



# Tuart Place

## Growing Strong Together

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Government of Western Australia  
Department for Child Protection  
and Family Support



## **Submission by Tuart Place on the *Redress and Civil Litigation* Consultation Paper by the Royal Commission into Institutional Responses to Child Sexual Abuse**

### Introduction

Set up by care survivors themselves and operating on a participant-leadership model, Tuart Place offers a resource service to adults who experienced out-of-home care during childhood. The majority of people who come to Tuart Place have participated in schemes such as Redress WA, Towards Healing and/or other complaints processes offered by past providers of institutional care.

Given this history, Tuart Place's previous Submission on *Issues Paper 6* (June 2014) primarily focused on important features in making redress processes more effective for claimants and institutions.

The current Submission responds to the issues and questions raised in the Royal Commission's *Consultation Paper on Redress and Civil Litigation* by reporting and analysing the findings of a recent survey and a focus group with care leavers. This Submission also reports relevant observations by staff at Tuart Place and Board members of Forgotten Australians Coming Together Inc. (FACT), the governing body of Tuart Place.

We recognise that the Royal Commission's Terms of Reference encompass the sexual abuse of children in a broad range of institutional contexts, not only in out-of-home care. However, it is relevant to note that children in residential care settings experienced a double detriment: they were not only abused in an institution, they were also separated from the support of a family—often under traumatic circumstances.

Tuart Place commends the Royal Commission on its thorough and sophisticated analysis of the issues reported in its Consultation Paper. In particular, it was pleasing to see a clear recognition of the significance of personal responses from institutions to survivors.

### Tuart Place—our history and our model of support

Tuart Place is a 'no wrong door', 'one stop shop' resource service offered free of charge to people who experienced out-of-home care during childhood. Tuart Place offers individual counselling, a drop-in centre, support groups, social activities, volunteering and peer leadership opportunities, computing and IT classes, visiting health and legal services, family tracing, assistance to access records, support with professional standards claims, and help in dealing with other agencies.

Tuart Place is a participant-led<sup>1</sup> organisation and was instigated by the late Laurie Humphreys JP, a former child migrant and Bindoon ex-resident. Five of the 10 Board members of the governing body, FACT Inc., are care leavers, and Tuart Place has a strong emphasis on peer mentoring and leadership in the day-to-day operation of the drop-in centre and support networks. Tuart Place thus represents a leading edge model of recovery and healing for people who experienced childhood abuse in institutional settings.

Trauma-informed clinical work conducted by professional staff at Tuart Place operates alongside peer leadership and mentoring activities in the drop-in centre. Therapeutic support groups are facilitated by qualified clinicians, while activity and social support groups are organised and overseen by participants. Care leavers who have developed skills and confidence are present to welcome nervous newcomers (and oldcomers) to Tuart Place. Considerable research acknowledges the benefits of peer leadership and group support models.<sup>2</sup> Both forms of interaction lead to greater social connectedness and enable therapeutic normalisation of symptoms commonly experienced by survivors of childhood abuse.

The Report of an independent evaluation completed in April 2014 by the University of Western Australia (UWA) validates the Tuart Place service model. This Report states that 'Tuart Place is leading the way in providing an organisational response to the needs of participants who were abused as children in institutions...' (p.4); and that 'the governance model of Tuart Place is unique and ground breaking in social services delivery in Australia' (p.28).<sup>3</sup>

## Feedback from a care leaver survey and focus group

The scope of the survey developed for this Submission was limited by time and resources, which precluded the use of methods such as a postal survey with a broader sample of care leavers. Nonetheless, consultation with care leavers was as extensive as possible, involving both a survey and a face to face discussion of the issues.

A 13-question survey form was prepared and pilot tested in partnership with care leavers at Tuart Place, being completed by 18 individuals. The same set of questions was asked during a focus group held with 21 care leavers on 23 February 2015. The survey form is attached at Appendix 1, and the responses are summarised below.

### **1. If a national redress scheme was introduced, what types of abuse and/or neglect should be covered?**

Survey respondents and focus group participants listed the following: 'physical, sexual and emotional abuse', 'lack of education', 'emotional neglect', 'starvation', 'slave labour', 'stolen

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<sup>1</sup> During a process of consultation in 2012, a group of regular attendees at Tuart Place decided to be known as 'participants' rather than 'clients'. The term 'participant' is used to refer to care leavers who choose to be involved in activities at the Centre.

