Catholic Religious Australia

22 December 2020

Treasury
Langton Cres
Parkes ACT 2600

**BY EMAIL:** dgr@treasury.gov.au

Dear Sir/Madam,

**Consultation Exposure Draft: New governance standard 6 in the Australia Charities and Not-for-profits Commission Regulation 2013**

This is a submission by Catholic Religious Australia (CRA), which is the peak body representing the Leaders of 150 Catholic Religious Institutes and Societies of Apostolic Life which operate in Australia, in relation to the new governance standard 6.

CRA has been engaged with the National Redress Scheme (Redress Scheme) since its inception. We were involved in high level discussions in relation to the proposed legislation, meetings with the previous and current responsible Ministers, Opposition Minister. We also worked at a policy and operational level with the Department of Social Services to try to facilitate a more effective Redress Scheme.

CRA fully endorses the Redress Scheme. We believe it is a valuable pathway for survivors, one that is simpler and less traumatic than the alternatives. Since the start of the Redress Scheme, we have supported our member Religious Institutes to understand, engage with and enter the Redress Scheme. CRA has been providing advice and support to Religious Institutes, particularly the many small ones which have limited experience and resources in professional standards. The Religious Institutes we represent are committed to working compassionately with survivors of child sexual abuse and many work with survivors and/or their representatives on a regular basis. Much of the contact with survivors is through civil litigation and lawyers, some through *Towards Healing* or the *Melbourne Response*, and more recently the Redress Scheme has provided another avenue. In addition, many are engaged in ongoing pastoral ministry focussed on support and healing processes for survivors and their families.

57 Catholic Religious Institutes were named in the Royal Commission's 2017 Analysis of Claims. Of the 34 named in Part 1, 100% committed to join the Redress Scheme and all but 4 have been declared. Of the 23 named in Part 2 (those Institutions that had received 1 to 3 claims), 43% have been declared. The remainder are at various stages of joining.

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It should be noted that the Religious Institutes in the Redress Scheme represent hundreds of Catholic schools, hospitals, aged-care facilities and social services. Religious Institutes also take responsibility for many now defunct Institutions.

This submission focuses on two key points.

1. Need for an exemption

   An exemption is required in the Regulation to exempt a registered entity from the stated sanction if the registered entity has taken reasonable steps to become a participating non-government institution and the Minister has decided not to declare the registered entity. The FAQs make it clear that the purpose of the Commonwealth is to place further sanctions on institutions 'who continue to refuse to join the Redress Scheme'. Those entities who have taken reasonable steps to join the Redress Scheme should not be penalised because of a decision taken by the Minister as they do not fall within the category of an institution who 'refuses to join the Redress Scheme.'

   We seek that this exemption be incorporated into the Regulation to ensure that entities which have taken reasonable steps to participate in the Redress Scheme, but denied entry by the Minister, are exempted from the sanctions.

2. Removing "likely to be identified in a claim'

   We refer to the words at paragraph 45.30 Governance standard 6:

   'or is likely to be, identified as being involved in the abuse of a person:
   (a) in an application for redress …or
   (b) in information given in response to a request under section 24 or 25 of that Act.'

   The use of the words 'is likely to be identified' is far too broad. It requires a registered entity to guess whether a person may make a claim against them. This is unreasonable. The words in the Exposure Draft Explanatory Statement relating to this issue include an example of registered entities that were named in the Royal Commission into Institutional Responses to Child Sexual Abuse but may not have been identified so far in Redress applications. It is understandable to include those entities in this Regulation (assuming that the Minister has not denied them entry to the Redress Scheme).

   The document entitled Frequently Asked Questions advises when a charity is considered 'likely to be' identified. The response gives three examples, as opposed to the one example given in the Explanatory Statement. These examples are those entities who:

   1. have been named in the Royal Commission into Institutional Responses to Child Sexual Abuse, but have not yet had a claim made against them
   2. become aware that an application is likely to be made against them:
      a) if they are informed directly by a person that the person is going to make an application for redress; or
      b) the person is otherwise involved in litigation with the entity about past abuse, for example, in the course of past or present legal proceedings

CRA accepts Example 1. However, the two examples under Example 2 are unreasonable. They require 'guesswork' by the institution. Example 2(a) is problematic as an institution may be informed directly by a person that they are going to make an application for redress but the person then does not make the application for a variety of reasons. The institution should not be penalised for this. The example contains a further risk to institutions as it could be one person's word against another. For instance, an institution may be subject to these new sanctions if a person says that they informed the institution but did not in fact do so.

In relation to Example 2(b), commencing legal proceedings (past or present) is not an indicator that a person will bring an application under National Redress. In fact, commencing legal proceedings (past or present) could indicate the opposite, that the person has rejected making an application through National Redress. This requirement on institutions is unrealistic and places undue and unnecessary burden upon institutions. This is especially true as the process to join National Redress is complex and time consuming.

'Likely to be identified' should be removed and those entities which fall within Example 1 should be specifically included and defined in the Regulation to remove ambiguity and risk.

The focus should be upon streamlining this process, as CRA has raised on many occasions, to enable more institutions to join more quickly. I am very happy to discuss ways forward in this regard.

As stated above, CRA is committed to supporting an effective implementation of the Redress Scheme. CRA continues to be available to assist in any way, including further discussion of any of the points raised in this submission.

Kind regards

Anne Walker
National Executive Director