

# Goodstart Early Learning

Royal Commission into Institutional Responses to Child Sexual Abuse:

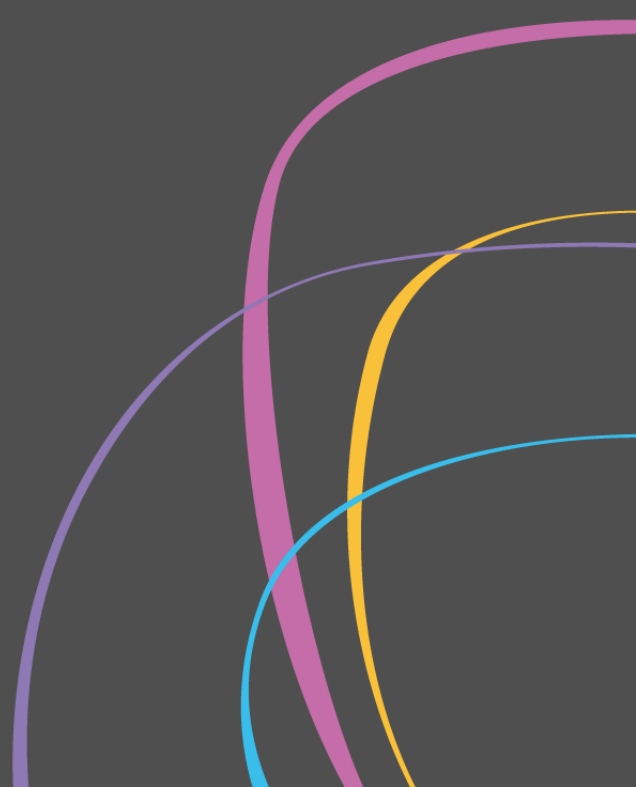
Response to Consultation Paper on Redress and Civil Litigation

---

9 March 2015

**goodstart  
early  
learning**

visit [goodstart.org.au](http://goodstart.org.au)



## Executive Summary

Goodstart Early Learning is the nation's largest, and only national provider of early learning and care, with more than 640 centres and 13,000 staff providing quality early learning to around 73,000 children. Goodstart is for-purpose, not for profit and is one of the largest social enterprises in the country.

Goodstart's first guiding principle is that children are central to everything we do. Goodstart is a relatively new organisation, founded in 2009. As Goodstart does not have historic experience with redress schemes or civil litigation in this area, this submission is intended to provide an overview of the general principles Goodstart supports to inform the Commission's deliberations on redress and civil litigation.

In summary, Goodstart strongly supports changes to minimise and remove, where possible, the barriers to child abuse survivors seeking redress and to ensure that survivors and their families are treated with fairness, respect, and transparency at all times. Goodstart strongly supports measures to make it clear to all institutions providing services to children that they have a positive duty to take precautions to prevent abuse. Such institutions must be able to be readily identified and sued where they fail to take all reasonable precautions, and be required to have the financial capacity to meet such claims.

Goodstart's vision is for Australia's children to have the best possible start in life. Our mission is to provide high-quality, accessible, affordable, community connected early learning in its centres, as well as partner and openly collaborate with the sector to drive change to the benefit of all children. We welcome the opportunity to participate in the consultation process for the Royal Commission into Institutional Responses to Child Sexual Abuse.

## ***A note about this submission***

*Goodstart Early Learning is the nation's largest provider and only national provider of early learning and care, with centres in every state and territory. This submission addresses the some of the key questions outlined in the consultation paper as they are relevant to Goodstart. Responses are arranged by the chapters in the Consultation Paper.*

*Goodstart welcomes the opportunity to participate in the Royal Commission and would be pleased to discuss any aspect of this submission, or future recommendations with the Commission.*

### **1. Structure of the Scheme (Chapter 2)**

Goodstart supports a single, national redress scheme led by the Australian Government, as an alternative avenue to, (and not a replacement for), civil litigation, for survivors of past child sexual abuse.

- For a multitude of reasons, including the imperatives of transparency, fairness, credibility, minimising barriers to making a claim, and minimising re-traumatisation of survivors, Goodstart believes an externally administered national scheme is superior to the concept of regulated individual Institutional schemes.
- Uniformity is desirable. Goodstart believes a single mandatory national scheme is the best approach in ensuring the opportunity to achieve greater consistency of outcomes between survivors and preventing duplication of structures and costs between jurisdictions. A single national scheme would also simplify the administration of multi-institutional and multi-jurisdictional claims, which is in the best interests of survivors.
- In our view, a national scheme, in addition to the ability to award monetary redress, ought to have the power to order process or policy changes within an organisation directed at preventing recurrence (a different kind of reparation but one that, we understand, can have significant weight for survivors).

