

Redress Submission



Public Submission

This is a last minute replacement submission for the files that I opened this morning on my computer that were corrupted.

If found this Notepad entry in my computer history this morning which I think points to the reason why the file is empty.

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I am asking that the RC accept a late Submission as I had a substantial document prepared, and will have to redo it.

The situation of the preference for Child Sex Offenders to be sent to and migrate to Australia, and for Child Sex Offenders to be protected by Institutions in Australia is because of the following.

1. Australia is a Democracy with No Bill of Rights

This has been rectified in the ACT where the UN Human Rights is legislated for the past couple of years. The sky did not fall in.

The Australian Constitution needs a Referendum to include the UN Charter of Human Rights and particularly the Rights of the Child, in this instance.

The Royal Commission could proposed a change to the Constitution based on its eventual the findings. This would be an opportunity for bi-partisan political support, and a community led consensus to fix a wrong that had been overlooked and has been impossible to fix any other way.

The Referendum for Aborigines fixed a wrong that was identified in the Constitution. The lack of Rights for Australia citizens, particularly children has resulted in systemic crimes against children. And has resulted in people who want to harm children historically coming to this country to do so.

The powerful vested interests of wealthy Religions have interfered in the political process of

Australia, resulting in legislation protecting their Property Trust and assets, removing them from beyond the reach of the Law Courts. This has cumulated in the international disgrace of the Ellis Defence.

Justice for victims

Redress should be survivor focused

1. Justice should be seen to be done to the Perpetrators in Criminal Courts. All identified surviving perpetrators should be charged and prosecuted for crimes committed against children, no exceptions, no excuses.
2. Justice should be seen to be done to Institutions that gave knew of child sex abuse and kept the knowledge of the child's abuse within the hierarchy of the institution or organisation, failed to report to the Police, failed to remove the perpetrator, failed the safety and welfare of children in their care.

All Institutions that have been identified by the Royal Commission as covering up instances of child sex abuse should be prosecuted in a Civil Court for failure of Duty of Care.

State Governments cannot be prosecuted. However the Recommendations of the Victorian State Government Betrayal of Trust Report 2013 and should be implemented in every State and Territory in Australia..

3. All members of Boards, Clergy, who have perjured themselves at the Royal Commission should be prosecuted.
4. All Magistrates in Australia who handed custody of children to Convicted Child Sex Offenders should be prosecuted for endangering the safety of that child.
5. In order for the Civil Courts to be able to prosecute cases the Statute of Limitations needs to be abolished in each State and Territory, and as in Victoria, it needs to be abolished retrospectively so that historic class action cases, that can meet the standards of evidence required for a successful prosecution can be brought to Court. Can the RC please recommend the Abolition of ALL Statutes of Limitation in Australia including retrospectively.
6. The Australian public, and particularly Survivors and their families see the failure of

Australian Courts to prosecute Child Sex Offenders, and the leniency of the sentences handed to Clergy when convicted, as part and parcel of the Cover Up of Child Sex Offences in this country. This needs to be rectified with at least one Court case in each State that is successfully prosecuted against a major Institution, that results in Common Law precedent and resulting Civil Claims ordered by a Judge that sets a benchmark for the Settlement of Claims of Survivors. The Royal Commission should facilitate such a trial in each State and Territory.

7. Why claim that we are a Common Law Country and respect the Rule of Law, when the Law has been silent on the issue of Child Sex Abuse which has affected over half a million Australians? If the Nuremberg Trials had never happened, then much of the reform of law and International Law, and the UN Charter of Human Rights might never have happened. A major trial is required resulting from the Royal Commission to right the wrongs of the past.

8. REDRESS Principle

Redress should be provided to Survivors in line with the support that Perpetrators received from their Institutions. The principle that needs to be seen in public here is that an organisation should be penalised the full amount of the funds they expended avoiding prosecution, covering up abuse, and protecting Perpetrators, as a absolute minimum.

Why should a Survivor be worth less than a Perpetrator?

In the case of the Catholic Church in Victoria over \$1 million was provided for each Priest to defend them in Criminal Cases, Appeals and in legal fees against Victims.

This can be quantified exactly by an inquiry to Corrs.

So the upfront penalty for the Catholic Church should be that amount should equal to and definitely NO LESS than what the Catholic Church spent protecting each Perpetrator, that should be approx. \$1 million amount per victim at the Outset of the Redress Fund.

These funds came out of the Archbishops funds and Catholic Insurance.

So the Redress Funds for Victims should come out of the Archbishops funds and Catholic Insurance also.

If a Religious Organisation is not willing to participate in paying upfront fees to the Redress Fund then **their Charitable Tax Free status should be withdrawn**, by a request from the Royal Commission to the Charities Commissioner.

This is a simple administrative step.

The Institutions and the Religious Institutions have proven to the Royal Commission that they are NOT CHARITABLE. They are self-serving Corporations. Their Charitable Arms are separate legal entities, such as St Vinnies. No person in a position of authority in a Religious

Organisation wants to lose the Holy Grail of Tax Free Status, so its quite likely that they will do their utmost to co-operate with the creation of the Redress Fund.

