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VACCA Submission in response to *the Royal Commission into Institutional Responses to Child Sexual Abuse* concerning Issues Paper 6 on *Redress schemes*

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Executive Summary

VACCA is the lead Aboriginal child and family welfare organisation in Victoria, protecting and promoting the rights of Aboriginal children, young people, families and the community.

We provide programs and services to strengthen Aboriginal culture and encourage best parenting practices, and advise government in relation to child abuse and neglect in the Aboriginal community.

VACCA welcomes this opportunity to provide input to the Royal Commission into Institutional Responses to Child Abuse concerning the Redress Schemes Issues paper. Our perspective is particularly reflective of our Link Up program service experience and our knowledge of the difficulties many Aboriginal people face in seeking compensation through legal processes. The complexities of going down that path can in itself re-traumatise people and/or serve as a deterrent for people to seek the compensation they are due.

VACCA believes, as is noted in section 14 of the Bringing Them Home report, that no compensation measures can fully compensate for the effects of the atrocities that have occurred. Nevertheless some acknowledgment and form of compensation would assist people to feel that their pain and suffering has been recognised. That, in itself, assists in the ongoing healing process.

In accordance with the internationally established van Boven principles as presented in the Bringing Them Home report, reparation should consist of:

1. Acknowledgement and apology
2. Guarantees against repetition
3. Measures of restitution
4. Measures of rehabilitation, and
5. Monetary compensation

VACCA supports the recommendations made for compensation in Chapter 14 of the Bringing Them Home report. Although by and large Australian Governments have failed in the implementation of those recommendations, VACCA considers that the same principles and procedures can be used to inform this current consideration and that they are a vital part of the work of this Royal Commission.

VACCA also supports the submission and recommendations made by the Victorian Aboriginal Legal Service in their submission to the Royal Commission. We re-iterate the point made in our response to issues paper 5 that a well-structured redress scheme can provide people with some justice while at the same time mitigating the trauma involved in civil litigation procedures. This will alleviate many of the impediments that exist for people seeking compensation for the childhood abuses they suffered.

In response to the specific questions asked in the Issues Paper, VACCA offers the following based on our experiences and understanding of these issues primarily as they relate to the Stolen Generations experience.

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?

Civil litigation has been known to establish significant barriers for survivors seeking justice for injuries as a result of being abused as children. Such injuries reverberate into the present and inform trans-generational trauma that in turn affects family and community.

Civil litigation has proven to be both an onerous and costly process for the individuals who have chosen that route to redress. In particular, disadvantages of civil litigation can often be related to a lack of trust in the Australian justice system, incurred legal costs, issues pertaining to an individual's and or family well-being, limited understanding of legal proceedings, and the Australian justice system's inadequate practice of culturally appropriate engagement with Aboriginal and Torres Strait Islander peoples. Public litigation hearings and their proceedings can trigger past trauma, particularly in circumstances where survivors are publically confronted by their offender in foreign environments such as court

rooms. Also, civil litigation is often about financial compensation for individual cases. VACCA strongly endorses the notion that appropriate and comprehensive redress in this case include but not be limited to individual compensation. Aboriginal people who have been affected by institutionalised child sexual abuse require a range of supports including financial compensation as well as access to a comprehensive and holistic range of healing and support services.

The establishment of a culturally sensitive national redress scheme would possess greater potential in achieving a comprehensive justice response for Aboriginal and Torres Strait Islander peoples.

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

It is the position of VACCA that Aboriginal and Torres Strait Islander peoples be instrumental in the development of redress schemes, collaborating with representatives from relevant institutions and state and federal governments to ensure optimal outcomes for claimants. Such Aboriginal and Torres Strait Islander representation must accurately depict the diversity within Aboriginal and Torres Strait Islander communities, both metropolitan and regional, therefore ensuring all affected are heard and receive equal access to the services available. It is also recommended that adequate time be provided for Aboriginal and Torres Strait Islander peoples to apply and that these time periods include culturally appropriate consultation.

Appropriate consultation is required to ensure the Aboriginal community has a comprehensive understanding of the redress application process. In addition, the potential impact(s) financial compensation may have on an applicant's Centrelink entitlements as well as any compensation for abuse they have already received also need to be explored. Outreach to Aboriginal and Torres Strait Islander communities must include local Aboriginal and Torres Strait Islander services to provide sufficient support for those who experience difficulty in numeracy, literacy, and disability.

The financial implications and the methods in which monies may be disbursed to claimants requires careful consideration. As highlighted in the response to this paper by the Victorian Aboriginal Legal Service, lump sum payments made by previous redress schemes have proven to incite considerable friction within community and subsequently served in further isolating families rather than encourage community empowerment. In light of this experience, VACCA considers that in addition to individual compensation, claimants require access to a range of services that can address the specific healing, housing, educational, emotional, financial and any other social needs of each affected person.

VACCA recommends that a national redress scheme be audited on an ongoing basis for effectiveness and best practice. Such a review process will highlight current successes that can be further supported, and pinpoint areas that are in need of improvement.

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?

VACCA supports redress for all Aboriginal and Torres Strait Islander peoples that were institutionalised and placed in “care.” We support the concept of group benefits for all former residents of an institution where abuse was widespread. In addition, as stated by the Victorian Aboriginal Legal service, where individuals that were in “care” are no longer alive, family members receive appropriate redress in recognition of the ongoing trans-generational trauma prevalent in Aboriginal and Torres Strait Islander communities and the growing need for support services specific to family and community.

