



Australian Government

Getting the National Redress Scheme right: An overdue step towards justice

Australian Government response to the
Joint Select Committee on oversight of the implementation of
redress related recommendations of the Royal Commission into
Institutional Responses to Child Sexual Abuse report.

February 2020

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Acknowledgement

The Australian Government would like to thank all those who participated in this Inquiry – particularly the survivors who provided evidence to the Joint Select Committee, both in person and through written submissions. In addition, evidence from experts in the field and from survivors’ advocates has provided the Government with important insights into the delivery of the National Redress Scheme for people who have experienced institutional child sexual abuse (the Scheme), including areas for reform.

Commitment

The Australian Government welcomes the report, *Getting the National Redress Scheme right: An overdue step towards justice*, of the Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Committee).

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.

Noting that the evidence presented to the Committee was collected in the first six months of the operation of the Scheme, the Government has already undertaken a range of activities to fully implement the Scheme and address issues with service delivery to improve processing times and reduce the impact on people who are applying. These include:

- increasing the numbers of institutions participating in the Scheme
- streamlining the assessment process so that Independent Decision Makers are considering matters earlier
- increasing the number of Independent Decision Makers
- introducing a case manager approach whereby the same staff member handles the application from beginning to end.

The Scheme is the first of its type and scale established in Australia and a number of complexities were managed in its first 12 months of operation. As more applications are processed, the Scheme has had to reassess some of its initial assumptions. Application complexity, particularly around institutions, has been greater than originally envisaged. Remedying the disparities between the Scheme and the recommendations of the Royal Commission will require substantive legislative change or changes to key policy.

The Government will continue to engage institutions to join the Scheme and actively monitor performance. The Government is also committed to a review of the Scheme following the second anniversary of its commencement.

In recognition of its commitment to the transparency of the operation of the Scheme, the Government has also supported the establishment of the Joint Select Committee on Implementation of the National Redress Scheme, which was appointed by resolution of the House of Representatives on 10 September 2019 and resolution of the Senate on 11 September 2019.

The Government will work with states and territories and non-government institutions to address the issues identified by witnesses to the inquiry, and is committed to the effective operation of the Scheme in support of people who have experienced institutional child sexual abuse.

Introduction

On 20 June 2017 the House of Representatives agreed to a Senate resolution that a joint select committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse be established following the tabling of the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission).

The committee was tasked with inquiring into:

- a. the Australian Government policy, program and legal response to the redress related recommendations of the Royal Commission, including the establishment and operation of the Commonwealth Redress Scheme and ongoing support of survivors; and
- b. any matter in relation to the Royal Commission's redress related recommendations referred to the committee by a resolution of either House of the Parliament.

On 2 April 2019 the committee tabled its final report. The report made 29 recommendations covering the Scheme's policy and legislative design and the implementation of it. The recommendations reflect issues including difficulties engaging with the Scheme, lengthy processing times, the inadequacy of support arrangements under the Scheme and access to redress for survivors of now defunct institutions.

Recommendations made by the Committee

1. *The committee recommends 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.*

The Government **agrees** to this recommendation.

The Government is committed to improving survivors' experiences and the delivery of the Scheme in accordance with the general principles outlined at Section 10 of the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018* that guide actions of officers under the scheme, namely that:

- Redress under the scheme should be survivor-focused.
- Redress should be assessed, offered and provided with appropriate regard to:
 - o what is known about the nature and impact of child sexual abuse, and institutional child sexual abuse in particular; and
 - o the cultural needs of survivors; and
 - o the needs of particularly vulnerable survivors.

- Redress should be assessed, offered and provided so as to avoid, as far as possible, further harming or traumatising the survivor.
- Redress should be assessed, offered and provided in a way that protects the integrity of the scheme.

Work has already begun to increase resources and streamline survivors' applications to the Scheme, including recently moving the operational element of the Scheme (essentially application processing) from Services Australia into the Department of Social Services (the department).

The department will continue to engage regularly with survivors, advocacy groups, support services and jurisdictions to gain feedback about survivor experiences.

2. The committee recommends that Commonwealth, state, and territory governments place and maintain pressure on all relevant institutions to join the redress scheme as soon as practicable.

The Government **agrees** to this recommendation.

The department continues to expand its outreach work to identify and encourage non-government institutions (NGIs) with a history of working with children to join the Scheme as soon as possible, noting that the legislation does not allow the Government to mandate the participation of NGIs.

The Government will consult with jurisdictions as a priority on appropriate strategies to encourage NGI participation.

3. Noting that such a mechanism should only be applied in the context of the National Redress Scheme, the committee recommends that the government consider mechanisms and 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, and for the suspension of charitable status of, any institution that:

- *could reasonably be expected to participate in the scheme, including because the institution was named in the Royal Commission into Institutional Responses to Child Sexual Abuse, or an application for redress names the institution;*
- *has had reasonable opportunity to join the redress scheme; and*
- *has not been declared as a participating institution in the National Redress Scheme for Institutional Child Sexual Abuse Declaration 2018*

The Government **notes** this recommendation.

