



SUBMISSION on the Consultation Paper: Redress and Civil Litigation

Royal Commission into Institutional
Responses to Child Sexual Abuse

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Centre for Excellence
in Child and Family Welfare Inc.



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About the Centre for Excellence in Child and Family Welfare

The Centre for Excellence in Child and Family Welfare (the Centre) is a peak body established to improve the lives of vulnerable children and their families in Victoria. The Centre and its hundreds of members represent early childhood, child, youth and family support services and out-of-home care services including kinship care, foster care, residential care and services providing support for children moving on from care. The Centre works with these organisations and those employed in child and family services to strengthen the quality and capacity of services. It does this through workforce development and learning, policy development research and advocacy for children and families.

Royal Commission into Institutional Responses to Child Sexual Abuse

The Centre is committed to supporting the work of the Royal Commission into Institutional Responses to Child Sexual Abuse. To date the Centre has:

- Provided information to community service organisations on the important work of the Royal Commission
- Facilitated four forums to highlight the importance of implementing child safe policies and appropriate responses to children and adults abused in institutional settings and their families
- Submitted written responses to the Royal Commission's Issues Papers on Working with Children Check, Child Safe Institutions, Preventing Sexual Abuse of Children in Out-of-Home Care, Civil Litigation, Redress Schemes and Statutory Victims of Crime Compensation Schemes
- Attended a private roundtable discussion on redress facilitated by the Royal Commission.

Consultation Paper: Redress and Civil Litigation

This paper is a written submission on the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Redress and Civil Litigation (Consultation Paper), which is intended to complement our previous written submissions on the relevant Issues Papers on redress and civil litigation.

Prior to responding to the questions posed in the Consultation Paper, the Centre would like to acknowledge that redress and civil litigation for child sexual abuse in institutional settings pose many challenges, as agreement on the most suitable scheme and civil law reform will not resolve the issues that many survivors have in seeking redress, but also, may not be beneficial to organisations and vice versa. For example, the Centre advocates for a national redress scheme and the removal of

limitations periods for civil litigation for all forms of child abuse, as did other institutions/community service organisations. This may potentially have financial implications for governments and our member organisations, particularly smaller organisations. However, it is well documented that victims can take many years before they are able to disclose child sexual abuse, well beyond legislated limitation periods that leaves them currently with no redress for the crimes committed against them as children that have had a lasting effect on their life.

The Centre's approach in written submission to the Royal Commission is to advocate for the safety of yesterdays, todays and tomorrows children in institutional care. Governments and institutions are responsible for the safety of children entrusted in their care in the same way they are responsible for the occupational health and safety of their staff.

Below are the Centre's responses to the questions posed in the Consultation Paper.

Issues Raised in Chapter 2

Discuss the issues raised in Chapter 2, in particular:

- *we seek views of the Australian government and state and territory governments on whether they favour a single, national redress scheme led by the Australian Government or an alternative approach*
- *on whether we should we recommend redress processes and outcomes for future institutional child sexual abuse?*

The Centre would like to acknowledge that redress and civil litigation is a critical component of reparation for past wrongs by governments and institutions to offer compensation and services to those who suffered child sexual abuse in institutional contexts. And as such, redress schemes and civil litigation are appropriate avenues for survivors of child abuse in institutional settings to seek justice for past wrongs.

The Centre advocates that a redress scheme should not limit eligibility to those sexually abused as children in institutional care but that it should be accessible to all victims of child abuse in institutional settings, in the same way that civil litigation would not exclude applications by victims of other abuse types.

The Centre strongly supports the establishment of an independent national redress scheme and legislative reforms to civil litigation for survivors of child abuse in institutional settings, these processes should sit side by side. Survivors of child abuse in institutional settings should be able to access justice either through redress and or civil litigation irrespective of the date the abuse occurred. Even with legislative reform in civil litigation, future survivors may prefer to access redress because they may not be able to meet the costs or standard of proof or possess the psychological energy required for a court process to outline just a few reasons.

The Centre strongly supports the ability of children or their advocates to apply for redress or civil litigation where the child has been sexually abused in an institutional setting. This will enable children and their families to access appropriate supports and services to address the consequences of the abuse they suffered in institutional care.

