



YMCA Australia

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Response to the Royal Commission Consultation Paper on Redress and Civil Litigation

Summary

YMCA Australia welcomes the opportunity to provide our views in response to the Royal Commission's Consultation Paper on Redress and Civil Litigation. While many of our views have been shared through our participation in the private roundtable discussions on this issue, we have also learned a significant amount through this consultation process. The opportunity to hear directly from organisations and institutions who currently provide redress to survivors, to hear directly from survivor advocate groups about what has worked and what has failed, and to hear from governments about the challenges and possibilities of implementing a national redress scheme has continued to shape our thinking in response to this very complex and important issue.

While the challenges in establishing and implementing a national redress scheme may be substantial, it is clear from survivors, advocacy groups and from the majority of institutions that this is most effective way forward in order to achieve justice and fairness for individuals who have been abused in an institutional context in the past.

YMCA Australia endorses many of the proposed approaches outlined in the consultation paper, in particular the principles regarding eligibility for redress, elements of direct personal response, counselling and psychological care and broad approaches to funding arrangements.

We also note with interest, the principles outlined in relation to interim measures to provide guidance to organisations and institutions regarding an appropriate redress response to survivors.

1. Introduction:

The YMCA in Australia is a federated structure comprising 24 independent and autonomous Associations that collectively form the National Council of YMCAs (YMCA Australia). Each YMCA Association is headed by a Chief Executive Officer and is governed by a volunteer Board of Directors and each Association is subject to a license agreement with the National Council. The National Council of YMCAs is also governed by a volunteer Board of Directors.

Member Associations are located in each state and territory of Australia and each differs significantly in size, geographic location and in services provided to the community. The YMCA operates in over 700 locations across Australia. The profile of the YMCA in Australia has changed over the past 30 to 40 years, with many smaller YMCAs no longer in existence having been amalgamated with other YMCAs or ceasing operations in particular areas. The personnel of the YMCA has changed also,

shifting from a largely volunteer driven and managed organisation to the YMCA of today where the number of paid employees far exceeds that of the volunteer base.

In recent decades, the activities, programs and services provided by the YMCA and accessed by children and young people have also changed. The YMCA has always been a provider of recreational and sporting programs for children and young people, provided camping and outdoor educational programs and in the past some low cost accommodation services for young people. In more recent years, the YMCA has also become a provider of children's services including before and after-school care services and vacation care services.

For many children and young people, their interaction with the YMCA may have been through attending a camp, participating in holiday program activities, gymnastics clubs and other sporting or recreational programs. When reflecting on our history, we have come to understand that the experience of survivors of child sexual abuse within the YMCA may be characterised in a number of ways. For some, their experience of abuse may have occurred as a once-only incident in what could be described as an opportunistic environment, and for others their experience may be of prolonged abuse by someone who had positioned themselves as a trusted leader in the community. Regardless, the outcomes and impacts for survivors have been profound and often extremely devastating. While much of the focus in discussions to date regarding redress has involved children and young people abused while in institutional or residential care, the issue of redress for those abused in organisations such as the YMCA is equally relevant and urgent.

While the structure, governance, activities and historical profile of the YMCA is not necessarily unique, there are some particular characteristics of the YMCA and 'like' organisations that may be of relevance as work progresses towards the establishment and implementation of a national redress scheme.

The following response to the consultation paper is made on behalf of YMCA Australia and draws on our understanding of redress and the relevant issues raised throughout the consultation process, research undertaken to date by the Royal Commission and the various Case Studies which have examined this issues closely.

2. Structural Issues

2.1 Elements of redress

YMCA Australia agrees with the three elements of redress as identified including a direct personal response by the institution, access to counselling and psychological care and the provision and offer of a monetary payment. Our detailed views in relation to each of these three elements are provided below.

We also support an approach to redress that explores effective ways to support the partners and immediate family members of survivors, particularly in relation to the provision of trauma-informed counselling as it relates to the treatment of the survivor. It is also acknowledged that partners and family members of those who have committed suicide or have died as a result of the abuse suffered may require particular support which could be considered as a component of redress.

