

**REMARKS:****Australian Royal Commission into Institutional Responses to Child Sexual Abuse – Issues Paper Six: Redress and Civil Litigation**

I regret that these comments do not answer, directly, the series of questions posed by the Royal Commission in its issues paper, but hope that these remarks are helpful and thought-provoking all the same – Aletha Blayse.

*“There can be no keener revelation of a society’s soul than the way it treats its children.” (Nelson Mandela)*

There is another keen revelation of a society’s soul in the way it treats adults whom society has failed as children. Failed to protect. Failed to nurture. Failed to provide every opportunity for growth into a strong, resilient, confident, healthy, and productive member of society. In many cases, crippled, psychologically destroyed, or cruelly limited. A society that doesn’t care for such adults properly is not one that can call itself civilised.

Upon a person reaching the age of 18, most societies suddenly become somewhat harsh towards that human being. There is a tacit assumption that childhood has prepared the person for the wilderness, the complexity, and difficulties of adult life. In the case of those abused as children, this preparation has often not occurred. In a way, true and meaningful childhood has never really been experienced by those abused as children. Thinking of it that way, there is an unfinished job, and one that we ignore at our peril.

The job for a society that has failed to protect a child from abuse is to restart the clock, go back in time, and get it as right as it is possible to get it right, whatever the age of the adult survivor. The adult survivor must be given the same treatment that should have been provided in childhood – safety, security, the opportunity to safely make (repeated) mistakes as he or she learns and grows, assistance to develop his or her full potential, guidance in knowing how to have healthy and safe relationships with others, and the knowledge of how to live balanced, productive, and stable lives, among other things that may be missing.

We allow 18 years for development of a child before we say, for the most part, *“Off you go. You’re on your own, kid.”* At a minimum, we should therefore allow 18 years for development and support of an adult society failed in childhood. Longer, in fact, because there is also often the need to first undo damage done, such as to help a survivor unlearn maladaptive coping strategies he or she may have adopted or overcome limitations such as poor sleep, anxiety, trust problems, and so on, before going on to help a survivor navigate through life as strong and resilient an adult as possible. Longer, in fact,

because the effects of abuse may re-emerge repeatedly throughout life as a person reaches different life stages and challenges.

Think about a child learning to walk. We allow the child to stumble and fall and get up again as many times as it takes before the child learns to walk without falling. Adult survivors must be given the freedom and financial and other forms of security to stumble, fall, and get up again too. Institutions must bear the responsibility and costs of multiple attempts by survivors to grow strong, if necessary. If we truly love children unreservedly, and give them space and time to learn and grow, so we must love the adults they become unreservedly, and without time limits or restrictions on their progress towards achievement of their fullest potential.

Anyone who has loved or loves a survivor cannot fail to feel this way. In the popular fictional television programme 'Cold Case', which is about police investigations of very old criminal cases, adult characters' faces morph into younger faces as the viewer is taken back in time to when the crime occurred. As a teenager, when my father ran the support group *Formerly in Children's Homes (FICH)*, long before I watched this programme, I experienced something similar to the experience of watching this programme. In the faces of abuse survivors of many ages, from middle-aged to elderly, particularly when they spoke of their childhoods, I saw starkly, in many cases, the faces of children behind the adults' faces. Bewildered children. Frightened children. This is not to say that the members of the group were not extraordinary people, and it is not to infantilise them or suggest that they did not possess great strengths and abilities or to dismiss the often extraordinary achievements of their lives. It is merely to make the point that no person without compassion for his or her fellow human beings cannot fail to look into the face of a survivor, see the child that was, and wish, fervently, to go back in time, shield the child who was not shielded, nurture that child, and make things right.

If we love our children, if we believe that children are our future, if we believe that a child raised in a safe and loving environment will go on to better our society and is worth investing in without limit, so must we love and invest in those who missed out on what should have been taken for granted, and do *whatever it takes* to make things right for them now.

### **Justice delayed is justice denied – survivors need help *now***

The imperative to provide adequate redress is urgent. My father died before achieving true justice. He died nearly 25 years after first informing broader society of what happened in Australia's Forgotten Australians. This was a personal tragedy for him. It is a personal tragedy for those still living who are still to see any form of redress at all. I suggest to the Royal Commission and any other governmental agency following its progress that while it is important

to get redress right, there is also a need for an emergency response *now*, while working out more details later. The immediate and pressing needs of survivors exist *now*, and can't wait to be addressed until possibly years before the Royal Commission's recommendations are or are not implemented by whatever government is in power. The longer it is before the needs of survivors are addressed, the more the damage to survivors compounds, the more likely it is that survivors will die before seeing justice or getting a chance at a better life, and the more likely it is that families of deceased survivors will have to live with the pain of never having seen their loved ones see justice and experience the peace and healing that only true justice and care can deliver.

