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Senator Dean Smith
Chair
Joint Select Committee on Implementation of the National Redress Scheme
By email: redress@aph.gov.au

Dear Senator Smith,

Tuart Place welcomes this opportunity to contribute to the Joint Select Committee on implementation of the National Redress Scheme, and we thank the Committee for continuing its work throughout the COVID-19 health crisis. We also appreciate the timely publication of the Committee's April 2020 Interim Report, ahead of the Second Anniversary Review of the National Scheme.

The attached submission builds on the recommendations in Tuart Place's previous submissions to parliamentary inquiries into national redress,¹ and the evidence provided by Tuart Place to your Committee's public hearing on 15 April 2020.

The matters addressed in the attached submission are:

- 1) Changes to NRS service delivery related to the COVID-19 crisis**
- 2) Advance payments**
- 3) The State as responsible institution for sexual abuse of former State Wards**
- 4) Access to personal records provided to the National Scheme**
- 5) The initial 'identity check' phone call and ongoing communication with applicants**
- 6) Adequate state-level redress for care leavers excluded from the National Scheme**

We would be pleased to provide any further information if required. The contact person for this submission is Tuart Place Director Philippa White, via email: director@tuartplace.org

Yours faithfully,

Dr Philippa White
Director, Tuart Place

Ms Cevrina Reed
Chairperson, FACT Inc

¹ Tuart Place submission on Commonwealth Redress Bill (30-1-18) <https://www.aph.gov.au/DocumentStore.ashx?id=4fc1eae1-2301-4000-815d-52c872ce7e12&subId=563001> ;
Supplementary submission (25-2-18) <https://www.aph.gov.au/DocumentStore.ashx?id=0a863cb1-462e-42db-9d09-bcf92afa8ba2&subId=563001> Tuart Place submission on National Redress Bill (30-5-18) <https://www.aph.gov.au/DocumentStore.ashx?id=1de51e07-3aa4-4760-bdd7-4cdd682ca9e3&subId=566518> ;
Tuart Place submission on implementation of redress related recommendations by the Royal Commission (5-8-18) <https://www.aph.gov.au/DocumentStore.ashx?id=935868a5-54f3-4871-9d40-dbe40199b063&subId=658595>

Introduction

The majority of recommendations in this submission concern the specific experience of care leavers – the Forgotten Australians, members of the Stolen Generations, and former child migrants from the UK and Malta – because these are the people that Tuart Place serves.

The recommendations in this submission are in addition to a range of prior recommendations made in previous submissions. The great majority of these recommendations remain current. Some of the more important ones include: greater procedural transparency and speedier processing of applications; publication of the Assessment Framework Policy Guidelines; removal of the requirement for a statutory declaration; increased availability of financial counselling; publication of the names of institutions that have not joined the Scheme and reasons for their decision; expansion of funder of last resort provisions to the relevant state jurisdiction, regardless of whether the State participated in placement of the child; and removal of the capacity for a redress offer to be reduced on appeal.

The matter of indexation deserves special mention. Both Joint Select Committees received evidence from a wide variety of witnesses critical of the indexation of prior abuse payments, and both the 2019 and 2020 committees have recommended revisiting or removing the practice. In its response to this matter, the Government has noted that indexation was a recommendation of the Royal Commission.

Unfortunately, the Royal Commission was mistaken on this point. Indexation is widely viewed as a mean spirited and transparent attempt to cut costs for past provider institutions. The degree of ill will generated by the indexing of prior payments must surely outweigh the amount of money it saves.

The idea that it is 'fair' to apply indexation to abuse payments is seen as a particularly middle-class idea by survivors living in poverty. The redress money they received years ago is long gone – it has not been earning high-yield interest in offshore investment accounts.

Indexation is unfair because it is not balanced by any award of interest on the redress payment calculated from the date of the injury – the date this debt was incurred. Further, prior payments are not 'upscaled' when they are deducted from damages awarded in civil claims, which are usually significantly higher than payments made under the NRS.