In terms of a redress scheme for *future abuse*, if the Royal Commission's ultimate recommendations to improve the civil litigation process for survivors are implemented, a redress scheme may not be necessary. Goodstart is hopeful that the Royal Commission will be the 'circuit breaker' needed in Australia to ensure we do not see a repeat of the responses and treatment of survivors that have been presented to the Commission. The prevailing principle must be to support survivors obtain compensation and to address or alleviate the impact on them of institutional child sexual abuse.

### **2. Direct Personal Response (Chapter 4)**

Goodstart supports the principles proposed by the Commission for an effective direct personal response from the relevant Institution. It is clear that a sincere and appropriate interaction with the Institution such as the provision of an apology and/or undertaking to make changes in the organisation to prevent recurrence is a critical element in achieving justice for survivors.

Minimum standards proposed by the Commission for any redress scheme should include a requirement that any personnel involved in providing a direct personal response to survivors are appropriately trained to ensure they do not cause further harm in that process. A register of approved training providers or expert consultants may help ensure Institutions are seeking advice and training from suitably recognised and qualified professionals.

### **3. Redress Schemes (Chapter 7)**

As a relatively new organisation, Goodstart does not have detailed feedback in relation to aspects of the redress scheme process. However, Goodstart supports the concept that a redress scheme may allow a different standard of proof, in circumstances where allegations are uncorroborated (often the case with children), or where documents no longer exist. Goodstart agrees that Institutions should not be “rewarded” by avoiding paying compensation because they destroyed or failed to keep adequate records. As suggested, verification can be to the satisfaction of an external qualified party, not the institution itself, and can be provided by way of detailed statements and psychological evaluation, rather than the giving of evidence and cross-examination as required in a trial context.

As suggested in the Consultation Paper, any national or mandatory scheme should not preclude past claimants, to the extent the settlement they previously received is below the bands established for the scheme.

### **4. Funding (Chapter 8)**

It is Goodstart’s view that the costs in relation to any individual claim, including counselling and psychological care, administration of the claim, and any monetary payment determined by the scheme, should be borne by the institution (including Government Institutions where applicable), in which the abuse occurred (or on a pro-rated basis where more than one institution is involved).

Goodstart supports the proposal that government fulfil the ‘funder of last resort’ role in respect of past claims.

All Institutions providing services to children should be required by legislation to maintain adequate insurance in respect of potential future child sexual abuse claims.

### **5. Civil Litigation (Chapter 10)**

#### Limitation of Liability

Given the clear evidence about the time taken for survivors to disclose their abuse, we agree that the application of limitation of liability provisions to victims of child sexual abuse is unjustifiable. We would support civil limitation periods being abolished in all Australian jurisdictions in relation to child abuse matters.

We note that the removal of limitation periods is not unprecedented – e.g. previously in NSW with respect to dust disease claims, and by the Victorian Government’s recent move to introduce *The Limitations of Actions Amendment (Criminal Child Abuse) Bill 2014*.

We support the Committee’s finding that the abolition should have retrospective effect. Retrospective civil laws can be justified in some circumstances (Australian examples include laws with respect to bottom of the harbour schemes and laws with respect to war crimes). There are clearly compelling public policy reasons to enact such retrospective laws in this case.

#### Duty or liability of Institutions

Goodstart supports clarification of an institution’s duty or liability to the extent that it is made clear that Institutions do have a positive duty to take reasonable care to prevent child sexual abuse of children in their care. Additionally, Goodstart supports a reversal of the onus of proof, requiring the institution to prove it took all reasonable steps to prevent sexual abuse.

#### Identifying the correct defendant

Goodstart would support the development of appropriate legislation that mandated incorporation and appropriate insurance arrangements for non-government organisations providing services to children.

## **6. Conclusion**

We acknowledge the Commission’s finding that institutional child sexual abuse can have a severe and sometimes lifelong impact on survivors and that survivors experience many difficulties in seeking justice. Goodstart supports the Commission in their objective of ensuring justice for survivors through the provision of redress by Institutions or damages through improvements to the civil litigation process.

