Joint Select Committee on Implementation of the National Redress Scheme

Submission by Frank Golding 30 March 2020

This submission is a personal one—I was a ward of the State of Victoria from 1940 until 1953, from aged 2 to 15—but it draws on my extensive involvement with Care Leavers over several decades. I am Vice President of Care Leavers Australasia (CLAN) and a Life Member of that national peak body.

The submission is in two parts:

1. An analysis and discussion of some of the main problems in the National Redress Scheme (the Scheme). Some, but not all, of these problems were discussed in the report of the former Joint Select Committee tabled in 2019. Recommendations are put forward to address each of the problems.
2. A table that summarises the 29 recommendations of the report of the former Joint Select Committee 2019; digests the Government's 2020 response; contrasts the recommendations and Government responses with the 2015 advice of the Royal Commission; and sets out Care Leavers' experience of the Scheme in relation to the matters addressed in the 29 recommendations.

PART 1

1. Introduction: an imperfect legislative framework was rushed through Parliament without proper consultation and debate and reflects the interests of governments and the large institutions

Given almost two years' experience of National Redress Scheme (the Scheme) it is now evident beyond argument that those responsible for the design of the Scheme did not make use of the body of reputable international research and guidelines about how to design a survivor-focussed process for victims and survivors of abuse. That literature consistently advises four common principles.[1]

(1) Do no further harm;
(2) Take account of the social circumstances of marginalised and low-income survivors including their literacy levels;
(3) Use the principles of co-design involving advocacy groups and road-test all paperwork; and
(4) Build in options for applicants.

[1] E.g. United Nations (2005). *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Geneva; Ruben Carranza, Cristian Correa, and Elena Naughton (2017). *Forms of Justice: A Guide to Designing Reparations Application Forms and Registration Processes for Victims of Human Rights Violations*, New York: International Center for Transitional Justice.

The complex legislative scaffold supporting the Scheme breaches those principles. It was constructed with minimal consultation except behind-closed-doors negotiations involving the states, territories and some of the large institutions in the non-government sector. It was also necessary for all states to pass legislation referring relevant powers to the Commonwealth. However, for many months there was some uncertainty as to whether the states would join at all—and they did so, ultimately, in piecemeal fashion between May 2018 and January 2019, in some cases after the Scheme had formally commenced.

Because the Commonwealth legislation was hastily drafted, discussion was limited and amendments that might have improved the design of the Scheme were actively discouraged. It is a matter of record that some senators and members of parliament felt "there was little option but to agree to pass the bills without any amendments."[2]

To understand the Scheme, you have to scrutinise:

- a principal Act;[3]
- a consequential Act;[4]
- the Rules;[5]
- an Assessment Framework;[6]
- a set of Assessment Framework Guidelines[7] (The Assessment Guidelines are not a legislative instrument and are not publicly available. Section 104 of the principal Act makes it an offence to record, disclose or use the Assessment Guidelines for an "unauthorised purpose".);
- a Direct Personal Response Framework;[8] and
- a Declaration.[9]

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[2] Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2019) *Report*, p. 128.
[3] *The National Redress Scheme for Institutional Child Sexual Abuse Act* 2018 establishes the Scheme.
[4] *The National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Act* 2018 provides for consequential amendments relating to the Act.
[5] *The National Redress Scheme for Institutional Child Sexual Abuse Rules* 2018. Section 179 of the Act gives the minister the power, by legislative instrument, to make rules for giving effect to the Act.
[6] *The National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework* 2018. Section 32 of the Act gives the minister the power, by legislative instrument not subject to disallowance, to declare the method for calculating the amount of a redress payment and the amount of the counselling and psychological component of redress for a person.
[7] *The Assessment Framework Policy Guidelines*. Section 33 of the Act gives the minister the power to make guidelines for applying the Assessment Framework.
[8] *The National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework* 2018. Section 55 of the Act gives the minister the power to declare guidelines by legislative instrument not subject to disallowance about how direct personal responses are to be provided under the Scheme.
[9] *The Declaration*. Section 115 of the Act gives the minister the power to declare by notifiable instrument that an institution is a participating institution or that a state or territory is a declared provider of counselling and psychological services under the Scheme.

The previous Joint Select Committee in 2019 expressed its "deep dissatisfaction with the rushed legislative process that took place."[10] The haste was said to be necessary to enable the Scheme to begin on 1 July 2018 and to avoid further delay for survivors of child sexual abuse. It is ironic, to say the least, that the process has produced a Scheme which is now notorious for its lengthy delays in providing outcomes for survivors. Pending the legislated requirement of a formal review of the Scheme at the two-year mark of its implementation, the current Joint Select Committee now has an opportunity to recommend measures that might restore some of the integrity to the parliamentary process.

However, it must be said that there is widespread pessimism that the review will result in significant changes for two reasons: (a) the requirement to go back to all jurisdictions to seek their unanimous consent to proposed changes; and (b) governments around Australia are foremost among the institutions that bear responsibility for most of the child abuse that occurred, so the legislative framework represents a massive conflict of interest.

2. Flaws in the Scheme in both design and processes

In its report in April 2019, the previous Joint Select Committee exposed serious flaws in the basic design of the Scheme. It also exposed problems in the handling of applications for redress. In some matters the two—design flaws and process problems—interconnect; but when considering reforms, it is useful to identify the two types of defects.

It is not possible, here, to discuss all of the 29 recommendations of the former Joint Select Committee. This submission discusses only some of the problems of the Scheme that most concern Care Leavers. These include some problems that the previous Committee identified in its 2019 report and some problems that the Committee did not adequately touch upon.

Problem 1: Inadequate survivor-focus stemming from poor consultation

In both design and procedures, the Scheme is heavily weighted in favour of the institutions and governments. A greater focus on the needs of survivors from the outset would perhaps have reduced some of the problems that have emerged.

Many Care Leavers say that the process is re-traumatising. Others describe it as coldly bureaucratic and unduly legalistic. They report that officers who contact them lack compassion and show an inadequate understanding of the historical context of out-of-home care and institutional life. To many Care Leavers the Scheme is adversarial—it is essentially an 'us-versus-them' system with the Scheme representing the powerful and Care Leaver applicants the powerless. There is no give and take, no reconciliation.

The first of the Committee's 27 recommendations is an admonition:

[10] Report of the Joint Select Committee, 2019, p. 128.

> that any amendment to the Scheme proceed on the principle of 'do no further harm' to the survivor, be subject to proper consultation with key survivor groups, and appropriately incorporate feedback from those consultations.

In its response (February 2020), the Australian Government graciously affirmed that

> Evidence to the Inquiry shows that there is a clear need to improve the service delivery of the Scheme, particularly its interaction with survivors. There are learnings from the way the Royal Commission interacted with survivors that can and should be applied to the ongoing operation of the Scheme. The Government is committed to ensuring that the Scheme and any amendments are survivor-focused and trauma-informed.

