

10th September 2023

Supplementary submission

by Tuart Place to the Community Development and Justice Standing Committee: Inquiry into the options available to survivors of institutional child sexual abuse in WA who are seeking justice.

This submission follows our initial submission on 25th July 2023, which focussed on a single issue, and made the following request:

That the WA Government recognises the special circumstances of descendants of the Stolen Generations who were sexually abused in state-funded kinship care and 'private' foster arrangements, but are now deemed ineligible for the NRS on the basis that they were not made wards of the state.

We reiterate this request to the WA Government, and are heartened by new information indicating that it would not be a difficult step for the government to take.

New data on NRS applications deemed ineligible in WA

Recently reported data by the WA Department of Justice (DoJ) shows that the identified problem is statistically small, with only 28 applications so far deemed ineligible by the WA Government - just a fraction of the overall total of 3,135 applications received prior to 30 June 2023.¹

Not all of these 28 individuals are First Nations survivors, but the experience of having their redress application rejected would have been distressing for them all, and we know firsthand of the great suffering it has caused to some. Given the extremely negative impact on survivors, and the fact that this would not be "a big problem to fix" because it is confined to such a small proportion of NRS applicants, we reiterate our request to the WA Government to show compassion to this clearly defined group of extremely disadvantaged Western Australian survivors, and accept their applications for redress.

Mechanism for sharing personal information uncovered in redress process

It is not uncommon for our clients to have no photos at all from childhood. A photograph of oneself as a child is a precious thing – even a mugshot taken in a juvenile correctional facility is better than nothing.

We are therefore grateful to the WA Aboriginal History Unit for sharing the following information in the DoJ submission:

"...In conducting research for RFI responses, the Department of Local Government, Sport, and Cultural Industries' (DLGSCI) Aboriginal History Unit often discovers material such as photographs of the applicant as a child, or letters from parents that the applicant has identified they have never been able to find. To the DLGSCI's knowledge, the current RFI process does not include the Scheme informing applicants of these personal documents, or how to access them. The DLGSCI is interested in exploring ways to connect applicants to such personal, historical, and family records".²

¹ Government of Western Australia, Department of Justice, Office of the Commissioner for Victims of Crime. *Western Australian Government Submission*. P00039 18 August 2023. (p.28).

² *Western Australian Government Submission* (p.12).

We can suggest a straightforward solution for connecting applicants with their personal records by building on the experience of the *Redress WA* scheme (2008-2011), in which the same situation arose. Redress WA researchers uncovered photographs, letters, and other significant personal information in the course of verifying applications. Initially unsure what to do with this information, in due course the Scheme decided that in order “*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 file...*”³

This system was successful, and we suggest the same, simple solution could be applied in the present situation. It is important that action is taken promptly, while current contact details are available for survivors, and the possibility exists for this information to be conveyed to applicants via the National Redress Scheme.

We believe it would be morally indefensible for any institution *not* to inform a survivor that it had become aware of the existence of childhood photos, or letters to/ from parents, and not to provide the survivor with information on how to access this material (especially in cases where the department can see the information has not been previously accessed).

The significance of historical photos and documents cannot be underestimated. Since 2012, Tuart Place has facilitated a series of projects in which institutional survivors and institutions have contributed photographs and ephemera to our Historical collections.⁴ Most recently, in August 2023, a volunteer collated and printed a unique series of unpublished photographs donated by the Churches of Christ Aboriginal Missions. We make these images available to the ever-growing number of First Nations clients who formerly resided in CoC missions across WA, and are now seeking justice.

Justice options for survivors of non-sexual institutional child abuse in WA

Civil litigation

As the Committee is aware, WA is the only jurisdiction in which the Statute of Limitations was removed for child sexual abuse alone. This inequity has caused great distress to many WA survivors. It was particularly apparent in 2018-20, when the law had just changed, and a large number of civil claims commenced.

Former child migrants who experienced extreme violence, brutality, and permanent physical injuries in Christian Brothers orphanages, but did not disclose sexual abuse, have had no avenue by which to seek justice. A common injury is permanent hearing loss resulting from children’s ears being ‘boxed’ (a practice among some nuns and brothers). Other incidents included both male and female children being lifted up by, and/or dragged by, their ears, and boys being punched in the side of the head by a male adult, causing the child’s still-developing eardrum to burst.

