

## Submission -Consultation paper on the redress scheme and civil litigation.

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I would like to address my submission specifically to the issue of the personal apology and its relationship to the redress scheme.

### The Money and the Apology

The payment of any money to victims of abuse by the institution is inextricably connected to the issue of the apology. They both go together.

Any effective redress scheme must address both.

Of the two I suggest that the personal apology has a more significant impact on those survivors who are willing to take that step. The benefits, when done well, have more long-term effect especially with the assistance of experienced counsellors. The money gets spent pretty quickly.

Many survivors have told me that initially they did not want or felt able to meet face-to-face with a senior church official. But they found that with the help of sensitive and professional administrative staff and counselling they had grown in strength and felt empowered enough to have a face-to-face meeting.

The power of a personal apology comes in part from the fact that it takes some effort and courage for survivors to take that step. Therefore survivors need professional support during the initial administrative stages up to the point at which a mediator is appointed to facilitate the meeting.

It takes time and effort to help survivors work through the preparation stages. This requires a real commitment to this process by the proposed one-stop shop redress scheme. Expert staff will need to be employed to sensitively deal with survivors during this process. For some survivors it will be a relatively short period but for others it will take much longer for them to be ready psychologically for the meeting.

The issue is who will put in the time and effort to help survivors through this process, the proposed redress scheme or the institutions where the abuse occurred. Or will both try and dodge this issue by putting it in the too hard basket.

### Achieving Fair and Equal Treatment of Survivors

There is a danger that the attempt to “achieve equal and fair treatment between survivors “by developing a “one-stop shop” could diminish the role of the personal apology and reduce it to a second or third order issue. This is especially so if the one-stop shop does not commit sufficient funds to properly administer the process of supporting survivors to seek a personal apology. Simply sending a letter to the relevant institution on behalf of the survivor requesting a face-to-face meeting will not suffice.

If the Commission looks only for equality and fairness in monetary terms without giving equal attention to the importance of facilitating the option of a personal apology then it will have set itself a very low bar.

This occurred in the “one- stop shop” Melbourne response set up by the then Archbishop of Melbourne, George Pell. Its aim was to “achieve an equal and fair treatment between survivors” through a tribunal run by lawyers appointed by the church. There were, however, three main problems. Firstly, even though the tribunal members were independent lawyers, it was still, for the survivors, a Catholic Church process. Secondly it had a low payment threshold based on the then victims of crime legislation amount of \$55,000.

And thirdly the importance of a personal apology was a second or third order issue. There were no face-to-face meetings between the survivors and senior clergy. There was a public apology and a reference to it in the covering letter enclosing the cheque.

As stated in my previous submissions the Melbourne Response was designed to be an administratively clean approach designed to effectively discharge the Melbourne Archdiocese from the odour of a few bad apples who had brought the name of the Catholic Church into disrepute. It handed the process over to the legal profession to manage. This effectively put the Archdiocese at arm’s length from the survivors.

Its aim was to deal with the churches ‘problem’ of survivors so that the Archdioceses could get back to doing what it normally does. For more details on the difference between the Melbourne Response and the alternative Towards Healing face-to-face mediation approach - see my submissions to Case Study 2 - Towards Healing and Case Study 6 - Redress Schemes at: <http://www.childabuseroyalcommission.gov.au/getattachment/afd9b78b-4283-4699-a391-60e026205211/19-Greg-Rooney> and <http://www.childabuseroyalcommission.gov.au/getattachment/30898f2b-1c14-432c-b80b-cb3f3dca1c4e/18-Greg-Rooney> respectively.

An example of a one-stop shop process that, in my opinion, did strike the right balance was the Goodwood Orphanage Program set up by Archbishop Wilson and the then Professional Standards Director Sue Cain for the Catholic Archdiocese of Adelaide. A significant number of female orphans including many British child migrants suffered harsh physical and emotional abuse post-World War II at the Goodwood Orphanage in Adelaide run by the Sisters of Mercy.

A process was developed in which each claim was assessed by an independent barrister and a set award of money was made based on the number of incidents of abuse that were accepted. Independent research was undertaken to benchmark the various levels of abuse including bedwetting deterrent practices, physical and emotional abuse, poor education, poor food et cetera.

However, the Archdiocese wanted to encourage survivors to also meet and receive a personal apology from the Sisters of Mercy. To encourage this it built into the process an additional fund of money available to pay for particular needs of survivors such as education, equipment or training. The requirement was for survivors to meet with representatives of the Sisters of Mercy to discuss their particular needs. The Archdiocese had, through its support of the Towards Healing mediation processes seen the value of the personal apology in helping survivors move forward with their lives.

My observations from mediating most of the Goodwood program matters were that not only did survivors benefit from the personal apology from the Sisters of Mercy but the sisters themselves seemed to grow from the powerful experience of meeting and hearing harrowing stories of

survivors. The same archdiocese would have been better off offering the parents of intellectually handicapped children abused at the Saint Anne's School the same option of a personal apology as the Goodwood orphans received.

The Towards Healing process is the best example of a process that had the right balance between the payment of money and the apology. They were both dealt with together in the one session. It was a holistic approach with respect to the issues facing survivors. Senior clergy and survivors had to work together with skilled mediators to find common ground and balance the appropriateness of the apology with the appropriateness of the financial reparation. When done well the Towards Healing process was able to help everyone grow including the senior clergy who participated.

As stated in my submissions to Case study 2 and 6 referred to above the Towards Healing process was predicated on the view that sexual abuse of young children was a systems failure at a personal and human level rather than just a legal liability caused by the actions of a few bad apples. It therefore had to be treated at that same human and personal level by offering the opportunity for survivors to have a face-to-face meeting and a personal apology from senior clergy.

