

REDRESS & CIVIL LITIGATION

ROYAL COMMISSION CONSULTATION PAPER



CHILD MIGRANTS TRUST

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1. Executive Summary

The Child Migrants Trust both welcomes and values this opportunity to participate in this developing national debate on redress and civil litigation.

The work of the Royal Commission is of local and global significance at a time when the historic abuse of children is becoming an urgent item on the policy agenda of many countries.

It has for too long been a neglected, low priority area, leaving those affected carrying the burden which is rightly ours – society's. It is our shame, not those who have suffered in silence for so many years.

The Child Migrants Trust submission relates to former child migrants and their families. A child migrant's history is largely one of terror, loss, grief without end, separation from family, country and friends, deportation, a childhood characterised by cruelty and abuse on a scale which is difficult to comprehend. A childhood of captivity for many, children unable to escape from perpetrators, under the control of the abuser for many years – both physically and psychologically. This underpins our view of the central importance of independence as a key principle in all matters relating to historical abuse. It is of vital significance, providing a much improved prospect of recovery.

1. The Child Migrants Trust is convinced that there is an urgent need for a national redress scheme as the most appropriate method of delivering redress.
2. The experience of former Child Migrants is well documented as the subject of two national apologies. Clearly the level of redress should reflect the long years of suffering and hardship. As well as the serious nature of the criminal abuse, the denial over many years has compounded the suffering. Redress payments therefore should reflect the degree of injury caused. Just as the sexual assaults were of a very serious nature, it is reasonable to expect a serious and substantial rather than a token level of redress payment.

3. The greatest hope of repair has at its heart some of the values and principles we have outlined in Section 4. The therapeutic work of the Child Migrants Trust is focused on recovery. Independent, specialist, professionally trained workers and ethical practice are key components when working with former Child Migrants and their families.

When I came to work in Australia with former Child Migrants in 1988, I raised with both the Australian and British Governments, at that time, the disclosure by many former Child Migrants of childhood abuse. The immediate response from various organisations was to argue that this was the “**standards of the day**”. My response was to ask when it was lawful to assault children.

We have moved a considerable way forward since then in our understanding of childhood sexual abuse in all its many forms. This consultation paper, delivered by the Royal Commission, is asking all of us to determine the standards of **today**.

Margaret Humphreys CBE, OAM
International Director

3rd March 2015

2. Introduction

This paper considers selected aspects of the issues surrounding redress for survivors of childhood sexual abuse. The Trust has worked with former child migrants and their families for nearly thirty years. It has been involved in nearly every significant development to promote greater awareness of the difficulties faced by former child migrants.

Many former UK child migrants deported to Australia were subject to different types of abuse, including rape, during their childhood in institutions and elsewhere. The Trust has advocated for specialist services and more public recognition for former child migrants since 1987 and achieved a modest measure of success, for example, in securing public apologies.

However, for decades there has been a marked reluctance to face some painful facts - that thousands of children have been abused while in care and that child care agencies and different levels of government have failed to safeguard their interests. Similarly, the nation's historians have failed to inform or remind the general public and governments that Australia played an active role in recruiting child migrants in the post war period. This leading role creates special obligations and responsibilities in regard to former child migrants.

In many respects, questions of redress remain very much unfinished business for former child migrants. Time has never been on their side. This may be the last chance for significant numbers of former child migrants to secure any measure of justice.

The involvement of migrating agencies and the provision of counselling services are two important issues which are addressed in this paper. In addition, the structure of existing redress provision and the need for a national approach are both vital questions in this debate. The analysis of the limited provisions available at present leads to proposals for a national scheme. This is regarded as essential to secure a more just outcome for those who suffered significant sexual abuse but have received quite inadequate levels of redress. Indeed, many have not received any financial redress at all. This cannot be regarded as an acceptable outcome.

I have been assisted in the writing of this submission by Ian Thwaites, Assistant Director (Services) and Mervyn Humphreys, Assistant Director (Policy) .

3. Principles for an effective response from the institutions

a) Introduction

Across the child migrant community, there is a wide range of views regarding engagement with the migrating or receiving institutions. Many remain adamant that they want no contact with agencies in whose care they experienced trauma, deception and criminal abuse. Others seek acknowledgement from the agencies and acceptance of responsibility for poor standards of care and abusive practices, as a critical component of their own recovery and an assertion of their identity as a survivor rather than a victim. Across these groups there are varying attitudes to matters of redress and other forms of restorative justice.

There are also former child migrants who maintain a strong attachment to the institutions and agencies in whose care they spent most of their childhood. This group includes those who experienced severe abuse and others who report no abusive history.

To understand the complex and diverse relationships between former child migrants and the institutions, it is vital to consider the strong bonds between many child migrants, forged in a childhood full of adversity, competition and secrecy that often persists to the present. This can create a strong form of peer pressure to remain involved with an institution as an inseparable component of maintaining childhood relationships with others, regardless of the incidence of historic abuse. For some child migrants, this factor perpetuates a negative relationship with an institution and reinforces feelings of powerlessness and an inability to escape childhood abuse and oppression.

Over the years, former child migrants have had little choice about re-engaging with the institutions if they wanted to access their historic records, reunite with childhood friends, or seek redress through institutional processes that lack any external or independent accountability.

The Child Migrants Trust (CMT) has frequently heard complaints from child migrants of present day interactions with the institutions where they felt powerless or experienced indifference or denial that triggered childhood trauma. Comments such as: 'they made me come begging...' or 'nothing changes...' are common responses.