They won't do it of their own accord.

Elements of Redress

The personal apologies by Institutions for Private Settlements have been hollow and self serving documents delivered by staff with no knowledge or interest in the Survivor.

I don't think that there is any point in having personal apologies to Survivors from Institutions staff unless it is at the end of the Trial of the Institution for covering up Child Sex Abuse.

Justice First, Sincere Apology after Sentencing, when there are consequences for the Institutional staff and Board Members who covered up the abuse. They they will actually mean it. The assurance that the Institution will changes its practices will occur in practice rather than in 'Policy Documents and Brochures' when the people who were on Boards or the Perpetrators are prosecuted. It will be a case of improving risk management and Manadatory changes such as the Betrayal of Trust Report changes for Insurance Cover, Mandatory Working With Children Checks on a National Basis that ACTUALLY change things.

I know some Survivors need a personal Apology to heal. My partner [REDACTED] certainly felt a whole lot better when the politicians on the Vic Inquiry insisted that the Salvation Army lawyer present at the Vic Inquiry Hearing give him an on the spot personal apology.

Being put on the spot with cameras rolling and the media present certainly got a heartfelt apology out of him.

Some survivors will need a sincere personal apology and the Royal Commission should supervise that Apology in a location that is run by the Royal Commission, away from the trappings of the Institution.

Many Institutions have a once a year Reunion Day for their Care Leavers, and the staff consider that that is sufficient to 'look after them'. Which obviously it isn't.

Access to Therapeutic Counselling

All counselling services should be provided by professional and self-help based organisations such as ASCA.

There is no point funding perpetrator organisations to do "counselling'. They use the funds to send staff to dissuade Survivors from going to the Police and dissuade them from applying for Redress.

Open Place in Victoria is now primarily doing 'Counselling' as in doing 'Nothing' apart from chatting to Care Leavers. Very disheartening.

Monetary Payments

Lump sum payments must be available so that a Survivor can decide themselves what they want to do with the payment.

All of the arguments that say a Survivor is incapable of making a decision in their own

interests are just paternalism.

There only extenuating circumstances are from the 'Do No Harm' principle: when Centrelink payments are impacted by a lump sum, Centrelink has a formula that assumes the lump sum will last for a particular period of time, and reduce pensions and benefits accordingly.

It is therefore necessary that a portion of a Lump Sum be managed so that it fits those guidelines for a Pensioner or Beneficiary so that they don't lose their Pension entitlements and Health Care Card and or lose their Housing.

A Managed Fund could be set up within a Trustee Company to invest and diisberse the funds as needed by the Survivor with advice as to the impact on their Pensions if a large amount is withdrawn at one time.

In this way the lump sum is still owned by the Survivor and is still accessible in an emergency and can form part of an Estate when they die.

A Survivor who is under Guardianship may have to have their Funds invested for them anyway. State Trustees is notorious for getting a terrible return on invested funds and charging high administration fees.

If the RC Redress Fund can ask ANZ Trustees or Perpetual to run a Survivors Fund that would be appreciated. It might be workable, but just a suggestion.

9. WA Redress as a Model

The WA Redress Scheme is flawed in that many Stolen Gen Survivors and Forgotten Australian Survivors were told that they were not eligible to apply for the Scheme when they first made an enquiry. There is the same sort of issue with the Royal Commission, in that the first phone call very actively screens out people.

"Because there are so many" or

"We have to make sure you can apply"

"Are you a Torres Strait Islander?"

Some people are entirely put off, and just put the phone down and don't call again.

It is unlikely that the disclosure of circumstances relating to Child Sex Abuse is going to be made in the first phone call, or the first inquiry, so the process of gate keeping enquiries needs to be looked at to ensure that it fits with the General Principles for Providing Redress.

I am concerned that the Stolen Gen Report, the FA Report the Relinquishing Mums Report resulted in a stack of 'professional training', 'consultation' and pamphlets for Emergency Departments in Hospitals about how to be nice to homeless people, but didn't actually provide much in the way of Housing for homeless Survivors.

I don't want these "Principles" to turn into another round of Professional Development opportunities, and that's all.... The RC has already created a micro industry within the Welfare Sector.

‘Appropriate support’

If a Survivor is homeless, organise them Priority Housing directly from the Royal Commission offices, don't buck pass to a local government social worker.

If a Survivor needs Rehab or Psychiatric referral then arrange that first, and do the Redress paperwork later. Its no good doing Redress if the Survivor isn't going to make it through the week.

10. Redress Payments

Please create a Redress Payment that also includes the United Nations current definitions of Torture, including Child Sex Abuse in a Religious Context.

Malnutrition

Failure to provide Medical Assistance

Torture

False Imprisonment

Child Slave Labour

Some Survivors have X-Rays of their bones knitted at odd angles, flattened knees from scrubbing floors that are evidenced by a Medical Report.

These life long agonising injuries must be accounted for in any Redress Scheme.

Redress to Parents who had to cope with Sexually Abused children who later suicided or require lifelong support must be included.