As outlined in response to recommendation 2, the Government will continue to identify and encourage NGIs to join the Scheme as soon as possible, especially in the lead up to 30 June 2020. The Government will consult with jurisdictions as a priority on appropriate strategies to encourage NGI participation.

4. *The committee recommends that Commonwealth, state and territory governments 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 a defunct institution; and*
 - *the defunct institution would not have fallen under the operations of an existing institution.*

The Government **notes** this recommendation.

The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. This recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

5. *The committee recommends that, in regards to the National Redress Scheme, that Commonwealth, state and territory governments revisit the practice of indexing prior payments.*

The Government **notes** this recommendation.

Adjusting relevant prior payments for inflation and deducting them from the redress payment was a recommendation of the Royal Commission. The Government will consult with jurisdictions.

6. *The committee recommends that the Parliament consider referring an inquiry to a parliamentary 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.*

The Government **notes** this recommendation.

This is a decision for the Parliament.

7. *The committee recommends that Commonwealth, state and territory governments give consideration to allowing all non-citizens and non-permanent residents access to redress provided that they meet all other eligibility criteria. Particular regard should be given to allowing the following groups to be eligible for redress:*
- *former child migrants who are non-citizens and non-permanent residents;*
 - *non-citizens and non-permanent residents currently living in Australia; and*
 - *former Australian citizens and permanent residents.*

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

8. The committee recommends that Commonwealth, state and territory governments agree to and implement amendments that would allow all survivors who are currently in gaol or who have been sentenced to imprisonment for five years or longer to apply for and receive redress, unless:

- ***the Operator decides in relation to a particular survivor that providing redress to the survivor would bring the National Redress Scheme into disrepute or adversely affect public confidence in the scheme; and***
- ***the decision of the Operator is based on publicly available guidelines that set a high threshold for bringing the scheme into disrepute or adversely affecting public confidence in the scheme.***

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

9. The committee recommends that Commonwealth, state and territory 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.

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. Consideration will also need to be given to the financial implications and any potential unintended impact on financial viability and the ability of NGOs to participate in the Scheme.

10. If a new Assessment Framework is implemented to replace the National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018, the committee makes the following recommendations

- ***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 offer.***

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. Consideration will also need to be given to the financial implications and any potential unintended impact on financial viability and the ability of NGOs to participate in the Scheme.

11. The committee recommends 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.

The Government **agrees to** this recommendation.

The department will review the information available, including on the Scheme website to ensure it sets out how applications for redress are considered and how determinations are made.

The current legislative provisions require that a person who receives an offer of redress be provided with the reasons for the Independent Decision Maker's determination on their application.

12. If the current National Redress Scheme for Institutional Child Sexual Abuse 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.

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*.

The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. Consideration will also need to be given to the financial implications and any potential unintended impact on financial viability and the ability of NGOs to participate in the Scheme.

13. If the current National Redress Scheme for Institutional Child Sexual Abuse Assessment Framework 2018 is maintained, then the committee recommends that the government publicly clarify key terms in the Assessment Framework.

The Government **supports in principle** this recommendation.

The Government will look at ways to provide clarifying information.

14. The committee recommends 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.

The Government **notes** this recommendation.

The maximum payment of \$150,000 was agreed upon to offer both maximum recognition to people who experienced institutional child sexual abuse and maximum opportunity for institutions to opt in to the Scheme. The average payment is currently higher than the amount estimated by the Royal Commission.

15. In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and territory governments agree to increase the maximum redress payment from \$150 000 to \$200 000.

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme. Consideration will also need to be given to the financial implications and any potential unintended impact on financial viability and the ability of NGOs to participate in the Scheme.

16. In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, the committee recommends that Commonwealth, state and 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.

The Government **notes** this recommendation.

Although every application is individually assessed, under the current framework the minimum payment an eligible application, with no relevant prior payments, may receive is likely to be \$10,000.

Implementing this recommendation to change the practice of taking relevant prior payments into account would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

17. In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, 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 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.

The Government **notes** this recommendation.

The legislation requires a minimum amount of counselling and psychological services, or payment, be made to applicants who receive redress and accept the offer of counselling. The responsibility of providing these services, in jurisdictions which have elected to provide counselling services directly, rests with the individual state and territory governments, and consequently arrangements above the minimum national standards differ between jurisdictions. Subject to agreement by jurisdictions consolidated information will be provided on the Scheme website about what counselling and psychological care services are provided by each state and territory to eligible survivors.

The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

18. The committee recommends 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.

The Government **agrees** this recommendation.

