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Royal Commission Consultation paper: Redress and Civil Litigation

The consultation paper on redress and civil litigation reflects the multiplicity of issues that arise when considering “justice” for victims of institutional child abuse. Clearly the Royal Commission’s remit does not include purely non-sexual forms of abuse. However it is hoped that if institutions either voluntarily adopt the Commission’s recommendations (should a redress scheme be recommended) or if, as survivors would prefer, a compulsory Government backed scheme is established, all forms of abuse will be compensable.

Indeed, one of the major drawbacks of civil litigation in this area is the difficulty in framing causes of action for the almost infinite losses experienced by victims of child abuse (particularly for those abused in care) including neglect, loss of education, emotional abuse, malnutrition, inappropriate and damaging medical treatment including illegal drug trials and of course lack of love, which our courts will never be able to appropriately compensate.

Principle of Equality for Survivors

An issue for many survivors is whether or not they have been treated “equally” to other survivors. For some who become aware of processes or settlements that other survivors have had the benefit of, greater resentment and a sense of further betrayal is created if they feel that their suffering has been treated less seriously than another complainant’s.

Because of past inequities that have been exposed mainly through the Royal Commission public hearings, a number of institutions have agreed to re-open settlements. For example the Christian Brothers have invited claimants who have already settled their claims to apply for further compensation.

In addition, the Melbourne Response process is being reviewed and the terms of reference include whether past settlement should be re-opened.

Speaking of the Salvation Army, we also find a difference in approach in the way in which claims are assessed. The Consultation Paper refers to the matrix used by the Salvation Army Eastern Headquarters in assessing claims. To the writer’s knowledge no such matrix is relied upon by the Southern Headquarters although the writer was instrumental in developing a protocol with the Salvation Army Southern Headquarters as a result of which many cases were settled resulting in a consistent approach similar to that which may have been achieved by use of the matrix. However, because of the difference in approach between the two territories, a victim of abuse in a Home run by the Salvation Army in Queensland might be offered a very different outcome as compared to a victim who was abused in Victoria even though the allegations of abuse may be almost identical.

This difference of approach between organisations, much less within the same organisation, can lead to victims suffering confusion and distress.

In addition, some victims of institutional abuse feel that their settlement may be less meaningful because they have no yard stick to compare it with others. This is because victims' abuse has "cost" them and for many, what it then "costs" an institution is a measure of how seriously the complaint has been dealt with. Accordingly, it is important that any settlement process, irrespective of the institution, is consistent for all survivors but also that the process is transparent.

As a practitioner in the area, it has also at times been extremely difficult to advise clients on possible outcomes. Many cases have been settled for less than may have been achieved in the courts either because the legal barriers were such that court proceedings were not possible at all if for example there was no entity that could be sued or because of risk factors such as the statute of limitations.

Because of the legal barriers referred to in the Consultation Paper, there is very little litigation in this area so there are in effect very few comparative verdicts that practitioners can point to in advising clients. Until very recently all settlements were required to be kept confidential. In addition, it is not unusual to get a significantly higher result for one victim with institutions baulking at paying a similar amount for another victim. This occurs sometimes because of politics within the organisation i.e. if an institution is likely to be more embarrassed by the revelations of abuse, there is clearly more pressure on it to make better offers of settlement. Also we sometimes see that victims who are better "connected" within an organisation may for political reasons get better outcomes.

We also see that as the Royal Commission has conducted public hearings where the amounts of some of the settlements have been revealed, some victims have been consumed by rage in the knowledge that their abuse was apparently worth considerably less than someone else's abuse even though from where they sit, the circumstances of the abuse seem almost identical.

Accordingly, equal access and treatment for survivors is vital. As the consultation paper points out, this does not prevent recognition of different levels of severity of impact of abuse but it does require transparency and consistency.

The elements of redress identified by the Royal Commission include a direct and meaningful personal apology, access to counselling and monetary payments. However the claims process itself must have therapeutic value. In other words, the claims process should be part of a journey of healing which usually starts when a victim decides to disclose and which hopefully finishes once the appropriate treatment has been or is being received, the perpetrator (if alive) and the relevant institution have been forced to acknowledge any wrongdoing (including criminal proceedings where possible) and there has been appropriate monetary recognition and a meaningful apology.