2.2 General principles for providing redress

The general principles described in the consultation paper (pages 53-54) are supported by YMCA Australia and we would also support these principles being incorporated into guidance to organisations for an organisational approach to redress as an interim measure. Our expanded views on these principles are detailed in our response to Chapter 9 Interim Measures.

2.3 Possible structures for redress

Institutional schemes:

The work of the Royal Commission to date has given rise to a greater knowledge and understanding about the ways in which organisations, institutions and governments have sought to respond to survivors of child sexual abuse through the provision of redress. The Private Sessions, Case Studies and Issues Papers have highlighted the shortcomings and failures of institutional redress schemes to respond fairly and ethically to many survivors. While we acknowledge the shortcomings identified with institutional-based schemes as articulated in the consultation paper, we consider that it will be important for institutions to consider the implementation of redress according to the principles outlined, if only as an interim measure.

Of particular relevance to organisations like YMCA Australia are issues that may arise when an organisation no longer exists (and where there is no clear legally responsible entity) or when an

organisation does not have sufficient assets to contribute to a required level of redress. While these issues may effectively be dealt with through a national or state/territory-based scheme, we also acknowledge the role of the federated structure in seeking to manage these issues.

National scheme or state and territory schemes:

YMCA Australia supports the establishment and implementation of a national redress scheme, however the structure of the YMCA in Australia could be suited to either a national scheme or a state and territory scheme. Given the clear challenges in achieving the necessary Commonwealth and state/territory agreement required to implement a national scheme, YMCA Australia would not oppose the establishment of a state/territory scheme provided the scheme was consistently applied and implemented across jurisdictions according to a common set of principles and practice. We do consider, however, the very real challenge in achieving this consistency and equity across jurisdictions and we also note the significant administrative burden on federated organisations such as the YMCA in Australia if we were to participate in numerous stand-alone redress schemes.

We also acknowledge the clear feedback from the majority of survivors and from many institutions that a national scheme is preferred and seen as the only appropriate option.

Should the establishment of separate state and territory schemes be recommended, the implementation of a National Framework supported by agreed principles will be critical to ensuring consistency and equity across jurisdictions.

2.4 Past and future abuse

As noted in the consultation paper, the provision of redress for future abuse may not be necessary if reforms to civil litigation are achieved.

YMCA Australia believes that our focus as organisations, governments and the community regarding future abuse should primarily be on ensuring the implementation of effective preventative measures. While redress may provide a remedy for past abuse, acknowledging that past processes and procedures failed, redress in of itself does not provide an effective lever to drive organisational change. Changes to the ways in which concepts of duty of care are dealt with by the law and pressures applied to organisations and institutions through the insurance market may in fact produce organisational change to policy and practice that achieves a high standard of prevention strategy into the future. The insurance market is already responding to many of the failings identified through the work of the Royal Commission, by placing stronger requirements on insured organisations to implement improved mitigation strategies.

Clearly, the prevention of child abuse has inherent value and coupled with additional levers such as more stringent insurance requirements, greater regulatory oversight (perhaps including that which determines and maintains charitable status), and shifting the onus of proof regarding duty of care will have a combined effect of elevating the priority of safeguarding children and young people within all organisations and institutions.

2.5 Children

We acknowledge that seeking redress could certainly be an option for children and families, particularly in cases where a criminal case has not been successfully prosecuted and where a family may be reluctant to pursue civil litigation against the institution. While it is acknowledged that an option such as this may rarely be taken up by children and families, it should always remain open.

4. Direct personal response

YMCA Australia agrees that a direct personal response as described by the Royal Commission must come from the institution itself. We also agree that institutions and organisations need to respond to requests and directions as articulated by the survivor themselves. Any response from the institution needs to be survivor-directed, acknowledging that each survivor and/or their families will be seeking a different response from organisations and any response from organisations needs to be individualised in nature.

4.1 Principles for an effective direct personal response:

4.1.1 Re-engagement between a survivor and institution should only occur if, and to the extent that, a survivor desires it

YMCA Australia supports this principle and we acknowledge the importance of survivors having choices available to them about the manner in which they would like to engage with the organisation and who they would like to engage with. Importantly, our response to survivors must be one that promotes a sense of control for the survivor – and this should underpin all elements of our direct response and our approach to redress more broadly.

