

SUBMISSION – ISSUES PAPER 6:

Redress Schemes

Royal Commission into Institutional Responses to Child Sexual Abuse

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Centre for Excellence
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100 Years
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Introduction - The Centre for Excellence in Child and Family Welfare

The Centre for Excellence in Child and Family Welfare ('the Centre') is the peak body for child and family welfare in Victoria, providing independent analysis, dialogue and cross-sectoral engagement to address factors that perpetuate disadvantage and vulnerability. Working alongside our 90 member organisations, the role of the Centre is to build capacity through research, evidence and innovation to influence change. The Centre and its member organisations collectively represent a range of early childhood, child, youth and family support services, and out of home care services, including kinship care, foster care and residential care.

The objects of the Centre include:

- To contribute to the wellbeing of children and young people and the support and strengthening of family life particularly where there is poverty and disadvantage.
- To promote leadership and excellence in child, youth and family services.
- To actively represent the interests of members to government and to the community, and to influence community expectations of support available to children and families.
- To develop and influence policies in child, youth and family welfare, including providing policy advice to government in respect of child, youth and family welfare.
- To promote ongoing research and evaluation in child, youth and family welfare

Royal Commission Into Institutional Responses to Child Sexual Abuse

The Centre is committed to the work of the Royal Commission into institutional responses to child sexual abuse. To date the Centre has facilitated three forums for our member organisations to provide information on the Royal Commission and to highlight the importance of implementing child safe policies as a preventative measure to abuse in care and appropriate responses to children abused in care settings and their families.

The Centre submits this paper on redress schemes as a critical component of reparation for past wrongs by governments and institutions to offer compensation and services to those who suffered child sexual abuse in institutional contexts. The Centre will advocate that such a redress scheme not limit eligibility to just those sexually abused as children in institutional care.

Redress schemes in Australia

There already exists a strong body of work on redress schemes locally, nationally and internationally that are highlighted in many previous inquiries on child abuse in care and institutional settings. The two main national inquiries that provide an excellent overview on redress schemes are:

- "Forgotten Australians: A report on Australians who experienced institutional; or out of home care as children" 30 August 2004, The Senate, Community Affairs References Committee, Commonwealth of Australia. In our consultation with Open Place and Alliance for Forgotten Australians they supported the implementation of the national redress scheme recommended in this inquiry, adding that the criteria to access the scheme should be broader than the scope of this Royal Commission, that is, a redress scheme should not be limited to victims of child sexual abuse in institutional settings. The Centre supports this view.

- “Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their families” April 1997, Human Rights and Equal Opportunity Commission Report. In our consultation with the Victorian Aboriginal Child Care Agency they supported the redress scheme recommended in this inquiry. The Centre supports the Victorian Aboriginal Child Care Agency submission to the issues paper on redress schemes.

Redress schemes established by Governments and or institutions in Australian States and Territories have taken diverse approaches. The Queensland, Western Australia, South Australia and Tasmania Governments have implemented various redress schemes with differing criteria and eligibility. For example, redress schemes may have different levels of compensation or eligibility may only be open to wards of the state. The New South Wales and Victoria Governments have not established redress schemes as they deal with compensation on a case by case basis.

Many non-government institutions such as faith based institutions have established internal redress schemes that, like government schemes, provide varied processes and responses, an example is the Catholic Church’s Toward Healing.

A national redress scheme

The Centre advocates for a national redress scheme for children abused in care because Commonwealth and State Governments together with institutions are responsible for children in care settings. For example, the Commonwealth and State Governments were responsible for policies and the contracting out the responsibility of the care of children, for example, child migrant policies and the Stolen Generation. Further, there have been many inquiries over the years that have highlighted the abuse of children in care settings and their needs post care and recommended action by Governments. As such Commonwealth and State Governments and institutions that were responsible for the care of children should contribute to a national redress scheme.

