



CARE LEAVERS AUSTRALASIA NETWORK

CLAN is a National, Independent, Peak Membership Body which supports, represents and advocates for people who were raised in Australian Orphanages, Children's Homes, Foster Care & Other Institutions.

January 2018

Submission to the Australian Government in response to the proposed Commonwealth Redress Scheme for Child Sexual Abuse.

“The Royal Commission called for ALL victims of sexual abuse to come forward. It didn't not exclude those Care Leavers who have a criminal history for speaking about the crimes committed against them. ALL Care Leavers have suffered abuse and must be entitled to:

- Redress*
- Direct Personal Response*
- Counselling”*

CLAN - Care Leavers Australasia Network is the national, independent, peak membership body which represents and advocates for Care Leavers who were raised in Australia's and New Zealand's Orphanages, Children's Homes, other Institutions and Foster Care. The Senate Inquiry estimates there were more than 500 000 children in Australia who grew up in 900 plus orphanages, children's homes, training schools, institutions and foster care. CLAN's main objective is to assist and support Care Leavers and their families through the wide variety of work we do including, but not limited to, advocacy for a National Redress Scheme, support at the Royal Commission, the Senate Inquiry, searching for family, counselling, casework, records, and publishing Care Leaver's stories in the national newsletter.

CLAN would like to thank the Senate Inquiry for giving us the opportunity to provide our input and suggested provisions on the 'Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and Consequential Amendments.'

After 18 years of CLAN advocating, lobbying and supporting Care Leavers, we thank the Australian Government for the implementation of this scheme. CLAN is pleased to see that Australian Government listened to CLAN and the history of Care Leavers to produce this National Scheme. Care Leavers and their horrific abuse histories are finally being recognised and the Churches, Charities and State Governments who ran these Orphanages and Children's Homes, will hopefully be held accountable.

CLAN feels however, whilst this Redress scheme is a major advancement for Care Leavers and their experiences, there should be some further changes and adjustments in the application of this scheme before being finalised.

Scheme for Institutional Child Sexual Abuse Bill

Inclusion of all forms of abuse

Care Leavers Australasia Network is pleased to see the Commonwealth has envisaged a plan to provide justice for Care Leavers who suffered abuse in the Care system. Following the Royal Commission into Institutional Responses to Child Sexual Abuse, findings have disclosed the extent to which children suffered extreme abuse and neglect. Finally, Care Leavers histories will be hopefully be recognised with the objective of alleviating the impact of past institutional abuse in the form of a Redress Scheme.

Whilst CLAN is extremely supportive of a Commonwealth Redress Scheme, there are many changes we would like to see before the Bill is passed.

Our critical concern is the lack of recognition for other forms of abuse, including physical and emotional abuse and importantly, neglect.

There is more than just one way to harm a child.

For any Redress Scheme to truly serve the purpose of recognition and justice for those abused in the Care system, it **MUST** include **ALL** forms of abuse.

It is important to note that all forms of abuse are intertwined. The proposal of this scheme outlines that for an individual to be eligible, they must have been sexually abused. However, it also states that related non-sexual abuse is inclusive as long as that person had too been sexually abused. CLAN questions the purpose of including other forms of abuse, only in the presence of sexual abuse. This clearly outlines that abuse is intertwined, and it is unreasonable to only assume sexual abuse was the most damaging. Care Leavers have often expressed how the psychological, physical abuse and neglect, outweighed or was equivalent to sexual abuse.

“Overall my experiences in Care have affected my life greatly, all types of abuse must be considered, they are just as important as sexual abuse.”

“I never fronted the Royal Commission on my sexual abuse, purely because they didn’t care about other forms of abuse!”

“If the Australian Government is willing to pay refugees on Manus Island for physical abuse, then there should be no reason whatsoever not to compensate AUSTRALIAN survivors of physical, emotional abuse and neglect.”

“The sexual abuse I suffered was horrific, but nothing compared to the psychological abuse. I still carry the scars, though they may not be visible.”