The WA Redress payment to Aboriginal People who had their wages withheld by the WA Government was only \$2000 per person. This was another slap in the face of Government sanction and APPLIED RACISM.

The Royal Commission cannot be seen to be adopting the same double standards in terms of ignoring ALL the harms done to Children incarcerated in Institutions by the State.

11. Redress Payments

There shouldn't be a Cap on a Redress Payment.

If a Redress payment needs to be more than an incident of Child Sexual Abuse, such as is covered by the upfront Fees charged to the responsible Organisation or State Government, then the amount should be billed to the Perpetrator and Perpetrator's Institution or Organisation and paid promptly.

12. Stepped Redress Payments

The Magdalene Laundries in Ireland has a Pension top up payment that will result in many of the elderly Survivors never receiving a full Redress payment.

3. The redress offered under the scheme is inadequate.

As well as making arrangements for healthcare provision, the Quirke scheme offers tax-free *ex gratia* payments to women based on the length of their documented service in the laundries. [Representative groups are divided as to the adequacy of this element of the scheme.](#) The scheme provides for a top figure of 100,000 euro in redress; the figure available to a woman who has spent 10 or more years in a laundry. Very few women fall into this category. The majority of women who spoke to Mr. Justice Quirke's team had been in a laundry for 1-5 years. Most of these women are 66 or over, in ill-health, badly educated and living in relative poverty. A woman of 66 who had been in a laundry for 4 years, would receive:

- Weekly payments equivalent to the state contributory pension, if she is not already in receipt of that pension.
- 32,500 euro in general damages. General damages provide redress for “the harsh and physically demanding work required of the women and the traumatic, on-going effects which their incarceration and misery within the laundries has had upon their security, confidence and self-esteem”, as well as for the women's educational deficit and current poor living conditions. General damages are capped at 40,000 euro. A woman who spent, say, 20 years in a laundry is not entitled to more.
- 24,000 euro in respect of the labour undertaken in the laundries. No woman will receive more than 60,000 euro in respect of labour in the laundries, whatever her length of service.

A woman in this category will not receive a 56,500 euro lump sum. 50,000 euro will be paid as a lump sum, with the remainder to be paid in weekly installments for the rest of the woman's life. The woman in our example would receive a weekly income of 239 euro, which represents the combination of her state pension, assuming she is receiving it for the first time (230 euro per week) and the remainder of the redress due to her which is to be eked over the remainder of her life at a rate of 9 euro per week. The absolute maximum 'top up' to the state pension which any woman will receive under this scheme is 130 euro per week. This life income will not pass to dependents when the woman dies. When we take account of the age and ill-health of the majority of Magdalene women, it seems clear that many will die before they have been paid the full redress due to them under Quirke's formula. This is an especially troubling prospect for women who spent longer periods of time in the laundry, who are entitled to larger sums under the scheme....

... **Frank Shortt, who successfully sued the state for 27 months false imprisonment (a good analogy for the experience of the many Magdalene women who were illegally detained in the laundries) was awarded [millions of euro in damages.](#)** There is a danger that if the state is perceived to have downgraded the Magdalene women's financial entitlement, then the restorative expression of sincerity will begin to look more like risk management.

Máiréad Enright, What's Wrong with the Magdelene's Redress Scheme ¹

Irish Supreme Court ruling for Frank Shortt.

The Supreme Court increased the general damages including aggravated damages from €500,000 to €2.25m.

The punitive damages portion was increased from €50,000 to €1m. This is thought to be the largest ever punitive damages award in the history of the State.

In his judgment, Chief Justice Mr Justice John Murray said Mr Shortt had been the victim of disreputable conduct and a shocking abuse of power on the part of two garda officers.

He said both engaged in a conspiracy to concoct false evidence against the plaintiff which in turn resulted in perjured garda evidence being given at his trial, leading to his conviction.

What followed, he said, was a tormenting saga of imprisonment, estrangement from family, loss of business, public and professional ignominy and despair.

As a result of his ordeal, Mr Justice Murray said Mr Shortt should be awarded very substantial compensatory damages, far in excess of the amount awarded by the High Court.

He also found aggravating elements to be manifest, and ruled he should get further aggravated damages for the outrageous and arrogant manner in which the wrongs were inflicted on him.

He further found compelling reasons for awarding substantial exemplary damages, including that the due process of law had been undermined, as had An Garda Síochána.

Possible Structures for Redress Payments

Institutions can't be trusted to run their own Redress schemes. Failed already Towards Healing prime example.

Prefer one National Redress Scheme.

Past and Future Abuse

The power imbalance between a Child or Disabled Sex Abuse Survivor and an Adult and their Employers or the unwitting enablers will always remain.

It is therefore necessary for the Redress Fund to be ongoing.

The Victims of Crime Compensation Schemes could be used to access the Redress Fund. Or Civil Claims.

It was demonstrated in the Vic Inquiry that the power imbalance of the status of the parents of the victim were given consideration in the nature of discussions about Settlements and the nature of support given to Survivors.