In relation to redress matters, such as 'Towards Healing', many former child migrants have reported they felt coerced to accept minimal redress through a 'take it or leave it' attitude that belies the title of that program. Indeed, some may have felt a sense of déjà vu. Just as their childhood institutions lacked care so they now struggled to feel any genuine sense of healing in this process. These are important considerations in relation to any role the institutions might play in a future national redress scheme.

b) Secondary abuse

During almost thirty years of providing independent, specialist therapeutic services to former child migrants and their families, the Trust has encountered many examples of institutions compounding the original harm arising from historic abuse by their present day attitudes and practices. These range from subtle undermining through continued institutional attitudes and processes, to more serious breaches including denial of historic abuse, inappropriate use of authority and failure to observe confidentiality.

CMT has evidence of failed family reunions where poor, ill-informed practice has led to further devastating outcomes (secondary abuse). The fear of rejection is a constant anxiety for many former Child Migrants. Family reunion work is highly specialist. We would recommend strongly that this work requires independence from those agencies with past involvement in child migration. Surely we all have the responsibility and motivation to ensure we make sound, ethical decisions on these vital issues. This is where hope exists for many former Child Migrants and their families.

c) The impact of secondary abuse

This can include:

- Triggering trauma linked to historic, authoritarian, abusive relationships;
- Reinforcing a sense of powerlessness and despair;
- Activating feelings of rage that cannot be safely expressed and often bleed into other interpersonal relationships with partners and children;
- Preventing or delaying former child migrants from seeking help and losing the opportunity for recovery.

The continuing power imbalance, between adults who were abused as children in residential care with staff or representatives of those institutions, and its negative impact on many former residents' ability to advocate for themselves, is now better understood.

This power imbalance is a critical factor in determining appropriate levels of involvement and engagement of institutions in any redress scheme.

d) Examples of contemporary secondary abuse by agencies and institutions

The following examples are provided to illustrate the continuing abuse of power and its impact on former child migrants at the point of re-engagement with representatives of the migrating agencies:

Towards Healing:

- At the point of negotiating the financial offer, the Provincial of a religious order told a former child migrant: 'There's not much in the kitty...that money is coming out of our pensions'. This has occurred on at least two occasions, one witnessed by CMT. Obviously, we do not know how many times this was repeated when we did not accompany the former child migrant in this process.
- Sessions have often been held in institutional buildings with clerical staff in full religious clothing, triggering anxiety and trauma.
- Refusal to acknowledge or discuss incidents of sexual assault perpetrated by lay staff such as gardeners or handymen without encouragement to pursue investigation or identifying other justice routes: 'That's nothing to do with us!' This has included an example of sexual assaults spanning five years by a priest who was a regular visitor to a Melbourne institution.
- Insistence that offences by perpetrators from different religious orders are dealt with in separate sessions, requiring repetition of painful disclosure before a new panel from the same church.
- Minimisation of serious abuse; for example, reference to children being flogged with canes and straps as 'misdemeanours'.

- Imposition of a 'reconciliation' agenda which highlights 'forgiveness' or 'healing' but omits any mention of investigating offences or action to achieve a measure of justice. The inappropriate use of apologist words that dilute the abuse and the explanations offered that religious staff were poorly trained and overworked. Similarly, referring to former child migrants' disclosures as 'your memories' rather than evidence of historic abuse, results in strong expressions of disgust and anger at the process. Many former child migrants resent that they must submit to the charade of 'reconciliation' to access modest levels of redress.

Other examples:

- A request by a former child migrant for his historic file to be sent to CMT was refused. Instead, the entire file was posted to his home and left on the doorstep so that he arrived home to find pages of sensitive, confidential information blowing around his front garden.
- A former child migrant in NSW reported he was told by a representative from a faith based agency that his family could not be traced because his birth certificate had been 'washed overboard in a shipping container accident.'
- Another former child migrant told the Trust that she only used certified photocopies of her birth certificate because 'mine is one of those orange ones, the nuns told me that means I'm the daughter of a whore.' This is a good example of both identity fraud - giving someone a false identity - and the long term impact of a deliberate lie on a vulnerable child and adult.
- For many years, former child migrants from one WA institution were required to meet with a former staff member to access their institutional files. There were many reports of confidentiality breaches, and harassment of those who expressed criticism of the institution to the point that some were afraid to ask for their records. These records have now been placed in the State Library with the necessary access protocols established.

These issues highlight some of the risks for former child migrants of continued engagement with agencies and institutions. There are specific concerns relating to the involvement of institutions in redress processes arising from historic abuse.

There is an inherent conflict of interest for any organisation reviewing past practices where damages claims arising could impact on its reputation and financial liability. Often such processes are driven by lawyers and will seek to minimise responsibility and the public record of its role in historic child abuse. Clearly, this motivation of damage limitation is at odds with the needs of former child migrants seeking redress for institutional abuse and exploitation.

Many if not most institutions have shown a culture of protecting the reputation of staff and former employees rather than the needs of vulnerable children in their care, even in the face of serious criminality and serial offences.

The evidence before the Perth public hearings into Christian Brothers' institutions, for example, highlighted their persistent denial of virtually continuous paedophile activity, documented back to 1920, yet minimised during the Slater and Gordon action in the mid-1990s as 'just a few rotten apples in the barrel'.

This self-protective culture compounds dismissive attitudes during the mid-twentieth century where children in care were to be seen and not heard; their complaints were often dismissed as lies consistent with their reputation as being of poor character, and even basic standards of safeguarding and external accountability were frequently ignored. Collusion and corrupt practices between statutory authorities and the institutions rendered ineffectual any monitoring of standards, whether legislated or not.

Authoritarian regimes are described as virtually universal across institutions receiving child migrants. Many – probably most – former child migrants continue to feel intimidated and powerless when confronted with institutional staff or their representatives.