4.1.2 Institutions should make clear what they are willing to offer and provide by way of direct personal response and they should ensure that they are able to provide what they offer

We agree with this principle and recognise how important it is to be able to provide what is offered. By adhering to an overarching principle of ‘do no harm’ we must ensure that any expectations or

assumptions held on behalf of survivors are understood and acknowledged, and if required that these expectations are managed in an honest and transparent way.

4.1.3 At a minimum, all institutions should offer and provide on request an apology; an opportunity to meet with a senior representative of the institution; and an assurance as to steps taken to protect against further abuse

Apologies: YMCA Australia agrees that a personal and individualised apology should be offered. It is important that an apology addresses the particular circumstances of the individual survivor and is not generalised in nature. Where the institution has accepted that abuse occurred, an apology should also be accompanied by an acknowledgement that the abuse occurred, that the individual is believed and that the abuse was not the fault of the survivor. It is also important that an apology acknowledge the impact of the abuse and the harm the abuse has caused to the individual and his/her family. We agree and acknowledge that a full apology must be provided that demonstrates the organisation is taking responsibility for what has occurred. An apology can be provided in a written form and/or verbally in person from a senior representative of the organisation. We agree that in making an apology to a survivor and/or their family that this must be driven by a genuine desire to enhance the survivor's wellbeing and not by a desire to alleviate guilt on the part of the perpetrator and/or institution. The power imbalance that characterises child sexual abuse must not be reflected in the content or manner of an apology.

Meeting with senior institutional representatives: We agree that the opportunity for survivors and/or their family members to meet and speak directly to a person in a position of seniority within an organisation is very important. Feeling respected in this interaction and having the opportunity tell their story of abuse directly to a person in a leadership position can be a positive experience for many survivors. We are also mindful that many survivors do not trust those in positions of power in organisations and may have felt betrayed in the past. To ensure the interaction and engagement with the organisation is a positive and beneficial experience it is important to respect the survivor's views and wishes about who they would like to meet.

Assurance and undertakings: We agree that providing an assurance about the steps the organisation has taken and will be taking in the future towards preventing the abuse of children in its care is of great significance for many survivors. This may include details about policies and procedures, pre-employment screening, recruitment practices and training provided to employees and volunteers. We also consider that it may be important to convey to survivors that the issue of child protection

and child safety is taken very seriously by personnel at all levels of the organisation, from front line employees to volunteer directors.

4.1.4 In offering direct personal response, institutions should try to be responsive to survivors' needs.

YMCA Australia agrees and acknowledges that each survivor may be seeking different outcomes in terms of redress and their engagement with an organisation or institution will require an individualised approach. We agree, that to every extent possible, an organisational approach to redress must be directed by the needs of the survivor and that every survivor must be afforded the opportunity to have input into the redress process at each stage. This will assist survivors in achieving a sense of control over the process, which can be managed and engaged with at a pace determined by the survivor.

4.1.5 Institutions that already offer a broader range of direct personal responses to survivors and others should consider continuing to offer those forms of direct personal response.

Those institutions who offer a range of services to survivors such as pastoral care, counselling or financial assistance should continue to do so. For organisations such as the YMCA in Australia which do not provide these kinds of services, it will be important to work with survivors to facilitate their access to these services as requested.

4.1.6 Direct personal response should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors.

YMCA Australia agrees that those individuals engaged in the provision of direct personal response and the provision of redress more broadly should receive training in the foundations of a trauma-informed approach. Not all personnel delivering direct personal response will require in-depth training that would be expected of a practitioner in this field, but a foundational understanding and appreciation of a trauma-informed approach should be considered a minimum standard.

This will better enable those providing direct personal response to appropriately consider issues such as the physical space in which meetings are held, the attire and demeanour of those in attendance and broader issues such as the approach and time allowed for meetings.

