



## ISSUES PAPER 6

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### REDRESS SCHEMES

#### ISSUE

The Terms of Reference require the Royal Commission to inquire into what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse in institutional contexts, including in ensuring justice for victims through the provision of redress by institutions. 'Redress' means remedy or compensation, and it can include financial compensation, provision of services, recognition and apologies and the like.

The Royal Commission is considering the effectiveness of redress schemes or processes established by governments or institutions to offer compensation and/or services to those who suffer child sexual abuse in institutional contexts.

All states and territories have established statutory victims of crime compensation schemes, and some states have established schemes specifically for those who experienced abuse in some institutions. Some non-government institutions also offer redress schemes or processes, including for example the Catholic Church's *Towards Healing*, which was the subject of Issues Paper 2. Redress schemes have also operated overseas, including government and non-government schemes.

Redress schemes in Australia and overseas have taken a variety of forms. Some schemes are quite small, applying to former residents of only one institution, while others are larger schemes applying across a group of related institutions, and some have been established as statutory schemes. The schemes have also had quite varied rules, including about coverage, eligibility, validation procedures and payment calculation and scales.

The Royal Commission now seeks submissions on redress schemes and their effectiveness.

Redress provided through statutory victims of crime compensation schemes will be considered in a separate Issues Paper. The Royal Commission has already obtained input about the effectiveness of civil litigation systems in resolving claims for damages against institutions in the civil courts and possible reforms to civil litigation systems through Issues Paper 5.

Submissions from those who have been involved in redress schemes in relation to child sexual abuse in institutional contexts, whether as a claimant, institution, service provider, representative of a party or stakeholder or professional organisation, are particularly welcome.

#### SUBMISSIONS

Submissions are sought from interested individuals and government and non-government organisations on this issue. Of particular interest to the Royal Commission is:

1. What are the advantages and disadvantages of redress schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts, particularly in comparison to claims for damages made in civil litigation systems?

### **Advantages**

Depends on the administration of the scheme. Redress schemes have generally been at no cost to the applicants and their information or statements of evidence have not been subject to the normal rules of evidence with a requirement for corroboration by other supporting information or evidence although this may be ascertained. As such the schemes are more sympathetic to the victim and the process is much less conflictual or contentious.

Redress schemes are generally independent and therefore not influenced by or seen to be implemented by the institutions that caused harm in the first place.

### **Disadvantages**

Often arise as a political response or agenda, meaning that the scheme is governed by seeking particular government or political outcomes as opposed to outcomes that would most benefit the claimants.

Often time limited – therefore claimants have a limited period in which they can make a claim.

If the institutions are not involved in some way they avoid responsibility for what occurred and claimants generally want some acknowledgement, validation and apology from the perpetrators /institutions.

2. What features are important for making redress schemes effective for claimants and institutions? What features make redress schemes less effective or more difficult for claimants and institutions?

### **Most Effective**

Accessibility with range of options for face to face contact and support in claimants compiling their information as this can be integrated with counselling to assist claimants healing process.

Accessibility to information regarding historical records, other peers – to know that their peers were also claimants validates their experiences and not restrict access via use of FOI processes – though there is still a requirement to protect individuals where required. There are alternatives to the current restrictive processes.

### **Less Effective**

3. What forms of redress should be offered through redress schemes? Should there be group benefits available to, say, all former residents of a residential institution where abuse was widespread? What should be the balance between individual and group redress?

Redress should entail a range of options including group redress such as:

Monetary compensation

Availability of ongoing counselling / healing - not limited to the life of the redress scheme

Family and peer reconnections

Mediation between claimants and the institutions / perpetrators

Group Redress should entail both financial and services in order to address group needs and in particular the intergenerational impact upon the claimants own families and children.

4. What are the advantages and disadvantages of establishing a national redress scheme covering all institutions in relation to child sexual abuse claims? If there was such a scheme, should government institutions (including state and territory institutions) be part of that scheme? How and by whom should such a scheme be funded?

#### **Advantage of National Redress Scheme**

Better correlation of institutions involved and ability to track patterns of offenders who moved between institutions and across states.

Uniform delivery of compensation and services – though it must be emphasised that these need to be developed and delivered at the local level to meet local needs

Ensures that all institutions are participating and contributing and not able to move between states to evade their responsibilities.

#### **Disadvantages of National Redress Scheme**

Could become too bureaucratic with a one size fits all approach.

Government institutions must be part of the scheme as there were and still are crossovers between government and non-government as service providers. For example historically, church institutions provided the facility and 'care' whilst government instrumentalities were responsible for monitoring and visiting such sites as well as providing payment / funding for same.

How and by whom should such a scheme be funded?

Institutions should largely fund the scheme as much of their accumulated wealth has arisen from their 'business' of caring for young people. They could contribute via cash

or assets placed in trust for administration by a non denominational entity either government or non-government.