<sup>2</sup> See, for example: Hodges, J. and Markward, M. (2004). Effects of self-help service use upon mental health consumer satisfaction with professional mental health services. *Psychiatric Services, Summer*; Macauley, C. (2011). Peer Support and Trauma Recovery, *Journal of ERW and Mine Action, Issue 15(1)*, Spring, 14–17; and Kaufmann, C.L., Ward-Colasante, C. and Farmer, J. (1993). Development and evaluation of drop-in centers operated by mental health consumers. *Hospital and Community Psychiatry, 44*, 675–678.

<sup>3</sup> Bailey, S. and School of Population Health, Social Work and Social Policy (2014). *Tuart Place: Providing support of substance for care leavers in Western Australia*. Faculty of Medicine, Dentistry and Health Sciences, University of Western Australia, Perth.

heritage', 'health', 'nutrition', 'medical neglect' 'all types of abuse', 'mental abuse'. An additional comment was that 'there should be no excuse that it was "just the times"'.

While the Royal Commission cannot make recommendations outside Terms of Reference focusing on sexual abuse, the Commission's Consultation Paper acknowledges that isolating sexual abuse from other forms of abuse represents a narrow response to people harmed in institutional care. It is also relevant to note that sexual abuse does not take place in a vacuum and is always accompanied by emotional abuse, at the very least.

Countless survivors have told us over many years that they feel most harmed by the lack of education they experienced in institutional care. It may be difficult for people who were adequately educated to understand fully the often devastating impacts of deprivation of education. The most obvious outcomes include impaired literacy/numeracy and lifelong loss of opportunities; however, many people also experience a pervasive sense of shame, low self-esteem, poor self-image, minimal confidence and impaired capacity to process verbal information. Uneducated people commonly equate a lack of education with low intelligence—they think they are 'dumb'. The notion that this problem can be 'solved' by providing adult literacy classes is naïve and simplistic.

People who were harmed during childhoods marked by neglect and non-sexual abuse tell us that they feel outraged and devalued by the narrow emphasis on sexual abuse and the 'high value' placed on sexual abuse in relation to other, equally damaging, forms of abuse and neglect. Not one of the respondents to our recent survey thought that a redress scheme should only focus on sexual abuse, and we have never heard this view expressed by any care leaver or survivor—even those for whom the main form of childhood abuse was sexual.

## **2. Should a redress scheme be (1) time limited or (2) open-ended?**

Only one survey respondent thought that a redress scheme should be time limited. All other respondents thought that it should be open ended. Comments included: 'Open-ended—I missed out on Redress WA. I heard about it but didn't know I was eligible'. The general consensus among the focus group participants was that, while a scheme should be open ended, once it started, the process should be quick because of applicants' advancing age.

As noted in the Consultation Paper, a redress scheme 'should not be subject to a fixed closing date' (p.22), and the rationale for open-ended schemes is certainly compelling. For example, Tuart Place is aware of many people who missed out on the Redress WA scheme because the application period was time limited. Some abuse survivors did not hear about Redress WA because their Post Traumatic Stress Disorder (PTSD) symptoms are triggered by news media, so they avoid watching television news and reading the paper. Some saw the promotions for Redress WA but, because of impaired literacy, did not understand that they were eligible to apply. Some eligible survivors were in jail during the application period and did not apply because they felt too vulnerable and/or feared that other prisoners would find out and brand them as potential molesters themselves. Another group of people was not psychologically ready; they wanted to apply, and some even started filling out an application form, but found it too distressing to continue. Anecdotal evidence suggests that a cohort of people—possibly including the worst abused and most badly affected of all—simply could not deal with the trauma of applying for Redress WA at the time the scheme was open.

The concept of 'treatment readiness' noted in the Commission's Consultation Paper (p.112) is relevant to this discussion, and time-limited redress schemes obviously increase the potential for survivors who are psychologically unstable and unsafe to be harmed by the process (see the discussion of *Counselling and psychological care* below).

### **3. Apart from money, what things should be offered as part of a redress scheme?**

Survey respondents and focus group participants had much to say on this topic. Suggestions included: practical life supports (e.g. 'rental and transport assistance', 'a Gold Card'); acknowledgement of aged care issues (e.g. 'funded places in aged care Homes' and 'sensitive aged care facilities for people who were damaged by institutionalisation'); life skills support (e.g. 'help with writing applications and planning priorities'); and acknowledgement of educational neglect (e.g. 'free access to further education' and 'scholarships for children and grandchildren').

Other things identified as important included: ongoing and free [psychological] counselling; financial counselling (not through Centrelink); a Health Services card; support services and networks; and apologies.