A culture of harsh, unjust and brutal punishments without opportunity to speak up as a child has left its mark on many former child migrants' ability to advocate for themselves. This reality is often reflected in present day interactions where agency staff are quick to assert that former child migrants 'are believed'.

Present day acceptance by the institutions of the reality of their legacy of historic abuse is a very recent development. Former child migrants express a wariness that 'the agencies have been dragged, kicking and screaming, to the negotiating table.' Many former child migrants have felt affronted by the agencies' continued denial until very recent times; their sense of injustice has been reinforced by the very limited amounts offered through institutional redress schemes.

The explicit 'reconciliation' agenda expressed by many agencies is not straightforward and requires further scrutiny. On the face of it, such sentiments appeal to the general public as an honest approach to putting things right. However, the agencies' history of denial, their protection of perpetrators, even serial offenders, and the severity of criminal abuse are entrenched factors in the minds of many former child migrants who cannot ignore a lifetime of reprehensible conduct or a public relations strategy designed to ensure survival of the institution as its first priority, rather than hearing the grieving, hurt child within the adult.

e) Considerations for an effective redress scheme relating to involvement of past care providers

An effective redress scheme addressing issues of historic institutional child abuse requires solid foundations built on clear principles of safety, due process and independence.

- It needs to be therapeutically safe, with structures and systems that avoid secondary abuse and re-traumatising applicants. This means providing potential outcomes that encourage recovery and a sense of freedom from past oppressive influences. For many former child migrants, this involves clear independence from the influence and control of their childhood tormentors, represented by residential institutions.
- Its structure and processes need to demonstrate transparency and independence from those responsible for the original offence. This particularly applies in assessment of the harm suffered and decisions regarding levels of payment.

- It needs to be effective and seen to acknowledge the harm suffered, both in childhood and longer term impacts. More achievable standards of evidence compared with civil litigation claims with consequent lower payments need to be explained in the case of historic abuse, particularly where protracted legal processes would potentially increase both time and stress factors for applicants.
- Obtaining documentary evidence regarding institutional placements to support redress applications needs to be simplified, with clear access protocols established. During Redress WA, many former child migrants expressed concern that the institutions still held control over their childhood files.
- A frequent anxiety was that prior to release, any files or papers implicating abuse might be removed or destroyed. Shredding documents was seen as an obvious way to avoid the shredding of the institution's reputation. As long as the institutions retain former child migrants' historic files, these concerns will remain.
- Acknowledging that many former child migrants seek a response beyond monetary payment to address their sense of injustice, the redress scheme needs a clear a protocol for referral of criminal matters. This factor requires independent decision making processes that excludes involvement from past care providers, given their perceived or potential vested interests and history of protecting perpetrators.

f) Summary

There are varying attitudes across the child migrant community to re-engagement with the institutions and their involvement in redress processes. Clearly, the issue of personal choice is important, though that should be an informed and considered choice.

It should not represent a continued response to institutionalised patterns of compliance established through authoritarian relationships in the past.

The organisational needs of institutions to seek reconciliation with former child migrants who experienced trauma and abuse in their care ought not to be confused with the therapeutic needs of former child migrants.

Many struggle to recover from either the long term consequences of historic abuse or the impact of more recent secondary abuse or both. An important strand of recovery for many former child migrants is a sense of freedom from influence and control by their childhood abusers. It would be difficult to reconcile that need within a redress scheme where past providers played any role in assessment or decision making or were seen as still holding a position of power rather than being finally held to account.

4. Principles for counselling & current service gaps

Counselling services targeted to assist recovery for former child migrants in relation to institutional abuse require a specialist, independent approach, with a strong foundation in knowledge of historic social context and past residential care culture and practices. The Trust has observed clear benefits in delivering counselling services alongside identity and family restoration work, where improved insights and a more coherent narrative are reinforced by clarity of personal identity and stronger family relationships.

a) Resistance to conventional counselling models

Former child migrants, as older people who have grown up in an era when counselling was often equated with negative social problems and stigma, have often shown a resistance to counselling if presented in a conventional, session based format. In this regard, they are perhaps not unlike the majority of their generation. However, most former child migrants have an added layer of mistrust and reserve due to the dismissive responses shown by authorities and institutions throughout their lives.

There is often an explicit fear of negative labels and concern that they will be judged or poorly perceived by members of their family, friends or fellow child migrants.

A very common and understandable response to an initial request for help is fear and anxiety. New clients often describe sleepless nights ahead of their first meeting with the Trust. The potential to re-activate trauma through discussion that might include painful, unspoken history about loss of family and identity, or childhood institutional abuse is a significant risk.

Equally, the risk of failing to convey a sense of understanding and authority by avoiding sensitive areas can confirm former child migrants' expectation that nobody could possibly understand the many complex layers of their lifetime loss and trauma.

Former child migrants have a number of unique characteristics which make it difficult for most generalist agencies to provide a comprehensive service to address their highest priority needs. For example, they usually lack documentation regarding their deportation and arrival in Australia; consequently, citizenship uncertainties are a serious issue for most former child migrants at some point, particularly when they need to obtain a passport. The most critical institutional care records for child migrants are usually held in the UK, containing vital information about their family and circumstances of separation. Obviously, the most significant problem facing most child migrants relates to tracing and engaging their families, who usually reside overseas in a different continent.

In some ways, former child migrants have more in common with indigenous children taken from their families and culture than most Australian care leavers, with whom they may share a common experience of abusive institutional regimes. Their remedies and recovery require a specialist service outside of mainstream counselling services, given the added complexities of forced deportation and international interventions required.

The impact of entrenched consequences of long term trauma arising from historical abuse is usually inseparable for most child migrants from issues of identity and loss of family.

