

## **Response to redress and civil litigation consultation paper**

Presented by Andrea Lockhart, Senior Counsellor/advocate, Ballarat Centre Against Sexual Assault (CASA); in consultation with the Ballarat CASA men's support group / Ballarat survivors group.

*The comments in this paper have been developed as a response to the Royal Commission Redress and Civil Litigation Consultation Paper, through discussions with Ballarat Survivors Group and other survivors who would, due to the nature of their abuse experiences, be eligible to access a redress scheme. (The term 'survivors' is used in a generic term referring to the various people that Ballarat CASA works with who have been impacted by childhood sexual abuse in an Institutional setting.)*

### **Section 2. Structural issues**

#### *Justice for victims*

We support the Royal Commissions' work in developing recommendations for redress schemes, to establish processes to assist victims to receive justice for the abuse they experienced in institutions. A National redress scheme is seen to be the most appropriate way that this justice can be achieved, through the development of an overarching, independent body that administers the process, which is funded by the various institutions or government authorities for past abuse and by the Institutions for future abuses.

If the Federal Government does not agree to this recommendation, we support the establishment of a National advisory body guided by an understanding of the impacts of child sexual abuse, to ensure a consistent, best practice response for victims.

### *Current failings*

Civil litigation has shown to be an inconsistent, and consequently unfair process for many of the institutional abuse survivors who have spoken about having high legal fees that are factored into the payments offered, reducing the final payouts. Some survivors also reported that they were promised high figure outcomes by lawyers, which, after a lengthy process have not achieved, leading to further disappointment. Generally most report that they felt that they had very little control of the process, which contradicts recommended practice for working with survivors of institutional abuse.

The Victorian Government's announcement on 24<sup>th</sup> Feb 2015 of removing the statute of limitations for civil litigation for child sexual abuse, acknowledges this importance of the need to reform this process. This will assist to remove some of the reported high legal costs, and impediments, this recommendation should be adopted by the other states.

Currently there is a lack of independent mechanisms to support or enable survivors to undertake any redress options. Generally survivors don't want to approach the institution that also represents the context of the abuse. It is important to have an advocate/case worker in place, as part of any redress scheme, to support and guide people through the process, and liaise with the institutions on behalf of the survivor.

### *Elements of redress*

It is Important for a scheme to include both a lifetime access to counselling and a money payment. Any redress scheme/compensation payments need to be independent or quarantined from Centrelink or Medicare payments. This is due to the long-term impacts of childhood sexual abuse; including chronic unemployment/underemployment, and health impacts often associated with the impacts of coping mechanisms, such as self harming, drug, or alcohol abuse, or

even overworking. Most survivors would rather be working but struggle to maintain ongoing employment, therefore the principle of repayments of government benefits would be unjust. This should also include people who are employed, so that a redress payment does not attract a higher tax burden.

### *General principles for providing redress*

Designers of the process need to be aware of not replicating power imbalances- it should be a rights based system which is guided by experience, knowledge and understanding of working with people who have experienced sexual assault trauma.

Funding for a support person should be established with a clear role to explain/translate and work with the survivor in any of the steps along the way, as the trauma brain has difficulties taking in and understanding information. As survivors report, this should ideally be one person assisting the survivor rather than a multitude of people with various roles, so as not having to repeat the story to various people and to promote trust and a sense of safety.

### *Children*

Future schemes-institutions need to be incorporated and made liable for activities undertaken under their organisations' umbrella. It is seen that it is still important to continue redress schemes into the future, as it is well recognized that many people don't disclose sexual assault (this includes children) till many years later. This also includes institutions, which have contact with children being required to develop and demonstrate policies and procedures in place to protect children and prevent instances of child sexual abuse. It is suggested that due to the work of the Victorian enquiry and the royal commission, and the associated increase in awareness of social responsibility to protect children that further offences need to attract larger penalties when there is a failure to protect.

#### **Section 4. Direct personal response**

The overall response by the survivors regarding apologies, or direct personal response was summarized by the survivors who said' "the time for apologies has come and gone"; "we need more progressive responses now" and "there should have been apologies instead of fighting people in the courts" [REDACTED]

Some of the survivors in the group who have been offered apologies in the past through their involvement in schemes, such as Towards Healing, or through the civil litigation process, predominantly describe this offer as being meaningless and not seen as a priority or as being important for their recovery, as one described; *words are nothing compared to actions.*

Most importantly what would have the most impact is for the institutions to make a commitment and willingness to support and undertake the recommendations of the Royal Commissions redress scheme.

##### *Principles for an effective direct personal response*

It was felt that apologies should only occur if the survivor wants it to take place. The institution should negotiate it with an advocate, who would discuss this option with the survivor. Another suggestion is to have an independent arbitrator who would negotiate apologies, with the costs of this arbitrator being funded by the institution.

Many felt that apologies would have more meaning if they were accompanied by genuine efforts to follow up with the survivor and their family, otherwise it becomes tokenistic. What has historically been lacking in any experiences of apologies in the past are the offers of ongoing care and concern, such as "what can we do to assist you to recover from this, or we will continue to do whatever you need to help you recover, or our door is not closed".