Indeed, if the claims process is therapeutic it may be that the need for ongoing counselling is minimized, except in the case of the most damaged and vulnerable of victims who, as the Royal Commission has pointed out, may well need access to lifetime therapy.

If all of these elements are important, what sort of a redress scheme will most likely deliver the outcomes survivors are seeking?

Firstly and most importantly, a national scheme should be established. We know that abuse occurs across state borders and indeed internationally. Whilst we can't control what occurs overseas, we can try to ensure equal access and consistency of approach within our national borders. A national scheme is important for victims but it is also likely to be welcomed by institutions, many of which operate nationally.

A national scheme would reduce administrative costs for institutions, would create greater efficiencies because of the larger number of claims being dealt with centrally and would

most readily allow for the consistency craved by survivors. A national system would also lend itself more readily to an independent appeals process.

The Royal Commission has looked at a number of redress schemes throughout Australia and internationally. We have an opportunity to learn from the mistakes of other schemes and to develop a truly therapeutic claims process.

National Redress Scheme

We propose the following basic elements for a national redress scheme:

- The cost of establishing the scheme and administration should be funded in the first instance by state and federal Governments. Institutions should be required to pay a "premium" based on a percentage of the amount of all claims awarded against them. This premium should go towards general administration costs and the establishment of a separate fund to cover awards against institutions which no longer exist or which have no capacity to pay.
- The initial claim should be lodged via a claim form with accompanying supportive documentation which would be required to include at a minimum an applicant statement and a medical or psychological report on the effects of the abuse. Other documentation could include ward or other records if the claimant was abused in care, school records, police records, health records, "before and after statements" and any other documents which either go to the issue of institutional responsibility or support the claim for loss. In other words, to use more legalistic terms, documents which go to "liability", "causation" and "damage". Having a claims process which does not require a hearing in the first instance will save on costs. In addition, in the writer's experience most claimants would find a hearing traumatic. However, a proper acknowledgement of wrongdoing is important and this is referred to below.
- Claims should therefore be determined on the papers by specialist claims officers who are not only trained in assessing claims for compensation but who are also trained in the unique aspects of abuse claims. For example, causation can be particularly tricky in abuse cases. Often victims of abuse have had troubled childhoods before the abuse occurred and then go on to have troubled lives after the abuse. It is important that claims officers recognize that vulnerable children are most often targeted for abuse and that the abuse itself can lead to damaging and self-destructive behaviours which may at first blush appear to be non-related to the effects of the abuse itself.
- Following the lodgement of the initial claim form and supporting documentation, the relevant institution should be served with the material that has been provided by the claimant and required to respond to the allegations. The institution should be required to provide information on previous complaints regarding the alleged perpetrator (in a form where all prior complainants are de-identified) and to provide an explanation as to how any prior complaints were dealt with. The institution should also be given the opportunity to make submissions including reasons why, where appropriate, the claim should be denied. A submission requesting that a claim be denied could include evidence that the alleged perpetrator was never associated with the institution in question or in hopefully rare circumstances could be based on evidence that the claimant is simply not telling the truth. The institution's response should be provided to the claimant who should be given the opportunity to respond and/or ask further questions if appropriate.
- Where a specific perpetrator is named, the complaint should also be referred to a national police taskforce which should be established to work side by side with the redress scheme. Claimants could identify in their claim form whether they wish their personal details to be provided to the police. At the very least, the substance of all complaints should be referred to the police taskforce thereby allowing a national data base to be established which would be crucial in the successful prosecution of alleged paedophiles.