The Child Migrants Trust (CMT) has designed its service model in recognition of these sensitivities. In the first instance, the Trust avoids institutional triggers by delivering its services from warm, homely environments rather than conventional offices or impersonal welfare settings with large, busy reception areas. Considerable planning goes into the selection of material for display and the messages they might convey, particularly to a first time visitor. CMT operates a flexible, responsive service that seeks to avoid a cold, bureaucratic experience. Its premises are designed to be places of understanding and belonging for former child migrants, who often find it very difficult to explain their background to authorities, agencies, and even their GP. Above all other considerations, safety is the key to the journey of recovery.

b) Specialist, professional and independent services

CMT only employs well qualified, experienced professional social workers to deliver its services. It holds the view that the complexity of the work, including family research, release of childhood records and restoring former Child Migrants to their families after a separation of 50-60 years requires considerable expertise for all involved (mothers, fathers, brothers, sisters and extended family members).

A key strand of the Trust's practice is independence, to ensure therapeutic safety for vulnerable clients seeking to address their painful experiences of loss of family and an unresolved grief compounded by years of childhood sexual abuse. This principle has been embraced by the Australian Government as a policy imperative when tendering for its post apology Find and Connect services, where there was a requirement to be 'arms-length' from past providers.

The Trust places particular emphasis on confidentiality given many former child migrants' experiences of institutions' disregard for accuracy and privacy considerations in their record keeping and interface with former residents. This is another argument for professional, specialist service delivery. In addition, some of the material is potentially very distressing, even to those with experience in this area.

Easy access to records held overseas, and capacity to provide therapeutic services to family members and former child migrants living in the UK and other places world-wide are vital; not only for family restoration to work but also in relation to historic abuse. As many former child migrants were abused in British institutions, the long term consequences and need for counselling services extends beyond those resident in Australia.

The Trust's model provides a seamless, integrated service delivery with social work teams in Australia and the UK providing a comprehensive family restoration and social work service to the former child migrant and members of his or her family.

Without this capacity, a less personal and more fragmented approach is inevitable. This would leave former child migrants with insufficient support for the complex tasks ahead - to establish new family relationships and address issues often overshadowed by the impact of historic institutional abuse.

c) Historic institutional records & therapeutic recovery

Historic institutional files are often a critical component of helping a child migrant piece together their early life and family background. The understanding they sometimes offer is particularly important since so many former child migrants were deceived about their origins – told they were orphans or ‘war orphans’; or given stigmatising, cruel and untrue information about their mother’s reputation. Many were told hurtful lies, such as ‘your mother abandoned you at the hospital’, ‘You’re the sons of whores – Irish whores’. The truth about their separation is usually far more complex.

Very few child migrants were removed from families through child protection concerns. Understanding these matters is often a critical strand of recovery work relating to institutional abuse that occurred after leaving the safety and protection of family.

Given the common experience of many former child migrants that they were deceived by the institutions about their family origins, it is not surprising there is suspicion and mistrust regarding the migrating agencies’ continued control over childhood records.

Institutional files often contain harsh and judgmental statements regarding mothers in particular. Similarly, the children themselves are frequently dismissed in terms of both intellect and potential with sweeping statements about their academic performance that ignore the impact of separation from family or, indeed, the abuse they endured whilst in the care of those writing the reports.

The need to apply critical analysis to harsh value judgments within former child migrants’ institutional files requires an informed, professional approach. Often, it is best managed within a counselling relationship that offers opportunities to question and re-assess long held stigmatising beliefs typically based on either dubious or cruel misinformation.

Benefits of counselling in relation to historical abuse often include the development of new insights into systemic factors that permitted perpetrators to operate with impunity and escape justice. This assists the transfer of anger and negative self-image onto those responsible, enabling former child migrants to speak about their past.

Over time, their painful past can be shared with their families and reduce a pervasive sense of isolation and self-blame for childhood trauma. There is frequently an initial expression of profound relief and sometimes a reduction or containment of traumatic reactions such as sleep disturbance and anxiety triggers.

In relation to redress matters and 'righting the record', some former child migrants have discussed the possibility of preparing their own account of their personal history, to be placed on their institutional or agency file. This strategy could be a powerful tool in addressing the historic imbalance of power where child migrants had no say in recording often distorted accounts of their personal and family history.

It is clearly a complex dilemma for institutions regarding the potential inclusion of defamatory material regarding institutional staff; but, in therapeutic terms, this seems a lesser consideration.

Where appropriate for the individual, CMT often encourages consolidation of these new insights through group discussion with other former child migrants and involvement in campaigning work to promote justice.

d) Trans-generational issues and implications for counselling

Many former child migrants have managed, against all the adversity of their disrupted early lives, to build positive adult relationships and parent successfully. The cost has often been particularly high; we are often told the opportunities they provided for their children served as frequent reminders of their own deprivation and loss.

Even so, many report that the lack of attachment, affection and safety throughout their institutional childhood created challenges in relating easily to their own children.

Many are profoundly self-critical that they replicated institutional rigidity within the home environment and may have transferred their anxieties onto their adult children. Equally, most speak proudly of their children's achievements. CMT often reinforces this evidence of success as an important strand of recovery during counselling.

CMT sometimes enables former child migrants to disclose painful aspects of their childhood to partners and adult children, as a significant part of their recovery from a position of isolation and shame with regards to institutional abuse.

Whilst they may not have known the detail, most former child migrants' family members have long been aware of triggers or the intrusive influence of their partner or parent's childhood trauma. This can be long term work, particularly if there has been a difficult history of separation or dysfunction in family relationships.