Care Leavers are pleased that the Australian Government endorses the first Recommendation of the former Joint Committee. It is important, however, that the Government's good intentions lead to reforms to both the design of the Scheme and the processes that survivors must go through.

Recommendation 1: That, in the light of the evidence to the Inquiry showing a clear need to improve the service delivery of the Scheme, particularly its interaction with survivors, and the Government's endorsement of that evidence,
(a) amendments be made to the legislation to make it better balanced between the interests of the institutions and governments and the interests of survivors;
(b) changes be made to the design of the Scheme to make it more transparent, more responsive to feedback and bring it closer into alignment with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse; and
(c) all such amendments and changes must be made in consultation with advocacy and support groups.

Problem 2: The Scheme treats all survivors of sexual abuse as if they are equal, and they are not.

It has been obvious from the outset that the one-size-fits-all model of the Scheme is a fundamental design flaw. The Royal Commission and a string of other inquiries over the years have demonstrated that, as a cohort, Care Leavers have significantly different attributes from other survivors of sexual abuse. In brief, these include a cluster of issues with literacy, poverty, insecure accommodation, issues of ageing, frailty and elder abuse, long-term ill-health, lack of access to family support and the psychological scars of multiple forms of abuse in institutions where, as children, they lived 24/7, subjected to child labour and mind-numbing routines, cut

off from wider society and "looked after" by staff who wielded almost unlimited power with little accountability for their abusive and neglectful treatment of the children in their care.[11]

Furthermore, as the Scheme is discovering belatedly, many Care Leavers are not victims merely of maltreatment and neglect. They are also victims of systems abuse—the inexplicable separation of siblings, the refusal to allow contact with family members, the lack of love, the stripping of personal identity in military style facilities, the frequency of placements they had to endure, the failure to be given any explanation of their situation, and the lack of opportunity to speak up and be believed. These are matters that lead to the complete lack of trust in authority, not to mention the deep emotional scars of being regarded as worthless that last a lifetime.

Care Leavers do not assert that the sexual abuse suffered by children who lived with their families at the time of their abuse is regarded as less damaging and the harm less enduring. The argument is that the experience of children in out-of-home care was qualitatively different, and any redress scheme should be designed with those differences uppermost in mind. The effort to treat everyone the same, and to give everyone equal access to the same process in the belief that this is just and fair, is misguided. The significant historical factors that disadvantage Care Leavers cannot be ignored.

Confidence in the Scheme is low among Care Leavers who are not convinced that their claims are being handled with the respect and timeliness they merit. In order to achieve fairness in outcomes every effort should be made to acknowledge unequal starting places and provide different types and levels of support based on diverse needs. Even if the broad parameters of the Scheme are retained, there is a compelling argument for the Scheme to abandon the one-size-fits-all approach by setting up a parallel strand for Care Leaver applicants within the Scheme.

Perceptions are important—and reality even more so. Evidence was given to the former Joint Select Committee about the lack of reliable data about matters such as the average processing time for applications and the levels of payments made under the Scheme. However, the Committee's Recommendation 23 did not go to the concerns expressed by Care Leavers. These concerns are about not feeling assured that Care Leavers are being treated equitably in terms of

- rates of successful and rejected applications by type of cohort;
- levels of payments offered (It is not really helpful to say that the average payment awarded is $82,000. Care Leavers want to know whether that average is indicative of a pattern of paying Care Leavers less than other survivors who might be able to prepare a better application and get a higher offer.);
- the proportion of applications held up by abuse having occurred to them in more than one institution, and the failure of one of those institutions to join the Scheme. It is likely

[11] Palmer, D. (2016). *The role of organisational culture in child sexual abuse in institutional contexts*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney.

that most of these applicants would be Care Leavers who were commonly moved from placement to placement.

On that last-mentioned point, there is no reason, other than bureaucratic convenience, why such applications cannot proceed on the basis of having at least one responsible institution participating in the Scheme. In such cases, a proportionate advance payment should be made without undue delay and the case reviewed when the other institution(s) joins the Scheme. After all, it is no fault of Care Leavers that Scheme was based on an opt-in principle that gave institutions up to two years to join the Scheme. Why should those who have suffered in these recalcitrant institutions be asked to wait even longer for justice?

Likewise, in the case of defunct institutions or institutions that cannot or will not join the Scheme, delays are caused by failure to resolve the funder of last resort issue in a timely fashion. The view of the former Joint Select Committee (Recommendation 4) is in accord with the position of the Royal Commission—that is, that Commonwealth and state/territory governments should be 'funders of last resort' on the basis of their regulatory and guardianship responsibilities. The Scheme has been operating long enough now to know which institutions are defunct and should be operating on the basis that governments are the 'funder of first resort'.

Care Leavers are an ageing cohort. We know that many Care Leavers are frail and not in good health. A disturbing number have died before an offer of redress has been made. We do not know, however, the relative proportions of these applicants who are Care Leavers as against other applicants. It is important to have this information because it might signal to all concerned that a policy needs to change or that more support or a different type of support is necessary. CLAN has asked for this type of data on a number of occasions, but such requests have not been met. We note that the current Committee has been informed that such data exist and could be made available.[12]

Recommendation 2: That a separate strand for applications who are Care Leavers be introduced so that the operations of the Scheme are more flexible and responsive to the needs of Care Leaver applicants and those who are yet to apply by implementing.

Recommendation 3: That, where applications involve more than one institution and at least one of those is a participating institution, such applications should be processed in respect of the participating organisation(s); and if a decision is made in respect of that participating organisation(s), the applicant should be made an advanced offer as an interim measure, pending a review when the other institution(s) join the Scheme.

Recommendation 4: That, given that funder of last resort arrangements should have been resolved in the early months of the Scheme, and delays are creating undue hardship to

[12] Proof Transcript of evidence of Ms McGuirk, Joint Select Committee, 19 March 2020, p. 50.

applicants related to defunct agencies, the relevant government should accept responsibility and act as 'funder of first resort'.

Recommendation 5: That the National Redress Scheme website publish regularly updated key data in respect of Care Leavers compared with other survivors. These could include: rates of applications received; rates of applications rejected; levels and range of payments offered; proportion of applications held up by institutions not participating; the number of applicants given priority treatment because of ill health or frailty; the number who have died while waiting for an offer of redress.

Problem 3: Sexual abuse as the sole form of abuse creates a hierarchy of justice and creates harm to those who suffered other forms of abuse

A vast majority of Care Leavers endorse the sentiments of the former Joint Select Committee on redress for non-sexual abuse.

> The committee expresses its deep disappointment that victims of non-sexual abuse are excluded from the redress scheme and is of the view that these victims are equally deserving of redress (para. 8.48).

The exclusive focus of the Royal Commission on child sexual abuse and the consequent narrow focus of the Redress Scheme has created a grave national injustice. The operations of the Royal Commission from late 2012 to its final report in late 2017 dominated the media and commanded the attention of institutions and government. Care Leavers had to put their lives on hold if they were not abused sexually but were cruelly separated from their family, the most drastic of childhood events and the most profoundly disturbing of interventions, especially when they were then treated worse than before—stripped of all personal possessions, physically brutalised, starved of affection and exploited as cheap labour while being denied an education. These Care Leavers are marginalised, feel betrayed, and continue to find it hard to understand why their abuse is not recognised.