Quotes taken from CLAN’s Surveys and CLAN members messages to the Nations Leaders.

As stated by a Care Leaver, the Manus Island Refugees have been recognised and compensated for the physical and psychological abuse they suffered. Care Leavers were victimised as just children, and still many years on are not being recognised for the severe physical, emotional, psychological abuse and neglect.

Asylum seekers alleged the Commonwealth breached its duty of care by falsely imprisoning them in sub-standard conditions without adequate food, medical treatment, personal hygiene and security.

This was the same experience of half a million Care Leavers who were under the legal guardianship of the Commonwealth (it paid child endowment to their Orphanages, Children’s Homes and foster parents). These children were kept against their will – many for their entire childhoods, and starved, beaten, locked up, and stripped of their rights, their dignity and their identity. Not all children abused in institutions were sexually abused but all of them were harmed and have lived their lives as damaged adults.

It is unjust to assume other forms of abuse are subordinate or insignificant. Care Leavers have fought for many years to have their voices heard regarding their experiences; they are now feeling as if another lid is being put upon their horrific childhoods. This scheme is the last chance for the Commonwealth to recognise all forms of abuse, before it’s too late.

Eligibility for Redress

Secondly, before addressing the Bills, CLAN would like to express our extreme disappointment in the Federal Government for proposing to exclude those who have served jail time, from entitlement to the Redress Scheme. As clarified in the Bills and the Explanatory Memorandum, the purpose of this scheme is to recognise the

wrong, and alleviate the impact of past institutional child abuse. CLAN questions the truthfulness and direction of this statement, if the scheme chooses to neglect those who have been incarcerated.

Why is this Redress scheme separating those who have been incarcerated?

Care Leavers with a criminal record are going to feel excluded and discriminated against if they are deserted from the scheme due to a history of crime.

The Royal Commission called for **ALL** Care Leavers who was abused in the Child Welfare System, and it did not discriminate based on their lives after Care.

The Royal commission heard 700 victims' stories who are were incarcerated during the duration of the private hearings.

CLAN feels that by not providing Redress to all Care Leavers who have been in prison, is just as incriminating as the abuse they suffered at the hands of the system.

If they were held responsible for their crimes, why should the Child Welfare System get away with it?

Many Care Leavers were kicked to the street once released from 'Care' with nothing but the clothes on their backs. The Care system did not set these children up with futures, and in survival mode many turned to small crimes to feed and dress themselves while they lived on the streets. Following this, several engaged in crimes out of an overwhelming need to displace their anger from the abuse and neglect they suffered in 'Care'.

CLAN believes that some of the responsibility of why Care Leavers ended up in prison could be alluded as outcomes of Care experiences. CLAN is not suggesting that these crimes are justifiable, merely just stating that these criminal behaviours may or may not have occurred if they weren't abused and mistreated in the Care system. It is unreasonable to disregard a Care Leavers abuse and sexual abuse histories if they have been incarcerated.

In 2011 CLAN conducted a survey of its members "Struggling to keep it together", to understand the impacts and outcomes for Care Leavers abuse histories. We received 577 responses which provided us with valuable insight, as almost 80 respondents claimed to have spent some time in prison after leaving 'Care'.



CARE LEAVERS AUSTRALASIA NETWORK



“My family only knows what I want them to know”

A National Survey about CLAN's member's Childhood Experiences and the Royal Commission Into Institutional Responses to Child Sexual Abuse

(Final Report, March 2016)



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Following a second survey CLAN completed in 2016 “My family only knows what I want them to know”, we received an overwhelming number of respondents who gave their personal perspectives of their struggles with criminal behaviour. The below responses are anonymous.

“I’m in prison, and there are many of us victims of abuse by the system, yet I feel that we are out of sight, out of mind, and forgotten. There truly is *NO* support for us in here.”

