to the existing Bill:

- The blanket exclusion of persons with sentences of over 5 years be lifted, with the onus shifted onto the Operator to find reason to make the exclusion;
- The provision that prevents persons in custody from making an application be lifted, and instead, such persons be supported to make an application;
- That subsection 19(2)(b) requiring an applicant to "specify where the person lives" be instead amended to "specify a contact address" to allow people struggling with homelessness to specify a point of contact (such as a relevant homeless support service)
- Cultural abuse be included as an assessable head of damage in the case of Aboriginal and Torres Strait Islander applicants; and
- Raise the maximum payable cap of the scheme to $200 000 as recommended by the Royal Commission.

For more information please contact Alister McKeich, Senior Policy and Project Officer, on 03 9418 5999

Sincerely,

Wayne Muir
Chief Executive Officer
VICTORIAN ABORIGINAL LEGAL SERVICE