Parents of students from from [REDACTED] were offered meetings between barristers and a

¹ Máiréad Enright, What's Wrong with the Magdelene's Redress Scheme Jun 28, 2013
<http://humanrights.ie/law-culture-and-religion/whats-wrong-with-the-magdalenes-redress-scheme/>

Confidential Settlement averaging over \$300,000 promptly organised.

Survivors who went to Towards Healing were given different options depending on their status and likelihood of being able to get a lawyer to represent them.

Homeless survivors of Institutions were handed cash sums as low as \$2000 in exchange for Signing a Confidentiality Agreement.

So there is no access to Justice or Settlements for the Institutional Survivors who can't read and write, are homeless or in jail. They just have to rely on the Royal Commission as their last hope for any reparations.

That's why I am carrying on a bit with this Submission, because I have taken homeless institutional survivors from [REDACTED], and he has just checked their name on the list he has in his office of people who have signed a Confidentiality Agreement, and called the Police to drive them to the Mission.

This is so heartbreaking, Institutional survivors who are homeless are like little kids, they don't trust anybody and they just keep on asking for someone to help them.

They get sent to the Salvos. Which really isn't much help in the long run as they won't house or assist anyone with a criminal conviction, and that is why many of the Institutional Care Leavers from places like [REDACTED] are still in desperate situations.

They are considered to be 'not eligible' for help.

I want to ABSOLUTELY ENSURE that Institutional Child Sex Abuse Survivors and Survivors of Torture and Child Slave Labour are eligible for Redress from the Royal Commission, and they get real help.

That is: A roof over their head in a major city near the support services and medical services they need, not just dumped into the worst bedsit Public Housing with ex-prisoners at the back of Geelong or Bairnsdale.

A program for them modelled on the Montefiore Homes program for their Holocaust Survivors which has an outreach program home care and specialist nursing home facilities.

The results of extreme childhood trauma are known to the medical and psychiatric professions in Melbourne, there is a pool of world class expertise here, and I would like the Royal Commission to utilise some of that expertise in creating a program from the Redress Fund for Special Needs survivors and an Aged Care Support Program.

The Holocaust Survivors program has some simple things like top up payments for additional Home Help from the local Council. Veterans Affairs likewise has Care Packages that could be a model for Survivors.

Children

Yes, there should be a review of the processes in each State and Territory for Civil Claims for Children.

This is an area of heightened Confidentiality and it may be that the Royal Commission is one of the few opportunities to assess what has occurred in Civil Claims and Settlements for

children and the disabled who have received Court Ordered payments and mediated settlements.

There also needs to be a change in how Criminal Child Sex Abuse cases are run in Courts by lawyers, as the process is very harrowing for children.

There needs to be change in how different areas of Police, Emergency Services and Hospitals organise access to Forensic Services for a child, as at the moment it is very difficult to know where to send a family in distress to get this dealt with in the immediate aftermath of an Assault on the Child. Apart from Go straight to the Children's Hospital, call the Police, and they will sort it out from there.

There should be a procedure put in place for a National Uniform Redress Scheme for Child Sexual Assault.

Effective direct Personal Response.

It is necessary for Institutions to stop running their own Archives and 'Responses' to Survivors.

We met 19 year old Catholic University students who were being sent out to do Oral History projects with Survivors. Of course the elderly ladies they went to see weren't going to disclose any of their harrowing experiences and abuse to young unmarried girls from the Catholic University. So their report on the history of the Institutions is all rather toned down.... The Catholic University will then use this 'Research' to whitewash history.

Most Institutions that offer services do so with one eye on the consequences of 'family tracing' and family reunions. Please refer to the Clan Submission into how badly this can be done by an Institution that is saying at the same time how they are 'trying to help' 'we can't find anything', 'all the records have been burnt' etc.

It isn't in the Institutions interests to help Survivors. There are some organisations that have made genuine efforts to create a support team for their Care Leavers and even the Care Leavers in WA from the Presbyterian Home who have built their own Retirement Village back at the site of their former Orphanage. But those circumstances are rare. The rest looks pretty awful by contrast.

'Institutions should welcome feedback' This is the sort of 'In Principle' statement that we can all agree to, but which hides the reality that there won't be much ACTION, maybe some window dressing, and a few events.

What really needs to happen is

Lift the 99 year ban on identifying siblings and relatives from the State Archives and DHS Ward Files and Institutional Records

Send out photos and good quality copies of the group photos to Survivors so they can identify friends and family members in the photos as well as Care Givers and in some cases Perpetrators.

The veil of secrecy wouldn't be tolerated if they were child survivors of a War because of the Red Cross family reunification program.

Because Children were separated from their siblings, systematically, deliberately by every Institution in the Country, it should be the responsibility of the Royal Commission to be able to CALL IN ALL THE FILES and have them indexed properly and deposited in the various State

and National Archives.

And the Bill sent to the Institutions.

Psychiatric and Psychological Service Provision

Medicare

My partner [REDACTED] has access psychological services through Open Place in Victoria as a Forgotten Australian and through the RC, as well as through previous Mental Health Plans via his local GP and local service providers.