“I started to live on the streets, and couldn’t trust anyone at all. To survive I would rob and cheat people to make money. I started going to juvenile prisons, and then goal itself, and now I am in for murdering a paedophile. I realise I did the wrong thing, life didn’t go the way I wanted it to.”

“I’m a product of the prison system now, my abuse started when I was very young, and I became a troubled teen.”

Those who have been incarcerated deserve Redress, just like any other Care Leaver who was sexually abused in an Orphanage, Children’s Home or Foster Care. It is important to again state that if the Churches, Charities and State Governments had cared properly for these children, many may not have committed crimes against society. Those who neglected and failed to Care for children appropriately, should still be considered responsible, even if it results to a reduced monetary payment for

Care Leavers who fall in this category. Care Leavers were once a victim, then later a perpetrator, we must respect that they too were young once, and abused.

At a minimum CLAN believes Care Leavers who have been incarcerated should be entitled to a reduced monetary payment, a direct personal response and counselling. To exclude them from all 3 aspects of the scheme is completely unreasonable. Perhaps if they had been given the adequate recognition and counselling years ago they may not have ended up in the prison system.

How will the Federal Government with the backlash of angry and distressed Care Leavers?

Why should the Federal Government get away with these crimes against children, when Care Leavers had to pay for theirs in prison?

Where is the duty of Care?

As stated in the explanatory memorandum, the purpose of this scheme is to be supportive, survivor-focused and avoid re-traumatisation. If those who have been in prison are excluded, the scheme will fail to meet these expectations. Following the proposition of a Redress Scheme for all Care Leavers, CLAN felt that the nation was finally coming to understand the intense impact of past institutional abuse on Care Leavers lives. However, to incorporate this limitation in the scheme, proves that perhaps the nation has not fully understood the suffering Care Leavers have been subjected to.

Financial Counselling

As a part of the payment, CLAN feels it is vital for Care Leavers and survivors of abuse that are receiving Redress, to have access to financial counselling if they wish. A large number of Care Leavers are receiving Centrelink Support Payments as a means of survival, and for many, large sums of money will be a foreign feeling. To ensure that Care Leavers are not left feeling further guilt and shame, it is very important they are

educated on the best ways to spend their money and receive assistance to make those decisions if they would like the assistance. As a result of poor treatment and neglect in 'Care', a large number of Care Leavers did not receive adequate schooling, if any. Care Leavers may spend their payments in impulse decisions, thus leaving them distressed as they were never taught to save, nor the principals of budgeting. We understand many may wish to go without, however CLAN see it important that the option is available if they request one session. This scheme aims to avoid re-traumatisation, therefore it is vital Care Leavers are provided with the necessary supports to make major decisions following their payments if they desire.

3 Elements of the Scheme

CLAN is pleased to see the intention of this scheme is survivor focussed, with 3 main elements creating the framework of Redress. The scheme is detailed in its direction, however we note gaps that may jeopardise the efficacy of the scheme, and cause further suffering for Care Leavers.

First and foremost, we look at the monetary payment. The assessment matrix is designed to calculate the amount a person can receive based on their experiences. Whilst it is capped at \$150,000, we question how this can be fairly assessed for each individual. As stated in the Bill, this scheme is designed to avoid further trauma for the survivors. However, if one is offered an amount seen as unworthy for the abuse they suffered, this will surely cause more suffering. CLAN is concerned how this decision will be conducted, to avoid further distress to the applicant.

In the instance that an applicant declines the offer due to it being too minimal, they are left with limited options. If they see the payment to be pitiful, they have only the option of an internal review. Based on CLAN's experiences with internal reviews in different aspects of our work, we often find internal reviews ineffective and sometimes biased. We notice that this Bill offers the option of an internal review if an applicant is dissatisfied with the decision. CLAN would like to see the alternative of an external review.

Considering this scheme has been created as trauma-informed, we must understand that this may be a Care Leaver's last chance at receiving a monetary recognition payment. It is imperative that an accurate decision is been made to ensure the Care Leaver feels acknowledged with a satisfactory sum.