Six recommendations are made in the following submission. Some of them concern day-to-day interactions and communication in the delivery of the National Redress Scheme (NRS). These 'micro-level' exchanges deserve as much attention as the 'bigger picture' items. Interpersonal and relational interactions between NRS staff and survivors can assist the process to be therapeutic for the survivor.

The small changes we suggest to improve the NRS experience for applicants should incur little or no additional cost, and would not require legislative amendment. It is important that a direct phone line to the NRS is reinstated at the very earliest opportunity. It is hoped that the larger structural alterations required to improve the Scheme will be prioritised in the forthcoming Second Anniversary Review of the Scheme.

1) Changes to NRS service delivery related to the COVID-19 crisis

The most noticeable change to NRS service delivery during the COVID-19 crisis has been temporary suspension of the 'helpline' service, which previously provided a direct line of contact with representatives of the Scheme. At the time of writing (20 May 2020), people seeking to contact the NRS must still leave a voicemail message on the 1800 number requesting a return phone call. While we acknowledge the logistical challenges in continuing a 'live' phone line into the Scheme, other changes to the social environment have made this particular service more important than ever. At a time of heightened social anxiety and uncertainty, applicants need greater access to reassurance and connection with the NRS, not less.

Further, a 'return call only' service means that survivors do not know when they will be speaking with a representative of the Scheme. This may seem like a 'small thing', but it is important because some abuse survivors feel they need to have another person present during any interaction with the NRS, while others want to maintain strict personal privacy. Having to wait for a return call means that neither scenario can be guaranteed. This is not trauma sensitive practice.

If a return call arrives at an inopportune time, the survivor could, in theory, ask for it to be rescheduled. However, in practice we know that very few applicants are likely to have the confidence to do so. As Levenson observes: "[a]buse survivors are particularly vulnerable to instinctive compliance".²

Recommendation 1: Tuart Place recommends that if the facility for direct telephone contact with a 'live' NRS representative has not already been reinstated, this should occur at the earliest possible opportunity.

2) Advance payments

Advance (or interim) payment is a mechanism used by redress schemes to assist elderly or ill applicants at risk of dying before their claim can be fully assessed. Interim payments were used by the Redress WA scheme (2008-11), during which a total of 167 applicants died. Interim payments are discussed in the *Redress WA Final Report*:

"Prior to Redress WA commencing to send out final payment offers in February 2010, interim payments of up to \$10,000 were made to applicants with terminal or serious life threatening illnesses, Aboriginal applicants 63 years and over and non-Aboriginal applicants 80 years and over. These claimants were then the first to receive the balance of their assessment offers. A total of \$1,797,500 was paid as interim payments to 220 applicants".³

Many of our Redress WA clients received interim payments from this scheme. The application process was straightforward and required a single-sheet application form; certified identification; and in the case of medical claims, a one-page 'Doctor's Report'. In September 2009, following the death of 29 applicants, the scheme's operator announced a further 'eligibility payment' of \$5,000,⁴ which was made available to family members of deceased applicants, and became known informally as the 'funeral payment'.

The Scottish Government has also introduced an Advance Payment Scheme (APS), which commenced on 25 April 2019. The APS has been established ahead of Scotland's statutory redress scheme, due to start in about March 2021.

APS is available to survivors who suffered institutional child abuse in Scotland before December 2004 and either have a terminal illness or are aged 68 or over.⁵ Eligible applicants can receive a payment of GBP10,000. As of 20 May 2020, Tuart Place has assisted 24 Scottish former child migrants to secure an APS payment, with two applications pending. The process is relatively straightforward – the applicant or support person completes a two-page application form; provides photo identification and proof of residency in a Scottish institution; and – in cases of terminal illness – a medical form.

An advance payment system could be adopted by Australia's NRS to address the need for 'priority applicants' to receive priority treatment. Currently, applications in the 'priority' category do not appear to be processed any more quickly than non-priority cases, seemingly because the assessment process is no different, and still often involves waiting for responses from multiple past provider institutions.