At the bare minimum, governments need to ensure provision of *unlimited, free* counselling to survivors with any provider of their choice. They will need this to participate in any redress scheme that may come out of the Royal Commission anyway, because participation in it will be, in many cases, extremely difficult in its own way, whether because it means having to revisit past traumas, speak to strangers about abuses suffered, or other factors. Other health needs must be addressed just as urgently. In addition to mental health needs, survivors often have serious physical health problems that are compounding daily in their effects on the bodies of survivors. The promised Gold Card for Forgotten Australians still hasn't been delivered, causing enormous distress to those whose hopes were raised and dashed. It would be good to see it delivered not just for Forgotten Australians, but all survivors.

### **The need to talk benefits not just costs – language matters**

Redress should not be framed as involving a cost to society. It is vital that it doesn't, particularly in an economic and political environment in which governments are looking to cut costs and avoid commitments to new expenditures. I am slightly disappointed in the actuarial modelling commissioned for the Royal Commission in the sense an opportunity was missed to perform thorough research firmly grounded in economic modelling best practice to show both costs *and* benefits. Economic modelling that I believe would have demonstrated, beyond a shadow of a doubt, that redress is not really a matter of cost, but rather a matter of *investment*, an investment that would yield multiple returns per dollar expended.

While some survivors reach great heights in society, whether publicly or privately, in terms of what they contribute to society's wellbeing, I believe that they could all contribute even more if they were cared for properly, properly compensated, and given the opportunity to show what they could have been were their childhoods not scarred by abuse. The benefits to society would accrue in the form of things such as higher gross domestic products per annum, increased tax revenues, reduced welfare expenditure, second and third generations less negatively affected by caregivers' childhood abuses, and

stronger and more resilient communities, among other things. Some of these things can be quantified quite easily, some less easily, but they *can* be quantified. I hope the Royal Commission or some other body will at some stage endeavour to re-examine the approach that has been taken to modelling redress by performing a thorough cost-benefit analysis of redress. I would like to see some estimation of the cost of *not* properly compensating and caring for victims and their families. It may mean the difference between the Royal Commission's recommendations being accepted or rejected, particularly if the economic environment in a few years from now is even worse than it is now.

**Redress is not a one-off thing – it should be a lifelong commitment to meeting the needs of survivors**

I believe strongly that any concept of redress must involve lifelong commitment to the needs of survivors if we are to be consistent about our belief in the worth of nurturing and protecting people through childhood. And no, it doesn't matter that we are talking about quite different time periods when we think about raising a child properly and fixing things for a child who was not. Yes, from one, somewhat brutal standpoint, society has more years to enjoy the fruits of a young adult who's been raised well throughout childhood, but it would be not only brutal but fallacious to assume that just because an adult survivor may only have a fraction of the years ahead of them than that of an 18-year-old, they necessarily have less to offer, less to contribute.

Even if we think about the case of, say, a survivor who, for the sake of argument, is so badly damaged by what happened in childhood that they may never re-join the workforce, or may be too old to do so, but who is helped, this person still has something to offer, even if it's in the ability to share the wisdom of his or her experiences and help younger generations flourish in ways that the survivor did not. Before my father died, for example, he used to speak excitedly about how he planned to help his grandchild's language development by ensuring that he learned his Latin roots early on in his studies. Had my father lived longer, he would have helped another human being reach even greater heights than this child will already reach. He'd also have finished a least one of his many ambitious personal projects, one of which was a thorough work on the growing of fruits, vegetables, and herbs, a project he embarked upon following frustration at the lack of any definitive, thorough, or completely accurate growers' guide for amateur gardeners.

**When an implicit social contract is broken, the full costs must be paid**

Children cannot generally enter into legal contracts. Yet, in a way, society enters into something of an implicit contract with a newborn baby. We say, in a way, to that baby that we will teach, guide, nurture, and generally prepare

him or her for adulthood. At the very minimum, we warrant that we will protect the baby from harm throughout ensuing infancy and childhood.

Institutions are often quite unabashed in making such promises. Those comprising groups such as Forgotten Australians lived through a time when society was being told quite baldly by institutions that these children were being cared for by people who would not only not harm them, but also help them become the best they could be. Money flowed accordingly to these institutions, whether from imposts upon parents, donations from the public, contributions from the taxpayer, or the profits from children exploited through child slave labour horribly repackaged as some sort of noble exercise in preparing children for adult life.

Promises of this type continue to be made by institutions, often most explicitly by those who profit the most from the business of helping to raise children. I drive regularly past a quite crude billboard in my area advertising a private girls' school that boasts some ridiculously high rate of academic achievement – the billboard quotes the percentage of girls who obtain an OP score (a score of academic achievement used to determine entry to tertiary study in Queensland, Australia) of better than 5 (a rank that admits young people to most courses preparing them for lives as, generally, high-earning professionals). Another tawdry billboard depicts a beaming young model in the school's uniform with the accompanying caption "*Aspiring oncologist.*" The promises are thinly veiled.