Random local psychologists don't have a clue about the special needs of Child Sexual Assault Survivors, although they have probably read a lot about it.

The best support that [REDACTED] has found is his Forensic Psychologist [REDACTED] in Mornington who he sees once a month, and found through ASCA.

It has made a huge difference to him to be able to discuss the upcoming trial of his Perpetrator with someone who has a working knowledge of Police Forensic and Court procedures.

Our experience is that a Specialist Service provision is necessary for Survivors.

The Medicare model through a Mental Health Plan with extra sessions available would be very much appreciated.

The easiest way for Survivors to access services is via their GP with whom they already have a confidential understanding of their immediate medical needs.

Access to services according to need is in place because it is necessary, and will continue to be necessary.

Some survivors and service providers will go through every cent of Redress funding available and then some more just because it is there and they can access it.

The Federal Dental Scheme got rorted.... is still rorted by some Dentists doing basic work for \$4000..

I think it is entirely necessary for it to remain on referral from a GP.

I agree that as a last resort, and there will always be some special circumstances, that the Redress Scheme should have some provision for topping up psychiatric and psychological service provision.

Settlements by lawyers with the [REDACTED] had the Medicare costs of prior treatment related to the Child Sex Abuse billed back to the Survivor out of their Settlement.

One person we know received a larger Medicare Bill than her entire Settlement, and went into a screaming meltdown about it, RETRAUMATISING!!!!

It SHOULD be that Medicare bills back the Survivors costs from the Government, after verification from the Survivor, the full cost to the Institution.

Monetary Payments

The Actuarial Report should have Tables showing the COST to the Australian Government of the destruction of the lives of all of the Child Sexual Assault crimes covered up by Institutions.

The RC is able to ascertain this from the testimony and written statements of Survivors who could give permission for the RC to access a summary of their Medicare Records.

The Institutions should provide a full list of the children who were in their Care which can be verified by the Federal Government Child Endowment Payments, which Treasury has a full record of per child, per Institution.:

Births Deaths and Marriages death rate in Institution
life expectancy per Institution

Medicare Records suicide attempts
addiction treatment
hospitalisations
psychiatric
psychological services

State Government Records Juvenile Detention
including all the kids transferred to Juvenile Detention without
charge from Institutions
Adult Incarceration
Psychiatric Incarceration

Tax Office average Federal Taxes forgone by Survivors

Centrelink Records average cost per Survivor
compared to national age weighted average

And then send the Bill for all of the above to the Institutions.

They were supposed to do a better job in raising children than the child's own family.

Obviously that didn't happen.

So get the money back, plus interest.

That will pay for Redress.

PRIOR REDRESS SCHEMES

The RC Redress Fund should take into account

Child Sexual Abuse

Physical Abuse

Neglect

Malnutrition
Access to Education
False Imprisonment
Torture
Child Slave Labour
Separation from siblings
Separation from parents and extended family
Later Family difficulties as a result of the Abuse

Redress for Secondary Victims should include

Acknowledgement of Pain and Suffering for Relinquishing Mothers

Some Institutional Survivors are also Relinquishing Mothers and they are a special case, especially those who were forced to endure a pregnancy resulting for rape in Institutions or Foster Care as a result of the power over them by the Institution and by the perpetrators.

I spent 4 years as a volunteer at Lentil As Anything and in the Glass Studio at the Old Laundries at Abbotsford Convent and met many of the Survivors of the Magdelene Laundries and their families on site.

Pregnant girls who were sent to [REDACTED] were stripped on entry, whipped naked by the Nuns and had their hair cut off.

This is surely an expression of child sex abuse in its most diabolical form.

Work in the laundries was IN SILENCE. Girls were whipped for making eye contact with other girls.

In the 1960s they were allowed to listen to the radio while they worked.

The same unlagged steam pipes were still burning girl after girl, year after year.

This was a sadistic place, and I would like the RC to ensure that the Redress Fund includes especially some special assistance for Pregnancy in an Institution and Forced Relinquishment.

Many of the girls committed suicide.

Their lock up room upstairs had a hanging beam, and many girls committed suicide by hanging.

There won't be many claims for Survivors for Relinquishing Mothers payments because the suicide rate and attempted suicide rate was very high up until the 1970s.

The Sole Parent Pension payment was introduced because the doctors at the Alfred Hospital produced the statistics for the Council of Single Mothers and their Children and the new Labor Government to show that there was at least a 50% attempted suicide rate for Relinquishing mothers in the 12 months after the birth of the child, and the psychiatric admission rate was very high.

One mother had walked to the [REDACTED] hospital with her sick baby in her arms because she couldn't afford the tram fare, and the child subsequently died of meningitis because they didn't get the antibiotics into her soon enough.

When we went to the Relinquishing Mothers Apology in Canberra, there were women I spoke to who were inconsolable. The first they knew of the whereabouts of their child was when the Department of Human Services rang them to say their Child had Died.

As one woman said, 'My child died on the streets of Melbourne. I had a job, somewhere to live, why didn't they tell me he had been released from Care? Why was I only ever contacted when he had died homeless.'