- The claim would then be determined by way of a monetary payment, if any, to be offered to the claimant. In addition, the claimant should be offered a meeting with the relevant institution and/or an appropriately worded apology. Meaningful apologies are important. For example, in the past the Victorian Government would not provide individually tailored apologies. The Victorian government would offer victims of abuse an extract from the speech made by the then Premier of Victoria Steve Bracks when the Victorian government apologised to people who had been abused in care. More recently, the Victorian government is providing apologies which are signed by the Secretary of the Department of Human Services. These apologies now refer to specific matters which have been raised by the victim either in the documentation provided as part of his or her claim or during a settlement conference where government representatives have invited the claimant to speak to them about their experiences. In addition, the letters of apology now admit that wrongdoing has occurred. They are unequivocal in acknowledging that victims of abuse were failed by the government and other organizations. These letters should be extended to include specific actions that an organization will take, if any, in response to the allegations of abuse. The consultation paper has given a number of examples where specific actions on the part of the institution may be appropriate.
- Where an award is made, the payment should come from the relevant institution or as outlined above, if the institution no longer exists or does not have the capacity to pay, the award should be paid through a separate fund. We know that one of the benefits of the common law system where wrongdoers are forced to compensate their victims is that behavior changes. It is also a matter of "justice" for the victims that the wrongdoer pays rather than the money coming from some Government scheme, even if the institutions are providing contributions to the scheme. It is also a matter of equity that the Institutions who have been most culpable bear the greater financial responsibility.
- Monetary payments should be made on an ex gratia basis and therefore should be tax free.
- A Medicare bulk payment agreement should be negotiated under the Health and Other Services (Compensation) Act 1995 as was done by WA Redress whereby a flat payment is made to Medicare on every successful claim. The current requirement that victims of abuse must complete Medicare statements of past benefits and repay services claimed is onerous and confusing to victims.
- Counselling should be made available separately and on an as needs basis and not tied to the outcome of the complaint. A counselling service should be run side by side to the redress scheme with institutions including, state governments and the federal government (through Medicare), funding the service.
- Both the claimant and the institution should have the right to seek a review. In the first instance there should be an internal review conducted on the papers. The parties should have 30 days to request a reconsideration. Should either party still be dissatisfied with the outcome there should be an appeals process to an independent tribunal. The Administrative Appeals Tribunal (AAT) is well placed to review disputed claims. The AAT currently has power to review decisions under the Safety Rehabilitation and Compensation Act (1988), the Veteran's Entitlements Act (1986), the Military Rehabilitation and Compensation Act (2004), the National Insurance Disability Scheme Act (2013) and other legislation. In other words, an appeals Tribunal already exists with relevant expertise in the area of compensation. The relevant institution should be liable for the claimant's costs if an award is made of more than the amount of the original determination.
- Decisions made by the AAT should be published and reasons provided. We have referred above to the lack of precedents. Published decisions would assist lawyers practicing in the area to give advice to institutional and individual clients. These decisions would also assist the claims assessors in how they determine claims. There should be a further right of appeal from the AAT to the Federal Court as currently exists in compensation matters.

- At the AAT stage, if the Applicant (the claimant) is unsuccessful there should be no requirement that the Applicant pay the institution's legal costs similar to the situation with Comcare claims which are currently overseen by the AAT. If the Applicant is successful, his or her legal costs should be paid by the Respondent at 75% of Federal Court scale.

Internal or state based schemes.

If a national scheme is deemed to be impossible, state based schemes should be established with the same processes and principles as outlined above. These schemes could be funded by the relevant state government and institutions with contributions from the federal government as well.

If state based schemes are also found to be impractical, then as a last resort institutions should be required to have internal compensation processes. These processes should be established by appropriate legislation. An independent review body should be established and funded by government to oversight the claims process and to provide an independent appeals process.

Possible models could be akin to the Superannuation Complaints Act which establishes a process whereby superannuation funds are required to consider complaints internally in the first instance with a tribunal having been established which has the power to review the funds' decisions. Established tribunals such as the Victorian Civil and Administrative Tribunal (VCAT) could have jurisdiction to hear appeals.

Internal schemes should be regarded as a last resort. Dealing with the organization which was responsible for the abuse has been and would continue to be problematic. Common sense tells us that there would be a high rate of review to an independent body simply because of the serious trust issues which now exist between victims and the institutions that have caused their abuse.

Institutions should however be encouraged to adopt any Royal Commission recommendations on Redress that can be implemented on an interim basis.

Scheme processes

The scheme process has already been dealt with in part earlier in this submission. However, the following additional points can be made:

1. It is important that there is a connection between the institution and the abuse and the payment that a claimant receives. It is important for claimants because it is "just" that the institution responsible for the abuse is also responsible for the monetary payment to compensate for the abuse.

2. Just as there should be clearly defined responsibility on the part of institutions, there should also be clearly defined eligibility criteria and at the very least the claimant should be able to establish a connection with the institution and where possible, with the perpetrator. We know however that this can be difficult to do. Records in historical abuse cases have been lost or destroyed, potential witnesses can be dead or unable to be located.