The Centre believes an important component in establishing a national redress scheme is that it will ensure consistency, independence, fairness, equity and accessibility in its responses to abuse in care. On the 31 March 2014 at the 2014 Families Australia Oration the Hon. Justice Peter McClellan, Chair, Royal Commission stated that “Many different institutions have come to our notice. In addition to the significant number of reports of abuse in foster care, we have received allegations of abuse in more than 1,950 institutions.”¹ Thus, a national redress scheme is necessary otherwise there could potentially be 1950 redress schemes established nationally with varied responses to people abuse in care as children.

Although there may be challenges in establishing a national scheme in regards to seeking agreement between all State and Territory Governments, the benefits far out way obstacles. These challenges and obstacles may be overcome through the introduction of Commonwealth legislation, such as the establishment of the compensation scheme in Ireland, the Residential Institutions Redress Act 2002 that is administered by a board (www.rirb.ie).

¹ <http://www.childabuseroyalcommission.gov.au/media-centre/speeches/2014-families-australia-oration>

It is well documented and the focus of this Royal Commission that redress schemes established to date either by Governments or institutions appear to have benefits and shortcomings, particularly in the view of the victims.² As such, the development of a redress scheme should include consultation with victims and victim support groups including Aboriginal and Torres Strait Islanders groups to ensure that any scheme is flexible, effective, culturally appropriate and does not further traumatise people seeking redress. There are examples of established redress schemes consulting with victims/survivors, for example, the Grandview Agreement in Ontario, Canada. The Centre believes that consultation will ensure that the scheme is respectful, considerate, victim focused and there will be no repetition of past failings in the redress scheme.

A national redress scheme – eligibility

The Centre strongly advocates that a national redress scheme is not limited to the terms of reference of this Royal Commission. That is, it should be broader and available to those who suffered sexual abuse, physical abuse, emotional and psychological abuse and neglect and forced separation from their families. As evidenced by private hearings in this Royal Commission, redress should be available where there was abuse to children by other children. The Centre believes that governments and institutions are responsible to protect all children in their care from all forms of harm irrespective of the perpetrator.

Further, the national redress scheme should be available for past, current and future people who have experienced abuse in care (out of home care). The benefit for current and future victims of abuse in care to be able to access a redress scheme is that it provides for an alternate avenue to civil litigation or redress from the responsible care service provider/institution.

Further, the Centre believes that a national redress scheme should be open to claimants who have received compensation in other redress scheme or the national redress scheme. The reason is that claimants may not have received an adequate response or compensation in their previous application. Further, there may be new information, new evidence or additional disclosures of abuse in care that were not part of the previous redress scheme.

A national redress scheme – principles

Important principles to consider incorporating in a national redress scheme are outlined in 'The United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' by Theo van Boven³. Van Boven's principles of reparations are all important components of any redress scheme and include:

- Restitution
- Compensation
- Rehabilitation
- Satisfaction and guarantees of non-repetition.

² Senate Standing Committees on Legal and Constitutional Affairs (2010) Review of Government Compensation Payments, 6 December 2010, Commonwealth of Australia

³ http://legal.un.org/avl/ha/ga_60-147/ga_60-147.html

“Restitution refers to measures such as restoration of liberty, family life, citizenship, return to one's place of residence and, return of property. These measures seek to re-establish the situation that existed prior to the violations of human rights and humanitarian law. Compensation relates to monetary compensation for any economically assessable damage resulting from violations of human rights and humanitarian law. Rehabilitation includes medical and psychological care as well as legal and social services. Satisfaction and guarantees of non-repetition includes an apology, including public acknowledgment of the facts and acceptance of responsibility, and measures to prevent recurrence of the violations.”⁴

Further, the Centre advocates that statutes of limitations should not apply in the redress scheme as outlined in van Boven's basic principles. The reason is that it is understood that victims can take years to disclose abuse in care settings and this should be a significant consideration in a national redress scheme.