We also consider it important that those providing direct personal response proactively seek advice from appropriately qualified and experienced trauma-informed practitioners and that within a process of policy and procedure review, this expertise is also sought.

Particular consideration also needs to be given to training and development in relation to cultural competency and ensuring any form of direct personal response and redress more broadly is provided

in a culturally safe manner and environment. This is particularly relevant when providing direct personal response to people identifying as Aboriginal or Torres Strait Islander in addition to those from diverse cultural, linguistic and faith-based communities.

We also consider it important to ensure that organisational personnel providing direct personal response have clear referral pathways to counselling and support as required. Issues of vicarious traumatisation and the impact of hearing personal accounts of abuse can significantly impact on the emotional wellbeing of organisational personnel and, if unaddressed, can adversely affect their capacity to respond to survivors in a beneficial way.

4.1.7 Institutions should welcome feedback from survivors about the direct personal response they offer and provide.

We agree that there should be informal and formal opportunities for survivors and their partners/families to provide input and feedback not only about the direct personal response provided to them, but also the organisational approach to redress more broadly.

It will be important for organisations to be proactive in seeking and providing opportunity for feedback in a manner that ensures survivors feel comfortable and supported to do so; and equally important for organisations to demonstrate that they have acted on this feedback.

YMCA Australia supports a formal process of review for survivors and their partners/families should they feel dissatisfied with any element of the direct personal response and the process of seeking redress more broadly.

4.2 Interaction between a redress scheme and direct personal response.

In the establishment of a redress scheme that is independent of the institution, we consider it important that the offer of direct personal response is provided through the institution or organisation and the nature and extent of this response is directed by the survivor.

A redress scheme that is situated within an organisation (as an interim measure) would be expected to have a clear link between the provision of direct personal response and the provision of other redress elements. There may be, however, the involvement of an external and independent mechanism to provide oversight in relation to the provision of organisational-based redress and this mechanism would need to facilitate the provision of direct personal response as directed by the survivor.

5. Counselling and psychological care

5.1 The need for counselling and psychological care.

We recognise the critical role that counselling and psychological care may play in significantly enhancing the quality of life and emotional wellbeing of many survivors and their partners/families.

5.2 Principles for counselling and psychological care

5.2.1 Counselling should be available throughout a survivor's life.

YMCA Australia agrees that counselling and psychological care should be available and accessible throughout the survivor's life. This is also relevant for partners and/or family members during the life of survivor and also after their death, particularly if their death is linked to their experience of abuse.

5.2.2 Counselling should be available on an episodic basis.

Recognising that many survivors may not require counselling or psychological care in a continuous manner, but rather at different stages and points during their lives, it is important that counselling be available and accessible at these varying stages as directed and required by the survivors and his or her partner/family. We understand that for many survivors of child sexual abuse, significant life moments such as marriage, the birth of children or the death of a spouse may trigger the need for intensive counselling and psychological care for a period of time. We also understand that media reports about child abuse and periods of heightened public awareness and public discussion about such issues may also act as 'triggers' for some survivors. This may require the provision of counselling and psychological care services at short notice and sometimes during an acute episode of psychological ill health.

5.2.3 Survivors should be allowed flexibility and choice.

As with other elements of redress, the importance of ensuring that survivors have choice and control over the counselling and psychological care services they access cannot be overstated. Flexibility and choice about the type, location and provider of counselling and psychological care services is vital to ensuring survivors can access the supports when and where they are required and provides a greater sense of control over the process of seeking support.

5.2.4 No fixed limits on services provided to a survivor.

Recognising the need for the provision of counselling and psychological care services across the life span and also understanding the fluctuation in need across that period, we consider that placing a

limit on the number of care sessions would be an inadequate and inappropriate response to survivors and their partners/families.

5.2.5 Psychological care should be provided by practitioners with the right capabilities to work with complex trauma clients.

We consider the provision of psychological care from a trauma-informed perspective by appropriately trained and experienced practitioners to be critical in meeting the needs of complex trauma clients. Many survivors will require this level of intensive psychological therapy at some point and at other times, other forms of counselling or therapy may be appropriate. Acknowledging that survivors will present with different needs and at different points in their lives, it is critical that all supports, particularly psychological and counselling services minimise the risk of doing any further emotional damage or harm.