A specialist, counselling service for child migrants requires the capacity to work with multiple family members, often needing more than one worker to manage and offset conflicts of interest, gender issues and matters of confidentiality.

e) Practical resources needed to support the service

An effective counselling service for child migrant survivors of institutional sexual abuse requires a number of practical and structural components to support the service and offer clients long term security and opportunities for recovery.

Wide national coverage is needed since former child migrants reside in every state and every mainland territory across Australia. CMT works from two permanent bases in Melbourne and Perth, and provides outreach visits to capital cities like Sydney and regional centres as needed.

The Trust operates a 1800 toll-free telephone service to simplify access for those clients living long distance from CMT offices. Whilst meeting in person is usually preferable when addressing sensitive issues such as childhood sexual assault, the Trust has found its telephone counselling service can still be effective, particularly where the initial interview in person established a working therapeutic relationship.

Former child migrants' complex and multi-layered needs generally require initial work to strengthen and clarify personal identity, requiring a search for family often followed by supported reunion practice, given their childhood institutional abuse is intertwined with events arising after separation from family and country.

In support of this core agency work, the Trust manages the Family Restoration Fund, a \$10m fund established in 2010 by the British Government as part of its national Apology to former child migrants and their families. This assistance provides a very strong message that family reunions are a vital strand of recovery. It is the very essence of reconciliation between a nation and its citizens, former Child Migrants.

A contribution from the Australian government for the small number of former child migrants not covered by the UK Government fund, such as the 310 children originally sent from Malta, would offer considerable benefits at comparatively little cost since only around a third of those people today would need such assistance.

This measure would also address the disparity in access to overseas reunion assistance that some former child migrants experience as exclusion and further evidence of discrimination.

Often, clients seeking help in relation to family tracing subsequently become engaged in counselling focussed on historical abuse only after a trusting relationship has been established. Family restoration services are sometimes viewed as less stigmatising than counselling, and operate as a gateway to the Trust's therapeutic work for those who might not otherwise seek help or even recognise the stigma as pain, which is often overwhelming.

Finally, the service requires long term security of funding to attract and retain well qualified, experienced staff, who are in short supply in this specialist area of practice. Short funding cycles increase the amount of agency time dedicated to preparing detailed funding applications, with consequent uncertainty and lack of job security for all staff. This works against building professional expertise across the agency, and can lead to a more transient workforce with reduced continuity for clients in their therapeutic relationships.

Since counselling in relation to historic sexual abuse often occurs over long periods at irregular intervals, former Child Migrants will require services for life in our view. Episodic recurrence of anxiety, stress and PTSD can regrettably be predicted. Fortunately, the Trust has a core group of staff who have provided a much needed sense of continuity over decades to former child migrants, regardless of the political or funding climate.

5. Context of redress schemes

Vital strands of a National Redress Scheme that addresses the needs of former child migrants include:

- Ex gratia payments at a level that is meaningful to recipients in acknowledging the severity and lifelong impact of historical institutional sexual abuse, without the complexity of process or burden of proof required through a civil litigation process. It is significant that the redress scheme would become available when most former child migrants have limited incomes in the latter stages of their lives.
- Funding of specialist, independent services designed to address key issues of recovery counselling from institutional abuse within a greater context of restoration of personal and family identity.
- Offers and opportunities for formal written apologies from Statutory Authorities and/or institutional representatives, with options for an acknowledgement meeting in person if requested.
- Opportunity and protocols to prepare a written statement to be placed on the institutional file that conveys the former child migrant's perspective and narrative, and addresses issues of power imbalance in recording personal, family and residential placement history.

Other important contextual developments supporting a National Redress Scheme could include:

- Legislative reform to address time limitation obstacles to an alternate justice route through civil litigation;
- Safeguarding measures to protect vulnerable children against institutional abuse in the present and future;
- Clear protocols with police nationally to investigate allegations of historical abuse arising from redress applications, and consideration of a national protocol and investigative body within State police forces to receive future notifications and investigate historic criminal abuse of children in institutional care. This would take into account the reality that survivors experience resistance and systemic obstacles to reporting historic abuse.

a) **General attitudes to matters of redress**

There is of course considerable variation regarding former child migrants' attitudes and expectations regarding levels of payment awarded in recognition of historic institutional sexual abuse. In some states former child migrants have had no access to any form of redress and their views are largely hypothetical. In others, particularly Western Australia, some former child migrants have had considerable exposure to more than one form of redress and now have quite developed views about minimal requirements based on experiences both positive and negative.

In preparation for this paper, CMT consulted with former child migrants across Australia, and found there is a greater general awareness of redress processes than in the past. For example, former child migrants showed a reduced reticence about the need for substantial monetary payments, and a greater awareness of the need for a consistent and transparent approach to scaled awards on the basis of severity of the abuse, context of the institutional experience, and lifelong impacts. Some former child migrants made reference to decades of hurtful denial by both governments and institutions, and felt the added layers of pain and suffering caused by the lack of any acceptance of responsibility should also be factored into any award made to applicants. CMT and the International Association refer to this dynamic as secondary abuse.

6. **Assessment of monetary payments**

An application process that avoids the need for interview or assessment before a panel reduces barriers for those former child migrants fearful of authority and intimidated by the prospect of addressing childhood institutional sexual assault in person. Supporting reports from medical or other professionals can, of course, add considerable weight and understanding concerning a former child migrant's application.

Written redress applications have a number of advantages:

- They allow for professional help to record the statement and develop insights and understanding into outcomes of historical abuse to present a more compelling case;

- In relation to CMT, preparing former child migrants' redress statements has frequently led to a therapeutic relationship strong enough to develop into counselling about matters raised during the intense preparation of the application;
- Written applications are probably easier to assess against determined criteria towards more consistent outcomes than verbal evidence alone;
- Written applications provide opportunities to reflect and build a chronology and narrative surrounding the most damaging abuse, and psycho-social, economic and interpersonal impacts.
- They provide therapeutic benefits by encouraging former child migrants to place their own, considered views on the record.