As a result this also brings us to the issue of how the maximum of \$150,000 was decided upon as a recognition payment. The intention of this scheme is to create an alternate method, far less intrusive than a civil claim. We question however, the aim of avoiding further risk or harm to Care Leavers.

The Royal Commission provided the suggestion of payments up to \$200,000 to recognise the sexual abuse suffered. However CLAN does not feel that this amount will suffice, as many Care Leavers were subjected to up to 18 years of abuse and misery. Consequently, even if a Care Leaver received the maximum amount of \$150,000, it would not be justifiable for what they suffered.

CLAN seeks clarification as to why the Government has reduced the maximum from \$200,000 as suggested by the Royal Commission down to \$150,000. CLAN is adamant that \$150,000 is insulting to Care Leavers, and does not reflect the long term legacy of abuse that Care Leavers carry. We do not believe this scheme should be a 'cherry pick' of the recommendations put forward by the Royal Commission.

CLAN has supported many Care Leavers through the civil claims process. For some, they received monetary payments of over \$200,000 for what they endured as children. If we aim to make this Redress Scheme a more viable and less traumatising process, we must consider what amount is truly going to recognise and potentially alleviate their pain. Thus, many Care Leavers may choose to take the civil path considering the amount is capped to \$150,000. This Redress scheme must provide adequate justice for Care Leavers, and a maximum amount of \$150,000, is just not enough.

Secondly, the scheme outlines the inclusion of counselling and psychological services to Care Leavers. CLAN wishes to ensure that the cost of counselling, is considered an 'add on' to their monetary payment. Many Care Leavers need access to counselling and psychological services. We are concerned that the cost of using these services will be taken from their monetary payment. A large number Care Leavers have never had the financial means to access these psychological services, and have therefore neglected the use of them. If it were that the institutions responsible pay only the monetary payment, many Care Leavers will not use their recognition payments for counselling, and will most likely avoid receiving psychological support.

It is imperative that this scheme provides a monetary payment, as well as funding for counselling and psychological support; and it is not expected that the Care Leavers must dip in to their monetary payment to cover these services. CLAN seeks clarification on this matter, to ensure counselling is separate.

The Royal Commission's Final Report suggests within recommendation 9.1 that the Australian Government and State and Territory Government should fund community support services for victims and survivors in each jurisdiction. As a part of this, it suggests an integrated model where advocacy, support and counselling for survivors of childhood sexual abuse be funded, to enable these services to be provided. CLAN wishes to see the Governments follow this recommendation.

Furthermore, the scheme outlines that counselling will be available throughout the duration of the scheme only. CLAN is concerned with the efficacy of this idea. If a Care Leaver were to access Redress in the last year of the scheme of 2028, this will limit their access to adequate counselling as it would cease once the Scheme is complete. For many Care Leavers, building rapport with a counsellor can be a timely process due to the many internal trust issues they have formed over the years of being subjected to abuse. The need for ongoing counselling is vital for Care Leavers and should be funded by government-funded agencies. Fundamentally, CLAN would like to see that the counselling can continue for the Care Leavers even after the scheme has finished, to ensure Care Leavers receive the best possible support.

Principles of the Scheme

The prospect of this scheme being based upon assessment, will result in a few inconsistencies. CLAN questions the efficacy of assessing each individual case, and what provisions are in place to come to a final decision. We note the maximum amount for a survivor to access is \$150,000, but question what circumstances a Care Leaver would have been subjected to in order to access the full amount. In the Bill, it states the assessment will be based on the nature and impact of the abuse as well as the cultural impacts and vulnerable needs of Care Leavers.