And to my absolute horror, it was beyond words that day, at least 5 women quietly told me the same circumstances. They didn't want to 'ruin' the day for other people who had met up with their child, but the relinquishing mothers who's children had died is something that I have to mention to the Royal Commission.

It has to be included, and it has to be followed up.

Monetary Payments

I'm sure you will get plenty of Submissions about Monetary Payments.

As said previously the Monetary Payment per Institution should be equal to or more than per Survivor than what was spent by the Institution per Perpetrator.

Anything less isn't Justice.

Those who have already received a Settlement from an Institution should be allowed to apply.

Their documentation should be available to the Royal Commission to get a complete picture of the Perpetrators to pass on to the Police.

As many Institutions did not name Perpetrators to the Police, and some victims did not know their Perpetrators names, by collating all the prior Settlements some outstanding criminal matters might be able to be concluded.

Variations of Settlements and prior payments should be assessed by the RC and a top up payment if required made to Survivors.

The Redress Fund should be a Court Fund under the Control of the High Court of Australia and should be separate to all Government Departments and the control of Parliament. Vested interests will use the Parliament to rip off the Fund or distort its purpose if they get the chance.

The only way to protect it is to make a Sovereign Fund in Trust under the High Court and put Justice Kirby in charge of it.

Because to quote him "Nothing is impossible to the human spirit".

And he has investigated the hell hole of North Korea and understands entirely how Institutional Abuse rolls.

Standard of Proof for Redress Claims

There should be the same standard as there is in Civil Claims, except in the instance of the Institution failing to co-operate with the Royal Commission.

If it is not the fault of the Survivor that their Records have been destroyed, then the full onus of proof should revert to the Institution to prove that that person was either not there or that the perpetrator was not there.

Decision making on a Claim

Decision making on a Claim should be by a Civil Court Judge with enough experience in this area to be able to make a final decision that cannot be argued against by the Institution in the Supreme Court or the High Court.

A lawyer should take the Claim and a Judge should sign off on the decision.

It is completely inappropriate to train non-judicial, bureaucratic staff to make wild stabs about what the Redress should be.

Review and Appeals of a Redress Claim should be to a Judge.

Support to Survivors

Family matters about disclosure by Survivors to their families are going to be huge.

There is always a family bunfight about Wills, so any lumpsum payment of Redress is going to bring out some spectacular issues for families of Survivors.

It is unfortunate that some Survivors who have gone through horrendous circumstances will donate their Redress payment back to the Perpetrator Institution.

Can the Royal Commission please put a Prohibition on Institutions from requesting Donations from Survivors from their Redress payment.

A managed fund by a Trustee company may be the best bet for Survivors where the RC ascertains that they Survivor is likely to be robbed of their Redress payment by being homeless, by being unwell, or by family members.

It may be necessary for the RC Redress fund to always check with Survivors what their current circumstances are before depositing funds to them.

Interaction with Alleged Abuser

All crimes against children should be reported to the Police including all historic crimes.

Redress and Retraumatization

It will be necessary for the Redress Fund to carefully go around the problem of a Survivor being retraumatized by the application process for Redress.

I would like to propose that the Redress Fund have a similar process to Centrelink Claim Form for Disability or other Pension, where a GP does the initial assessment with a tick list.

Things like State Ward Number
Name of Institutions
Perpetrator/s
General type of claim without being intrusively specific about actual assaults.
GP assessment of the Survivors capacity to deal with the Redress Fund
process, so that can be up front information to the RC Redress Fund staff. .

Referrals to counselling, psychiatric and other assistance should be done at this stage, not later down the track when a full scale retraumatising crisis from files and recall is already underway.

The Survivor adds relevant documents if they want to at the application stage, or waits for an initial assessment to see what else is required.

The RC Redress Fund requests State Government and Institutional Files direct, not the Survivor.

This then takes away the opportunity that [REDACTED] and other Service Providers have been planning for ever since the RC started, of minimising their risk by providing the minimum amount of information they can get away with.

Subpeona any documents and make the Institution Directors PERSONALLY liable for any False Disclosure.

It is in interests of the current Directors of Religious and other Institutions to fight Redress tooth and nail. The Redress Fund needs a full arsenal of compliance Orders, just as the RC has in its public hearings in regards to documents from Institutions and their lawyers.

Claiming to be from another country and another planet doesn't cut it.
Claiming anonymity of the current Board, or senility of the Religious leader or whatever other get out they come up with should result in the immediate suspension of the Institutions Charitable Tax Free Status.

In this way, every Institution should co-operate. There are complex situations of people who have been Fostered, Adopted, put back in Resi Units, and usually when these people speak to a lawyer, unless their Perpetrator is known, it all becomes too complex.

One Survivor from [REDACTED] in SA who used to live with us for a few months before he got housing, after being homeless with a 3 year old for over a year, was thrilled when he put in a Claim for the SA Redress Scheme for Forgotten Australians a few years ago.

He found out he had been a hero for so many of the other boys.

He had come to the Institution as a 10 year old, who was the youngest of 6 siblings and had a very strong sense as of what was FAIR and stood up to the staff when they imposed arbitrary and cruel punishments.