The Royal Commission 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). "Most previous and current redress schemes cover at least sexual and physical abuse. Some also cover emotional abuse or neglect". (*ibid.* p. 102). The Commission referred to previous state-based redress schemes in Tasmania, Queensland and Western Australia which had covered all forms of abuse of state wards, and they were aware that there were well-advanced intentions held by the governments of Victoria and NSW to introduce their own broad-based redress schemes prior to the emergence of the proposal to develop a national scheme. Victorian and NSW Care Leavers have never had a state-based redress scheme. The Royal Commission was aware that its hands were tied, but it is not clear that governments

understand that the Scheme has rendered many thousands of Care Leavers worse off than before the Royal Commission.

The former Joint Committee also referred to calls for a separate Royal Commission into the physical, mental, and other non-sexual abuse of children in orphanages and other institutions. However, another Royal Commission is not necessary. There is abundant evidence of the need reaching back to the Senate Committee's *Forgotten Australians* Report of 2004. Indeed, the evidence therein led the Senate Community Affairs Reference Committee to recommend a seven-point national reparation fund (Recommendation 6). That recommendation was rejected by the Australian Government on the grounds that redress was a matter for the states and territories. But the recommendation should now be revisited in the light of the emergence of the current National Redress Scheme. The Joint Committee's Recommendation 6 can be actioned without a further inquiry.

Recommendation 6: That the Government takes immediate steps to establish a national redress scheme for, or extend the current Scheme to, Care Leavers who were abused while in orphanages, children's Homes, foster care, missions and similar institutions but who not sexually abused and are not eligible on those grounds for redress under the current National Redress Scheme.

Problem 4: Penetration dominates the Assessment Framework but is not based on evidence

The former Joint Select Committee was most scathing of the Assessment Framework (paras. 8.71-8.86)—and rightly so. Problems with the Framework were the subject of five of the Committee's recommendations—a reflection of the widespread concern in the community. The Committee stated that it received no evidence from any stakeholders that supported the Framework. The Committee was correct to conclude that the Framework is "ill-informed" in that it "fails to take into account the vast body of evidence that the kind of abuse suffered does not, in and of itself, determine the impact of abuse for the individual" (para. 8.73).

The Royal Commission contracted research in this area and heard abundant evidence from a range of other sources. It summarised its findings in this way:

> Penetration is only one of several aspects of abuse that influences the severity of outcomes for victims...While penetration may increase the risk of worse health outcomes, the absence of penetration does not mean that a victim suffers lesser impacts.[13]

The Commission discussed many other significant matters that create impact on the victim of child sexual abuse. These include

[13] *Final Report*, Vol 3, *Impacts*, p. 31.

- the age and life stage of the child;
- the duration of the abuse;
- its frequency;
- the number of different perpetrators;
- the relationship of the child to the perpetrator e.g. the betrayal of trust when an abandoned child who craves affection has been groomed by someone who manipulates that yearning for affection;
- the nature of the institution where the abuse occurred; and
- the response the child had when trying to report the crime.[14]

Moreover, the definition of penetrative abuse is not clear. There is much discussion among Care Leavers, and others, as to whether it is restricted to penile penetration, or would include digital penetration, oral penetration and invasive internal examinations as experienced by many females on admission to some facilities. There are numerous examples of unspeakable sexual abuse of young children that happened on a regular basis without penetration occurring; but without penetration (however defined), the Assessment Framework does not allow for "extreme circumstances" to be applied in calculating the impact.

It's simply unacceptable in a national redress scheme that the meanings of key terms are not disclosed to applicants and their advisers. Even worse, to make it an offence to disclose or use the Assessment Guidelines is unnecessarily heavy-handed. The excuse that the Guidelines are not public—"to mitigate the risk of fraudulent applications"—is not plausible. There is no evidence that fraudulent claims in redress are common. Certainly not at a level that warrants a secret set of guidelines to assess claims. Moreover, much was made in successive national apologies of believing survivors of child sexual abuse. As recently as October 2018, Prime Minister Morrison speaking in the Australian Parliament told survivors, "I simply say I believe you, we believe you, your country believes you."[15] The Scheme's approach undermines that sentiment of validation which is so important to survivors.

The Royal Commission had been highly critical of secretive practices in the management of abuse claims in the Catholic Church. In response, while acknowledging the risk of some level of fraud, the Church declared in 2018 that it is not in favour of information remaining secret in the Scheme.

> [T]here will be a lack of procedural fairness afforded to both survivors and institutions if the assessment guidelines, which will contain information about the basis of redress and responsibility determinations made are not public.[16]

[14] *Final Report*, Vol. 3 *Impacts*, pp. 30 ff
[15] National Apology speech delivered to House of Representatives, 22 October 2018.
[16] Truth Justice and Healing Council, Submission to Senate Community Affairs Legislation Committee Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017, February 2018.

Recommendation 7: That the current matrix which forms the basis of the Assessment Framework be withdrawn forthwith and replaced with a matrix along the lines recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse.

Recommendation 8: That whatever matrix and assessment guidelines are adopted must be made publicly available along with a glossary of key terms related to the assessment process.

Problem 5: Eligibility rules are being interpreted unreasonably to the detriment of some Care Leavers

The previous Select Committee (in its Recommendations 7 & 8) touched on key issues around the eligibility of prisoners, people with a criminal record, and non-citizens. The architects of the Scheme failed to understand the direct links between sexual abuse as a child and offending as an adult. It is not difficult to find Australian research studies that show the direct links between criminalisation and living in out-of-home care.[17] A current British research study showed that of the participants sexually abused in residential care, 29 per cent reported perpetrating some type of criminal behaviour as an impact of that sexual abuse compared with 8 per cent of those sexually abused in other contexts.[18] It must be acknowledged that prisoners have been or are being punished for their offences as adults—and that is a separate matter from how we should respond to the crimes committed against them when they were children.

However, another further unanticipated issue has arisen in the operation of the Scheme. We are aware that a number of applicants—a growing number of cases it seems—have been ruled ineligible because an institution has been deemed not responsible for bringing a child into contact with their abuser. These relate to children not being physically inside an institution at the time they were sexually assaulted, abused or exploited. This goes to both legal and moral responsibility.