² Levenson, J. (2017). *Trauma-Informed Social Work Practice*, Social Work, Volume 62, Issue 2, April 2017, (pp. 105–113), <https://doi.org/10.1093/sw/swx001>

³ WA Department for Communities (2012). *Redress WA Final Report*, NL12. (p.6)

⁴ *Ibid.* (p.8)

⁵ <https://www.gov.scot/publications/financial-redress-survivors-historical-child-abuse-care-review-advance-payment-scheme/pages/2/>

A timely system of advance payment to Australian survivors may necessitate Government meeting the initial cost of these payments, to be recouped from responsible institutions following full assessment of applications. Such a measure may not require legislative amendment or even the agreement of the Ministers' Board because, in effect, nothing would change for any of the stakeholders – except for the Commonwealth Government, and elderly and terminally ill survivors.

Recommendation 2: Tuart Place recommends that a system of advance payment is implemented by the NRS for applicants in the 'priority' category due to advanced age or life-threatening health concerns.

3) The State as responsible institution for sexual abuse of former State Wards

Some National Redress applicants are former State Wards whose sexual abuse occurred outside of the residential setting(s) in which they were formally placed, or occurred after they were discharged from an institution, but were still under 18. In each case of which we are aware, the child appears to have been inadequately supervised and/or accommodated during this period of their state wardship.

Historically, it was common practice for children to be given no preparation for leaving institutional care, and to be abruptly discharged, without warning, into a 'working placement' at the age of 15 or 16. These children were extremely vulnerable to exploitation and abuse, and many post institutional placements – organised or sanctioned by the State – were highly unsatisfactory.

We understand that NRS applications have been rejected on the basis that abuse occurred under the abovementioned circumstances, and in cases where an institution did not actively 'introduce' the child to the abuser – even though the child was a Ward of the State. Tuart Place believes it is unreasonable and unfair to reject applications on this basis. The State was, literally, 'responsible' for these children and it had a duty of care to monitor and maintain the safety of those for whom it was Guardian. The responsibility of state governments to their former Wards has not been erased by the passage of time, and each of the states is now the 'responsible institution' for providing redress to these survivors.

Recommendation 3: Tuart Place recommends that survivors of child sexual abuse should be eligible for National Redress if the abuse occurred while they were Wards of the State, regardless of where the abuse occurred.

4) Access to personal records provided to the Scheme

Under current protocols, information released to the NRS by a participating institution for the purpose of a redress claim is deemed a protected disclosure, and cannot be released to the applicant. Two issues arise here. Firstly, it is fundamentally unfair that applicants do not have access to the information used to assess their claims of abuse; and, secondly, applicants are denied access to potentially significant personal records of childhood and early family history.

With regard to the second issue, in our experience even the smallest piece of personal information can provide an important piece of the 'puzzle' for people seeking to make sense of a childhood spent in institutional care. Many survivors are still unable to access personal records and the waiting time for FOI applications is (at least in WA) currently about one year.

The National Scheme is missing an important opportunity to provide a potentially valuable service to survivors by failing to encourage institutions to release this information to survivors.

The importance of personal records was recognised by the operator of Redress WA, although at the outset of the scheme in 2008, applicants were refused access to institutional information. As the scheme progressed, the operator realised the central importance of personal records to survivors, and

by mid-2010 Redress WA was at least advising applicants when the State held records in their name, and in some cases facilitating the release of information. As noted in the *Redress WA Final Report*:

"To further assist applicants with often unanswered questions about their personal histories and/or identities, they were informed of how to lodge a Freedom of Information request to obtain their departmental files. They were also able to request their assessment documents from Redress WA, some of which incorporated useful information pertaining to their time in State care... Approximately 1,300 applicants took up the opportunity to request their assessment documentation".⁶

While procedural fairness demands that survivors should have access to *all* the information used to assess their claims, the Scheme could, as a starting point (and without requiring legislative change), encourage institutions to make available to applicants records of residency, state wardship, birth and baptismal records, and other child welfare information. It would seem relatively easy for an institution to provide this information to an applicant who requests it, given that it has recently retrieved, collated, and provided this same information to the Scheme.