5. If institutions have established internal redress schemes, should all or any part of the decision-making of the scheme be independent of the institution? Should the schemes be subject to any external oversight? If so, what?

Institutions should not have internal redress schemes they have a biased and vested interest from the start.

Schemes should be subject to external oversight and review – such an oversight could be similar to a commission such as the Corruption and Crime Commission, Office of Police Integrity or similar entities.

6. Should establishing or participating in redress schemes be optional or mandatory for institutions?

Participation should be mandatory and /or with conditions similar to an insurance scheme whereby they pay annual premium toward claims – the more claims the higher the premium.

7. Should seeking redress or compensation through a redress scheme be optional for claimants? Should claimants retain the ability to pursue civil litigation if they wish?

Seeking redress / compensation through a scheme should be optional. However, a competently and adequately funded and administered scheme would all but eliminate the necessity for claimants to pursue civil litigation – less stress on claimants and more certainty for both claimants and the institutions claimed against.

8. How should fairness be determined in redress schemes when some institutions have more assets than others? How should fairness and consistency between survivors be achieved in these circumstances? What should be the position if the institution has ceased to operate and has no clear successor institution?

Fairness and consistency between survivors is achievable it is a matter of who pays for it. The institutions need to contribute to a common pool – I question this: Under confiscation of criminal assets legislation, assets gained or used as a result of criminal offense are forfeited to the state and sold or administered. Why are the institutions treated differently? In the event of their assets, buildings or property having been used to commit offences of abuse those assets could be seized and / or sold.

In respect of historical claims a common pool fund would ensure that all claimants are given equal consideration.

9. What are the advantages and disadvantages of offering compensation through a redress scheme which is calculated on the same basis that damages are awarded by courts in civil litigation systems? Should affordability for institutions be taken into account? If so, how?

The difficulty with court awarded damages is that they can vary greatly for the same offences and subject to legislative changes over time. Civil litigation is conflictual and

can be made to extend over years through dispute and challenges to decisions – it is not a process favourable to claimants.

Affordability should not determine the claimant's assessment or compensation payment. Criminal Injuries Claims are determined by the nature and impact of injuries to a victim they don't care whether the offender can 'afford' to repay the claim (albeit to the government) or not.

10. Given that the sexual abuse of children mostly occurs where there are no witnesses, what level of verification or proof should be required under a redress scheme to establish that a claimant has been sexually abused? How should institutions be involved in verifying or contesting claims for compensation?

The determination of sexual abuse can be done in many instances with skilled and experienced practitioners / investigators. There are many indicators of the probability of sexual abuse having occurred in respect of the victim and the perpetrator – the level of proof should be along that of the balance of probability. The guidelines need to be determined according to the majority of claim types not the exceptions as these could be subject to more detailed inquiry.

A process could be developed whereby institutions contest the claims with the administrator of the scheme not with the claimant. For example a claim is submitted and subsequently investigated and determined including a recommended compensation payment if claim is legitimised – if the institution seeks to contest the claim a substantial surcharge is applied to the payment if the contested claim still finds in favour of the claimant.

Where institutions are co-operative in providing all information etc toward determining a claim a discount could be applied to the level of compensation in order to facilitate an early resolution.

11. What sort of support should be available for claimants when participating in a redress scheme? Should counselling and legal advice be provided by any redress scheme? If so, should there be any limits on such services?

A redress scheme needs to be multi-faceted for claimants – essentially a one-stop shop whereby their claim, evidence, information and counselling support is able to be provided from a single entity. This enables the claimants information to be dealt with once and not go here for legal advice, go there for counselling, go here for your claim information, go there to access your file information – this repetitive and unnecessary process is re-traumatising and damaging to the client.

Any legal advice needs to be affordable and provided in conjunction with a psycho-social wellbeing assessment of the client. No good advising the client to pursue a civil litigation case if they only have 12 months to live!

There would need to be limits to some services where claimants are obviously continuously litigious or there is no apparent resolution being worked towards by the claimant / institutions. This would require far greater discussion.

12. If a claimant has already received some financial compensation for the abuse through one or more existing schemes or other processes, should the financial compensation already received be taken into account in any new scheme?

**Yes, previous payments received should be taken into account in any new scheme**

Submissions are welcomed on any aspects of redress schemes as they affect claims for compensation by people who suffer child sexual abuse in institutional contexts.

Submissions will be made public unless the person making the submission requests that it not be made public or the Royal Commission considers it should not be made public. That will usually only occur for reasons associated with fairness.

Submissions should be made by **Monday 2 June 2014**, preferably electronically, to [solicitor@childabuseroyalcommission.gov.au](mailto:solicitor@childabuseroyalcommission.gov.au), otherwise in writing to GPO Box 5283, Sydney NSW 2001