

# Royal Commission into Institutional Responses to Child Sexual Abuse

Response to Issues Paper 6—redress schemes—State of Victoria



## Contents

<b>1</b>	<b>Introduction .....</b>	<b>3</b>
<b>2</b>	<b>What are redress schemes? .....</b>	<b>3</b>
<b>3</b>	<b>Overview of Victorian practice .....</b>	<b>4</b>
3.1	Ongoing support for survivors.....	4
3.2	Acknowledgement and apologies .....	4
3.3	Counselling .....	5
3.4	Access to records .....	5
3.5	A less litigious approach to claims: the Common Guiding Principles.....	6

## 1 Introduction

The report of the Family and Community Development Committee of the Victorian Parliament's *Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations* (the Parliamentary Inquiry), entitled *Betrayal of Trust*, was tabled on 13 November 2013.<sup>1</sup>

The Parliamentary Inquiry recommended that the Victorian Government consider a scheme for victims of criminal child abuse that would:

- enable victims and families to obtain resolution of claims arising from criminal child abuse in non-government organisations;
- be established through consultation with relevant stakeholders, in particular, victims;
- encourage non-government organisations to contribute a fee to administer the scheme; and
- ensure non-government organisations are responsible for the funding of compensation, needs and other supports at amounts agreed through the process.<sup>2</sup>

The recommendation was limited to claims arising from child abuse in non-government organisations in accordance with the Parliamentary Inquiry's terms of reference.

In its response to the Parliamentary Inquiry (the Government Response), tabled on 8 May 2014, the Government supported this recommendation in principle and noted it is currently considering options for redress for victims in relation to this recommendation.<sup>3</sup>

The Government Response also acknowledged the continuing work of the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) on the issue of redress more generally and indicated the Government would consider any relevant findings of the Royal Commission in its response to this recommendation.

This paper reflects the Victorian Government's approach to these issues to date and does not represent a settled Government position.

## 2 What are redress schemes?

It is important to distinguish "redress" schemes from "compensation" schemes. Recognising that no amount of money can "compensate" for the harms suffered, redress involves a broader approach, which responds to the multiple and varying impacts of the harm for survivors.

Redress schemes are established, typically by governments and sometimes by other organisations, to provide an alternative to traditional, adversarial models of legal redress for survivors of institutional child sexual abuse.

Redress aims to provide a holistic response for survivors that better responds to their specific needs.

The benefits provided under redress programs vary but commonly may include:

- a financial payment;
- counselling;
- access to relevant services and supports such as health care, education and training;
- apologies; and
- other gestures of acknowledgement developed in collaboration with survivors such as the establishment of monuments.

Redress schemes may be:

- funded solely by government or non-government institutions, or funded under shared funding arrangements;
- established by the legislature, the executive, the courts or private institutions;

<sup>1</sup> Available at <http://www.parliament.vic.gov.au/fcdc/article/1788>

<sup>2</sup> Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust* (2013), recommendation 28.1 (p.574).

<sup>3</sup> Available at

[http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Government\\_Response\\_to\\_the\\_FCDC\\_Inquiry\\_into\\_the\\_Handling\\_of\\_Child\\_Abuse\\_by\\_Religious\\_and\\_Other\\_Non-Government\\_Organisations.pdf](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Government_Response_to_the_FCDC_Inquiry_into_the_Handling_of_Child_Abuse_by_Religious_and_Other_Non-Government_Organisations.pdf)

- ongoing or time-limited; and
- established using new or existing (eg, victims' compensation) infrastructure.

Most relevant redress schemes in Australia and overseas focus on redress for abuse that occurred within a single institution or a particular type of institution, or affected particular groups of victims (eg, wards of state). However, broadly speaking, there appears to be no technical impediment to a broader scheme jurisdiction.

### 3 Overview of Victorian practice

The Victorian Government has implemented a number of practices aimed at better responding to the specific needs of survivors. Key aspects of these practices are described below.

#### 3.1 Ongoing support for survivors

The Victorian Government recognises the importance of providing survivors of abuse in institutional settings with ongoing therapeutic services and practical supports.

Survivors commonly identify a range of priority needs for which they seek support including: health services including both physical (for example, dental services) and mental health; counselling and other therapeutic support; financial counselling; access to appropriate aged care options; and funeral expenses.

The Victorian Government provides funding of about \$2.4 million per annum to Berry Street Victoria for the provision of support services by Open Place to Victorian Forgotten Australians,<sup>4</sup> Child Migrants and members of the Stolen Generation.

The services provided by Open Place were developed following an extensive consultation process that responded directly to the views and ideas of Forgotten Australians. These services include:

- free, professional, ongoing counselling for care leavers;<sup>5</sup>
- information and referral to mainstream health and support services;
- financial assistance towards medical, dental and education costs;
- search services to help former wards find their records and family members;
- legal information about potential compensation claims and support during the claims process;
- support with advocacy; and
- social support and activity groups.

Families and partners are also supported including through the provision of counselling services and, for family members, assistance accessing records and family searches.

In addition to Open Place, a number of other community service organisations provide support to care leavers, for example, Child & Family Services (CAFS) Ballarat. The Victorian Government also provides funding to the Care Leavers Australia Network (CLAN) for a range of additional supports.

#### 3.2 Acknowledgement and apologies

Literature indicates that an acknowledgement of abuse accompanied by an apology has therapeutic benefits, assisting survivors to:

- achieve closure;
- feel empowered, and that justice has been done; and
- forgive the wrongdoer.

In recognition of these benefits, in August 2006, the then Premier of Victoria delivered a formal apology on behalf of the State Government to all Victorian children who suffered abuse or neglect in institutional care.