In addition to assisting survivors, such a gesture would provide institutions with an opportunity to demonstrate good will, transparency, and a genuine willingness to meet a widely-recognised need among survivors.

Recommendation 4: Tuart Place recommends that the NRS issues both public and private invitations to past provider institutions to voluntarily waive the provision for 'protected disclosure' of historical records provided to the Scheme, and to provide this information to those applicants who request it.

5) The initial 'ID check' phone call and ongoing communication with applicants

At present, when an application is received by the NRS, the survivor receives an unscheduled phone call from a representative of the Scheme, usually within 3-6 weeks. The purpose of this initial phone call is to verify the applicant's identity. People prove their identity by citing information such as a personal Centrelink Customer Reference Number. This phone call is made directly to the applicant regardless of whether a nominee has been specified.

As mentioned earlier, it is particularly important for some abuse survivors to have advance notice of an incoming phone call from the Scheme, and a number of NRS applicants have already reported adverse reactions to the initial 'ID check' phone call.

Such adverse reactions are trauma-related and are consistent with our experience of supporting more than 800 survivors throughout the Redress WA scheme (2008-11). Applicants had no warning of the initial call from Redress WA, and many reported being distressed by it. People described feeling embarrassed or compromised at a family gathering, or being caught off guard in a public place, and not feeling that it was safe to ask for the call to be rescheduled. A commonly expressed fear was that they might be penalised or 'miss out' if they did not immediately comply. One of the most frequent complaints about Redress WA was that applicants had felt unnerved by a redress worker calling them unexpectedly seeking personal information. Survivors were still raising this as an issue many years after the scheme closed.

While some National Redress applicants may be happy to receive an unscheduled phone call, experience tells us that a significant proportion will find it distressing. As stated in the research literature, trauma-informed practice with abuse survivors incorporates the "core principles of safety,

⁶ WA Department for Communities (2012). *Redress WA Final Report*, NL12. (p.5)

trust, collaboration, choice, and empowerment and delivers services in a manner that avoids inadvertently repeating dynamics of abusive interactions in the helping relationship".⁷

In order to be trauma-sensitive, the Scheme's interactions should – wherever possible – address the inherent power imbalance between the survivor and the NRS, by facilitating the maximum amount of agency and control for applicants. We propose that sending an initial letter to the applicant or their nominee proposing a date and time for the initial ID check phone call would assist in achieving this aim. It would allow applicants to prepare mentally for receiving the initial phone call, and enable them to either receive it in privacy, or arrange for a support person to be alongside them at the time of the call. Such a letter would also serve to provide official reassurance that the application has arrived safely.

Recommendation 5: Tuart Place recommends that within 2-4 weeks of receiving an application, the NRS should contact the applicant or nominee by postal mail, acknowledging receipt of the application and proposing a date and time for the initial 'identity check' phone call. All ongoing contact should adhere to the preferences indicated by survivors in their applications.

6) Adequate state-level redress for care leavers who are excluded from the NRS

Tuart Place's final recommendation concerns the pressing need for state governments to provide adequate redress to survivors of non-sexual abuse whose abuse occurred in closed residential institutions governed by the state (ie. care leavers whose childhood institutional abuse and neglect did not include sexual molestation).

In its April 2019 report, the former Joint Select Committee recommended 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".⁸ The Government's response to this recommendation in February 2020 was that "This is a matter for the Parliament".⁹

The need to address this 'unfinished business' is now more urgent than ever, and the justifiable sense of grievance and inequity experienced by this cohort of survivors continues to be reignited by the ongoing public attention focussed on redress and compensation only for survivors of sexual abuse.

Care leavers – regardless of whether or not they were sexually abused – are widely recognised as a disadvantaged population group, with significantly poorer socio-economic and health outcomes identified in a large body of research literature,¹⁰ and in a series of parliamentary inquiries and investigations over the last two decades.¹¹

Unfortunately, work towards implementing appropriate state-level redress for care leavers was abandoned in 2016, in favour of a National Redress model, despite the fact that only about half of Australia's care leavers would be eligible for this scheme – those who had been sexually abused.