### **4. Should redress payments be available in instalments as well as in lump sum payments?**

Thirteen of the 18 individual respondents, and 16 of the 21 focus group participants, thought that the option of instalments should be available to redress applicants but not imposed on them.

### **5. Would you want to receive instalments instead of a lump sum?**

In contrast to the responses to Question 4 above, only two respondents said that they might like to receive a redress payment in instalments if this option were available. Everyone else said that they would prefer a lump sum payment.

Comments by focus group participants suggest that a lack of trust in authorities would be a major impediment to applicants' opting to receive financial redress in instalments. Many participants expressed fears, such as that they might die before receiving all the instalments, or that the rules of the scheme could be changed, and authorities might decide to cut off their instalments part-way through.

These comments by focus group members, 20 (out of 21) of whom previously took part in Redress WA, indicate that people's experience of this scheme may have diminished their level of trust in redress schemes. The maximum payment offered by Redress WA was reduced from \$80,000 to \$45,000 in July 2009, after all the applicants had submitted their personal accounts of childhood abuse and neglect. The Redress WA payment cuts were frequently described by applicants as a 'betrayal', with many saying that it confirmed their existing belief that authorities and the WA Government cannot be trusted.

While eligible survivors in other states may not have the same degree of scepticism about a redress scheme's making good on all its payments, it seems that an instalment plan would not be a popular option.

There is certainly cause for concern that some eligible survivors may not be able to manage a large monetary payment effectively. As our experience of Redress WA taught us, lump sum payments can result in the targeting and 'fleecing' of vulnerable recipients. We knew of people with substance abuse problems who relapsed and spent all the money very quickly—leaving them feeling worse than before; we also knew of people who asked lawyers to prepare their applications and ended up owing more than they received.

On the other hand, it is important to allow survivors to make decisions about what is best for them. Possibly the most viable option for any redress scheme or complaints process would be to facilitate

contact between applicants who are being awarded financial settlements and an independent financial counselling entity other than Centrelink.<sup>4</sup>

The model of referral to financial counselling presently available to WA care leavers operates between Tuart Place and the Financial Counsellors' Association of WA (FCAWA), which offers free, independent information and advocacy to help people take control of their own financial situation.

Tuart Place facilitates contact between FCAWA and people receiving financial settlements through complaints processes currently operating in WA. The main purpose of these 'warm referrals' is to enable contact with a trustworthy agency that can help people make informed decisions about managing an ex gratia payment. Clients are also made aware of recently-introduced changes to deeming rules for the age pension, lower asset-testing limits and the possible impact of ex gratia payments on eligibility for state housing and for Centrelink benefits.

A more fraught issue is that of financial settlements' being received by people who lack mental capacity. Dementia is an ever-increasing reality among our elderly population of care leavers, many of whom also lack the kind of family networks that might normally step in and provide support. It seems that any redress scheme made available to this cohort should incorporate a mechanism for psycho-social assessment of applicants, with particular regard to mental capacity. A system of referral and application to a mental health administrative tribunal should also be implemented to respond to cases where the applicant requires statutory assistance to manage his or her finances. The delivery of payment by instalments does not adequately address the problem of money's being received by applicants who have diminished mental capacity or dementia.

***6. If a national redress scheme was introduced, should previous payments be taken into account?***

The overwhelming response to this question from focus group participants and survey respondents was a resounding 'NO'.

***7. Why?***

The views expressed by WA care leavers on this issue should be seen in the context of a particular set of circumstances. WA care leavers are used to systems in which previous payments are *not* taken into account. People who experienced childhood abuse in an institution where they were also abused by clergy from a different congregation are eligible to claim from both. Redress WA payments are not taken into account in the assessment of Towards Healing payments; and during the Redress WA scheme, people's Towards Healing payments were not deducted from their redress payment.

However, perhaps the main factor affecting the views of WA care leavers on this issue is the lasting impact of the almost halving of payments announced during the Redress WA scheme. This inflicted deep wounds on many of the applicants, who experienced this as a traumatic betrayal by the authorities. A vigorous campaign against the decision lasted for more than a year, with many applicants hoping in vain that the original payment levels might be reinstated. The failure of their campaign, and what it represented to WA care leavers, is still a raw nerve for this group, and the topic generally surfaces with passion when the issue of redress is discussed. The vehement reaction by WA care leavers to the question of whether previous payments should be taken into account by any new scheme is undoubtedly fuelled by the strong sense of injustice and outrage that still exists in regard to the payment cuts announced during the WA redress scheme.