3. A plausibility test should be applied both in terms of proving eligibility but also in establishing that abuse occurred. To apply a test "on the balance of probabilities" would mean that many genuine victims would be locked out and would in part defeat the purpose of having a redress scheme if the ordinary civil burden of proof was applied.

4. Successful claimants should not be required to sign deeds of release but clearly any payment already received would need to be taken into account should an award for damages ultimately be made. There should be no requirement for confidentiality.

5. Claimants should be entitled to payment of their legal costs. Presumably institutions will be able to obtain and pay for the best legal advice. Requiring claimants to rely on Community Legal Centres (CLC's) would simply make many victims feel that the power imbalance which led to their abuse in the first place continues. This is not a criticism of CLC's who do a lot of fantastic work, but it is the case that CLC's are unlikely to have the expertise or the resources to properly represent claimants.

6. Some survivors allege abuse in more than one organisation. This is particularly prevalent in claims involving out of home care. Where this is the case, the claim should be made on all relevant organisations. Evidence provided by the claimant should include expert opinion on causation and the notional proportionate contribution of each relevant institution. The claimant's overall entitlement should be determined and then the relevant institutions should contribute to the payment depending on the extent to which the abuse for which it is allegedly responsible has contributed to the claimant's overall damage.

7. Periodic payments should not be the preferred option. Firstly, periodic payments would lead to higher administration costs both to the institutions and potentially to the scheme. More importantly however periodic payments say to a claimant that they are not responsible enough to manage their own money and they do not deserve to do so. Periodic payments also perpetuate the relationship between the claimant and the institution which for many claimants would be damaging and counter-productive. Many victims of abuse, have been made to feel dependent, subservient and powerless. Periodic payments would make them feel as if they have been forced to beg for justice, cap in hand. Periodic payments would, in the words of Oliver Dickens, be akin to "Please sir, can I have some more?"

Monetary payments

Why is the money important? Rightly or wrongly, money is the way in which our society values things. As pointed out above, the abuse costs claimants in numerous ways including loss of income, medical expenses, loss of enjoyment of life, pain and suffering etc. Money is basically the only way in which something that has cost a claimant a great deal can cost the institution that was responsible for the abuse.

It is also important that victims get a cash payment where possible. Many victims of abuse have been forced to survive on low incomes or on pensions. A lump sum can allow them, sometimes for the first time, to put money aside for a rainy day or to buy things that they have never been able to previously afford. Whilst it is the case that some people "blow" their money, arrangements could be made to protect particularly vulnerable victims including paying their money into a separate fund which would be administered by the scheme similar to arrangements where settlement monies for people under disabilities are paid into court. In addition, financial advisers could be employed by the scheme to assist all claimants in managing their money should they either request this assistance or should it be deemed that this assistance is required.

The Royal Commission has done modelling on various "maximum" payments that could be made available under any scheme ranging from $100,000 to $200,000. The consultation paper also makes it clear that caps on schemes make less difference than the average of the payments made.

Whilst in an ideal world, there would be no maximum payment, survivors and their advocates largely recognize that for a scheme to be sustainable, it must be affordable. We should also recognize that there must be a trade-off between the benefits of a redress scheme versus litigation. In other words, litigation offers the capacity to be awarded higher sums but is more risky, stressful and costly.

From the institutions' point of view as well, a redress scheme should offer to claimants an attractive alternative to litigation. A handful of successful claims for damages in the courts against an institution have the potential to cost institutions a great deal more than smaller sums generally made available through redress schemes. Institutions would also be mindful that in addition to the monetary cost to institutions of successful litigation, the reputational damage that institutions suffer can also be costly.

A maximum payment of $200,000 would be sufficiently attractive to convince most claimants that a claim under a redress scheme is a better alternative to litigation.

We have spoken above about the importance of transparency and consistency. Establishing "bands" based on severity of abuse as were used in the Irish scheme is one way of trying to ensure consistency. The Consultation Paper gives a number of examples of how the calculation of monetary payments have been approached in other redress schemes. We strongly support the development of a matrix or table which should be applied in assessing monetary payments in all claims.

In addition, an additional payment should be made available based on the "culpability" of the institution similar to the DART scheme which allowed for an extra payment based on the way in which the Defence force had dealt with a complaint.