Currently in Victoria there are proposed amendments to civil litigation for victims of criminal child abuse that will be retrospective and prospective as recommended in the *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations* report by the Family and Community Development Committee (2013). Should this amendment be passed in Parliament, survivors of child abuse in Victoria will be able to access, should they choose, civil litigation. This should be available to all Australians, this will be especially important for those survivors that were abused in more than one jurisdiction. The Centre notes that additional legislative reform in civil litigation is necessary to further assist survivors of institutional child abuse in overcoming barriers in accessing justice through civil litigation, these are discussed in the Centre's previous written submissions on Issues Papers on Redress, Civil Litigation and Statutory Victims of Crime Compensation Schemes.

Issues Raised in Chapter 4

Discuss the issues raised in Chapter 4 including the principles for an effective direct personal response and the interaction between a redress scheme and direct personal response.

The Centre supports the three elements of redress outlined in the Consultation Paper, in brief, a personal response, monetary compensation and psychological care. However, in question 3 below, the Centre advocates that psychological care be extended to other service and support needs of survivors. Please refer to the Centre's written submission on Issues Paper 6 on redress for further information. A survivor should be able to select which element would suit their need at different points of time.

The Centre strongly supports the formulation of principles for institutional personal responses to survivors of child abuse to ensure that survivors are not re-traumatised by inappropriate responses.

As outlined in the Consultation Paper, direct and indirect personal responses need to be trauma informed and considerate of the survivor's needs and cultural background. The institutions that provide the personal response (including decision makers in any redress or civil litigation process) should have an understanding of child sexual abuse and perpetrators of child sexual abuse including child-to-child abuse.

It is critical that any personal response does not cause any further trauma to the survivor or their family. The personal response could be facilitated through the independent redress scheme, irrespective of whether the survivor has made an application for monetary compensation or psychological care to ensure that the personal response addresses the survivor's particular experience and needs.

Issues Raised in Chapter 5

Discuss the issues raised in Chapter 5, including the principles for counselling and psychological care, existing services and service gaps and the principles for supporting counselling and psychological care through redress. In particular:

- *we seek views of the Australian government and state and territory governments on options for expanding the public provision of counselling and psychological care for survivors*
- *we welcome submissions on the relative effectiveness and efficiency of the options in meeting survivor needs.*

The Centre supports the principles for counseling and psychological care outlined in the Consultation Paper. The Centre continues to advocate for the rehabilitation needs of survivors as discussed in the previous written submission on Issue Paper 6 on redress. The options outlined in the Consultation Paper which include the expansion of the public provision of services by changing Medicare requirements, stand alone government programs and a trust fund should be explored following the outcome of the investigation into the adequacy of current services by the Royal Commission as it may identify gaps in service, programs and skills, to ensure that survivors are provided with the care they require.

The Centre believes that care for survivors of child sexual abuse in institutional settings should be extended to other services and support needs, for example, medical care. Many survivors of sexual abuse also experienced physical symptoms or require rehabilitation treatment for substance abuse as a consequence of the abuse experienced in institutional settings.

The services may be available currently through public health models but survivors should be able to access funding for specialist care through private providers should a service be unavailable or the survivor has preferred provider. Supports and services should be available at no cost to survivors with no limits on the use. For example, some schemes/services provide a certain amount of free sessions to services before the user is expected to pay.

Issues Raised in Chapter 6

We welcome submissions that discuss the issues raised in Chapter 6, including the purpose of monetary payments. In particular, we welcome submissions on:

- *the assessment of monetary payments, including possible tables or matrices, factors and values*
- *the average and maximum monetary payments that should be available through redress*
- *whether an option for payments by instalments would be taken up by many survivors and whether it should be offered by a redress scheme*
- *the treatment of past monetary payments under a new redress scheme.*

As previously stated in the Centre's written submission on Issues paper 6 on redress, there is no amount of monetary compensation that will heal the past wrongs of abuse in institutional settings. Monetary payments must be fair, consistent and transparent.

Redress could be offered by scaled compensation (tiered) compensation based on the severity of the abuse, impact of abuse and institutional factors. This will allow for consistency, transparency and fairness that has been lacking to date for survivors. It would be important that any minimum or maximum payments that are set in an established redress scheme are not adjusted to lower rates due to the financial impact on government or institutions as has occurred in other schemes, as this will again not provide for fair and consistent system for survivors.

Survivors who have received monetary compensation in other schemes should be able to apply for redress in any newly established scheme and the previous compensation should be considered in the assessment process. Survivors who are successful in monetary compensation should be able to choose whether they are paid in instalments or as needed, such as, for financial assistance. For example, lump sum monetary compensation may negatively impact survivor's benefits.