Each Australian jurisdiction is responsible for child welfare, and care and protection legislation varies in some fine points of detail. But the nation has developed a more or less common system in which children found to be "neglected or criminal", "in moral danger", "likely to lapse into a life of vice and crime" or, in the softer language of more recent times, "in need of care and protection" were committed as wards through orders of children's or magistrates' courts (or similar) then placed in state-run institutions or outsourced to institutions run by churches or charities. It is fair to say that throughout the nation the rule is that if you were made a ward of

[17] For example, State of Queensland (2018). The criminalisation of children living in out-of-home care in Queensland, Brisbane: Queensland Family and Child Commission.
[18] The Truth Project of the English Independent Inquiry into Child Sexual Abuse, November 2019 p.68. https://www.truthproject.org.uk/i-will-be-heard

the state (or similar status) you were committed to care until you were 18 (in some cases 21) or until a relevant court order expired.[19]

Wardship involved a legal transfer of the rights and duties of the parents to the state. The power of the state to take a child away from abusive or negligent parents, and to act as the guardian of that child who is in need of care and protection is a long-established doctrine, *parens patriae*. Likewise, the state can intervene to act as the guardian of a child who is incapacitated or disabled and lacks parents able and willing to give the child adequate care. The guiding principle is the best interests of the child. But having stepped in to become not just a substitute for a time (*in loco parentis*), but the legal guardian of the child—with or without the consent of the parents or the child—it is incumbent upon the state and its delegates to do what the parents were deemed not capable of doing until the child is legally of age or until the expiration of the court order.

The problems associated with absconding are well known—although there is no published national data on the extent to which it occurs.[20] Various historic state *Police Gazettes* routinely published lists of children who ran away from institutions—very probably in many cases because of brutality in those institutions. In 1996, the Victorian Auditor-General reported that, between March 1993 and May 1995, 256 children—about 20 per cent of children aged between 10 and 17 under Guardianship or Custody Orders to DHS—were reported to Victoria Police as missing persons. "Of even greater concern," the Auditor-General continued, "is that around 55 per cent were reported on more than one occasion with around 10 per cent being recorded as multiple offenders missing in excess of 13 times."[21] Overnight absences were so common that they were not notified to the Police. The Auditor-General commented that "DHS regards overnight absconding as a normal part of adolescent behaviour".[22] Some of these children were sexually abused or exploited while they were on the loose from the institution. In 1996 the Victorian Auditor-General reported "Instances of staff failing to take action when children were known to be in the company of sexual deviants or drug and other illicit substance users."[23]

Nearly 20 years on, in 2015 the Victorian Commissioner for Children and Young People documented contemporary incidents of sexual abuse and exploitation of children in residential care. A case cited by the Commissioner involved a 12-year-old boy with an intellectual disability who was absent from his placement and, with an older boy from that placement, was

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[19] See Child Family Community Australia (CFCA, 2019). Resource Sheet Australian legal definitions: When is a child in need of protection? at: https://aifs.gov.au/cfca/publications/australian-legal-definitions-when-child-need-protection.

[20] Emma Colvin, Kath McFarlane, Alison Gerard, and Andrew McGrath (2018). We Don't do Measure and Quotes': How Agency Responses Criminalise and Endanger the Safety of Children Missing in Care in New South Wales, Australia. *The Howard Journal of Crime and Justice*, Vol. 57, Issue 2, June 2018 pp. 231-249.

[21] Auditor-General (1996). Special Report No. 43, *Protecting Victoria's Children: The role of the Department of Human Services*. Melbourne: Victorian Government Printer, p. 258. A recent study in England showed that 24 percent of sexual abuse survivors mentioned running away from residential care: The Truth Project, November 2019, p.74. https://www.truthproject.org.uk/i-will-be-heard.

[22] Auditor-General (1996), p. 259.

[23] Auditor-General (1996), p. 213.

visiting a 50-year-old man who was believed to be a paedophile.[24] There are many other cases documented in the Commissioner's report. Indeed 22 per cent of the 63 cases were subject to alleged sexual abuse by an external predator.[25]

In other cases, state wards were effectively evicted, sent to work or simply told they were old enough to join the work force in the mid-teens. In very few cases were children reunited directly with their family. In some cases, the institution found them employment, and in a small number of cases also found them accommodation. But many of these children were left unsupervised, without support, and in many cases, without adequate life skills. These children had to fend for themselves without any further guidance or support for coping with predators. In many instances, these children were sexually used, abused and exploited. And the Scheme is now adopting the reprehensible position that, because the abuse did not take place in the institution, there is no responsibility on the part of the institution even though a court order assigned the care and protection of the child to the institution.

I argue that if a child was a ward of the state—taken from a family because they required "care and protection"—it is reasonable to expect that the state and the institution to which the child was assigned as guardian had a binding duty of care for the safety of that child until their wardship expired. In the case of absconders, the institution—whether it be state, church or charity or some combination—should have taken all reasonable measures to prevent the child from absconding, or to have the absconding child found and returned to a place of safety. Under the terms of the legislation, for example Section 174 of the Victorian *Children and Young Person's Act* 2005, imposes on the Secretary of the Department a duty of care to act "as a good parent would". The Victorian Commissioner for Children and People reported in 2015 that staff of the Department and community services organisations failed to understand the relevant legislation and failed to comply with it.[26] It is now even more imperative that the Scheme understand the relevant law that governed care and protection of children in the various jurisdictions.

It cannot be reasonably argued that a child should not have run away and that it was their own fault they were sexually exploited or raped. Institutions cannot please themselves to suspend a duty of care to a ward of the state who, running away from one form of harm, experienced another harm outside the walls of the institution.

To some extent, the issue turns on the interpretation of Question 8 on the Redress Application Form: "Was an institution responsible for bringing you into contact with the person or people who sexually abused you?" This is a crucial question and a 'wrong' answer will make you ineligible. The issue is mentioned numerous times in the Redress Application Form: page 3 of

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[24] Victorian Commission for Children and Young People (2015). *"As a good parent would…" Inquiry into the Adequacy of the Provision of Residential Care Services to Victorian Children and Young People Who Have Been Subject to Sexual Abuse or Sexual Exploitation Whilst Residing in Residential Care*, Melbourne: The Commission, p.60.
[25] Victorian Commission for Children and Young People (2015). P. 53.
[26] Victorian Commission for Children and Young People (2015), p. 116.

9 (twice); page 7 of 9; page 3 of 30 (where if you answer No you are asked to ring a 1800 number); page 10 of 30; page 11 of 30; page12 of 30; page 18 of 30; and page 21 of 30. But not once at any of those mentions in the Redress Application Form is the significance of this issue explained. It is reprehensible that the Scheme asks applicants to answer Question 8 as if it just a simple matter of fact that they would know. It is, in fact, in the context of the legal framework of the Scheme a legal question—a matter of evidence with weighty consequences. In some circumstances, the survivor might not even know that information.

The matter is relevant also to Question 35, "Did you live at this institution when the sexual abuse happened?" The question is ambiguous to say the least. It may have been the address of your placement, but if you absconded—or were on a holiday placement at the time—you might not have lived there literally at the time you were abused. The answer could mislead an Independent Decision Maker. It must be a matter of existing evidence held by institutions or the state whether a survivor was legally in the care of an institution at the time or the care of the State.

Recommendation 9: That the definition of "responsible institution" be extended to include those institutions and states that had the legal guardianship of a child up to the point of the child's discharge from wardship orders and the definition of "responsible" be made clear on the Redress Application Form.