5.2.6 Suitable ongoing assessment and review.

We consider that any ongoing assessment and review of a survivor's psychological care plan should be conducted by the providing therapist, unless otherwise agreed or requested by the survivor and therapist.

5.2.7 Services for family members if necessary for survivor's treatment.

YMCA Australia acknowledges that counselling care services should be considered for the partners and/or family members of survivors, particularly as this may also form an important element of their ongoing treatment.

We also consider that it is important to consider the counselling care needs of partners and/or families in the circumstance where a survivor of child sexual abuse is no longer alive, and in particular when their death may have been related to the experience of abuse, such as death occurring as a result of suicide or alcohol or other substance misuse.

Acknowledging the counselling care needs of partners and/or family members is an important recognition of the impact of child sexual abuse on relationships, family units and on communities.

5.3 Current services and service gaps

While we support the assertion that funding for counselling and psychological care through redress should supplement and not replace existing programs and services, it is clear that the current service system is complex, often costly and difficult to navigate for many survivors. YMCA Australia does not intend to provide detailed commentary on the existing service system, as this is not within our sphere

of expertise, other than to acknowledge that broad reform is required to facilitate better access, greater affordability and the provision of higher quality psychological care services to survivors and their partners/families. This is particularly the case in many regional and remote locations.

We also recognise the complex interaction between emotional and psychological ill health and other significant challenges faced by many survivors such as homelessness or housing instability, alcohol and other substance misuse, physical ill health, financial instability, unemployment and underemployment, poor educational attainment, relationship and intimacy issues, and social isolation. We acknowledge these myriad issues cannot be addressed in isolation and while outside the Terms of Reference for this Royal Commission, recommendations for reform to the provision of psychological care services must be considered within a complex and interrelated system of broader services that also requires significant reform.

6. Monetary Payments

6.1 Purpose of monetary payments

In seeking redress and in seeking a monetary payment as a financial component of redress, survivors may hold differing views and perspectives of the purpose of the payment and what this payment may represent.

Whether a redress scheme is established that is independent of organisations or there is an organisational scheme, it will be important for there to be clarity and consistency about the purpose of a monetary payment. This purpose will need to be clearly and accurately conveyed to survivors.

We also acknowledge that the stated purpose of a monetary payment will have a connection to the amount of payment and the approach taken to determine that amount.

6.2 A possible approach

While we support the use of a matrix that takes into consideration various factors such as the severity of abuse and the impact of the abuse, we also acknowledge that assigning a value or scale to the impact of child sexual abuse is problematic and the notion of abuse being reduced to a measure on a scale may be distasteful to many survivors. We do recognise, however, the importance of an approach that, to the extent that it is possible, provides transparency and consistency for survivors.

YMCA Australia agrees that seeking to understand factors within the three broad categories as suggested such 'severity of abuse', 'impact of abuse' and 'distinctive institutional factors' may form

an appropriate basis for a transparent and consistent approach to the determination of a monetary payment.

While the assessment of such factors could form the basis of a determination of a payment, we also recognise that for many survivors a monetary payment represents an opportunity to enhance their quality of life or the lives of their loved ones. While it is broadly acknowledged that a payment amount is difficult to determine, we agree that it must represent an amount that is meaningful to survivors.

In considering an organisational-based approach to redress (as an interim measure), YMCA Australia faces a similar challenge to other community-based organisation in reaching an appropriate balance between ensuring the adequate funding of a scheme and ensuring the ongoing financial viability of the organisation, both to continue the provision of services for social good and to have a sustainable funding model for redress into the future.

7. Redress scheme processes

7.1 Key redress scheme processes

7.1.2 Eligibility:

Type of institutions: We agree that the types of institutions as defined by the Royal Commission's Terms of Reference should be considered for inclusion and participation in a redress scheme, although the institutional type and structure may determine the level and manner in which the institution participated in the scheme.

Connection required between the institution and the abuse: YMCA Australia supports the approach to identifying the connection between the institution and the abuse as outlined in the Consultation Paper.