VACCA would like to emphasize the need for culturally-based healing programs to be a component of the national redress scheme. Such programs are paramount to enable healing and enhance the overall well-being of many Aboriginal and Torres Strait Islander people, families and communities.

VACCA is very aware of the ongoing intergenerational impacts of past institutionalisation and the wide scale abuse experienced by those placed in “care”. VACCA believes that funds

should be available to ensure that healing services are provided to the children; grandchildren and great grandchildren of those impacted.

4. What are the advantages and disadvantages of establishing 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 the scheme? How and by whom should such a scheme be funded?

All relevant governments and institutions should be responsible for funding national redress schemes and therefore play their part in taking responsibility for past wrongs committed. As it was the successive Australian governments who funded the institutions, that in turn employed the offenders, it is our view that all government and institutions be held accountable and be required to contribute to a national redress scheme for survivors of child abuse whilst in “care”. The advantages of a National Redress Scheme would be the establishment of a systematic response to institutional abuse with one process open to all those impacted across Australia. The main disadvantage of this approach will be the time required to establish the scheme given the numerous negotiations with state governments and other organisations who may not be supportive given their involvement in past redress schemes.

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?

Where institutions have already developed and enacted redress schemes, the measures that they have already put into place need to be taken into account when considering what further contributions they must make to any national redress scheme. At the same time it should be mandatory for all relevant institutions to participate in the National redress scheme. Institutions may have input into the development of a national redress scheme and their input may be valuable in terms of redress measures they have already taken and the experience they have gained in the implementation of those.

As suggested in a document prepared by the Public Interest Advocacy Centre in 2002 and quoted in the VALS response to issues paper number 6, the establishment of a tribunal of Indigenous elders and relevant professionals would be appropriate to ensure that Aboriginal and Torres Strait Islander people's claims are assessed in a culturally appropriate manner.

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

Participation in a redress scheme should be mandatory for any institutions implicated. Those institutions must be held accountable for their actions and made to contribute to a fair, equitable and comprehensive redress scheme. Where institutions have already implemented redress schemes, past contributions should be considered when calculating their contribution under the national redress scheme. Where the institution or governing body no longer exists, the State or Federal Government should act in its place.

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?

Redress needs to be about choice. Having choice and feeling empowered is what was taken away from Aboriginal people, families and communities when people were removed from families and abused in institutions. Any compensation or redress schemes must be based on this key point. Therefore, engaging in a redress scheme must be optional for the survivors of institutional abuse. They must also have the option to pursue civil litigation if they wish. At the same time, given that civil litigation would seem to be a much more difficult process for claimants, any redress scheme should provide adequate compensation so that people don't feel the need to pursue the more challenging civil litigation option.

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?

VACCA recommends a means testing model be applied to all the institutions involved. In cases where the institution no longer exists and there is no clear governing body or successor, the relevant government agency should cover the contribution of that organisation.

VACCA further believes that all child residents of institutions where abuse was taking place were victimised by being in those institutions and as such should all be entitled to apply for redress. Proof of institutionalisation in places where abuse was known to have occurred should be adequate grounds to be eligible for compensation. Such proof can be made available via records obtained through Freedom of Information.

As outlined in Chapter 14 of the Bringing Them Home Report grounds for compensation could follow the same 'Heads of Damage' outlined as follows:

1. Racial discrimination.
2. Arbitrary deprivation of liberty.
3. Pain and suffering.
4. Abuse, including physical, sexual and emotional abuse.
5. Disruption of family life.
6. Loss of cultural rights and fulfilment.
7. Loss of native title rights.
8. Labour exploitation.
9. Economic loss.
10. Loss of opportunities.

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?

One of the advantages of having a redress scheme is that legal costs are minimized. The value of damages awarded through a mandatory redress scheme may take into account the fact that costly legal fees will not be subtracted. VACCA believes that institutions must be held financially accountable for their role in abuse and that they amount they are required to pay be based on a means testing model as discussed in point 8 above.

Another advantage of offering compensation through a redress scheme is the ability to minimize further trauma to survivors by developing a fair and equitable model that will apply to all residents of institutions where sexual abuse is known to have taken place that were resident at the time the abuse was taking place.

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?

In an institution where abuse is taking place, all residents of that institution will be affected by the abuse one way or another. VACCA believes that simply proof of institutionalisation in places where abuse was known to have occurred should be adequate to be eligible for compensation as discussed in point 8 above.

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 comprehensive range of supports must be available to all Aboriginal and Torres Strait Islander people who have been affected by institutional abuse including the families and communities of those who were directly affected. Such supports include counselling, healing programs, social support and legal and financial assistance.

Support and services must be culturally safe and take into account language and literacy barriers that may exist.

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?

VACCA believes that in situations where a claimant has already received a compensation payout for the abuse they suffered in institutional care, those people may be eligible for a top up amount under a redress scheme if the compensation they have received is not equal to the amount offered under the redress scheme.

Conclusion

VACCA would like to see justice for all those removed from their families and placed in institutions where they were subjected to horrific abuses and to this day have received no justice for these experiences. VACCA is aware that civil litigation is an incredibly difficult process for people and therefore most do not pursue this option. A national redress scheme with contributions from all states and past institutions is, in our view the best way forward. Ensuring that redress encompasses the five recognised van Boven principles of:

1. Acknowledgement and apology
2. Guarantees against repetition
3. Measures of restitution
4. Measures of rehabilitation, and
5. Monetary compensation

As this Royal Commission would be aware, while there has been some acknowledgement and apology to some, the remaining principles are very much a hit and miss affair with no systematic approach to adhering to and ensuring these are being met.