In addition, van Boven states that reparation may be claimed either individually or as a group by the victim and including persons connected with the victim such as immediate family. The Centre advocates that this should be considered in a redress scheme as family members have also suffered the consequences of abuse in care or forced separation.

The establishment of a national redress scheme in Australia is necessary. It has been recommended previously in inquiries such as “Forgotten Australians: A report on Australians who experienced institutional or out of home care as children” (2004). It is necessary because it forms part of the national apology to children abused in care and it provides for alternate and perhaps more appropriate avenues for reparation. The Centre believes that a national scheme represents the importance of the protection of children from abuse, it signifies that children will be heard, believed and protected from harm by Government and the community.

A national redress scheme – compensation, rehabilitation and prevention

Compensation

Compensation is an important component of redress, however, there is no amount of compensation that will heal the past wrongs of abuse and neglect for children in care. Compensation should be considered as an acknowledgement that the abuse should not have occurred and as a child you should have been protected from abuse and neglect by those responsible for your care.

A national redress scheme will provide a consistent, fair and transparent approach to compensation. The development of the process for compensation needs to consider the trauma experienced by the claimants. “Persons making applications for compensations should also feel confident that their redress claims will be treated sensitively and thoughtfully, and the assessment process will not be unreasonably stressful or traumatic.”⁵

⁴ Commonwealth of Australia (2004; 216) “Forgotten Australians: A report on Australians who experienced institutional; or out of home care as children” 30 August 2004, The Senate Community Affairs References Committee.

http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/completed_inquiries/2004-07/inst_care/report/c08

⁵ Senate Standing Committees on Legal and Constitutional Affairs (2010) Review of Government Compensation Payments, 6 December 2010, Commonwealth of Australia

The Centre believes that a national compensation scheme should include the following features:

- Eligibility should be open to all who as children experienced abuse, neglect and forced separation in any care setting, irrespective of abuse type, there should be no exclusion criteria. This includes where abuse occurred by either paid or unpaid staff, clergy or other residents in the care setting.
- No time limits should be set to access redress.
- Claimants should be assisted legally in their application process and further, eligible for Legal Aid or financially assisted to access legal advice, advocacy and representation to the compensation scheme or where seeking redress through civil litigation.
- Claimants should have access to support services prior, during and following applications for compensation. Support services should provide emotional assistance and practical support, for example, to prepare their application. Support services should be flexible able to cater to the differing needs of applicants.
- Claimants should be offered scaled (tiered) compensation based on the seriousness of the abuse and neglect with consideration given to the severity and type of the abuse that is paid by the responsible institution or care provider. Consideration should be given to the provision of flexible compensation schemes, for example, where claimants are able to seek financial assistance rather than lump sum compensation.
- Corroboration of claims should not be necessary given that it is well established that lack of corroboration in child abuse, particularly sexual abuse, is common. Also, there are circumstances when claimants cannot recall the perpetrator of the abuse or they were unknown or have since died.
- The standard of proof should be less than the balance of probabilities given that the redress scheme is not a legal process. For example, the Department of Defence apply the 'plausibility test' in response to allegations of abuse in the Defence.⁶ "The assessment of plausibility is based on all information available to the Taskforce, including information provided by the person in their Personal Account which must be verified in the form of a statutory declaration."⁷ This could be considered by the Royal Commission to assess the appropriateness of its use in abuse in care settings.
- There should be no confidentiality clauses or secrecy surrounding the compensation claims other than the privacy of the claimant. Secrecy clauses attached to compensation payments perpetuate the secrecy of the abuse and do not hold organisations and governments accountable for past wrongs.
- Applications from claimants that have received compensation in previous schemes should be accepted and considered in the assessment process.

There should be provision for the inclusion of the responsible institution during the process. The inclusion of the responsible institution may be at the request of the claimant and provides the opportunity for the claimant to inform the institution of their care experience. In addition, it provides the institution with information to improve their child safe/protection policies and procedures. Importantly, it can be an opportunity for individual apologies. If institutions are not part of the process then they should be informed on the findings and outcomes of compensation claims.