#### The Redress Scheme's Role as Gatekeeper.

If the one-stop shop redress scheme is accepted as the preferred model it will become the gatekeeper for all survivors. Therefore how it views the relevance and importance of the personal apology will have a major influence on the survivors. There has to be a clear commitment to encourage survivors to seriously consider going to the next step and seek a personal apology otherwise, by default, it will discourage survivors from doing so.

There will need to be a second administrative process within the tribunal to help survivors first of all consider and then prepare for receiving that apology. This will require a similar commitment from the relevant institutions by the appointment of suitably qualified liaison officers. There would also need to be agreed protocols for preparing the claimants for a possible meeting including the provision of initial counselling.

The preparation phase will need to be handled sensitively requiring the employment of specialist staff. It will require slow and patient work with survivors.

Then there is the issue of who would appoint the mediator to mediate the meeting between the complainant and the person representing the institution giving the apology. Would the tribunal have a panel of nationally accredited mediators or would they be appointed by arrangement with the complainant through direct negotiations with the institution.

The easy and most cost-effective way out for the tribunal would be to refer survivors back to the relevant institution for the personal apology once the reparation amount has been determined. This would throw the administrative costs of preparing the parties for the personal apology back onto each institution.

The problem with this approach would be that the tribunal would then not be a one stop shop. It would mean survivors would have to apply to another body namely the institution responsible for the abuse. It is highly likely that the survivors having gone through the first process would not be keen to return for a second go somewhere else.

There are many institutions that are keen to close the book on this unpleasant issue as soon as possible. They would be more than happy for the tribunal to do the money calculations and rely on the “independent umpire” principle to deal with disgruntled survivors. In effect placing the tribunal as a buffer between the survivors and institutions. This would make it less likely for there to be any significant cultural changes in the institutions other than the immediate pain of financial loss.

One significant way of protecting future generations of young children from similar abuse is for senior officials of the institutions to actually feel the pain of the survivors. That is why the face-to-face apology has benefits both ways.

There is a danger that the proposed one stop redress scheme will end up being nothing more than a de facto Melbourne Response. The attempt to artificially manufacture a sense of fairness, justice and equality out of the sexual abuse of young children principally through monetary payments will end up keeping the victims (let’s use the right word for child abuse) of that abuse as nothing more than just ‘survivors’. The challenge for the Commission is to not kill off the path to self empowerment and recognition by creating a redress process that will allow the option of the personal apology to just wither away.

#### The Protocols for Setting up a Body to Facilitate a Personal Apology

##### The Facilitator

The facilitator should be a nationally accredited mediator. An Accredited Mediator means a person who is entered as a mediator in the register of nationally accredited mediators maintained by the Mediator Standards Board, the incorporated body registered under the Corporations Act as the Mediator Standards Board Limited (ACN 145 829 812). This body was set up as a result of the work of NADRAC which was the Federal Attorney Generals advisory committee on mediation and alternative dispute resolution.

The facilitator should also have some training and experience in the facilitative and transformative mediation models with a particular emphasis on the psychological needs of survivors who have suffered sexual abuse and trauma.

##### The Process

The process should be a combination of the facilitative and transformative mediation models.

The facilitative mediation model is defined in part as:

Looking at the party’s underlying needs and interests including the substantive, procedural and psychological effects by maintaining a constructive dialogue (Boulle).

The transformative mediation model is defined in part as :

The principle that the most important outcome of the mediation is that the survivors are empowered by it through gaining personal strength and self-confidence (Baruch Bush and Folger)

##### The apology

There are two important ingredients for an effective apology.

The first is that the person giving the apology must develop a personal connection with the person receiving it. This requires the ability to listen with the heart to whatever the survivor wishes to say about how the abuse has affected them. Survivors pick up very quickly whether the representative is listening with the heart or merely intellectualising what they are hearing. The role of the mediator is to hold the space for the survivor to talk as long as they feel the need to.

The second step is for the person giving the apology to acknowledge and validate what they have heard. It is only then can the formal apology be given on behalf the institution. The most powerful word that can be used is the word “sorry”. In my view it has more power than the phrase “I apologise”.

The best apologies go beyond just saying sorry on behalf of the institution. Sorrow is expressed on behalf of all current and former members of the institution including those who were in charge at the time the abuse occurred.

The role of the mediator is important. It is in the pre-mediation meetings that the mediator builds a relationship with each of the parties sufficient to be able to hold the space while the personal connection is established.

### The Perpetrator

The perpetrator should have no involvement in any of these processes.

The principles of Restorative Justice, which has a focus on the rehabilitation of offenders through reconciliation with victims and the community at large, should not apply to cases of sexual abuse of minors.

The rehabilitation of paedophiles and serial abusers is a separate and complex issue. The survivors of their abuse should not be used as part of facilitating that process.

In making these submissions I rely on my experience over the last 12 years in mediating over 200 meetings between survivors of sexual abuse and senior religious figures from the Catholic, Anglican and Protestants churches within Australia and more recently in facilitating matters for the Defence Abuse Response Taskforce. I have also mediated abuse claims within orphanages particularly the Goodwood orphanage in South Australia and the Christian Brother’s orphanages in Western Australia

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Baruch Bush RA and Folger JP (1994), The Promise of Mediation: Responding to Conflict Through Empowerment and Recognition Jossy-Bass Publications, 1994.

Boulle, L. Mediation- Principles, Processors, Practice Butterworths 1996