Problem 6: Giving away your most personal information

Care Leavers have brought this vexed issue to the attention of the Scheme from the outset. It remains one of the most troublesome issues in the Scheme's processes. Apart from the substantive issue of the right to privacy, the Redress Application Form confuses and disturbs applicants who want to know definitively and honestly what the Scheme will do with personal information and who will have access to it.

In respect of Part 3, applicants filling out the Redress Application Form are given mixed messages. Consider these statements in the Form.

- On page 8 of 9: *"Part 3 asks about the impact sexual abuse has had across your life. You need to answer this question…"*
- On page 8 of 9: *"You can choose to share Part 3 with the relevant institution(s)."*
- On page 8 of 9, *"In some cases, the institution's insurer made need…the impact of the abuse (Part 3). Where this is the case the Scheme will share the information directly with the insurer."* It should be noted that this is the first and only mention of the insurer.
- On page 26 of 30: *"Your answers in this section [Part 3] will only be shared with the relevant institution(s) if you agree that they can be."* There is no explanation as to possible consequences to an applicant if they decide not to agree to share this information

- On page 27 of 30: *"Institutions use information from Part 3 to prepare for a direct personal response."*

Is personal information for the use of the insurer as stated on page 8 of 9 or is it for the direct personal response as stated on page 27 of 30?

Bearing in mind that applicants have the choice to accept or reject the offer of a direct personal response—and the take-up of offers has been very low—surely institutions do not need to have personal information before a determination has been made and a survivor has accepted an offer of a direct personal response. Care Leavers are deeply concerned that the institution will have their most personal information even if they do not wish to engage with the institution. It must be remembered that many Care Leavers have had significant problems in the past with personal records. The Royal Commission into Institutional Responses to Child Sexual Abuse considered it a major and enduring problem and issued a separate volume (No. 8) on the matter in its Final Report.

Another avoidable problem has been created if an applicant decides to withdraw their application or decline an offer of redress in order to pursue civil action. Care Leavers feel that their position is compromised because presumably the institution and insurer who will defend the civil action will have been made privy to information that may advantage them in the courts.

Recommendation 10: That (a) the Scheme commit to a process of close consultation with Care Leavers advocacy groups with a view to clarification of the purposes of collecting information, who will use it, and where it will be archived at the end of the process; and (b) that information about the role of insurer and protocols governing their part in the Scheme be made publicly available.

Problem 7: As survivors' main route to the Scheme, the Redress Application Form is not fit for purpose

The former Joint Select Committee recommended that all governments revisit the practice of indexing prior payments, and it is to hoped that there can be agreement to resolve the problems of indexing generally. But the way in which Care Leavers are asked to provide information about prior payments in the Redress Application Form (pages 23-26 of 30) is creating confusion and anxiety. Applicants are required to produce documentation for redress payments made many years ago in some instances by victims of crime, court awarded payments and other redress schemes—for such matters as legal costs, medical costs, payments for counselling and one-off hardship payments.

Care Leavers are required to state the amounts awarded for sexual abuse as well as non-sexual abuse—which, given its remit, is none of the business of the National Redress Scheme unless the Scheme is opened up to those other forms of abuse. In any event, at the time many Care Leavers were not told the breakdown of the items for which they were awarded payments.

Many have not kept records—after all the Australian Taxation Office only requires you to keep your financial records for five years. This part of the Scheme is designed to suit the institutions with the onus placed on Care Leavers to supply information that the institutions are much better placed to supply. The onus should be on past providers to supply that information to the Scheme. However, in that eventuality, no decision should be taken about without the applicant being fully informed and given an opportunity to verify prior payments before a final decision is made.

Care Leavers have given consistent feedback to the Scheme that the Redress Application Form is seriously flawed, but to date little improvement has been made. For example, Questions 36 and 47 require Care Leavers to tick a box, but a person could truthfully tick several boxes because their status could have been multiples of the options listed. Question 47 uses terms that were not in vogue at the time when many Care Leavers were institutionalised (e.g. 'out of home care', 'relative care', 'youth detention'). Question 38: "Did the sexual abuse at this institution happen more than once?" is a simple binary Yes/No, which does not allow for frequency, which is critically important in many cases.

Some language is mystifying to many Care Leavers e.g. Question3: "Your date of birth will be exchanged…"? One applicant had had his birth certificate changed so he wondered if this meant it would be changed again. Question 32 asks: "How were you known at this institution?" One applicant said she would answer, "I was the one the nuns picked on all the time." That's how she was known at the orphanage.

Question 58 is bizarre. It provides a list of 29 words or phrases that presumably describe the impact of child sexual abuse across a survivor's life. The applicant can circle any they choose. But what can it mean to an Independent Decision Maker or to an Institution when an applicant circles a particular word or phrase? One hundred people circling the word 'emotions' or the phrase 'home life' could mean 100 different things. Yet many Care Leavers are led to believe that an Independent Decision Maker will be able to see at a glance the lifelong impact of sexual abuse on their lives. One Care Leaver wanted to complete Question 58 of the Redress Application Form by slashing two lines across the list of words and writing *"Sexual abuse ruined my life. That's all you need to know."*

Back in 2010, a Senate Committee on compensation payments reported that "a recurring theme in the submissions related to the pain, shame, and humiliation involved in having to relive their experiences in order to apply for compensation."[27] In the past 18 months, many Care Leavers have told CLAN that filling out the Redress Application Form has been traumatic—not only because it triggers deep-seated emotions but also because they don't know what to write or how to write their account. They would prefer to be able to talk to an Independent Decision Maker face-to-face and explain in their own words as they did when interacting with the Royal Commission. A number of redress schemes have allowed applicants to provide information in

[27] Senate Legal and Constitutional References Committee (2010). *Review of Government Compensation Payments*, p. 22.

modes other than written form.[28] CLAN has supported a number of applicants who have given up on their applications. A proportion of those Care Leavers have engaged solicitors to take them down the civil litigation pathway.

Instead of selecting and circling words on the Redress Application Form, applicants may choose to write an essay in the space provided on page 28 of 30. Some Care Leavers who do not like the concept of circling words are intimidated by this task. They can't spell words like 'ejaculation' or 'masturbation' or they don't have the language to describe specific body parts in what they perceive to be the acceptable middle-class language for the parts of the body, or are simply embarrassed to say what really happened to them. Some have told CLAN they believe that those who can write the best words will get the most money from redress. Many Care Leavers say they have already given their account to the Royal Commission and bitterly resent having to repeat it here at Question 58 and earlier at Question 44.

The bureaucratic one-size-fits-all approach to applications is again exemplified at page 11 of 30 where applicants are instructed that they may be obliged to copy pages 12-26, and/or pages 16-17, and/or pages 23-26. The assumption is that all people have ready access to photocopiers or scanners. If someone must be inconvenienced, it is preferable for the balance to be in favour of the Care Leaver and not the people administering the Scheme.