He found all these wonderful stories about him from the testimony of the other FAs. That was worth more than money to him, it was worth him feeling 10 foot taller. He was made to dig the grave of his best mate who absconded at 13 and tried to drive a car and died. That sort of torture of children by Institution staff is the sort of additional payment thing that I think is absolutely necessary.

So I think that it would be wonderful if the Redress Fund could do some of the roles that were supposed to be done by Institutions themselves in the last 20 years, and haven't been done very well, if at all. State Governments funded Perpetrator organisations to provide support services, and these again, do a less than half hearted job on the following.

assistance with gaining access to records
family tracing and family reunion
culturally appropriate collective redress events and assistance

Some Institutions have failed so badly since the Stolen Gen Report that they simply cannot and should not have any role in the lives of the Survivors under any circumstances. Those Survivors though still want to reconnect with their friends and family members from those Institutions and they shouldn't miss out just because the Files have been "burned".

From: [REDACTED]
Sent: Monday, 9 March 2015 11:36 AM
To: redress
Subject: Redress Submission Helen Dawson Public

Dear Royal Commission staff

I had prepared a substantial submission and it has been corrupted on my computer since I last closed the file at 1.30am this morning.

Redress Submission

[REDACTED] Public Submission

This is a last minute replacement submission for the files that I opened this morning on my computer that were corrupted.

I found this Notepad entry in my computer history this morning which I think points to the reason why the file is empty.

[.ShellClassInfo]

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I am asking that the RC accept a late Submission as I had a substantial document prepared, and will have to redo it.

This is a very short recap of some of the issues involved which I have put together this morning. I will send a complete pdf file of my submission as soon as I have redone it.

Redress should be survivor focused

1. Justice should be seen to be done to the Perpetrators in Criminal Courts. All identified surviving perpetrators should be charged and prosecuted for crimes committed against children, no exceptions, no excuses.
2. Justice should be seen to be done to Institutions that gave knew of child sex abuse and kept the knowledge of the child's abuse within the hierarchy of the institution or organisation, failed to report to the Police, failed to remove the perpetrator, failed the safety and welfare of children in their care.

All Institutions that have been identified by the Royal Commission as covering up instances of child sex abuse should be prosecuted in a Civil Court for failure of Duty of Care.

State Governments cannot be prosecuted. However the Recommendations of the Victorian State Government Betrayal of Trust Report 2013 and should be implemented in every State and Territory in Australia..

3. All members of Boards, Clergy, who have perjured themselves at the Royal Commission should be prosecuted.
4. All Magistrates in Australia who handed custody of children to Convicted Child Sex Offenders should be prosecuted for endangering the safety of that child.

5. In order for the Civil Courts to be able to prosecute cases the Statute of Limitations needs to be abolished in each State and Territory, and as in Victoria, it needs to be abolished retrospectively so that historic class action cases, that can meet the standards of evidence required for a successful prosecution can be brought to Court.

6. The Australian public, and particularly Survivors and their families see the failure of Australian Courts to prosecute Child Sex Offenders, and the leniency of the sentences handed to Clergy when convicted, as part and parcel of the Cover Up of Child Sex Offences in this country. This needs to be rectified with at least one Court case in each State that is successfully prosecuted against a major Institution, that results in Common Law precedent and resulting Civil Claims ordered by a Judge that sets a benchmark for the Settlement of Claims of Survivors. The Royal Commission should facilitate such a trial in each State and Territory.

7. Why claim that we are a Common Law Country and respect the Rule of Law, when the Law has been silent on the issue of Child Sex Abuse which has affected over half a million Australians? If the Nuremberg Trials had never happened, then much of the reform of law and International Law, and the UN Charter of Human Rights might never have happened. A major trial is required resulting from the Royal Commission to right the wrongs of the past.

8. REDRESS Principle

Redress should be provided to Survivors in line with the support that Perpetrators received from their Institutions. The principle that needs to be seen in public here is that an organisation should be penalised the full amount of the funds they expended avoiding prosecution, covering up abuse, and protecting Perpetrators, as a absolute minimum.

Why should a Survivor be worth less than a Perpetrator?



So the upfront penalty for the Catholic Church should be that amount per victim at the Outset of the Redress Fund.

If a Religious Organisation is not willing to participate in paying upfront fees to the Redress Fund then their Charitable Tax Free status should be withdrawn, by a request from the Royal Commission to the Charities Commissioner.

This is a simple administrative step. No person in a position of authority in a Religious Organisation wants to lose the Holy Grail of Tax Free Status, so its quite likely that they will do their utmost to cooperate with the creation of the Redress Fund.

They won't do it of their own accord.

9. WA Redress as a Model

The WA Redress Scheme is flawed in that many Stolen Gen Survivors and Forgotten Australian Survivors were told that they were not eligible to apply for the Scheme when they first made an Inquiry. There is the same sort of issue with the Royal Commission, in that the first phone call very actively screens out people.