There are obvious anxieties for some applicants regarding a written application process, not least problems of literacy arising from educational deprivation and low self-esteem regarding performance issues in any formal process. With time, these can usually be addressed through professional service provision, provided the services are available.

a) Suggested assessment matrix and weighting

There are many sound and comprehensive examples of assessment structures within previous redress schemes outlined in the Consultation Paper, and it is probably unnecessary to list all the assessment criteria in detail within this submission. Briefly, assessment of the impact of historical institutional child sexual assault in relation to former child migrants needs to consider and include the following broad principles and factors:

Assessment criteria	Components included	Weighting
Severity and duration of the abuse	Description and context of assaults; e.g. penetration and use of physical force Grooming and threats Witnessing assaults upon other children	40%
Relationship with the perpetrator and institution	Nature of relationship with the child; statutory responsibility for care and safety Institutional culture of abuse and serial offenders	15%
The child's context and experience – aggravated damages	<ul style="list-style-type: none"> • Age and vulnerability of the child • Immediate impact within the institution; e.g. isolation from peers, bullying • Previous experiences of sexual assault • Loss of family including separation from siblings • Compounding factors such as other forms of abuse and deprivation suffered • Absence of any external support or safety 	15%
Lifelong impact and loss of opportunity	<ul style="list-style-type: none"> • Relationship and attachment difficulties • Parenting or physical health problems related to institutional trauma • Mental health factors; e.g. depression, anxiety, PTSD and other diagnosed disorders • Substance abuse and other recognised self-destructive effects of sexual assault including low self-esteem and loss of hope • Impact on employment opportunities; e.g. problems with authority 	20%
Compounding factors including secondary abuse	<ul style="list-style-type: none"> • Denial of the abuse by institutions • Examples of contemporary abuse of power; e.g. refusal to release records • Evidence of protection of perpetrators' interests over those of the victim 	10%
Previous redress settlements	<ul style="list-style-type: none"> • Factored in to the final determined award 	

In addition, applicants could include any actual expenses arising from medical treatment or counselling related to institutional sexual assault. These quantifiable damages could be applied across the assessment process and may result in a higher award where evidence submitted lacks substantive content; for example where the applicant is unable to articulate their history due to mental illness or other health issues.

b) Considerations of appropriate levels of payment

To avoid unrealistic expectations, it is vital the national redress scheme fully explains the differences between civil litigation and redress processes; particularly the levels of payment awarded and differing burdens of proof required.

Increasing awareness of remedies for historical abuse have reduced the stigma for survivors seeking financial redress and led to a developing awareness of both acceptable and inadequate responses.

A major investment by Australian governments and institutions involved deserves a community recognition and perception that payment levels awarded have relevance to the abuse suffered and represent more than a minimal token gesture.

The Trust's consultation with former child migrants has included broad discussion of expectations and minimal levels of an effective redress response.

Most former child migrants consulted accepted that a redress process with a sliding scale that reflects the severity of abuse and varying longer term consequences would be fairer than a uniform response for all applicants.

There was general support for the middle model presented within the Consultation Paper, with a ceiling set at \$150k for the most severe abuse, and median payments of \$65k. These were considered significant rather than merely token responses and not unreasonable given the length of time it has taken governments to accept their responsibility.

Opportunities for former child migrants to use a civil litigation process rather than an easier redress process were accepted as important, if difficult for the majority of former child migrants given the burden of proof required – even following the potential removal of time limitation.

c) Timing of payments

Former child migrants are an ageing population. The youngest are now in their sixties; the majority are mid-seventies and many are older still. For many, a lifetime of high stress levels arising from historical abuse and lack of supportive family attachments in their younger lives have taken their toll on health and general well-being. Lack of education has resulted in many former child migrants being limited to manual work. Some describe themselves as worn out. Abuse and deprivation in childhood is a poor investment in longer term physical, emotional and mental health.

The Royal Commission's commitment to make recommendations on redress matters is a clear acknowledgement that many potential applicants are running out of time to seek justice or enjoy the benefits of redress measures.

CMT strongly recommends any redress process should establish systems that ensure older applicants, alongside those in poor health, receive priority in assessment and settlement. A number of former child migrants requested that any national scheme guarantee payment of their award to their next of kin in the event they do not survive the application process. Whilst there is a grudging acceptance that any national scheme is unlikely to be retrospective with regards to applications from family members where the child migrant has already died, there is an anxiety across the child migrant community that their families do not miss out because their claim is extinguished by death.

Redress WA made concessions to this issue by swift, if modest, payments of \$10k to those applicants medically certified as terminally ill.

d) Duration of a national redress scheme

It is now recognised that some applicants for redress can take many years to disclose childhood abuse. Fear, lack of safety and issues of shame can play a powerful role in maintaining the silence.

One of the central factors which needs legislative review is the difficulties created by the time limitation on child sexual abuse proceedings.

There is an obvious tension between administrative and budgetary considerations of managing a national redress scheme, which favour a time limited scheme, compared with the need for a flexible, accessible policy that avoids further trauma through rigid application deadlines and is available when needed rather than only for those ready to proceed.

In the past, CMT has seen many former child migrants struggling to define or quantify their institutional abuse into terms that convince them they are eligible. For example, during Redress WA the Trust interviewed significant numbers of former child migrants who considered they had not been sexually abused because the assaults stopped short of penetration. In any case, there is an obvious reluctance to define oneself as a sexual abuse victim or survivor, and often heightened anxiety about the perceptions of others towards that label.