Recommendation 11: That responsibility for providing information about prior payments should lie with the past provider not the applicant, but no decision should be made about how past payments will be accounted for without the applicant being fully informed about, and given opportunity to check, the data about past payments before decisions are made about a redress offer.

Recommendation 12: That the Scheme withdraw the current Redress Application Form and redraft it in close consultation with Care Leavers advocacy groups with special attention to asking questions in plain language and allowing more flexible means of providing information.

Problem 8: The role and function of nominees

Considerable difficulties have been experienced with inconsistent and confusing practices in regard to nominees. The Redress Application Form is unhelpful in that regard. The role is first described on page 2 of 9. Among other things, applicants are told that a nominee is a person or organisation that can act on your behalf, if you "want to apply for redress but do not want to interact with us yourself". Yet, an applicant gets to Question 29 (page 8 of 9) before being asked whether they would like to appoint a nominee to act for them. At that point, they are told that they and the nominee both need to complete another form which can be downloaded from the Scheme website. This second form gives further information including that there are two different types of nominee with different powers.

[28] Kathleen Daley (2014). *Redressing Institutional Abuse of Children*, London: Palgrave Macmillan, p. 137.

The Redress Nominee Form is unnecessarily bureaucratic. Part 1 asks the applicant to repeat much of the same information already supplied on the Redress Application Form. Part 2 is to be completed if the applicant wants to nominate a person and Part 3 is to be completed if the applicant wants to nominate an organisation. It may be helpful to a bureaucrat to lay it out like that, but it's confusing to applicants.

The Redress Nominee Form is also intrusive. For example, it asks the applicant to give their reason for using a nominee when (you will recall) the purpose of having a nominee has already been described in the main Application Form (page 2 of 9). The applicant is asked to provide information in the Redress Nominee Form about the relationship they have with the nominee (Question 23) although they are not told why this is required. The Redress Nominee Form is also confusing and apparently repetitious at pages 6 and 7 of 8. The two forms are also repetitious one with the other. For example, even after appointing a nominee through the Redress Nominee Form, the applicant is requested on the Application for Redress Form at Question 59 & 60 to explain who helped them and how. No explanation is given as to the reasons this information is required—and what will be done with it.

As if all that wasn't bad enough, the Scheme's approach to the role of the nominee has been inconsistent in practice. The Scheme often fail to contact the nominee when issues arise that the nominee would be well placed to help with. Staff of the Scheme have made calls to Care Leavers who clearly need a nominee's support but who are home alone. Some of these calls have caused severe trauma, confusion and anger. In one case, a tragic outcome was narrowly avoided only by CLAN's late intervention. Whatever happened to the mantra, 'Do no further harm'? Scheme case managers are inconsistent; some give incorrect information; and some are ill-informed about Care Leavers' history and current circumstances.

Recommendation 13: That the Scheme consult with Care Leaver advocates about the role and function of nominees with a view to improving the Scheme's processes in that matter and that better information about the role and function be reflected in the application process.

PART 2 follows.

PART 2

For the convenience of the current Joint Select Committee, the table that follows

- lists the 29 recommendations of the Joint Select Committee 2019 report;
- summarises the Government's 2020 response;
- contrasts the 2015 advice of the Royal Commission; and
- give Care Leavers' perspective of the Scheme and what they advocate to improve it.

Joint Committee Recommendations	Government Response	Royal Commission Recommendations	Care Leavers' Perspective
1. Survivor-focus That any amendment to the Scheme proceed on the principle of 'do no further harm' to the survivor, be subject to proper consultation with key survivor groups, & appropriately incorporate feedback from those consultations.	**Agrees**. Should be survivor-focussed; Sensitive to needs of vulnerable survivors; do no further harm; protects the integrity of the Scheme.	- Should be survivor-focused providing justice to the survivor, not protecting the institution's interests - A 'no wrong door' approach in gaining access - Have regard to the needs of particularly vulnerable survivors & ensuring access with minimal difficulty.	One size does not fit all. The Scheme is complex & retraumatising Care Leavers. Rigid processes treat all the same when they are not. Separate application process for Care Leavers. Allow for issues of literacy, insecure accommodation, age, ill-health, access to support & context of institutional abuse.
2. Opting in (i) That all governments place and maintain pressure on all relevant institutions to join the redress Scheme as soon as practicable.	**Agrees**. But can't mandate.	Did not contemplate or discuss optional participation.	Creating long delays & trauma especially for those abused in multiple institutions. Use taxation & related powers to require all institutions to opt in.
3. Opting in (ii) The committee recommends that the government consider mechanisms & their efficacy, including those available under the *Charities Act* 2013, to penalise all relevant institutions that fail to join the Scheme, including the suspension of all tax concessions for, & for the suspension of charitable status of [non-participating institutions]	**Notes**. Will continue to identify & encourage NGIs to join the Scheme asap, especially in the lead up to 30/6/2020. Will consult with jurisdictions as a priority on strategies to encourage NGI participation.	The Commission did not recommend the opt in model.	Strongly support using all government powers as a matter of justice without further delay. Abuse of children is not compatible with tax concessions or public funding of responsible institutions. Action required as a matter of urgency.
4. Funder of last resort That all governments	**Notes**. Will consult with jurisdictions &	Commonwealth & state/territory governments	Many Care Leavers report their application

expand the circumstances in which the funder of last resort provision applies so that the relevant participating jurisdiction acts as the funder of last resort where: the institution responsible for the abuse is now defunct; & would not have fallen under the operations of an existing institution.	further consider through the legislated 2nd anniversary review. Would require unanimous agreement of the Ministers' Governance Board (MGB) & changes to the Act.	to be 'funders of last resort' on the basis of their social, regulatory and guardianship responsibilities.	being held up for long periods because of this issue. Governments are best placed to be funder of first resort. A matter of urgency.
5. Indexing That all governments revisit the practice of indexing prior payments.	**Notes**. Was a recommendation of the Royal Commission. Will consult with jurisdictions.	Recommended previous payments should be indexed.	This is causing great anger for Care Leavers. Many prior payments included non-sexual abuse, but indexing is on gross amounts. Cease the practice.
6. Redress for non-sexual abuse That the Parliament consider referring an inquiry to a Joint Committee into the adequacy of state and territory responses for survivors of institutional child non-sexual abuse, including consideration of the redress models that could be available to these survivors.	**Notes**. A decision for Parliament.	'Most previous & current redress Schemes cover at least sexual & physical abuse. Some also cover emotional abuse or neglect.' But terms of reference tied them to 'a narrower focus than most government & non-government institution redress schemes had.'	Many thousands of Care Leavers brutalised & neglected in state "care" are worse off than before the Royal Commission. The Scheme rubs salt into their wounds. Victorian & NSW Care Leavers have never had redress. A broader Scheme is a matter of urgency.
7. Eligibility - residency That all governments give consideration to allowing all non-citizens & non-permanent residents access to redress provided that they meet all other eligibility criteria. Particular regard should be given to: former child migrants who are non-citizens & non-permanent residents; non-citizens & non-permanent residents currently living in Australia; former Australian citizens & permanent residents.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review of the Scheme.	No citizenship or residency requirements.	Care Leavers who were sexually abused were taken from Australia by foster parents or adopting parents. Others have decided to live overseas because of the trauma they experienced in Australia. To be deemed ineligible is a travesty of justice and they should be made eligible forthwith.
8. Eligibility – prisoners That governments allow all	**Notes**. Requires unanimous	Did not discuss or specify, but interviewed hundreds	Prisoners are already being punished for