In other words, the capacity to be awarded an additional payment which would be akin to "punitive damages" would be an important factor in some claimants determining whether or not to litigate. For many victims, litigation is attractive because a successful claim for damages proves that the institution was at fault.

It is also important that claimants who have already received a settlement can claim a "top up". We know that many claimants have accepted paltry amounts because of the risks of litigation or indeed because there was no capacity to litigate at all where there was no legal entity that could be sued. Many of these victims have come forward and told their stories to the commission at great personal cost. It would be a travesty if these claimants were locked out of any scheme and having settled their claims would also be locked out of any litigation despite the fact that there have been and are likely to be legislative changes that will make it easier for victims to sue.

Further as some of these barriers to litigation are dealt with by legislation (for example the Victorian Government has introduced a bill which abolishes limitation periods in child abuse cases) victims who have settled their claims at a time when they did not have the benefit of these legislative reforms will feel ripped off unless they can claim a top up.

Funding

This is referred to above. The scheme should be funded by Governments and Institutions. Where an award is made, the responsible institution should be required to contribute to the fund the amount of the award and to pay a premium to go to administrative costs and the establishment of a fund to cover claims where the institution no longer exists or does not have the capacity to pay. This premium should be based on a percentage of all successful claims against the particular institution.

Civil litigation

Limitation Periods

The Victorian Government has announced it will be abolishing limitation periods in child abuse cases and has presented a Bill to the Victorian Parliament. The abolition of limitation periods applies to all actions regardless of the point in time that the relevant act or omission which has resulted in death or personal injury is said to have occurred. The negligent act must have been in relation to a minor at the relevant time and involve physical or sexual abuse. Time limits are abolished in relation to claims for psychological abuse only where the psychological abuse arises out of the acts or omissions that resulted in the physical or sexual abuse. In other words, the amendments do not apply with respect to claims for pure psychological injuries based for example on emotional abuse only. The words physical, sexual and psychological abuse are not defined in the Act and will be determined by a court. A court can summarily dismiss or permanently stay proceedings where the lapse of time has such a burdensome effect on the Defendant that a fair trial is not possible.

The NSW government is also consulting on the issue of abolition of limitation periods in child abuse cases.

Draft wording of a Bill to abolish limitation periods in all jurisdictions as part of the Royal Commission's recommendations would be helpful. The Royal Commission should also recommend that all state governments adopt the proposed draft. Firstly, the Royal Commission is best placed having investigated these issues so closely to prepare a draft Bill. Secondly, given the views expressed about consistency, it would be preferable for all stakeholders if we were dealing with the same limitations regime throughout Australia.

The Duty of Institutions

Victims believe that there should be strict liability where abuse has occurred regardless of the institution's state of knowledge. There are in fact good reasons why strict liability should be introduced. Whilst strict liability would not stop all child sex abuse it would impose on institutions the greatest incentive to ensure as far as possible that children were not sexually abused whilst in their care.

In the alternative, a reverse onus of proof should be introduced whereby rather than a victim having to prove that the institution knew they were at risk and failed to act, in order to avoid liability, institutions would have to show that they took all reasonable steps to protect children from abuse. This would also provide a powerful incentive to ensure that an organization, as far as possible, has processes in place which protect children from abuse.

Vicarious Liability

On the question of vicarious liability, many victims find it astounding that an institution will be held liable under our law for the negligent conduct of an employee but not for the criminal conduct of an employee, except in circumstances where it can be shown that the institution knew or should have known that a child was at risk.

In addition, the employment status of priests, clerics and other religious personnel such as nuns needs to be clarified. Any person who is financially supported by an institution and who is subject to lawful direction should be deemed to be an employee for whose conduct the institution is vicariously liable.

Identifying a Proper Defendant

Churches and other religious institutions which are incorporated solely through property trusts should be compelled to incorporate in a way which allows these entities to be sued with respect to all activities that the organization is involved in and not just with respect to

strictly property issues. Some churches such as the Anglican Church in Victoria is already incorporating for all purposes. There would be issues as to how to compel an organisation to change its legal status.

One way to put pressure on an organization to incorporate would be to require any organisation which is involved in the care of children to incorporate and obtain insurance cover if it wishes to receive government funds and/or apply for charitable status.

Alternatively, laws can be passed compelling the property trust to meet any claim for damages for child sex abuse from the assets of the trust as suggested by David Shoebridge who introduced a private members bill into the NSW parliament on this basis.