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<sup>4</sup> A large and consistent volume of feedback over many years indicates that a considerable proportion of care leavers do not trust Centrelink and will not use its financial counselling service.

Redress WA payment cuts were mentioned by a number of survey respondents and focus group participants, who expressed views such as 'It is morally wrong/unfair to deduct, because pain and suffering has not ended'; 'Payments in past decisions were a mere pittance and lost all value because many years passed before they were received'; 'I spent 17 years in institutions and lived a miserable life'; and 'There is ongoing trauma—I'm still trying to cope'.

Focus group participants also expressed the view that different responsibilities should be addressed by different organisations (e.g. 'Church and Govt'; and that any national redress scheme should be a new system (e.g. 'the Federal Government should take some responsibility for past deeds').

The issue of Federal responsibility for redress is often mentioned, particularly by former child migrants. Former child migrants have a strong voice among WA's care leaver cohort<sup>5</sup>, and a commonly-expressed view is that the Federal Government has not adequately addressed its role in the harming of children received by Australia throughout its child migration schemes.

While the Australian Government issued a formal apology to former child migrants and Forgotten Australians in 2009, it has not offered financial redress, and considerable dissatisfaction has been voiced in regard to some of the initiatives announced instead as part of this national apology. For example, the (then) Department of Health and Ageing's classification of Forgotten Australians and former child migrants as a Special Needs Group for aged care purposes may in fact be detrimental to the interests of this cohort by creating a perception in the industry that they are a challenging group (further discussion on p.9).

Many care leavers who attend Tuart Place have also expressed disappointment over the large amount of federal funding devoted to the national 'Find & Connect' project as an outcome of the 2009 national apology. It should be noted that the federal funds were used to set up a separate service in WA and, as Tuart Place was already doing some of this work, this did strike some as wasteful. There is also a view that most care leavers who were likely to apply for institutional records would already have done so. In the case of former child migrants, particularly, the vast majority have already 'found' and 'connected' with whatever records or family members they were likely to seek out. Participants generally thought that these funds would be better directed to redress or to other services.

It could perhaps be expected that care leavers who have already participated in some sort of redress process might hope that previous payments would be exempt, while other groups of care leavers might think this unfair. It was recognised by some focus group participants that care leavers who have not received any redress might reasonably think that previous payments should be deducted.

### ***8. Is it important for institutions to offer face to face apologies as part of redress?***

The great majority of respondents and focus group participants thought that face to face apologies were important; however, one person said that 'child migrants should have been given a separate apology', and another person's view was that 'it's too late and public apologies have already been made'.

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<sup>5</sup> Western Australia received 98 percent of all child migrants sent from Malta, and 81 percent of Catholic child migrants sent from the UK, under post WWII child migration schemes

**9. If you were offered an apology, would you like it to be: (1) Face to face (2) In writing (3) both (4) not at all**

The overwhelming majority of respondents said that they would like both a written and a face to face apology. One respondent answered, 'Not at all', because he has already received a number of apologies.

**10. Should support services be extended to family members of applicants?**

The overwhelming majority of responses to this question were in the affirmative. Several people commented that problems arising from their childhood abuse and neglect had been passed on to all family members.

**11. If yes, what sort of support should be funded for family members?**

Survey respondents and focus group participants listed the following types of support:

- Counselling: this was the most common response; one comment was that it would 'help them to understand the situation for the applicant'
- Assistance at death, and with funeral costs; also 'any benefits and payout [not already received] should go to the family'
- Assistance with access to education/health care/travel costs/accommodation
- Respite.

Tuart Place currently provides support to many family members, mainly the widows and adult children of care survivors; however, its present funding arrangements do not specifically provide for the delivery of services to family members. Some family members are referred to visiting counsellors who see them at Tuart Place under a Mental Health Care Plan and generally bulk bill to Medicare.

The most common forms of support provided to family members are: counselling; psycho-education about the impacts of childhood trauma and abuse; assistance with family tracing and access to historical records and photos; and facilitating contact between the adult children of deceased care leavers and people who may have known them during childhood.

**12. Who should fund support services for people abused in institutions (and possibly their family members)?**

The majority of respondents to this question said that past providers such as the Churches and former Homes should fund support services. A number of respondents said that both Federal and state governments should provide funding. One person listed 'foster carers'.