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<https://www.defenceabusetaskforce.gov.au/Outcomes/Pages/DefenceAbuseReparationScheme.aspx>

⁷ *ibid*

A national redress scheme should include policies on the appropriate qualities of apologies and responses to claimants. Apologies that are not appropriate, individual or acknowledge the experience can re-traumatising for claimants.

Rehabilitation

The rehabilitation of victims of child abuse in care settings is a necessary component of any redress scheme in acknowledgement of the negative effects of past experiences. Victims of child abuse in care settings should be eligible for a number of services to assist in healing the psychological and physical wounds experienced in care. Many were not provided with adequate education, medical or psychological care whilst in care as children. Government funded and priority access to services must be made available. This includes dental, medical, psychological/psychiatric, education, housing and aged care services and treatment. The Centre supports the Alliance for Forgotten Australians submissions to previous inquiries that advocates for a gold card for people who experienced care settings as children.⁸

As stated above, consultation with people who experienced care as children should occur on the provision of services to address the consequences of the abuse and neglect they experienced in care.

An important component of rehabilitation includes the ability for victims to access unredacted personal records and files from Governments and institutions. As such, there needs to be policies on record keeping and quality recording. Records contain important information on family, siblings, reason for being placed in care, past carers that may be helpful in the healing process but also in locating family. There are many services and institutions that assist people to access their personal files and provide appropriate support as it can be traumatic reading the information contained (or not contained) in these files.

The Centre advocates for the ongoing funding of services that provide support to people who have experienced abuse in care or forced separation in the past and that this funding not be limited to any time period. The services provide support that can assist to improve the health and wellbeing of people who experienced abuse in care and provide support in accessing specialist services, financial assistance and individual advocacy. Such services can assist and support victims to access redress schemes.

Prevention: satisfaction and guarantees of non-repetition

A national redress must ensure that there are guarantees of non-repetition that includes an individual apology, a public apology and acknowledgment of the facts and acceptance of responsibility, and measures to prevent recurrence by the responsible institution. This is more likely to occur if institutions are involved in the redress scheme, particularly the process of compensation (as discussed above).

Institutions/organisations that provide a service to children whether directly or indirectly (ie advocacy) should have robust child protection/safety policies that ensure the protection of children and appropriate responses to concerns children express about their care.

⁸ An example of a submission made by the Alliance of Forgotten Australians can be found here: <http://www.forgottenaustralians.org.au/AFA%20Subs%20and%20docs%20PDFs/AFA%202010%20Senate%20Legal%20and%20Constitutional%20Affairs%20sub.pdf>

Child protection policies should include appropriate screening and recruitment practices of staff and volunteers to prevent any potential risks to children. Preventative measures should include training and education tailored to be delivered to all staff and volunteers, children and families that incorporates child abuse and neglect behavioural and physical Indicators, grooming and other inappropriate behaviours by staff, volunteers or others (ie other children).

A redress scheme should ensure that organisations should make available to all children, parents and staff (including volunteers) complaints processes so that they are aware of whom they can discuss and report concerns.

Child Protection/safety policies should contain processes for appropriate responses to allegations of abuse and neglect that include informing police and child protection authorities where appropriate. This will ensure that those responsible for any abuse are brought to justice and to prevent further harm to other children in the organisation or other settings. Reports to police and child protection authorities are more likely to establish a pattern and history of an alleged offender and maximize redress through a criminal conviction. This can provide a more accurate account of history.

Further, child protection/safety policies should ensure that responses to allegations of child abuse and neglect result in appropriate and proactive inquiries into the care provided to other children that may have been in contact or under the care of the alleged offender.

Lastly, the Commonwealth and State Government together with institutions/organisations should provide community education into child abuse and neglect so that all citizens can contribute to the protection of children. Protection of children is maximized when adults are aware of child abuse and neglect and grooming behaviours and can respond appropriately though reporting to the relevant authorities.

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