Considering CLAN has been working with Care Leavers for over 18 years, we are very aware of the differing coping mechanisms as well as visible and invisible impacts that abuse has had on Care Leavers. Some Care Leavers do not express their pain and suffering like others, and some are introverted with their experiences. We are apprehensive about determining the 'impact' via assessment that abuse has had on an individual life, as they may downplay the effects, or are merely unaware of them. Furthermore CLAN is concerned that there will be certain categories based on what the individual experienced, which will require the Care Leaver to again disclose the horrific and traumatising pasts they have.

We feel that any survivor of sexual abuse should be entitled to a substantial payment, as determining the impact may prove inconsistent across cases. We also wish to know the detail about assessing the 'cultural needs' of survivors, what this entails and how it affects applicants.

ALL Care leavers who are survivors of abuse have been traumatised, ALL Care Leavers have been or are vulnerable and ALL Care Leavers should be entitled to a substantial payment.

Support and Applications

CLAN is adamant that adequate assistance and support services be provided to Care Leavers in applying for Redress. Many Care Leavers were deprived of their basic human rights, such as satisfactory access to education as children. This means that there are large numbers of Care Leavers which are consequently illiterate. Many CLAN members have been supported through our organisation over the years to complete paperwork, and wish to do the same with the proposed Redress Scheme. We hope this will be easily facilitated with the components of the scheme, to ensure Care Leavers fully understand the circumstances in which they are applying.

A further concern is the proposed idea within the Bill that only one application can be made per person. We note that the Scheme suggests in the instance where someone was abused in 2 different institutions, and only one has opted in to the scheme, that they could wait to re-submit once the second opts in. CLAN is strongly against the notion of one application per person as it make the scheme highly ineffective.

Due to the lengthy wait for many to receive justice, the implementation of this scheme is best if it recognises the importance of time. We cannot expect Care Leavers to sit back and wait at the possibility that the other institution will opt in. CLAN is adamant that the Bill should allow one application per institution, NOT per person. Many Care Leavers are elderly, and need the monetary support NOW.

If they wait, they may die, and never receive financial recognition or justice. We have already lost too many Care Leavers, who never had this opportunity.

The Royal Commission reported their concerns to the Government in 2015 regarding a scheme to provide justice to survivors of abuse, before time runs out. They were very aware of the delays of producing a scheme, and the Government is already well behind the Royal Commission's Timeline. To CLANS knowledge, we have already lost 34 Care Leavers since the establishment of the Royal Commission in 2014. This is only a number produced by people who contact and are a part of CLAN. Nationally, so many lives have already been lost prior to them accessing Redress, and justice.

If the Scheme is conducted in such a way many will miss out, as they will want to apply as soon as possible. The responsible institutions wouldn't be capable of being held accountable if they choose to opt in a few years down the track; and the Care Leaver has already put in an application for a different institution. Again, we remind that the purpose of this scheme is to provide justice and recognition, without re-traumatising Care Leavers. CLAN see it necessary that an applicant can put in one application per institution, to avoid missing out. Many Care Leavers are already apprehensive of the nation's lack of interest in helping them get justice before they die, we want to ensure they no longer feel this way. Care Leavers previously have had their reservations regarding an effective redress scheme.

“The longer it takes means the more of those eligible will die before any action is taken.”

“My situation is such that I cannot wait any longer, I will be dead soon.”

CLAN is also concerned about the responsibility that participating institutions will have. Once an institution has committed to the scheme, we question if they can retract their involvement at any point during the scheme. Again, Care Leavers may be feeling re-traumatised, as they may be waiting for one institution to opt in before applying, and consequently miss out on both.

Miscellaneous

CLAN would like to raise the issue of creating an 'opt in' only based scheme. The policy presents as weak in this manner, as the decision becomes based entirely on the Church, Charity or State as to whether they wish to recognise the suffering they

inflicted on Care Leavers. We especially raise this point as there appears to be no penalties for those who choose not to opt in. We question what will be the incentive to ensure that ALL Churches, Charities and State Government are involved in the scheme.