survivors currently in gaol or have been sentenced to imprisonment for five years or longer to apply for and receive redress, unless the Operator decides it would bring the Scheme into disrepute or adversely affect public confidence in the Scheme; and the Operator uses publicly available guidelines that set a high threshold for bringing the Scheme into disrepute or adversely affecting public confidence.	agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review of the Scheme.	of prisoners in goals. A high proportion had been sexually and otherwise abused as children especially in orphanages, children's Homes and youth detention facilities.	crimes they committed as adults. Redress is for the crimes committed against them when they were children. In many cases, there's a clear pathway from being sexually used as a child and later offending as an adult. 'Public confidence' & 'disrepute' are buzzwords. Natural justice demands they be able to apply for redress.
9. Assessment Framework (i) That governments work together to develop and implement a new Assessment Framework which more closely reflects the assessment matrix recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse and which acknowledges that the type or severity of abuse does not determine the impact of sexual abuse for the individual.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review. Need to consider any potential unintended impact on financial viability & the ability of NGIs to participate in the Scheme.	Matrix measured 'severity of abuse' (40 points), 'impact of abuse' (40 points), & 'additional elements' (20 points).	The existing matrix is a convenient invention concocted in secrecy with no evidence. See footnote 3 above for other impact factors. Many Care Leaves don't know about the matrix or understand it. A key failure of the Scheme. Replace it
10. Assessment Framework (ii) If a new Assessment Framework is implemented to replace the Assessment Framework 2018, the committee recommends: • That applicants who were assessed using the current framework are re-assessed using the new framework. • When re-determining the redress payment under the new framework, offers of redress must not be lower than the original.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review. Also need to consider any potential unintended impact on financial viability & the ability of NGIs to participate in the Scheme.	Do no further harm.	Existing Assessment Framework is contrary to the Royal Commission's advice, and the body of evidence about the nature and impact of sexual abuse. It is creating outrage in the Care Leaver community and beyond. Even some of the institutions are appalled by it. *Do no further harm.*
11. Assessment Framework (iii)	**Agrees**. Will review the information	Stressed the importance of transparency and	Many Care Leavers do not understand how the

That the government clearly communicates to the public, to the maximum extent allowed under current provisions, how applications for redress are considered and the grounds on which determinations are made.	available, including on the Scheme website to ensure it sets out how applications are considered and how determinations are made. Currently, a person who receives an offer must be provided with the reasons for the decision.	consistency throughout their report.	Scheme works nor how decisions were reached. Often better done though trusted support services. Publish the grounds on which decisions made, including in general terms.
12. Assessment Framework (iv) If the current Scheme Assessment Framework 2018 is maintained, then the committee recommends that any acknowledgment of 'extreme circumstances' in the Assessment Framework be applicable to all applicants, not only those who experienced penetrative abuse.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review of the Scheme. Also need to consider any potential unintended impact on financial viability & the ability of NGIs to participate in Scheme.	Defined sexual abuse: 'the fondling of genitals, masturbation, oral sex, vaginal or anal penetration by a penis, finger or any other object, fondling of breasts, voyeurism, exhibitionism and exposing the child to or involving the child in pornography. Includes child grooming…'On penetration versus other abuse see Final Report vol. 2, 9; vol. 3, 31).	Care Leavers oppose this arbitrary hierarchy of sexual abuse. Other factors are more important in many cases. 'Extreme circumstances' needs better definition & should be unshackled from penetration. Maltreatment of many Care Leavers was 'extreme' without being penetrated. It is dubious to claim penetrative abuse as worse than other types of abuse in every single case.
13. Assessment Framework (v) If the current Assessment Framework 2018 is maintained, then the committee recommends that the government publicly clarify key terms in the Assessment Framework.	**Supports in principle**. Will look at it.	Defined terms clearly & consistently	Many Care Leavers don't have the literacy levels to understand key terms, and some avoid using terms that would be common to the administrators of the Scheme. An urgent review of the Application form & its language is a priority.
14. Cap of $150,000 (i) That the government clearly and openly explain how the maximum payments came to be set at $150 000 rather than $200 000, and the rationale for this decision.	**Notes**. The $150,000 was agreed upon to offer both maximum recognition to survivors & maximum opportunity for institutions to opt in. The average payment is currently	The amount of $200,000 was in both the Consultation Paper and the Final Report, and widely supported even by the Catholic Church in public.	Many Care Leavers prefer their chances with civil litigation. It is no consolation that the average payment is higher than predicted. The Scheme has not been operating long enough to establish whether current trends

	higher than the Royal Commission's estimate.		are indicative of those yet to be assessed. Transparency
15. Cap of $150,000 (ii) In line with the recommendations of the Royal Commission, the committee recommends that Commonwealth, state and territory governments agree to increase the maximum redress payment from $150 000 to $200 000.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Will consult with jurisdictions & further consider through the legislated 2nd anniversary review of the Scheme. Also need to consider any potential unintended impact on financial viability & the ability of NGIs to participate.	Established an understanding that a cap of $200,000 was acceptable to key stakeholders.	The expectation was always a cap of $200,000. Care Leavers see this cut as another betrayal of trust. It is driving some away from the Scheme. Reverse this bad decision now.
16. Minimum payment In line with the recommendations of the Royal Commission, the committee recommends that Commonwealth, state & territory governments implement a minimum payment of $10 000 for the monetary component of redress, noting that in practice some offers may be lower than $10 000 after relevant prior payments to the survivor by the responsible institution are considered, or after calculating a non-participating institution's share of the costs.	**Notes**. Each application is individually assessed. Currently, the minimum, with no relevant prior payments, is likely to be $10,000. Requires unanimous agreement of the MGB & changes to the Act. Will consult with jurisdictions and further consider through the legislated 2nd anniversary review of Scheme.	Recommended a minimum payment of $10,000 (Rec. 19).	The Royal Commission's recommendation of a minimum of $10,000 was a turn-off for many Care Leavers; but the Scheme's failure to even provide that fir eligible survivors—when indexing is applied—is seen as insulting. Introduce a base payment immediately.
17. Counselling (i) In line with the recommendations of the Royal Commission, the committee recommends that Commonwealth, state and territory governments agree to and implement amendments that would ensure that each survivor receives an adequate amount of counselling and psychological services over	**Notes**. A minimum amount of counselling services, or payment, is made. Some jurisdictions provide counselling services directly. Jurisdictions differ in provision above the minimum national standards. Subject to agreement, the	Counselling should be on-going over the course of their life and available also to family members of the survivor. '[T]here is no evidence that supports the imposition of a fixed limit on the number of counselling sessions available to a survivor per episode of care' (p. 189).	Counselling offers are inadequate and often confusing specially to Care Leavers already in counselling. Letters of offer do not provide appropriate information. The model of counselling must change to be closer to the Royal Commission's recommendations—