### *Meetings with senior institutional representatives*

Survivors constantly report that they quickly feel overwhelmed whenever they see a person in the religious attire associated with the Institution where the abuse occurred. Any apologies, whilst recognizing the benefits of coming from a higher representative of the organisation, should be conducted in a neutral place – away from the Institution, without the religious attire, as this continues the power imbalance, which an apology should be aiming to diminish and rectify.

### *Assurances and undertakings*

Many survivors have spoken about wanting to know what the relevant organisation will do to prevent further abuse, such as being required to report instances of child abuse, even if from the confessional. There is also a need for a transparent discussion about what will be the institutions approach with the perpetrator – i.e. are they still carrying that position of power, are they being cared for or having their legal fees paid after committing crimes that clearly contradict the ethos of the institutions? An apology therefore would have meaning if the representative would be willing to discuss what changes their organisation are going to undertake to prevent further abuse.

### *Gaining access to records*

There is a need with any apology to have an open commitment to assist the survivor with accessing information and records regarding their time at the institution, which to date has shown to be a difficult process for many.

Any language or discussion about 'caps' or 'limits of accountability' clearly contradicts any spirit of apology, many of the survivors are hoping that it would rather include offers such as 'what can we do to assist you in your recovery'.

*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*

One survivor in the group suggested the following model: " a two hour time frame– the victim speaks first – then feedback/response from the institutions representative, and a discussion *with purpose*. This should also include the representative of the organisation listening to something like a victim impact statement – so that they really listen to the effect of the abuse that the perpetrator caused. The purposeful discussion would be facilitating the opportunity for the survivor to be able to articulate what they think needs to happen.

One man wanted the representative to perform a symbolic act of apology such as "washing our feet". Another wanted a publicly printed apology – available for viewing by the general public, such as in a newspaper, most want to remove any notion of secrecy as it is seen that secrecy prevents the institution from being held accountable.

## **Section 5. Counselling and psychological care**

*The need for psychological care/counselling should be available throughout a survivor's life*

The men who contributed to the discussions about the consultation paper are all clients of Ballarat CASA and are in agreement that ongoing counselling and support in its various forms has assisted them in many aspects of their lives. Most of all they see that counselling should be a "built in" part of a redress scheme, in addition to any financial compensation. That is because trauma has a multitude and variety of impacts over a person's lifetime and counselling needs to be accessible at various times throughout that lifetime. It is also seen that counselling needs to be available for family members; partners, parents and children as they are also impacted by effects of the trauma on their loved one. In Ballarat there

has been over 45 suicides connected with abuse in the [REDACTED] Provision of counselling for the families affected should be accessible within a redress scheme.

#### *Options for service provision and funding*

The Ballarat Survivors Group support the need to recommend further funding for specialist sexual assault services, with training and experience in working with adults who have experienced childhood sexual assault and a supervision structure that promotes accountability and supports the counsellor in that process. One suggestion to fulfill this direction would be to have the Institutions involved in the abuse provide funding to the specialist services. A private practitioner generally charges fees of approximately \$150-220 per hour, and does not have the inbuilt infrastructure; a specialist service is able to provide the same level of service with significantly reduced costs.

Treatment plans, as discussed in this section can be difficult to gauge and monitor and should not be seen as an essential part of the counselling process. Most survivors struggle to even identify what needs to change and setting treatment goals can be daunting and generally a deterrent for help seeking. Therefore counselling options need to be built on a long term 'as needs' model, rather than the traditional structured model of the Medicare mental health access plan.

#### *Restrictions on access to Medicare*

With this model, it is generally ten sessions, referred by the medical practitioner with a CBT/ solutions focus, treatment models that do not work with complex trauma. It doesn't allow for non-targeted sessions, which allow for the engagement process to occur and to develop trust and safety, an integral requirement of trauma therapy, with people who have had their trust destroyed. This model also relies on the survivor having discussed their abuse with their doctor – many in the group report that they are too ashamed to tell their doctors, or take many years to

develop the trust to tell their doctor. It also relies on the survivor reapplying for further sessions once the ten sessions are completed, which is counterproductive as most survivors of sexual abuse have difficulties with assertiveness or even believing that they have a right to receive help and assistance.

A new Medicare category for child sexual assault is a suggested model for Medicare as a funding system for counselling services outside the specialist sexual assault services if people wish to access a private practitioner. One suggestion is that each institution has a number that the Medicare treatment is billed against.

### *Other forms of healing*

Other than counselling it is also seen that other therapies are important to assist with the survivor's recovery. In Ballarat, payments for additional stress related therapies such as massage or physiotherapy for body pain, gym membership and herbal medications have been reimbursed through referrals from CASA to the [REDACTED]. These ongoing treatments have assisted many of the survivors in their recovery and improved their general sense of wellbeing, reducing the depression and anxiety and suicidal ideation. One of the survivors has extensive pain and has found that the herbal remedies have helped him reduce the amount of prescription opiate based pain medications, subsequently improving his mood and helping to increase his energy.

Other survivors have spoken about the need for assistance and funding for study or training, as schooling for many was reduced due to the abuse experiences.