**13. Do you have any additional comments or suggestions?**

Comments included the following: 'Ensure that the abuse of the past doesn't happen again'; 'Support places like Tuart Place to help facilitate the whole process'; 'Tuart Place—the only place where each person can understand the other's negative experience during childhood'.

Although it was made clear to individual respondents and focus group participants that a national redress scheme may never happen, some comments suggest that people are clearly hopeful, and a number of comments were about time: '... urgent as we have waited too long already and are in later years of life'; 'Don't take too long to come to a decision. Many have reached old age, deserve to be cared for, it's been a long time coming'; 'Why has it taken so long?'; 'Waiting is the hardest part of the process ... makes you feel worthless. If they were sincere in their apology they would not bicker about what is a pittance'; and 'Please don't wait till the majority are 6ft under!' (Note that

some of these responses were from care leavers currently participating in organisational complaints processes).

Several comments were about payment: 'Payout should be exempt from income/assets testing'; 'All monetary/apologies to be passed on to relatives on the death of claimant'; and 'Decisions about payment ought to be considered bi-partisan—stay in perpetuity regardless of the govt of the day'.

## Comments on other issues

In addition to the survey data reported above, Tuart Place has comments on other issues raised in the Royal Commission's *Consultation Paper on Redress and Civil Litigation*, specifically: Counselling and psychological care; Models of support; Health care; Monetary payments; Deeds of Release; and Legal representation.

### ***Counselling and psychological care***

The Commission's Consultation Paper identifies counselling and psychological care as key elements of redress for eligible survivors and acknowledges the importance of trauma-informed approaches to treatment (p.101). It is also important that support services working in this area are aware of the impact of 'telling one's story' for the purpose of a complaint and of the potential for significant re-traumatisation of survivors during redress schemes and complaints processes. Many Redress WA applicants told us during the scheme that recounting their memories of childhood abuse, consciously locked away for decades, felt 'as bad as the abuse itself'. In the years since the scheme closed, we have heard many survivors say that they have 'never felt the same since Redress WA'.

Revisiting one's childhood abuse through adult eyes may be an essential feature of therapeutic recovery; however, documenting the details of childhood abuse and identifying the negative effects for a redress application is an acute stressor, and survivors should not be 'rushed' into any process. This view is supported by the model of recovery outlined by trauma expert Judith Herman<sup>6</sup>, which has three stages: (1) Establishing safety; (2) Reconstructing the traumatic story; and (3) Restoring the connection between the survivor and his/her community.

As noted in the response to Survey Question # 2, time-limited schemes increase the potential for survivors who are psychologically unstable and unsafe to be harmed by the process. It is important that 'Safety and Stabilisation' are achieved before survivors are encouraged to participate in any process that involves 'Reconstructing the traumatic story'—including redress schemes, institutional complaints processes, Senate Inquiries and Royal Commissions.

Counsellors working in this area need to have an awareness that redress and complaints processes encourage the applicant to inhabit a victim role and, while this is a necessary part of the journey, it also takes a toll. Counsellors should provide psycho-education on this issue to survivors taking part in any complaints process. Research evidence confirms our own clinical observations that re-traumatisation during a complaints process can lead to an increase in emotional dysfunction, relationship problems and offending behaviours.

Applicants and complainants should be provided with straightforward information on the potential for post-trauma symptoms to arise during the complaint process. People who feel bad during such a process typically blame themselves and/or think that they are 'losing it'. Applicants are often averse to the idea of counselling; however, the applicant or a family member/carer might be willing to read

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<sup>6</sup> Herman, J. (1998). *Trauma and Recovery*. Pandora, London (p.155).



a one-page 'FAQ', providing clear information on some key issues, or to receive psycho-educational information in a different context (e.g. a group information session).

Support services for any redress or complaints process should also provide mechanisms for applicants to debrief after the disclosure of childhood abuse and also after any acknowledgement/apology/ financial settlement.

The Tuart Place service model reflects the principles for counselling and psychological care identified in Section 5.3 of the Commission's Consultation Paper, incorporating features such as the support groups and drop-in centres mentioned in 'Other forms of healing' (p.110).

As noted in the independent evaluation of Tuart Place, the greatest opportunities for recovery and healing are found in places offering Safety, Connection, Opportunity and Hope<sup>7</sup> to survivors. We trust that the Royal Commission will acknowledge the value of models of support that move beyond the provision of remedial services to victims, to a model of meaningful engagement with participants and the development of opportunities for peer mentoring and leadership.