These factors, and the reality that some former child migrants are isolated and unlikely to easily learn about national redress opportunities indicate the scheme should be available for as long as possible for eligible applicants. CMT is aware of several former child migrants who learned too late of state based redress schemes, and this loss of opportunity has compounded their litany of grievances and sense of being regarded as of little worth or respect.

7. Structure of Redress Schemes

a) Introduction – previous redress schemes

A large number of former child migrants have applied to previous State redress schemes, particularly in West Australia, and to faith based schemes such as Towards Healing. Consequently, the Trust has developed considerable experience of different types of redress scheme, particularly by supporting applicants and assisting with written submissions. However, both these formats have produced significant disappointments for child migrants. The following observations are made about previous redress schemes after consulting with former child migrants who made applications to them.

b) State Redress Schemes

Tasmania: Several former child migrants commented that this scheme was poorly advertised and promoted. Indeed, CMT was not formally notified of its existence despite working with former child migrants for significant periods.

However, this scheme ultimately responded to late applications by reopening for extended periods, ultimately spanning several years. In addition, it offered a higher maximum level of payments at \$60k than other schemes.

Queensland: The two tiered application process was experienced by some former child migrants as stigmatizing as they had to identify themselves as having been severely abused if they wished to claim more than the basic \$7k redress payment.

This scheme did not engage widely with professional agencies providing support to applicants and, in the Trust's experience, offered minimal guidance and little assistance to facilitate the preparation of statements.

Most former child migrants known to the Trust, who participated in this scheme, have been generally dismissive of the outcomes in terms of the level of payments and the lack of transparency in decision making.

Western Australia: Redress WA was easily the most open and consultative State based scheme and, throughout its operation, provided access and guidance to professional agencies and stakeholders seeking to assist applicants to prepare their claims. It recognized the specialist nature of providing high quality, victim impact statements and, through a tendering process, authorized services independent from the State government to assist applicants.

The assessment process allowed the development of cumulative knowledge about each specific institution and perpetrators working there. Similarly, CMT grouped redress applications by specific institutions and delivered these to particular assessment teams so that a broader picture could be developed of patterns of abuse linked to both individual offenders and specific institutions.

In West Australia, there was a widespread sense of deep disappointment and anger that the level of maximum payments would be almost halved after many had submitted their written applications. The new, lower level of payments were regarded as a totally inadequate response to the very serious and damaging levels of abuse often suffered by former child migrants during their childhood in institutions.

It must be remembered that these redress payments were not confined to those who suffered one type of abuse but for all forms of abuse in any combination. For example, the reduced level of payment would be offered to an individual who had been severely beaten, neglected and sexually abused over an extended period of time.

Consequently, it is not difficult to understand the sense of betrayal when such serious ill treatment was at first seen as requiring a payment of \$80,000 but later reduced to \$45,000. Certainly, the many consequences of such abuse – emotional, physical and financial – had not been reduced, merely the level of their recognition.

Thus, there were two difficulties with this particular scheme. At first, the initial payments were viewed as adequate rather than generous but much good will was lost when the payments were cut to an unacceptable level. Secondly, the reduction was seen either as a betrayal or as evidence that their pain and loss were devalued. At best, many concluded that the volume of demand across the State had not been properly and fully considered.

Despite those reservations, in the interests of providing a balanced account, it should be said that in Western Australia, at least, significant efforts were made and substantial financial resources were allocated to tackling this issue.

This cannot be said for other States like New South Wales and Victoria, for example, which lack similar redress schemes. The decision not to pursue a State redress option does not seem to depend on the ready availability of other forms of redress, such as faith based schemes or civil proceedings. Consequently, former child migrants who were residents of several institutions in Victoria and New South Wales could not access the two most common types of redress with only civil litigation left open to them. This is a major gap in provision.

c) Civil Proceedings

Clearly, if some States and religious agencies have not implemented any redress schemes but left these matters to civil proceedings in the courts, then provision will be uneven and probably experienced as arbitrary.

Access to justice is, therefore, determined by one's childhood address or one's ability to mount civil proceedings. These do not represent a sound foundation or a satisfactory method for dealing with serious matters such as sexual assaults.

There is no guarantee that those who would most benefit from civil proceedings are able to use this route to justice. Many former child migrants did not enjoy either a good education or institutional regimes which inspired self confidence.

Finding and instructing lawyers would be a challenge for many, while the considerable time and trouble involved for uncertain outcomes also helps to explain the few numbers of civil claims over the past twenty years.

In New South Wales, former residents of Fairbridge Farm School, Molong, have been involved in very protracted civil proceedings for several years. Consequently, for those who have died or may die before the case is finally heard in court, justice delayed has resulted in justice being denied. This was their last chance to secure justice in the absence of any alternative form of redress.

Civil proceedings have not been used to any significant extent by former child migrants. The early class action in 1993 conducted by the Slater and Gordon law firm was not regarded as a satisfactory outcome by many of those concerned.

It is a very positive consequence of the review of this settlement by the Royal Commission that the inadequate amounts previously received are now being re-negotiated.

Issues involving time limitation periods and the protracted nature of the legal process involved are just two of the major obstacles which have reduced the take up of civil proceedings as a way of seeking justice.

It is probable that civil litigation is not a strategy which will appeal to many former child migrants who have been abused in childhood. It does not seem to be structured to meet their specific needs in its present form. Indeed, it may simply be a road which is too full of obstacles. The past or present decisions to choose this route do not inspire others to follow this path. Perhaps, it is seen as a last resort if there are no other options in view.

d) Faith Redress Schemes

The Catholic Church has mounted a substantial initiative to offer its own version of redress for those abused during their childhood. Many other denominations were actively involved in child migration, including the Methodists, Presbyterians and Church of England but none of these have featured in any significant measures of redress for former Child Migrants. Thus, the response by the Churches is an exaggerated version of the State based redress schemes – many have not accepted the challenge of providing redress. Similarly, regardless of the flaws in the Catholic scheme, at least it is seen by some as an attempt to make amends.