We note that within the Bill it mentions the details of those that are eligible to receive redress. We are aware of a small discrepancy within the definition of a child. For a small number of Care Leavers, they were kept within the Care or Wardship of a state until 21. The definition of a 'child' in the Bill states a person under 18 years old.

CLAN has the knowledge of Care Leaver experiences who were abused from 18 through to 21 years of age whilst still considered in Care. We raise the issue in the hope that those institutions who are still considered responsible for Care Leavers abuse histories are held accountable.

CLAN commends proposal within the Bill that participating institutions must comply with the requirement to provide information regarding the applicant in full. For many years CLAN has applied for records for Care Leavers and failed to have success without multiple pages being redacted. Often records are withheld from Care Leavers, due to the concern that the document may incriminate an individual or institution and expose them. Many have attempted to access their records as they clearly outline misconduct within the institution, to use them in legal proceedings. However, have been denied access to them.

We are pleased to see that there is a civil penalty for those who do not comply with these rules, and institutions must provide the entirety of a file, despite the exposure they may create. CLAN understands these records cannot be used for further criminal proceedings, but for the purpose of this scheme, the records will clearly outline to the Operator what mistreatment the Care Leaver suffered.

Finally, CLAN also points out the importance of this scheme being Care Leaver-informed. We note that the scheme has been designed in a way such that it is trauma-informed, however it is vital that those who are involved in the scheme have a detailed knowledge and understanding of Care Leaver issues and their histories. Many support workers and counsellors claim to be trauma-informed, but know nothing about Care Leavers and their trauma experiences. CLAN wishes to know what training has been provided to those working as a part of this scheme. Care Leavers have many in depth issues that must be understood, as they have suffered trauma upon trauma and often face a loss of identity. It is imperative that the scheme adopts a Care Leaver –informed approach, as without this, we are certain the scheme will not be as effective, and may cause more distress to Care Leavers.

Conclusion and Recommendations

We again commend the Commonwealth with the projection of an established redress scheme to hopefully allow Care Leavers who have survived horrific childhood abuse, to feel heard, recognised, and most importantly receive justice. Whilst we still await to be informed of those institutions that will be opting in to the scheme, we are hopeful that ALL will step up and take responsibility.

Overall CLAN is pleased with the direction of this scheme. However, we again call attention to the discrepancy of this scheme being just sexual abuse focused, and will continue to advocate for the importance of acknowledging ALL forms of abuse in the 'Care' system. It is vital to avoid re-traumatisation of Care Leavers and we cannot ignore those who have suffered in ways just as damaging.

In addition, we are adamant that the capped amount of \$150,000 be reviewed, as the recognition payments must be substantial to truly reflect a sincere apology for the abuse the Care Leaver has suffered.

Importantly, CLAN strongly opposes the idea of excluding Care Leavers who have been in prison. Those who have been incarcerated have already been punished for their crimes. Any prison sentence does not eliminate the fact that these Care Leavers suffered at the hands of the Child Welfare System, and perhaps if they had been nurtured and cared for appropriately, they may have remained out of prison. It is essential they be viewed the same as any other Care Leaver, as many will be feeling yet again, let down by the system.

CLAN hopes this scheme will provide many Care Leavers with the justice they deserve, and alleviate the impact that abuse has had on their lives. We commend the Commonwealth for constructing a scheme that has the intention of being trauma-informed, but are adamant that they must also be Care Leaver informed.

For many, this will be a less invasive process than taking civil action, if our concerns outlined in this paper are modified. CLAN will continue to advocate and be the voice for Care Leavers who require our support, or are no longer with us.

We thank the Commonwealth for allowing us to provide our input in to this major milestone of Care Leavers lives; a Commonwealth Redress Scheme.

References

CLAN, 2011. *Struggling to Keep it Together*, CLAN's Survey Report

CLAN, 2016. *My Family Only Knows What I want them to know*, CLAN's Survey Report.

Royal Commission (2017) *Final Report Recommendations*, Commonwealth of Australia

Extracts from CLAN Members Responses to the Nations Leaders.