The Government will continue to consult with jurisdictions and support services. Subject to agreement by jurisdictions consolidated information will be provided on the Scheme website about what counselling and psychological care services are provided by each state and territory to eligible survivors.

19. In line with the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, 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.

The Government **supports in principle** this recommendation.

The legislation requires a minimum amount of counselling and psychological services, or payment, be made to applicants who receive redress and accept the offer of counselling. The responsibility of providing these services, in jurisdictions which have elected to provide counselling services directly, rests with the individual state and territory governments, and consequently arrangements above the minimum national standards differ between jurisdictions. Subject to agreement by jurisdictions consolidated information will be provided on the Scheme website about what counselling and psychological care services are provided by each state and territory to eligible survivors.

The Government will continue to consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

20. The committee recommends that Commonwealth, state and territory 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 made to the institution in relation to direct personal responses*
- *the nature of these complaints; and*
- *how these complaints were resolved.*

The Government **supports in principle** this recommendation.

The department supports participating institutions to understand their obligations under the legislation, and is proactive in assisting institutions to understand their responsibilities for delivering timely, safe and effective direct personal responses under the Scheme. This includes providing support and practical guidance to participating institutions concerning direct personal responses through the following means:

- The provision of written guidance on implementing trauma informed direct personal response;
- Advising institutions during the process of joining the Scheme about their obligations;
- Delivering training sessions to staff within institutions to provide information relevant for implementing a best practice approach to direct personal response;
- Developing a 'community of practice' for participating institutions to build knowledge in the delivery of best-practice direct personal response engagement; and
- The provision of ongoing advice and guidance, as required.

Under section 17 of the National Redress Scheme for Institutional Child Sexual Abuse Direct Personal Response Framework 2018, institutions are required to provide to the Scheme Operator, information on the number and 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.

The Government will work with states and territories, in consultation with participating institutions, to identify appropriate reporting measures relating to complaints.

21. The committee recommends 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.

The Government **agrees to** this recommendation.

The Government has committed \$52.1 million to 30 June 2021 to support survivors of institutional child sexual abuse engage with the Scheme through 40 professional, survivor focused and trauma informed redress support service providers. These providers provide a mix of emotional and practical support through service models either nationally via telephone and online services, or locally via face to face support, including some with extended outreach capability.

The Government continues to review and assess the adequacy and effectiveness of redress support services. On 22 October 2019, the Government announced additional funding of \$11.7 million. Of this, \$5.1 million will be used to increase the reach of services, fill gaps, and provide training to improve the quality of applications lodged.

22. Noting that the Intergovernmental Agreement on the National Redress Scheme for Institutional Child Sexual Abuse committed to providing survivors with access to financial support services, the committee recommends that Commonwealth, state and territory governments explore mechanisms to ensure that survivors have access to free and appropriate financial counselling services, when required.

The Government **agrees** this recommendation.

The Commonwealth, as well as State and Territory Governments, fund community organisations to provide free, independent financial counselling to help people in need or at risk of financial hardship.

23. The committee recommends 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.

The Government **agrees** to this recommendation.

The department will work to appropriately implement this recommendation.

24. The committee recommends that the government ensures that people are regularly informed of the progress of their application.

The Government **agrees** to this recommendation.

The department will work to implement this recommendation.

The department has implemented a case management approach for the Scheme. A key focus of the approach will be ensuring that applicants are kept informed of the status of their application, and that they have a single point of contact for any queries relating to their application.

25. The committee recommends 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. The average processing time should be from either:

- the date the application was lodged to the date an offer was made; or***
- the date all relevant information was received for an application to the date an offer was made***

The Government **agrees** to this recommendation.

The department will work to implement this recommendation.

26. The committee recommends that Commonwealth, state and territory 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.

The Government **notes** this recommendation.

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

27. The committee recommends that Commonwealth, state and territory 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.

The Government **notes** this recommendation

Implementing this recommendation would require unanimous agreement of the Ministers' Redress Scheme Governance Board and legislative changes to the *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*. The Government will consult with jurisdictions and will further consider this recommendation through the legislated second anniversary review of the Scheme.

28. The committee recommends that the government closely monitor the timeliness of internal review determinations.

The Government **agrees** to this recommendation.

If an applicant requests a review of their offer of redress, the application is provided to an Independent Decision Maker who did not make the original determination or who has any connection to the previous application. The Independent Decision Maker will review the information provided during the original application process.

As at 31 January 2020, 42 applicants have requested a review, of which 18 applications have been finalised. The average timeframe for an IDM to review a determination is less than one week.

29. The committee recommends that the new Parliament consider the establishment of a parliamentary committee, similar to this committee, to oversee the National Redress Scheme throughout the life of the scheme.

The Government **agrees to** this recommendation.

A motion to re-establish a committee was agreed by the Senate on 11 September 2019, following amendments by the House of Representatives.