### ***Access to medical, aged care and mental health services***

As the Royal Commission has heard, the association between child sexual abuse and adverse adult health outcomes is well established, and childhood abuse is associated with a plethora of somatic and psychological symptoms<sup>8</sup>.

Care leavers and other vulnerable populations were probably the worst affected when Allied Health Services available under Medicare's Better Access scheme were reduced in January 2010 from 12 to 10 services per patient per calendar year, and the provision for an additional six services under exceptional circumstances was also removed. For those worst affected, such as elderly care leavers with complex PTSD, this effectively reduced the number of Medicare-funded counselling sessions from 18 to 10 sessions per year.

While the number of counselling sessions available to care leavers who live within range of specialist services such as Tuart Place is unrestricted, many care leavers live in rural areas, and it is also important for this cohort to have a choice of services.

In our view, the single most useful element of any future redress for eligible survivors would be improved access to medical care, aged care and mental health services.

Elderly care leavers, many of whom experienced child sexual abuse, educational deprivation and other forms of abuse and neglect (including medical neglect), suffer significantly worse health outcomes than the general population. Elderly care leavers in WA languish on public health 'elective surgery' waiting lists for unacceptably long periods of time; it is increasingly difficult to find General Practitioners who bulk bill; and many care leavers are unable to afford Gap fees for medical services. Poor literacy, low self-confidence and age-related factors may present further barriers hindering elderly care leavers from accessing necessary medical and mental health services.

This issue of aged care is reaching crisis point for elderly care leavers. As mentioned above, the classification of Forgotten Australians and former child migrants as a 'Special Needs Group' for aged

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<sup>7</sup> Bailey, S. and School of Population Health, Social Work and Social Policy (2014). *Tuart Place: Providing support of substance for care leavers in Western Australia*. Faculty of Medicine, Dentistry and Health Sciences, University of Western Australia, Perth, p.22.

<sup>8</sup> Springer et al. (2003). The Long-term Health Outcomes of Childhood Abuse: An Overview and a Call to Action. *J Gen Intern Med*. 18(10), October, 864–870.

care purposes may have inadvertently damaged the interests of this group. The 'Special Needs' classification does not open up any additional aged care places for care leavers, nor does it provide any form of priority access or services. On the contrary, anecdotal evidence suggests that the 'Special Needs' label may create a perception that serves to disadvantage care leavers competing for scarce places in aged care facilities. When Special Needs and non-Special Needs applicants are seeking the same aged care places, it is not hard to imagine which category of applicant is likely to be more successful, regardless of any additional funding that may be available.

The Royal Commission's Consultation Paper acknowledges the need for improved access to counselling and psychological services and outlines several options for expanding public provision of these services through redress. Given the barriers to potential Medicare reform and the establishment of a trust fund (pp.126–131), a national stand-alone scheme is perhaps the most viable possibility. This idea is not inconsistent with previous public acknowledgement of care survivors' special needs by the Federal Government, the state governments and some of the other major past providers of institutional care in Australia.

A stand-alone scheme based on a model of funding such as that of the 'Balimed' scheme (p.128) would be ideal for eligible survivors of institutional abuse. This kind of model is also in keeping with the idea of a 'Gold Card' for survivors of institutional child abuse, which has been proposed many times and appears to be universally supported among the care leaver cohort. Like the system of Health Cards used by the Department of Veteran's Affairs (DVA), eligibility for specific services could be assessed based on specific conditions and circumstances.

### ***Monetary payments***

Tuart Place's previous Submission, on *Issues Paper 6*, commented on some general issues surrounding financial settlements. The present Submission primarily focuses on other matters raised in the Royal Commission's Consultation Paper.

### ***Assessment of payments by institutions***

It is noted that the Royal Commission prefers a model in which the determination of any monetary payment is made independently of the institution in which the abuse occurred. However, in our experience, there are advantages to monetary payments' being assessed, offered, and paid directly by the institution responding to historic abuse complaints.

This view is supported by comments in the Royal Commission's Consultation Paper:

'...a number of survivors have told us how they benefited from receiving payments, not just for the money itself but also for its meaning to them. For example, in the Royal Commission's Interim Report, we reported on Sharon's experience as follows:

In 2010, Sharon received \$55,000 from the Tasmanian State Government Redress Scheme. She said the payment meant a great deal to her. "They believed me, and I'd never been believed before. That was the first time." (p.132)

The above example illustrates the significant connection between monetary payments and opportunities for healing and reconciliation. For Sharon, the payment she received signified that the Tasmanian Government believed her. If Sharon's payment had been assessed and delivered by an independent entity, it would not have held the same affirmative meaning for her.