Type of abuse included: We acknowledge that all forms of abuse need to be taken into consideration when providing redress, recognising that physical and emotional abuse often accompanies and exacerbates sexual abuse. However, we consider that in determining eligibility for redress under a proposed national scheme, the inclusion of other forms of abuse unrelated to sexual abuse may not be suitable.

Cut-off date by which the abuse must have occurred: YMCA Australia supports the suggestion that if established, a redress scheme should address past abuse as this represents the most sustainable and

appropriate approach. In the case of an organisational-based redress scheme, the option of accessing this for future abuse should remain open to victims and their families, particularly those who do not wish to pursue civil litigation.

Whether those who have already received redress may apply: We support the proposed approach that would enable survivors to access the redress scheme if previous payments have been received, but that these payments would be taken into account when determining the amount of a monetary payment and this would certainly not preclude the survivor from accessing non-financial components of redress such as an acknowledgement or apology.

Definition of a child: YMCA Australia would also be interested to understand what recommendations the Commission might make with respect to the definition of a child insofar as this pertains to eligibility for redress. Considering the particular vulnerabilities of many children and young people who were subsequently abused within institutions, and if the abuse occurred on or around the age of consent, how might the definition of a child be articulated to reflect this vulnerability?

7.2 Duration of a redress scheme

Acknowledging the length of time between the abuse occurring and when many survivors feel able and supported in coming forward to seek redress, we consider that an open-ended scheme would be most appropriate and this can be reviewed if applications to the scheme fall significantly over a period of time.

7.3 Publicising and promoting the availability of the scheme

Ensuring that clear, accurate and easily understandable information is provided about the establishment and functioning of a redress scheme is essential in meeting the needs and expectations of survivors. Critical to this is the delivery of information in a variety of communication styles and through various media forms with a particular focus on accessibility for those community cohorts outlined in the Consultation Paper. Consideration also needs to be given to ensuring information is easily accessible to those survivors who may have limited written literacy.

7.4 Application process

YMCA Australia agrees that an application process needs to be as simple and efficient as possible to minimise the risk of re-traumatisation for survivors, however we also recognise that a balance needs to be achieved in order to obtain the necessary information to enable an appropriate determination of a monetary payment to occur.

We also support the proposal that a redress scheme will fund support services to assist survivors in documenting their stories and experiences for the purpose of applying to the scheme. While we acknowledge that oral hearings for each applicant may result in significant delays in the process and may not be necessary in many cases, we do support a process by which applicants can request to have an oral hearing or a similar opportunity to tell their story. Every effort should be made to reasonably accommodate these requests.

The opportunity for survivors to include previously documented information (such as that which may have formed previous applications for redress) and the verification of personal accounts by statutory declaration, should also be supported.

7.5 Institutional involvement

YMCA Australia supports a structure and mechanism which achieves an appropriate level of independent decision-making and external oversight, particularly with regard to the determination of a monetary payment for survivors.

We also agree that a balance needs to be achieved between independent decision-making and the involvement of the institution. While it is clear that the provision of direct personal response to survivors must actively involve the institution, it is also important in terms of ensuring the institution can understand and address past failures in policy and practice in order to implement appropriate preventative strategies.

7.6 Standard of proof

Given that a monetary payment provided through redress is not intended to provide an equivalent to that which would be provided through seeking common law damages, we agree that the burden of proof must be lower.

While it would not be appropriate for YMCA Australia to define or articulate what that standard should be, we recognise that a standard of proof needs to allow for a lack (or complete absence) of documents, information or other forms of evidence that might otherwise be required when making an assessment of historical allegations.

7.7 Decision on making a claim

YMCA Australia supports a proposed approach to decision making that would engage a diversity of expertise, not only to ensure that decisions regarding a monetary payment can be made in an informed and consistent manner, but that recommendations about referral to specialist services for survivors and other recommendations about direct personal response can be developed in consultation with the survivor.

