

**Response by Survivors & Mates Support Network (SAMSN) to questions taken on notice at the hearing on 21 July 2023 of the Senate Finance and Public Administration Legislation Committee**

**1. Question raised by Senator Dean Smith**

**i. Have you had the opportunity to familiarise yourself with some of those submissions which are raising questions about issues of law?**

I have now had the opportunity to read through all the submissions lodged in relation to this inquiry. Several of the submissions raise significant issues of law for consideration by this Committee.

I am making this response in my capacity as the Policy, Advocacy and Stakeholder Relations Manager, advocating for male survivors of child sexual abuse and in this context of male survivors of institutional child sexual abuse.

**ii. Would you prefer to see an improved bill or would an imperfect bill meet your circumstances, given that an imperfect bill does put legislators like us in a very unenviable position – that is, passing bad or imperfect laws?**

Having participated in the panel discussion before the Committee last week and having read the submissions, I think it is possible for improvements to be made to the bill, improvements that may reduce the possibility of the bill being passed as either bad or imperfect law.

My first point is that the purpose of this bill needs to be seen as having general application to Governors- General and not as penalising one individual. This general applicability is needed because many institutions, government and non-government, failed children, failed to keep them safe, putting the preservation of the institution's reputation ahead of the safety of the children in their care. As a result, our clients, and indeed the community at large have a high level of distrust of institutions be they government or non- government. The findings of recent Royal Commissions reinforce this distrust, distrust based on a lack of accountability and transparency.

My second point is that several of the submissions made to this inquiry have adopted a legalistic approach to the proposed bill. These submissions have stated the adoption of correct legal principles requires that the law remain as is, arguing for the status quo. However, for our clients maintaining the status quo is to deny accountability, yet again. Legal correctness wins over the chance to achieve accountability; entitlements will continue to be received because it is the legally correct position to take. It is our view that to take this stance is to dismiss the concerns raised by survivors (as set out in several submissions) and will diminish public confidence in the institution of parliament and in the institution of the office of Governor-General. I particularly refer to the Submission of the Anglican Church

*“Good public policy will allow for the review of entitlements based upon the allowance holder’s probity and the general expectation that the dignity of high office should be maintained.”*

My third point is that it is possible to address some of the shortcomings of the bill as identified in several of the submissions. My suggestions for consideration to meet some of these shortcomings are:

- i. That the declaration proposed to be made by the Minister in Section 4AGB(1) or House of Parliament in Section 4AGC be for referral to the Remuneration Tribunal to determine whether or not the entitlements should cease. I understand the role of this Tribunal is (as taken from the website)

“to determine, report on or provide advice about remuneration, including allowances and entitlements that are within its jurisdiction for the following:

- Federal parliamentarians, including ministers and parliamentary office holders
- Judicial and non-judicial offices of federal courts and tribunals
- Secretaries of departments
- Full-time and part-time holders of various public offices
- Principal executive offices.”

By making this declaration and referral, an independent body would determine whether or not having regard to all the evidence, the receipt of entitlements should cease.

- ii. The bill refers to the cessation of entitlements occurring where there is a finding of *engagement in serious misconduct, including an act of omission*. The Explanatory Memorandum sets out what serious misconduct involves and what serious misconduct means. My suggestion would be that the reading of the section with the Explanatory Memorandum remain as the framework for the trigger. Whether or not the particular facts meet the trigger, would be for the Remuneration Tribunal to determine once it has heard from all parties.
- iii. This bill is designed to operate retrospectively. We accept that the withdrawal of benefits or entitlements retrospectively goes against legal principles. However, given that the bill, may if passed affect Dr Hollingworth, then advice should be sought as to whether retrospectivity should remain. There is evidence as referred to in the submissions that public confidence in the office of Governor-General and in that of Dr Hollingworth has already been eroded.

My fourth and final point is that passing a bad or imperfect law will only cause further argument and delays, impacting public confidence in parliament and yet again re-traumatising survivors of institutional child sexual abuse. My suggestion would be to adopt the suggestion made by Mr Gavin Griffith KC in his submission that the Committee refer the bill to the Solicitor-General and seek advice on issues including but not limited to

- Affording procedural fairness - would this be achieved by referral to the Remuneration Tribunal?

- Defining engaging in serious misconduct, including an act of omission – is a more detailed definition required?
- Operation of the bill retrospectively – should this be allowed?

**2. Question raised by Senator Colbeck**

- There was mention early in the statements around some state and territory provisions in this space. I'd be happy to receive the information on notice, but I'd like to get some advice on what those might have been in similar circumstances.**

In making my opening comments to the Committee on 21 July, I referred to the need to bring the Commonwealth legislation into line with state and territory legislation. In making this statement I relied on the statement in the Explanatory Memorandum

“There are already similar provisions for ceasing entitlements to former Governors in state and territory legislation.”

As the Explanatory Memorandum goes on to state, this legislation does exist in Queensland. Section 18 of the *Governors (Salary and Pensions) Act 2003 Qld*, details the circumstances when entitlements to a former Governor will cease. However, specifically in answer to the question asked by Senator Colbeck, I have not been able to locate similar legislative provisions in other states and territories.

**Prue Gregory OAM** | Policy, Advocacy and Stakeholder Relations Manager

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