The abovementioned connection is even more powerful when the respondent is a religious or other non-government organisation. As the Commission will have heard many times, redress is 'not just about the money'; it is often a quest for psychological (and sometimes spiritual) recovery. In such

cases, the financial offer is an integral part of the pastoral response an organisation can make to a person formerly harmed in its care.

Obviously, there is potential for the opposite effect to occur, and low financial offers are commonly perceived as insulting and devaluing: an indication that the organisation either does not believe the person or thinks that his or her experiences were unimportant. Far from being reconciliatory, this further lowers the complainant's opinion of the institution.

### ***A proposed model***

The potential for occurrence of the abovementioned negative effects would be significantly diminished if the following mechanisms were in place:

- Transparent assessment mechanisms are informed by a matrix of factors and linked to a standardised schedule of monetary payments. The same matrix and schedule is available to complainants/applicants and is provided across all institutions responding to abuse complaints.
- Facilitated face to face meetings between complainants and a senior representative of the institution are conducted by an experienced, independent mediator
- Legal representation is funded for complainants. Lawyers skilled in mediation and non-adversarial approaches take the following steps:
  - a. measure their client's circumstances against the standardised assessment matrix to assess damages
  - b. present arguments on behalf of their client prior to any face to face meeting
  - c. manage complainants' expectations by providing a 'ball park' idea of what to expect
  - d. manage due process in regard to Deeds and financial settlements.
- In cases where agreement on financial settlement is not reached, an independent panel of appeal is available to complainants and their lawyers.

Other advantages of the abovementioned model are that it should offer a speedier process than one in which financial assessments are determined by an external entity; and it would be a more confidential process for complainants.

### ***Legal representation***

The view of Tuart Place on the issue of legal representation has progressed somewhat since our Submission on *Issues Paper 6*, and since lawyers have begun to have greater involvement in abuse complaints processes in Western Australia. For example, it is now recognised that lawyers representing complainants should be present during any direct response by the institution.

In our experience, it is not at all unusual for survivors to disclose additional information at apology meetings, and survivors often speak differently about their childhood experiences when they are sitting face to face with a senior representative of the institution. A sense of shared personal familiarity with the institution seems to allow complainants to talk about things which, they perhaps feel, would not be understood by others (such as counsellors, lawyers and family members). When survivors are talking to an institutional representative, they often talk more freely and personally about how the abuse has affected them.

It is also important to note that some survivors do not want to meet with an institutional representative, and there should be no obligation for a face to face meeting. However, the dialogue that takes place during apology meetings can be very liberating and empowering for the complainant and, from an institutional perspective, each meeting enables a senior representative to understand more fully what happened and how it affected individual people. It is important for the

claimant's lawyer to be present during this kind of interaction, so that any additional disclosures or effects of abuse discussed at the meeting can be taken into account.

It is unfortunate that some lawyers currently working in this area are unfamiliar with the kind of process mentioned above; they utilise an approach to civil claims in which their client never meets the respondent. This is a valid and well-established model of professional personal injury representation, but it is, in our view, inappropriate for the representation of clients whose needs are not solely financial. We know of some very sad outcomes in which survivors have been actively discouraged by their lawyer from meeting institutional representatives, and are kept waiting in a separate room while the lawyer shuttles back and forth conducting financial negotiations on their behalf. This process is inherently adversarial and disempowers the survivor. There is no potential for reconciliation and healing, and the financial payment is perceived as reluctant or begrudging.

Another common problem is the 'first offer, second offer' negotiations over money which sometimes occur in the presence of the survivor. This 'haggling' over price has been described by complainants as 'degrading' and 'unseemly'. It certainly ruins any potential for the survivor to perceive that an apology is genuine, or to experience the process as healing.

However, apart from the issues mentioned above, the introduction of legal representation has contributed a new structure to current complaints processes, providing both survivors and institutions with added security and peace of mind.

### ***Deeds of Release***

Our only comment on Deeds of Release is that they should not include confidentiality clauses. The more knowledgeable and experienced organisations responding to complaints of institutional abuse have not used confidentiality clauses in their Deeds of Settlement for many years. However, lawyers acting on behalf of some of the less experienced organisations continue to draft Deeds which contain confidentiality clauses or other inappropriate content, such as waivers that extend beyond the circumstances covered by the complaint. Funded legal advice should be made available to any applicants/complainants expected to sign this kind of document.