7.8 Offer and acceptance of offer

An approach which would provide survivors with a clear statement of the decision regarding a monetary payment, including appropriate information about the process used to determine a monetary amount, should be supported. We recognise that it is important for survivors to understand the process clearly and in particular, to know that a process of determination has been applied transparently and consistently.

YMCA Australia also supports access to and the provision of legal advice for survivors when considering whether to accept an offer and particularly, if that offer requires a deed of release. This advice should be provided through the redress scheme and at no cost to the survivor.

We agree that offers of a monetary payment should be open for a reasonable period to allow the survivor to seek appropriate advice and consider their position.

7.9 Review and appeals

YMCA Australia supports a process of review and appeal which is available to survivors, particularly if existing mechanisms and structures may be utilised such as through state ombudsmen or through an expanded role of the Administrative Appeals Tribunal, for example.

It will be important that a process of review and appeal is clearly articulated to survivors, is easily accessible, timely and that appropriate support and advice is provided to survivors to enable their engagement with a review process.

7.10 Deeds of release

YMCA Australia supports the approach to deeds of release as described in the consultation paper, in that this should involve an agreement to offset the value of redress against any common law damages

which may be awarded. We also agree that there may be value in a provision which would set the deed of release aside in particular circumstances as described.

We also agree that no confidentiality obligations should be imposed on survivors through a deed of release. YMCA Australia is supportive of an approach to redress that does not seek to limit the rights of survivors to seek common law damages.

7.11 Support for survivors

Seeking redress can be an extremely challenging process for many survivors and their partners and/or families, giving rise to feelings of anxiety and the potential for re-traumatisation. The provision of both counselling support and legal advice throughout the process of engaging with a redress scheme will be essential for survivors and their partners/families. These support services should be provided in an integrated manner, funded through redress and be easily accessible and responsive to survivors with a diverse range of needs.

Given the significant impact that seeking redress can have not only on the individual survivor, but also on their partner/family members, we also consider the provision of support services for partners and families as significant during this period.

7.12 Transparency and accountability

YMCA Australia supports an approach to a redress scheme that embeds principles of transparency and accountability as a priority. We recognise that transparency of information, process and decision-making is critical for survivors to effectively engage with a process of redress and to have confidence and trust in that process. The measures described in the consultation paper (p. 175) are an appropriate basis for improving transparency and accountability.

7.13 Interaction with the alleged abuser, disciplinary process and police

YMCA Australia agrees with the approached as outlined in the consultation paper (p. 176), particularly if the alleged abuser remains in a position which may continue to present a risk to children or young people, and that institutions and relevant authorities must be provided with the appropriate information from the redress scheme to enable an effective and timely response. This is also important from an institutional perspective in terms of understanding how the abuse may have occurred and undertaking a thorough review of systems, policies and procedures which may have been in place.

8. Funding redress

8.1 Possible approaches to funding redress

Initial principles: YMCA Australia supports the principle that through a redress scheme, institutions should fund the cost of counselling and psychological care, a monetary payment and administrative costs. This should also be the case where a larger group of related institutions fund the costs associated with institutions that no longer exist. This may be particularly relevant for organisations such as the YMCA in Australia where members of the federation of YMCAs may no longer exist, but where the current federation accepts responsibility for ensuring redress is appropriately funded through participation in a national or state/territory-based scheme.

Responsibilities of governments: While we agree that the responsibility for abuse rests primarily with the abuser and the institution in which they were active, we do agree that governments more broadly have a responsibility in ensuring the appropriate provision of redress considering the role governments have in regulating and funding institutions to provide services, programs and activities for children and young people.

Funder of last resort: YMCA Australia supports the consideration of governments as a funder of last resort as this reflects the broader social responsibilities of governments as described and also ensures there is an appropriate provision for survivors seeking redress in institutions that no longer exist and/or that do not have the financial capacity to provide an appropriate response.

Implementation: YMCA Australia supports the principles for implementation as outlined in the consultation paper (p. 188). Of particular relevance to federated structures such as the YMCA is an approach which would enable the participation in a national or state/territory-based scheme that was reflective of the applications for redress received that related to each independent member of the federation. In the event that an application was received which relates to a YMCA Association that no longer exists, the National Council of YMCAs represented by YMCA Australia may be the appropriate entity to respond on behalf of the federation as a whole.