the course of their life, noting that the amounts currently provided for, pursuant to section 6 of the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, are wholly inadequate.	Scheme website will publicise what counselling are provided by each state & territory. Will consult with jurisdictions and further consider this through the 2nd anniversary review.		including access by close family members—and clearer information must be provided.
18. Counselling (ii) That the Commonwealth government clarify, in the case of declared providers of counselling and psychological care, what services are provided to eligible survivors of the redress Scheme that are distinct from or in addition to services already available to Australian citizens.	**Agrees**. Will continue to consult with jurisdictions & support services. If jurisdictions agree, information will be provided on the Scheme website about what counselling & psychological care services are provided by each state & territory.	See above	The current provision is mean. Scheme counselling offers should remain distinct from & in addition to existing services. Most Care Leavers want to continue to see the counsellor they are currently seeing, but poor communication from Scheme is confusing and generates more anxiety.
19. Counselling (iii) In line with the recommendations of the Royal Commission, the committee recommends that Commonwealth, state and territory governments consider mechanisms to ensure that survivors have life-long access to counselling and psychological care that is available on an episodic basis, is flexible and is trauma-informed.	**Supports in principle**. But the same text follows as in response to 17 above.	'[T]here is no evidence that supports the imposition of a fixed limit on the number of counselling sessions available to a survivor per episode of care' (p. 189).	See above.
20. Direct Personal Response That all governments agree to amend an institution's reporting obligations under section 17 of the National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018 to require institutions to provide to the Operator the following information: • the number of complaints	**Supports in principle**. Notes legal obligation of institutions to report on the number & types of direct personal responses given during the year, as well as the time between a survivor requesting the response and the giving of it.	Should publish data, at least annually (Rec. 69), re: • no. of applications received • institutions to which applications relate • periods of alleged abuse • no. of applications determined • outcome of applications • mean, median & spread of payments offered	Care Leavers want quarterly published reports on the number of Care Leaver applicants compared to other survivor applicants re: • application numbers and proportions; • mean, median & spread of payments offered; • mean, median & spread of time taken

made to the institution in relation to direct personal responses; • the nature of these complaints; • how these complaints were resolved.		• mean, median & spread of time taken to determine the application, and • no & outcome of applications for review.	to determine applications; • numbers & outcomes of applications for review • numbers of applications rejected and reasons for these.
21. Support services That the government ensure that redress support services are appropriately funded so that they are available to all survivors, regardless of the survivor's location, cultural or other barriers.	**Agrees**. Extra $52.1 m to June 2021 through 40 professional redress support service providers; & October 2019, additional funding of $11.7m. Of this, $5.1 million to increase the reach of services, fill gaps, & provide training to improve quality of applications.	Set down principles on the provision of support services (Rec. 69) that were premised on the importance of transparency and accountability	Funding was needed earlier to support Care Leavers. Counselling starts long before an application is submitted: many survivors agonise over the decision to apply & many are re-traumatised by the process. Support services also find themselves being translators of Scheme information. This is a 10-year program & funding for support services should be guaranteed for that duration.
22. Financial counselling Noting that the Intergovernmental Agreement on the Scheme committed to providing survivors with access to financial support services, the committee recommends that all governments explore mechanisms to ensure that survivors have access to free and appropriate financial counselling services, when required.	**Agrees**. Governments already fund free, independent financial counselling to help people in need or at risk of financial hardship.	Rec. 66 addressed financial counselling, pointing out that advice is needed during the several stages of making an application, not solely at the point of an offer of a payment.	Financial counsellors helping Care Leavers will confront issues that are not normally a part of their service. These counsellors need to be fully informed about the history and culture of orphanages, children's Homes. Special training should be made available to financial counsellors who aim to provide advice to Care Leavers.
23. Priority processing That the government ensures a clear process to allow survivors to indicate on the redress application form whether their application should be considered a priority.	**Agrees**. Will act on this.	Rec. 4. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.	We have been giving this advice from the outset, but been ignored. The application form(s) must be revised as soon as possible.
24. Information about Progress That the government	**Agrees**. Will implement. Has recently	Survivor-focussed processes that are timely and sensitive to needs.	This continues to be a problem. The onus is on the Scheme not on the

ensures that people are regularly informed of the progress of their application.	implemented a case management approach to ensure that applicants are kept informed of the status of their application, and that they have a single point of contact for any queries.	Rec. 69 on case management.	Care Leaver to check progress.
25. Publishing key data That the government publish, on the National Redress Scheme website, the average processing time for applications and other key data concerning the redress Scheme, and that this data be regularly updated to ensure they are reasonably current.	**Agrees**. Will implement.	Rec. 69e on data reporting.	See response to Rec. 20. Processing time is an important indicator but there are others too. All data should be broken down to show Care Leavers applicants & other survivor applicants.
26. Internal reviews (i) That all governments agree to and implement amendments necessary to allow applicants to provide additional information in support of their review application, up to the point of the redress payment being made.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Government will consult with jurisdictions & further consider through the 2nd anniversary review.	Rec. 61 Redress Scheme should offer an internal review process. Rec. 62. Redress Scheme established on an administrative basis should be subject to oversight through the relevant ombudsman's complaints mechanism.	Many Care Leavers do not do themselves justice in their applications. A fair system would make reasonable allowances for legitimate mistakes. Why wait for 2nd anniversary review?
27. Internal reviews (ii) That all governments agree to and implement amendments necessary to ensure that a review does not result in an applicant receiving a lower redress amount than their original offer.	**Notes**. Requires unanimous agreement of MGB & changes to the Act. Government will consult with jurisdictions & further consider through the 2nd anniversary review.	Touchstone was fairness.	The power imbalance between the Operator of the Scheme and Care Leavers requires that the benefit of the doubt should go to the Care leaver.
28. Internal reviews (iii) That the government closely monitor the timeliness of internal review determinations.	**Agrees**. Reiterates current practices & notes that as at 31/1/2020, 42 applicants requested a review, of which 18 applications finalised. Average time is less than a week.	All processes should be carried out in timely fashion.	Because of the stress involved in challenged what is perceived to be a wrong or unfair decision, Care Leavers must be kept closely informed.
29. Oversight committee That the new Parliament	Agrees. Senate September 2019,	NA	The flaws in the Scheme are well

consider the establishment of a Joint committee, similar to this committee, to oversee the National Redress Scheme throughout the life of the Scheme.	following amendments by House of Reps.		known—both in its design & in its processes. Repairs should not be delayed by the legislated 2nd anniversary review of the Scheme.