Not surprisingly, survivors have clear recollections of specific incidents that immediately affected their hearing, sometimes resulting in lifelong damage. This kind of physical abuse and its impacts currently go unrecognised in civil claims in WA. In fact, defendant institutions have sometimes sought ‘discounts’ on the basis that a greater proportion of the permanent injury experienced by a claimant was attributable

³ WA Department for Communities, (2012) *Redress WA Final Report*, NL 5. (p.5)

⁴ See for example, *The Tuart Times* Issue 6: September 2013 (p.1); Issue 8: June 2014 (pp.6-7); Issue 14: August 2017 (p.1) and our archival photos from the *Inside Exhibition* (2015), all available at: www.tuartplace.org

to their physical abuse, rather than their sexual abuse of a child.⁵ We support further amendments to WA legislation to include serious physical and psychological abuse, to enable our survivors to access equivalent justice options to those available in other jurisdictions.

National Redress Scheme

Tuart Place has emphasised, in several previous submissions, the inadequacy of a national redress model solely focused on sexual abuse.⁶ By August 2018, we had accepted that the national model would not change, and began asking the Federal Government to encourage the States and Territories to respond to survivors of non-sexual historical institutional abuse at a jurisdictional level.⁷ Our May 2020 submission called for “*Adequate state-level redress for care leavers excluded from the National Scheme*”.⁸

State-level redress: We appreciate the WA Inquiry Committee’s interest in the matter of redressing non-sexual forms of abuse experienced by children in WA institutions. The need for action was outlined in 2018:

“...Western Australia also has an inglorious history of redress, including a problematic class action in the late 1990s which adversely affected hundreds of Christian Brothers’ ex-residents; and the ill-fated Redress WA scheme (2008-12), which caused secondary harm to 6,000 care leavers. Aboriginal people have been particularly badly affected – they comprised 51 per cent of Redress WA applicants and endured the notorious Stolen Wages Reparation Scheme (2012). It was further revealed during Royal Commission hearings that the quantum of child abuse settlements in nongovernment redress programs in WA has generally been lower than in the Eastern states... Accordingly, a large number of Western Australian care leavers have been left feeling cheated.”⁹

In 2017, a collective of survivors supported by Tuart Place called on the State Government to address the damage caused by the Redress WA Scheme. They spoke with Labor Members at Parliament House, and 24 care leavers described their experiences in a 15-minute film, *Make Redress Right*.¹⁰

The State Government’s response was that the problem had been solved by joining the new National redress Scheme in 2018, and by amending civil legislation at the same time.

This response poured salt in the wounds of WA care leavers whose childhood abuse in WA institutions did not include sexual abuse. They were excluded from the NRS and civil claims, and still felt aggrieved by the ‘betrayal’ of Redress WA. In 2017, The State Government advised that sexual abuse was not disclosed in about half the 6,000 applications received by the Redress WA scheme. Sadly, that number has dwindled significantly in the intervening years.

While in 2023, the unfinished business of Redress WA still remains, a new Victorian model indicates a possible way ahead. In October 2022, the Victorian Government announced a state-level redress

⁵ Although this issue was dealt with in the John Lawrence case, general legal advice to civil claimants in WA is to focus on incidents of sexual abuse rather than physical or psychological abuse.

⁶ For example, our March 2015 submission to the Royal Commission’s consultation on Redress and Civil Litigation (p.3); and submissions on the NRS in January 2018 (Submission 19, p.2); and May 2018 (Submission 14, p.13-14).

⁷ Tuart Place submission to the Joint Select Committee on oversight of the implementation of redress related recommendations. August 2018 (Submission 8, p.1). <https://www.aph.gov.au/DocumentStore.ashx?id=935868a5-54f3-4871-9d40-dbe40199b063&subId=658595>

⁸ Tuart Place submission to JSC on NRS. May 2020 (Submission 25, pp.5-7) <https://www.aph.gov.au/DocumentStore.ashx?id=5f55c05b-d6ce-4198-b852-e1f886294e09&subId=686483>

⁹ Tuart Place submission to JSC on NRS. August 2018 (Submission 8, pp. 7-9) <https://www.aph.gov.au/DocumentStore.ashx?id=1de51e07-3aa4-4760-bdd7-4cdd682ca9e3&subId=566518>

¹⁰ *Make Redress Right* (2017) YouTube <https://youtu.be/lufMOYiwjJU>

scheme for care leavers who experienced physical, psychological, and emotional abuse or neglect as children in closed institutions.¹¹ The Victorian scheme builds on the NRS, by covering the ‘gap’ in redress for those not otherwise able to claim. We would like to express full support for any WA State Government initiative designed to assist this group of care leavers.

We suggest that a similar initiative could fill the gaps for survivors in WA whose institutional child abuse was not sexual in nature.

Inconsistent treatment of WA institutions failing to join the NRS

Tuart Place would like to raise, again, the inconsistent application of the six-month deadline for institutions to either join the Scheme or be identified as a non-participating institution that has “not joined or signified their intent to join the Scheme”.