9. Interim measures

YMCA Australia welcomes the guidance of the Royal Commission with regard to interim measures which may be considered by organisations in developing their response to survivors of child sexual abuse. While we endorse the approaches outlined by the Royal Commission towards the development of a national or state/territory-based scheme and support such a scheme as the most appropriate response, we also acknowledge the complexities and challenges in terms of reaching the necessary level of agreement between governments and institutions and the likelihood of a lengthy implementation period in the event that agreement is reached.

The work of the Royal Commission in hearing directly from survivors about their experiences, their current and ongoing needs and the often inadequate response from organisations to date clearly highlights the very current and pressing need for intensive support and recognition for survivors today.

As an interim measure, YMCA Australia considers that we have an important role to play in ensuring the development of an organisational approach to redress that will respond fairly and ethically to survivors of child sexual abuse within the YMCA, or by a YMCA volunteer or employee.

9.1 General principles

In developing an organisational approach to redress, YMCA Australia supports the adoption of principles for the provision of redress as outlined in the consultation paper. In particular, we support principles that include, but may not be limited to:

- ensuring the best interests of the survivor are upheld;
- ensuring the rights and choices of the survivor will be respected and supported;
- the application of a standard of 'plausibility' and an 'appearance of reasonableness' when assessing allegations;
- ensuring a nationally consistent approach to redress;
- ensuring transparency, accountability and independent and external oversight;
- an approach which does not impose time limitations;
- an approach which will complement, not replace access to common law and civil litigation rights to bring a claim of damages; and
- an approach which will be built on a process of continuous improvement when responding to survivors.

9.2 Independence from the institution

YMCA Australia also supports an organisational approach to redress which seeks to establish a governance and decision-making structure that is independent from the organisation, a structure with which survivors can engage directly if they choose. While the establishment of such a structure may be costly for individual organisations, YMCA Australia may be supportive of a cooperative arrangement with other 'like' organisations in circumstances and within parameters that aligned with organisational values and characteristics. We anticipate the role of such a structure may be to:

- act as an initial and direct point of contact for survivors in making their application for redress;
- consult directly with the survivor about the elements of direct personal response, the provision of counselling and psychological care and other support services which may be required;
- formulate a care plan outlining the above elements;
- determine the amount of monetary payment offered;
- act as a primary point of contact for the survivor throughout the process of redress;
- receive any complaints or feedback from survivors about the process; and
- make recommendations to the organisation about improvements to the process of redress.

We also support an organisational approach to redress that seeks to provide the elements of direct personal response as described in the consultation paper. In particular, we consider that the elements of direct personal response must be directed by the survivor and every opportunity must be provided to actively engage survivors in determining the components of direct personal response that will meet their individual needs.

9.3 Counselling and psychological care

The provision of counselling and psychological care according to the identified needs of the survivor is also a critical component of redress which can be supported and/or funded by the organisation, in addition to other support services as required.

Principles of life-long and episodic care will need to be considered, in addition to the provision of specialist trauma-informed services for survivors whether they be in urban centres or remote locations. This may also include the provision of counselling and psychological care for partners and family members if required.

10. Civil litigation

YMCA Australia does not wish to comment in detail regarding the proposed reforms to civil litigation. While changes to limitation periods will have a significant impact on organisations and institutions, it is clear that current approaches to litigation present insurmountable barriers for many survivors seeking justice and reform will be welcomed.

We also support an approach which would see the adoption of a set of principles for organisations and institutions in handling civil matters regarding child sexual abuse.

Conclusion

The discussion paper sets out a leading practice approach to redress and which has the support of YMCA Australia. We are cognisant however, of the barriers which present themselves to the scheme being adopted by governments at a national or state/territory level.

It is therefore essential that institutions develop interim measures and redress schemes to meet the needs of victims/survivors now pending the adoption of any national scheme.

By providing guidance to institutions, such as through this discussion paper, institutions can develop redress schemes which are aligned to the practices that could be expected within a regulatory regime.