Additionally, the Victorian Government recognises that many survivors of abuse derive comfort from a personalised apology from Government. The Common Guiding Principles regarding management of

<sup>4</sup> The term "Forgotten Australians" comes from the 2004 Australian Senate report *Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children*.

<sup>5</sup> Survivors are able to access 12 counselling sessions per year.

civil claims, discussed in more detail at Section 3.5 below, recommend providing pastoral letters that acknowledge claims and provide information about services and supports available to claimants, and offering a written apology in all cases where it is considered appropriate.

Victoria also recognises the importance of monuments and symbols that acknowledge the experiences of care leavers. The Victorian Forgotten Australians Memorial was unveiled on 25 October 2010. It recognises Victorians who, as children, spent time in orphanages, children's homes or foster care during the last century. It is a lasting recognition of the experience of care leavers, and provides an opportunity for the wider community to reflect on their experiences. A memorial commemorating child migrants is also located at the Immigration Museum.

### 3.3 Counselling

Since 2006 and in addition to immediate support provided to current students involved in sexually-related incidents, the Victorian Department of Education and Early Childhood Development (DEECD) has provided financial assistance for counselling to former students who contact DEECD seeking therapeutic assistance relating to sexual abuse at Victorian Government schools. The assistance program allows access to counselling without requiring commencement of legal proceedings or lodgement of a formal claim.

Through this streamlined approach, DEECD is able to acknowledge pain and suffering and respond to requests for assistance in a sensitive, responsible and timely manner. This approach is also intended to reduce the likelihood of any further trauma that might result from requiring participation in a more drawn out and legalistic/adversarial process before funding for counselling can be accessed.

Furthermore, internal protocols have been developed to ensure that the needs of those seeking assistance are managed effectively, equitably and with sensitivity. The protocols provide clear guidance to DEECD officers on the reporting of abuse allegations to the appropriate areas of DEECD (such as Conduct and Ethics for allegations of employee misconduct), and external agencies where appropriate (for example, to Victoria Police in relation to sexual offences and to the Victorian Institute of Teaching in relation to misconduct by teachers).

The Department of Human Services (DHS) funds 21 non-government agencies on a recurrent basis to deliver sexual assault support services to adults and children throughout the state. The 2014-15 State Budget has provided an increased investment of \$4.7 million over the next four years for sexual assault support services state-wide, bringing the total budget for sexual assault support services in 2014-15 to more than \$20 million. These services are available at no cost to anyone affected by sexual assault including adults abused as children. Services are also available for non-offending family members.<sup>6</sup>

### 3.4 Access to records

The Victorian Government recognises that the records of an individual's experience in state care may be the only record of a victim's childhood and the family from which they were separated.

The Parliamentary Inquiry raised the importance of access to records by care leavers and acknowledged that care leavers may need support after obtaining and reviewing their records. In recognition of these aims, in Victoria:

- statutory backing for access to records is provided by the *Freedom of Information Act 1982*. Under the Act, former Victorian wards of state and past or current child protection clients can access their records through the DHS Family Information Networks & Discovery (FIND) service, which provides support throughout the process, as well as through the DHS Freedom of Information (FOI) Unit. The FOI fee is waived for former wards seeking access to their records;
- on completion of the DHS Ward Records Plan, developed in 2013 in response to recommendations from the Victorian Ombudsman, all ward records held by DHS will be stored digitally at the Public Records Office Victoria, making them more easily accessible to former wards;
- as part of the Ward Records Plan, in December 2013, DHS completed an extensive ward indexing project, which has enabled DHS to provide more timely and accurate responses to requests for individual records;
- DHS is developing tools to support the recordkeeping practices of funded organisations in accordance with departmental policy; and

<sup>6</sup> For more information, see [http://www.dhs.vic.gov.au/\\_data/assets/pdf\\_file/0011/581429/sexual-assault-support-services-fact-sheet-august-2010.pdf](http://www.dhs.vic.gov.au/_data/assets/pdf_file/0011/581429/sexual-assault-support-services-fact-sheet-august-2010.pdf)

- Open Place provides support for care leavers to access their records, as discussed at Section 3.1 above.

These Victorian Government services are in addition to the Commonwealth Government's national network of Find & Connect support services for Forgotten Australians and Former Child Migrants.

Additionally, former and current students of government schools can ordinarily access their own records directly from the school(s) or DEECD without making an FOI application.

### 3.5 A less litigious approach to claims: the Common Guiding Principles

DHS and DEECD manage civil claims involving allegations of child sexual abuse in accordance with the Common Guiding Principles (the Principles).

The Principles, which are policy guidelines that complement the Model Litigant Guidelines,<sup>7</sup> are part of a package of measures implemented by the Victorian Government following the Parliamentary Inquiry. They are publicly available on the Department of Justice website<sup>8</sup> and are intended to support DEECD and DHS to respond to all child sexual abuse claims, including pre-litigation claims such as letters of demand and unissued writs, in a way that is consistent and appropriate including:

- making the process for child sexual abuse civil claims less litigious;
- minimising potential further trauma to survivors of child sexual abuse;
- reducing government reliance on legal mechanisms that have been the subject of public criticism, including in submissions to the Parliamentary Inquiry;
- ensuring greater consistency in responding to child sexual abuse claims across departments;
- encouraging provision of pastoral letters and apologies; and
- supporting early resolution.

By way of example, under the Principles, departments will not ordinarily rely on a limitation period defence (both in settlement negotiations or, if the matter cannot settle, in litigation), and in most cases will not require confidentiality in terms of settlement.

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<sup>7</sup> These set standards for how the state should behave as a party to legal proceedings, and are also publicly available at <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/victorian+model+litigant+guidelines>

<sup>8</sup> At <http://www.justice.vic.gov.au/home/justice+system/laws+and+regulation/common+guiding+principles+-+child+sexual+abuse+civil+claims>