Many former child migrants have taken part in the Catholic redress scheme, 'Towards Healing'. This has not been a satisfactory experience for the majority. There have been many complaints that the scheme lacks a sense of due process and, almost by definition, any independent scrutiny or quality control.

Consequently, it is also seen by some as a corrupt, manipulative process that uses the power imbalance to minimize the settlements offered. For example, one former child migrant commented that: 'all that talk of reconciliation and wanting to hear my story was just the bubble wrap we had to get through before we could face the real issue – how much do they think my pain is worth?'

There are strong grounds for believing that not all those involved are fully committed to the aims and ethos of this scheme. Two clients of the Trust who attended two different sessions were shocked to hear that any 'redress payments were coming out of the money for our pensions.' Clearly, such remarks did not seem to be appropriate or in the spirit of attempts to remedy past wrongs.

Many former child migrants have felt ill at ease in the premises used for these sessions. The payments made have been usually less than those provided under the reduced payments of the West Australian scheme.

Since 'Towards Healing' has been the subject of a detailed case study by the Royal Commission, which clearly illustrates many of the difficulties already noted above, further comment here would merely repeat the list of flaws in its design or implementation.

e) Irish Residential Institutions Redress Board

A small number of former child migrants were born in the Irish Republic and sent first to Northern Ireland by religious orders which then shipped them to Australia usually without the knowledge or consent of their parents. These children as adults were eligible to apply to this scheme, which generally involved the use of legal practitioners during the application process. Former child migrants commented positively on the fact that their lawyers went to great lengths to obtain documents from church authorities which had often been withheld in the past. This advocacy reassured former child migrants and led to favourable outcomes.

f) Conclusion

It is painfully obvious that the present framework of State and faith based redress schemes does not provide a fair, equitable or easily accessible basis for all the many different, potential applicants for redress. The flaws and faults in these schemes are not compensated by the third option of civil proceedings which are similarly complicated and less than satisfactory.

This submission has former child migrants as its focus, a group of children who were exquisitely vulnerable. This extreme vulnerability resulted in a substantial number of severe sexual assaults during their childhood years in a variety of institutions across several States.

Child migrants were seen as the best type of immigrant in the post war period by politicians. They were also viewed as the best type of victim by predatory paedophiles who knew they were left defenceless by their age, their innocence and their lack of ties to family.

Some institutions which were meant to care for children lacked strong, child centred cultures and robust external regulation. The result was a living nightmare for former child migrants and a paradise for those paedophiles who had infiltrated orphanages and farm schools.

Former child migrants were sent across different States to live in institutions in cities, both large and small, and the outback. However, it is difficult to find many who are satisfied with the present arrangements for redress.

For a majority, it has been neither a simple nor a straightforward process. The payments have rarely matched the degree of abuse suffered or their long term, adverse impact or reasonable expectations of suitable redress payments. Sometimes, the process has felt like another assault course, full of obstacles but little real sense of healing or justice.

Similar degrees of sexual abuse can result in significantly different levels of redress payments depending on which institutions were involved and where they were located. Some former child migrants have received State and faith based redress while others have not had similar access to any such schemes.

Consequently, there is a large gap between those few who have received the maximum level of payments (roughly \$90k) from all the different redress options and those in Victoria, for example, who may have not received any payments at all. This seems a significant difference, especially to those who have retired and live on a small pension.

The injustice of being sexually assaulted as a young child in care by adults who have betrayed their positions of trust can be compounded by the absence of successful prosecutions and the lack of adequate redress and helpful services. These factors can combine in the lives of a number of former child migrants who feel alienated from society, lacking trust in others and at severe risk of depression. This particular sub-group clearly need specialist services as well as more adequate provision in terms of redress.

The fact that a Royal Commission has been appointed to examine the many implications of childhood sexual abuse is a clear sign that this is a serious national problem which should be addressed for the sake of a wide variety of individuals, especially survivors and their families.

Consequently, it should be of major concern to the wider society that the present redress arrangements are not fit for purpose and need a drastic review. The most obvious solution would be to devise a national system to reduce the present, unacceptable variations in payments and schemes. This would also help to confront some of the injustices in the present framework. Clearly, over the years, many opportunities for prosecuting offenders have been missed.

It is not possible to turn back the clock and remedy this injustice where offenders have died or are too frail to stand trial. This makes it all the more important to take positive steps on other fronts – such as redress and the provision of services - where progress can be made.

A national redress scheme would help to ensure that the present unacceptable variation in the range of both provision and payments would be significantly reduced. This would be a major step forward, especially for those for whom recent provision has been extremely limited. Similarly, a national scheme could inject a degree of justice into a pattern of redress which has not met the needs of those who suffered terrible injustices as vulnerable children whose interests were not safeguarded.

Finally, the Trust has a clear brief to contribute to the developing agenda of recovery through service delivery and reparation via redress measures. These issues are inextricably linked for former Child Migrants.

The international movement towards recognition and reparations is gathering momentum. Ireland, Canada and the U.S.A. have all had to face many of the complexities of historic abuse and social injustice. The Royal Commission is confronted with many challenges in tackling complex issues with deep roots and diverse consequences.

This is a time when the opportunities for positive, lasting change are within our grasp. We all have a public responsibility to move from denial towards acknowledgement and accountability. This will make our institutions and organisations a safer place for our nations' precious asset – our children.

Margaret Humphreys CBE, OAM
International Director

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