As detailed in a Case Study involving the Church of Christ Nollamara,¹² our client submitted an NRS application in September 2021 disclosing horrific sexual abuse by a Church Elder in a foster placement organised by the Nollamara church. In September 2022, our client was notified that this institution was not participating. In the 12 months since that time, we have been unable to obtain any information about the Scheme’s progress in ‘onboarding’ this institution, on the basis that it is ‘protected information’.

We have drawn the Scheme’s attention to information on the NRS website stating that “From 1 January 2021, when the Scheme receives an application that names an institution which had not been previously named, that institution will have a period of six months from their first engagement to join the Scheme”.¹³

However, despite numerous phone approaches to the NRS, and attempts to find out why Church of Christ Nollamara has not been subject to the six-month deadline, the most recent feedback (September 2023) is that this institution has *until the end of the Scheme* (2028) to opt in.

We wish to highlight the anomalous treatment of this WA institution, which has been responsible for a lifetime of suffering for our client who, now aged 75, is still suffering as a result of their behaviour and is still unable to gain any kind of closure or justice. There are likely to be other survivors in the same situation. We ask the Committee to investigate this matter.

Resourcing and provision of support services for survivors in WA

As stated on pages 2 & 3 of our previous submission, the Tuart Place service model is recognised as best practice in the sector, offering a suite of genuinely trauma informed, culturally safe, co-designed services through a comprehensive, wrap-around model of delivery. Tuart Place provides direct services to an extraordinarily large number of survivors, and we have been accurately described as “punching above our weight”.

Unfortunately, the Tuart Place service has been consistently marginalised and devalued by the Federal Government’s Department of Social Services (DSS), which has rejected all four of our funding applications since 2012. In 2020, under the sheer weight of NRS applications submitted by Tuart Place,

¹¹ *Past care leavers: We hear you.* <https://www.premier.vic.gov.au/past-care-leavers-we-hear-you> 12 October 2022

¹² Tuart Place Submission to JSC on NRS, February 2023, Submission 17 (p.13)

<https://www.aph.gov.au/DocumentStore.ashx?id=71be468f-e8bf-40a4-ba00-78438cfa38e9&subId=734315>

¹³ NRS website: <https://www.nationalredress.gov.au/institutions/institutions-have-not-yet-joined>

in addition to some strong lobbying by several parliamentarians - including Tuart Place Patrons Senator Dean Smith and former Senator Rachel Siewert, and the then Minister for Child Protection, Simone McGurk MLA - DSS finally agreed to provide a very small amount of funding to Tuart Place via a third-party contract with knowmore Legal Service.

We are most grateful for the support of these leaders. The funding via knowmore has kept us afloat, alongside a series of unconditional donations from religious past providers, and a Service Agreement with the WA Department of Communities (although the amount funded under this Agreement has not increased since 2012).

However, Tuart Place's circumstances changed dramatically in 2021/22, and the survival of this service is now at risk. We can no longer carry the cost of delivering federal programs by drawing on other sources.

At the time of writing, we are still seeking appropriate federal funding for our work supporting NRS applicants, and have recently collated a Table of data showing an extraordinary discrepancy in the amount of DSS funds granted to various service providers, compared to Tuart Place. For example, an equivalent support service in a different State, with similar client numbers, delivering a similar number of NRS applications and services, is funded nearly ten times the amount provided to Tuart Place over the same time frame.

We would be happy to provide the Committee with a copy of the Table of comparative data, and other information we have prepared detailing the injustice experienced by Tuart Place over the last 12 years.

Summary

Tuart Place's supplementary submission to the WA Community Development and Justice Standing Committee has:

- Provided recently released data showing that only a small proportion of NRS applications have been deemed ineligible by the WA Government.
- Reiterated our request that the WA Government acknowledges the special circumstances of descendants of the Stolen Generations who were sexually abused in state-funded kinship care and 'private' foster arrangements, but were not made wards of the state, and that it accepts their applications for redress.
- Suggested a mechanism by which the National Scheme could convey valuable personal information uncovered by the WA DLGSCI Aboriginal History Unit to applicants.
- Supported calls for further amendments to WA legislation to include serious physical and psychological abuse, to enable WA survivors to access equivalent justice options to those available in other jurisdictions.
- Identified a viable model of state-level redress for survivors whose institutional abuse did not include sexual abuse.
- Highlighted the inconsistent application of the six-month deadline for named institutions to either join the scheme or be identified as a non-participating institution, using the example of the Church of Christ Nollamara.
- Commented on the resourcing and provision of support services for survivors in WA, and the circumstances by which the Tuart Place service has been marginalised and denied grants for its work supporting federal programs for care leavers since 2012.

We look forward to speaking with the Committee on 20th September 2023.

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