Issues Raised in Chapter 7

We welcome submissions that discuss the issues raised in Chapter 7, including any aspects of redress scheme processes. In particular, we welcome submissions on:

- eligibility for redress, including the connection required between the institution and the abuse and the types of abuse that should be included
- the appropriate standard of proof
- whether or not deeds of release should be required.

As stipulated above and in the Centre's previous written submissions, a redress scheme should not be limited to child sexual abuse. Survivors experienced serious physical abuse and neglect that resulted in physical and psychological scars. In addition, many survivors may not be able or ready to disclose child sexual abuse and rather disclose physical abuse or neglect.

Establishing a redress scheme that limits eligibility to child sexual abuse does not provide for fair, consistent and just system for survivors of child abuse in institutional settings. Thus, eligibility to a redress scheme should not be limited to child sexual abuse and should include child-to-child abuse.

The Centre supports the Consultation Paper's (2015: 163) description of a satisfactory approach in relation to the connection between the institution and the abuse. However, it may be more appropriate for survivors to provide comment, as there may be circumstances where the abuse occurred by an official of an institution in other circumstances.

The standard of proof for a redress scheme should be lower than civil litigation as redress is not a legal process. The Centre advocated for the plausibility test for a redress scheme in previous written submissions. The main reason is that there is often no or little corroborating evidence in child sexual

abuse matters which is one of many obstacles to accessing justice and redress for survivors of child abuse in institutional settings.

The Centre believes that survivors should not be required to sign a deed of release. A survivor should be able to choose to make an application for civil litigation in the future as there may be new information that surfaces in the future that may meet the standard of proof required for civil litigation. Also, there may be circumstances where a survivor is a child or young adult that receives redress and the full consequences of the abuse may not become evident until later in the future, thus, they should be able to access civil litigation.

Issues Raised in Chapter 8

We welcome submissions that discuss the issues raised in Chapter 8, including the modelling of required funding and the possible approaches to funding redress. *In particular, we seek the views of the Australian Government, state and territory governments and institutions on:*

- *appropriate funding arrangements*
- *appropriate funder of last resort arrangements*
- *the level of flexibility that should be allowed in implementing redress schemes and funding arrangements*

The Centre believes that consultation should occur between government and institutions/community service organisations to ascertain the best approach in establishing a redress scheme.

The Centre supports the Royal Commission option that government should be the funder of last resort where an institution no longer exists, as this appears to be the only option for survivors to achieve justice through redress.

Issues Raised in Chapter 9

We welcome submissions that discuss the issues raised in Chapter 9, including the additional principles for interim arrangements and possible structures. *In particular, we seek the views of survivors, survivor advocacy and support groups and institutions on whether there are other issues on which direction or guidance might be required for interim arrangements.*

The Centre believes that extensive consultation between government and institutions/organisations is necessary to take into account the diversity and size of organisations in Victoria.

The Centre is concerned that interim arrangements would not provide for a redress scheme that was consistent, fair and just, nor a one stop shop for survivors in the same way as a national scheme. It may be more confusing to have parallel schemes and processes being considered locally and nationally for survivors and institutions.

Issues Raised in Chapter 10

We welcome submissions that discuss the issues raised in Chapter 10. In particular, we welcome submissions on:

- the options for reforming limitation periods and whether any changes should apply retrospectively
- the options for reforming the duty of institutions and whether any changes should apply retrospectively
- how to address difficulties in identifying a proper defendant in faith-based institutions with statutory property trusts
- whether the difficulties in identifying a proper defendant arise in respect of institutions other than faith-based institutions and how these difficulties should be addressed
- whether governments and non-government institutions should adopt principles for how they will handle civil litigation in relation to child sexual abuse claims
- whether any changes may have adverse effects on insurance availability or coverage for institutions, including specific details of the adverse effects and the reasons for them.

The Centre reiterates its views outlined in written submissions to Issues Papers 5 and 7 on Civil Litigation (refer to page 9 and 10 for a list of recommendations) and Statutory Victims of Crimes Compensation Schemes (refer to page 4 for a summary of recommendations), noting that Victoria is implementing legislative reforms to civil and criminal law following *Betrayal of Trust* (2013).¹ As stated above, these reforms should be implemented throughout Australia to ensure justice for all survivors of child abuse in institutional settings, however, additional legislative reforms are necessary to overcome legal obstacles.

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<http://www.justice.vic.gov.au/home/safer+communities/protecting+children+and+families/betrayal+of+trust+implementation>