Another option put forward by survivors would be the introduction of a card similar to the Gold Card given to returned service personnel. This would allow for the provision of medical and mental health services with both public and private practitioners and could be provided along the same guidelines. The card is recognised and accepted around Australia and the provision could therefore be 'piggy-backed' on the existing infrastructure.

### *Supplement existing services*

Specialist sexual assault services need further funding to be funded to prioritize institutional abuse. It is CASA's experience that men often phone only when they are in crisis and if they are not responded to quickly tend to not follow through. This is supported by many of the male clients of the Ballarat Survivors Group who report that the quick response assisted them to overcome their anxiety of accessing a counseling service and to continue on to engaging with the support process. Funding needs to allow for this prioritising to continue, especially throughout the lifetime of the Royal Commission and the ensuing years, due to the increased media reporting and the acknowledgement that there would be many more that have still not sought assistance.

### **6. Monetary payments**

Past monetary payments should not be included in redress schemes. This is because past payments, such as Towards Healing, were generally an unsupportive and distressing process, leading to negative impacts. Some describe the money offered as feeling like 'go away' money, or even 'prostitution'. A government scheme should remove some of the distress association. The institutions should be required to contribute with a support worker to assist the survivors. They should be provided a choice about payment options – lump sum or installments, without Centrelink/tax/Medicare impacts.

Within this context, it is important to understand that the impact of sexual abuse is similar, whether within institutions or families, and it is also recommended that the Royal Commission recommend that the state governments review their Victims of Crime processes and payments to provide some parity.

## **7. Redress scheme processes**

### *Eligibility for redress*

The consensus amongst the Ballarat survivors group is that the understanding of child abuse, in an institutional setting should include sexual, physical and emotional abuse. It has been described by many in the group that the sexual abuse, for example in [REDACTED] and [REDACTED] also involved acts of violence and intimidation, which are all means of controlling the victim and maintaining their silence. Therefore it is important to acknowledge the impact of violence and emotional abuse within the context of schemes for reparation of sexual abuse.

### *Whether those who have already received redress may apply*

As stated previously there would be many people in the nation who would feel that once a survivor has received a payment they should therefore not be eligible for any further payments. The difficulty with this notion is that these previous payments were provided many years ago, prior to adequate support systems being in place. Survivors speak of the 'Towards Healing' process for example, where the involvement in the process was so disturbing that they were left feeling suicidal and carried with them a further entrenched sense of worthlessness. Any monies received were often used to cope with the overwhelming feelings brought up during the process, by drug or alcohol abuse. Therefore, it would be unfair to then prohibit a survivor's application in a new redress scheme.

### *Deeds of release*

Legal advice and advocacy through a support worker needs to be incorporated into any discussion regarding deeds of release. The group is in agreement that the traditional confidentiality requirements should be removed, and even that the process includes public acknowledgements/ apologies.

### *Reporting*

Guidance regarding reporting should be that it occurs if a survivor wants to report - it should be discussed in all instances, and offers of support through that process. This does not include alleged perpetrator who are currently involved with children.

### *Standard of proof*

The lifelong effects for people who experience sexual abuse include anxiety, depression, difficulties with trust and intimacy, relationship breakdown, self harming, substance alcohol abuse, and a peppered work history with its' associated financial difficulties. [REDACTED]

Rather than involving the survivor with uncomfortable questioning, an experienced professional support worker would be able to assess the survivor's story and provide recommendations as standard of proof.

## **8. Funding redress**

Nicki Davis from SNAP has written about funding, and not buying into the language of affordability – (for example the Catholic church where abuse is 6 times more likely to have happened are speaking about affordability) – undermining the survivors sense of their rights for compensation – where she has outlined the significant wealth that the church has across the world. (See media statement Friday 30 January 2015, Media Statement by Nicky Davis, Leader, SNAP Australia (Survivors Network of those Abused by Priests).

The institutions that received tax-free status in the past, and government funding to run schools, should clearly be involved in the funding. For example the Catholic schools in the 1970s were show to be 50% federal funded, 35% state funded and

15% funded by the parents. They therefore would have a responsibility for accountability for that funding and the assumed care that they had for the children.

## **9. Interim arrangements**

In Ballarat CASA we have observed the ongoing devastating impacts of the abuse on the members of the group's lives. Many struggle with ongoing poverty and health impacts. We currently are assisting with interim measures, through arrangements with the [REDACTED] to fund medical care and even the provision of grocery vouchers for emergencies. They have also been assisting some of the survivors with the costs of transport to the group or to counseling. In the context of the church's wealth, this money is minimal, but the benefits to the survivors are significant. This is a clear indicator that interim measures need to be in place to assist people in their 50's, 60's and 70's who are struggling now.

A support worker/case manager is to be trialed in the Ballarat area, as promised by state government funding. This worker can assist people with an individual support plan to identify their needs and facilitate support. It is anticipated that this will help prevent survivors feeling overwhelmed and prevent further suicides in this area. This is a model that should be adopted in areas where there is significant history of abuse, and there are complex needs of the survivors to support. The large institutions should be encouraged or required to assist in the funding of this, but it needs to be consistent rather than an 'ad hoc' process.