We allow children to be processed through the foster system, which also involves payment of money to carers, on the promise that where they end up is safe and conducive to the production of strong, untraumatised, resilient adults. Those who send their children to public schools pay taxes that contribute to the education and development of their children. I could give many more examples, but hopefully the point is made. Institutions, including governments, that have made an implicit social contract with a child to do him or her no harm, and provide an environment in which that child may thrive, but that have failed to do so, have a responsibility to do *whatever it takes* to make the contract good. They can't run and hide when the child who's been failed turns up again as a struggling adult.

### **Make the polluters pay**

*"We have a responsibility as a state to protect our most vulnerable citizens: our children, seniors, people with disabilities. That is our moral obligation. But there is an economic justification too – we all pay when the basic needs of our citizens are unmet."* (John Lynch)

Redress must involve, at a minimum, payment of the *full* costs of the consequences of abuse to survivors and those who support them or whose lives are otherwise affected by the abuse survivors suffered. We need to ask: what are the costs of *not* having forced institutions to pay for what they have done; who is currently bearing these costs; and is the ‘burden’ (I place inverted commas around this term because I am conscious of its possible perception that I am saying that loving someone who’s been abused is all about pain) being distributed fairly? Because those costs are already being borne by *someone*, least often and indeed disgustingly poorly, by responsible institutions.

Obviously, costs are usually been borne with love and compassion by those who care for survivors, but that doesn’t mean carers’ needs and the needs of other people in survivors’ lives don’t matter and that their losses, if they have occurred, don’t matter, and it doesn’t mean that these people shouldn’t be compensated too. And, just as obviously, survivors will be doing the best they can, but in most cases could do so much better if they had not been abused or if their needs as adults had been met much earlier than the typical 20-year-plus time it takes for them to even think much about the abuse they suffered or to understand even partially the effects it has had upon them. And, for the rest of society, we need to understand that there’s a cost too – a cost in the form of lost potential not just of the survivor but also often of others in the penumbra of people around the survivor. This may be in the form of a ‘deadweight loss’ to society – a cost that no-one can recover.

This also leads me, incidentally, to the point that unless the full cost, the true cost, of abuse by an institution is forced back upon the institution, we have a problem of incentive. Yes, criminal sanctions are critical, but they must exist in tandem with economic sanctions, since so many institutions care most about their financial bottom lines. Redress in the arena of only a few hundred thousand dollars simply doesn’t come close to meeting the types of losses I have calculated to have been incurred by survivors I have known, or the losses of their families. We say “*make the polluters pay.*” Why should institutions be any different? Redress set at ridiculously low levels (anything below around half a million dollars is unlikely to come close to the average losses involved in a single instance of child abuse, if my admittedly limited observations are representative of a greater whole) doesn’t meet this objective of making those responsible bear the costs. Worse, it raises the ugly possibility of institutions simply building in small and predictable redress payments as part of their ongoing costs of doing business, and as part of what might harshly be described as a policy of ‘manageable and acceptable fault rates’ (i.e., child abuse victims), frequent protestations by most institutions of having “zero tolerance” for child abuse notwithstanding. It is much better that they should have to face the possibility of potentially extremely large payments in the future if they don’t get things right. If the threat of criminal sanctions, if moral

considerations, if love and respect for children and other things that are supposed to stop them letting children get hurt aren't working, perhaps the looming threat of insolvency or enormous costs in the future may finally get their attention?

### **Fairness to institutions?**

In recent discussions with a senior member of the Salvation Army in Australia, I was told that I needed to have regard to “organisational resources” in payments to victims. I snapped back that if the total cost inflicted upon society from an institution's failure to protect children was greater than its organisational resources, perhaps it didn't have a moral right to exist anymore. I didn't add at the time, but should have, that this was even more compelling, to my mind, if the institution had had decades to get things right but had failed to do so. A stitch in time saves nine. If the costs of redress are high, institutions have only themselves to blame, and if insolvency is the outcome of making things right, so be it. There are institutions that haven't abused children on the scale of those institutions whose failings are now getting to be quite well known. If proper redress to victims means the ultimate dissolution of the institution responsible, *society* won't lose out. There are plenty of organisations doing what culpable institutions call ‘good works’ that don't hurt children and haven't done so. Let resources flow to them. The quantum of ‘good works’ occurring in our society will remain in line with the goodwill, charitable impulses, and giving ability of people who haven't much time to do such ‘good works’ but would like to pay something to see others do them. Abusing institutions that fall back on ‘good works’ defences want us to forget this. Let's not.

### **All abuse matters**

As a final note, I would like to state the hope that the Royal Commission will at least remark upon the need to offer redress to all victims of child abuse, not only those who experienced sexual abuse. While the terms of reference may limit the Royal Commission in what it can recommend, it is free I think to comment upon matters outside its scope, and anything it may say about the need to compensate survivors and their families in situations of all types of child abuse would be influential.

Aletha Blayse