Model Litigants

Appropriate standards as set out in the model litigant guidelines and in the common guidance principles established by the Victorian Government in relation to civil litigation in child abuse claims should be extended and implemented by all governments. These guidelines are however ultimately not binding and should not replace legislative reform.

Any legislative changes regarding civil litigation should apply to all claims which have not been resolved including claims which may be before the courts but yet to be finalized.

In addition, institutions should agree not to rely on the releases that victims have signed finalising their rights to enable those who have cases which are strong on liability, but who settled because of technical legal defences, to have their day in court.

Other Matters

There should be capacity to develop particular strategies and processes which are consistent with certain large groups who will be seeking redress. In particular, Forgotten Australians, Aboriginal people and Torres Strait Islanders who identify themselves as being part of the Stolen Generations and Child Migrants were all “children” of the state many of whom allege abuse and because of this had experiences which were different to people who were abused in other institutional settings.

Thought should be given to special arrangements for these groups. For example, the Victorian Government through Open Place has made funding available to assist people who were in care not only with counselling but with life skills programs and funding for other medical services including dental work. Funding for family reunion is also important as the family bonds of many siblings were destroyed through the processes in the last century which not only ignored family bonds but in some cases it seems that steps were taken to purposely break these down as children who had no ties were easier to control.

These types of arrangements should continue to be made available for these groups through a redress scheme and should be extended to include “private placements” i.e. children who were placed in orphanages by their parents who were never made state wards are currently missing out on some of these services.

Aboriginal and Torres Strait Islanders might require a different redress process. For example, instead of a written claim form being completed, some people of indigenous background might prefer a face to face meeting where they can tell their story in a more traditional way. Ancillary services for indigenous background people could for example, include facilitation/funding of return to country.

Child Migrants might also require a specific family reunion program and might need assistance in tracing their families of origin overseas. Whilst these services already exist, it would make sense for these to form part of the redress process.

Conclusion

The Royal Commission's findings and recommendations which will be handed down in the middle of this year should be used by all stakeholders as a tool for change.

Whilst legislative reform is still essential to ensure change, institutions should be invited to implement the Royal Commission's findings and recommendations where practical to do so at the earliest possible time. The Royal Commission should monitor institutional responses until the Inquiry is concluded at the end of 2017.

Governments in particular should not wait for others to act first. The federal government should ensure that the Royal Commission's recommendations are discussed at a COAG meeting as soon as possible after the mid 2015 recommendations are handed down.

Governments should take the initiative in adopting the Royal Commission's recommendations in terms of how they handle child abuse claims but also to ensure that any legislative changes recommended by the Royal Commission are implemented without delay.

Changes to the laws which have to date inhibited or completely barred victims from accessing the civil courts will also be a powerful incentive for change on the part of institutions. A well-funded and resourced redress scheme is also likely to be more attractive to institutions if the civil litigation barriers are removed. In other words, if victims' prospects of success in the civil courts are enhanced by the removal of these barriers, some institutions are likely to be hammered with potentially huge damages claims. Accordingly, it is in the interests of institutions for a redress scheme to be a viable alternative for victims.

It is therefore important that a redress scheme has the following essential elements if it is to be a preferred alternative to litigation:

- A high maximum payment or no cap at all;
- Institutions coming to the table with "clean hands" ie providing relevant information on what the institution knew and what steps it took regarding prior complaints;
- An additional payment that is based on the "culpability" of the institution;
- Payment of the claimant's legal costs ensuring equality of representation for victims.

It should be noted that even if all current barriers to civil litigation were removed, there would still be a significant number of survivors whose claims would never be successful in a court of law simply because with the effluxion of time they would never be able to prove their allegations on the balance of probabilities. Further even those with good prospects of success may well choose to pursue a claim under a fair redress scheme because even successful litigation in our adversarial system, is stressful, costly and traumatic for victims of abuse.

For this reason alone any redress scheme should be ongoing. We know that it is unlikely that child sex abuse will disappear although it is hoped that through the work of the Royal Commission and other work that has been done including the Victorian Parliament's Betrayal of Trust Report, the incidence of child sexual abuse within institutions will be minimised in the future. Nevertheless, future victims of child abuse should be able to access a quick, efficient, therapeutic and non-adversarial process as would be provided by an ongoing redress scheme.