## **Conclusion**

Tuart Place has responded to issues raised in the Royal Commission's *Consultation Paper on Redress and Civil Litigation* by canvassing, and reporting on the views of, a number of people who experienced childhood abuse and neglect in out-of-home care, and by drawing on the experience of Tuart Place staff and Board members of FACT Inc.

This Submission has acknowledged that care leavers comprise a single sub-group among a wider cohort of survivors encompassed in the Royal Commission's Terms of Reference. However, the special needs of this group—the Forgotten Australians and former child migrants—have been widely acknowledged and recognised through mechanisms such as the national apology in 2009. Because children abused in residential care settings experienced a double detriment—not only were they abused, but they also lacked family support—we have argued that elderly care leavers should be given special consideration in regard to redress. In particular, we have advocated for a system of improved access to medical, aged care and mental health services.

This Submission has also argued for fair recognition of all types of abuse and neglect experienced by children in institutional settings, pointing out that harms such as educational neglect have had devastating lifelong effects for many. Again, we recognise that the Commission cannot make

recommendations outside its Terms of Reference, but any proposal needs to be as broad as possible in terms of types of abuse suffered.

Care leavers' views, gathered via a survey and focus group, provided feedback on 13 of the questions raised in the Royal Commission's Consultation Paper. This feedback indicates support for ideas such as services for family members and personal apologies, with a combination of both face to face and written apologies being the preferred option. Some survey and focus group respondents expressed theoretical support for monetary payments' being made available in instalments as well as lump sums. However, this was clearly viewed as an option that might help 'other people', and almost no one thought that they personally might elect to receive financial redress by instalments.

With regard to the idea of monetary payments' being made in instalments, we proposed an alternative model incorporating 'warm referrals' and facilitated contact with an independent financial counselling entity, along with a mechanism for clinical assessment of mental capacity.

Tuart Place's comments on issues such as monetary payment and legal representation are informed by considerable experience in supporting care leavers during redress/complaints processes with government and non-government past providers of institutional care. We have identified the need for expertise in support services that extends beyond 'trauma-informed counselling', and we have highlighted some of the particular issues faced by survivors taking part in complaints or redress processes.

Our comments on the assessment and determination of monetary payments are informed by our work with survivors, as is our observation that a financial offer is frequently an integral part of the healing response an organisation can make to a person formerly harmed in its care. In this Submission, we have proposed a structure for this kind of healing to be offered to survivors, which includes a mechanism for appeal. The role of legal representation in complaints/redress processes was also discussed and, while the presence of lawyers in this sector is welcomed, we identified some tensions between a 'healing and reconciliation' approach and more adversarial approaches to personal injury.

This Submission has affirmed the importance of apology meetings and direct personal responses by senior representatives of institutions. Mediated face to face meetings are not only viewed as a key feature of healing outcomes, but are often, in our experience, an occasion for survivors to disclose additional information—when they have an opportunity for dialogue with a person who has a first-hand connection to the institution.

Care leavers' responses to our survey suggest that this cohort would like to see some resolution to the issues and questions that have surrounded them for decades. There is a sense of urgency—that time is running out—and they are keen for some peace. It is the role of services such as Tuart Place to remind survivors that healing begins on the inside, and that the actions of an external entity cannot fix them. However, it is equally important for all external stakeholders to respond promptly to the needs of survivors with professionalism and compassion.

*Report prepared by Dr Philippa White, Director of Tuart Place, with input and support from participants and staff at Tuart Place and Board members of FACT Inc.*

*1<sup>st</sup> March 2015.*

**APPENDIX I: Tuart Place Participant survey on Redress schemes**

1	If a national redress scheme was introduced, what types of abuse and/or neglect should be covered?	
2	Should a redress scheme be (1) time limited or (2) open-ended?	1 / 2
3	Apart from money, what things should be offered as part of a redress scheme?	
4	Should redress payments be available in instalments as well as in lump sum payments?	YES / NO
5	Would you want to receive instalments instead of a lump sum?	YES / NO
6	If a national redress scheme was introduced, should previous payments be taken into account?	YES / NO
7	Why?	
8	Is it important for institutions to offer face to face apologies as part of redress?	YES / NO
9	If you were offered an apology, would you like it to be: (1) Face to face (2) In writing (3) both (4) not at all	1/2/3/ 4
10	Should support services be extended to family members of applicants?	YES / NO
11	If yes, what sort of support should be funded for family members?	
12	Who should fund support services for people abused in institutions (and possibly their family members)?	
13	Do you have any additional comments or suggestions?	