⁷ Levenson, J. (2017). *Trauma-Informed Social Work Practice*, Social Work, Volume 62, Issue 2, April 2017, (pp. 105–113), <https://doi.org/10.1093/sw/swx001>

⁸ Joint Select Committee on oversight of the implementation of redress related recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse. (2019). Recommendation 6. (p.x)

⁹ Australian Government Response (2020). *Getting the National Redress Scheme right: An overdue step towards justice* (p.6)

¹⁰ For example, Fernandez et al. (2016). *No Child Should Grow Up Like This: Identifying Long Term Outcomes of Forgotten Australians, Child Migrants and the Stolen Generations*, Kensington: University of NSW (p.191)

¹¹ *Forgotten Australians – Inquiries and Reports* (2013).

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiKppm_jMnpAhWb6nMBHe1HAp4QFjADegQIARAB&url=https%3A%2F%2Fforgottenaustralians.org.au%2Fassets%2Fdocs%2FResearch%2FForgottenAustralianinquiries-reports_with-links-to-reports.pdf&usg=AOvVaw3scz5PIQjcXRdYIQDyJ2LT

We ask the Committee to urge the Parliament to act swiftly in encouraging the states to implement state-level redress for survivors of institutional abuse and neglect who are excluded from the NRS.

While we support the former Committee's recommendation that a parliamentary committee be established to inquire into the adequacy of state-level redress, time is running out for these survivors. As mentioned above, ample evidence has been published over the last 20 years to justify and inform the commencement of state-level initiatives.

It is hoped that the parliamentary inquiry proposed by the former Committee could, once established, serve to review and comment on state-level redress interventions already underway, and perhaps identify any state that had so far neglected to take action.

Recommendation 6: Tuart Place recommends that the Joint Select Committee urges the Australian Parliament to encourage state governments to implement, as a matter of priority, adequate redress for survivors of non-sexual abuse whose abuse occurred in closed residential institutions governed by the state; and that a parliamentary committee is established to examine progress with the implementation of state-level redress initiatives.

Conclusion

The six recommendations in this submission address a range of matters affecting the experience of survivors of institutional child sexual abuse engaging with the National Redress Scheme.

The limitations of the NRS – which arose from a set of circumstances over which no one entity had control – have rightly received significant attention and criticism. There is much that needs fixing and there are major barriers to effecting structural change. However, there are ways to improve the scheme for survivors immediately, which do not require amendments to the legislation or even the Rules. Some of these potential improvements are identified in our current and previous submissions.

It is clear from feedback received from NRS applicants that positive interpersonal exchanges with representatives of the Scheme can go a long way towards ameliorating some of its shortcomings. Case coordinators and other NRS staff who demonstrate reliability and dependability and convey warmth and respect for the applicant can transform the experience for survivors interacting with the Scheme. The terms 'survivor focussed service delivery' and 'trauma informed support' are grossly overused, but *genuine* adherence to these principles provides the fundamental platform for reformation of the Scheme.

To conclude this submission, we would like to point out that some NRS applicants *are* experiencing positive outcomes. Two survivors engaged with Tuart Place received outcome letters in the past week, and for both it was an affirming experience.

Bettina said she felt 'believed' – for the first time. She felt validated by the NRS representative telling her that her experience would help keep children safer in the future. *Bettina* said she has learnt a lot about trauma during the process and is hopeful she can break the cycle with her own children.

Rochelle will receive the payment awarded to her mother, who tragically died while her application was being processed. Although her mother had not left a will, NRS staff completed the administrative tasks generally faced by families in this position, thereby sparing *Rochelle* a significant burden. *Rochelle* – a second generation care leaver – said the process and outcome had given her a new perspective on the intergenerational trauma in her family. The fact that her late mother was awarded the maximum level of payment was perceived by *Rochelle* as acknowledgement that her mother's very sad circumstances were 'not her fault' – something *Rochelle* had not previously realised.