“Because there are so many” or

“We have to make sure you can apply”

It is unlikely that the disclosure of circumstances relating to Child Sex Abuse is going to be made in the first phone call, or the first inquiry, so the process of gate keeping inquiries needs to be looked at.

10. Redress Payments

Please create a Redress Payment that also includes the United Nations current definitions of Torture, including Child Sex Abuse in a Religious Context.

Malnutrition

Failure to provide Medical Assistance

Torture

False Imprisonment

Child Slave Labour

Some Survivors have X-Rays of their bones knitted at odd angles, flattened knees from scrubbing floors that are evidenced by a Medical Report.

These life long agonising injuries must be accounted for in any Redress Scheme.

Redress to Parents who had to cope with Sexually Abused children who later suicided or require lifelong support must be included.

The WA Redress payment to Aboriginal People who had their wages withheld by the WA Government was only \$2000 per person. This was another slap in the face of Government sanction and APPLIED RACISM.

The Royal Commission cannot be seen to be adopting the same double standards in terms of ignoring ALL the harms done to Children incarcerated in Institutions by the State.

11. Redress Payments

There shouldn't be a Cap on a Redress Payment.

If a Redress payment needs to be more than an incident of Child Sexual Abuse, such as is covered by the upfront Fees charged to the responsible Organisation or State Government, then the amount should be billed to the Perpetrator and Perpetrator's Institution or Organisation and paid promptly.

12. Stepped Redress Payments

The Magdelene Laundries in Ireland has a Pension top up payment that will result in many of the elderly Survivors never receiving a full Redress payment.

3. The redress offered under the scheme is inadequate.

As well as making arrangements for healthcare provision, the Quirke scheme offers tax-free *ex gratia* payments to women based on the length of their documented service in the laundries. [Representative groups are divided as to the adequacy of this element of the scheme.](#) The scheme provides for a top figure of 100,000 euro in redress; the figure available to a woman who has spent 10 or more years in a laundry. Very few women fall into this category. The majority of women who spoke to Mr. Justice Quirke's team had been in a laundry for 1-5 years. Most of these women are 66 or over, in ill-health, badly educated and living in relative poverty. A woman of 66 who had been in a laundry for 4 years, would receive:

- Weekly payments equivalent to the state contributory pension, if she is not already in receipt of that pension.
- 32,500 euro in general damages. General damages provide redress for "the harsh and physically demanding work required of the women and the traumatic, on-going effects which their incarceration and misery within the laundries has had upon their security, confidence and self-esteem", as well as for the women's educational deficit and current poor living conditions. General damages are capped at 40,000 euro. A woman who spent, say, 20 years in a laundry is not entitled to more.
- 24,000 euro in respect of the labour undertaken in the laundries. No woman will receive more than 60,000 euro in respect of labour in the laundries, whatever her length of service.

A woman in this category will not receive a 56,500 euro lump sum. 50,000 euro will be paid as a lump sum, with the remainder to be paid in weekly installments for the rest of the woman's life. The woman in our example would receive a weekly income of 239 euro, which represents the combination of her state pension, assuming she is receiving it for the first time (230 euro per week) and the remainder of the redress due to her which is to be eked over the remainder of her life at a rate of 9 euro per week. The absolute maximum 'top up' to the state pension which any woman will receive under this scheme is 130 euro per week. This life income will not pass to dependents when the woman dies. When we take account of the age and ill-health of the majority of Magdalene women, it seems clear that many will die before they have been paid the full redress due to them under Quirke's formula. This is an especially troubling prospect for women who spent longer periods of time in the laundry, who are entitled to larger sums under the scheme....

... **Frank Shortt, who successfully sued the state for 27 months false imprisonment (a good analogy for the experience of the many Magdalene women who were illegally detained in the laundries) was awarded [millions of euro in damages](#).** There is a danger that if the state is perceived to have downgraded the Magdalene women's financial entitlement, then the restorative expression of sincerity will begin to look more like risk management.

Máiréad Enright, What's Wrong with the Magdalene's Redress Scheme

Irish Supreme Court ruling for Frank Shortt.

The Supreme Court increased the general damages including aggravated damages from €500,000 to €2.25m.

The punitive damages portion was increased from €50,000 to €1m. This is thought to be the largest ever punitive damages award in the history of the State.

In his judgment, Chief Justice Mr Justice John Murray said Mr Shortt had been the victim of disreputable conduct and a shocking abuse of power on the part of two garda officers.

He said both engaged in a conspiracy to concoct false evidence against the plaintiff which in turn resulted in perjured garda evidence being given at his trial, leading to his conviction.

What followed, he said, was a tormenting saga of imprisonment, estrangement from family, loss of business, public and professional ignominy and despair.

As a result of his ordeal, Mr Justice Murray said Mr Shortt should be awarded very substantial compensatory damages, far in excess of the amount awarded by the High Court.

He also found aggravating elements to be manifest, and ruled he should get further aggravated damages for the outrageous and arrogant manner in which the wrongs were inflicted on him.

He further found compelling reasons for awarding substantial exemplary damages, including that the due process of law had been undermined, as had An Garda Síochána.

Yours sincerely

