

Response to Redress and Civil Litigation

February 28 2015

Submitted by [redacted], mother of a survivor ( Name not for publication)

**Explanation.** I feel input from both primary and secondary survivors essential for the Commission to gain a balanced perspective. I am including background information to help explain my recommendations.

**Background Information**

My son, born 1968 was sexually assaulted by a [redacted] from an [redacted] [redacted] He was severely traumatised and has been on a disability pension since October 2006. With severe mental and physical impairment, he has no prospect of employment.

He reported the offence, 30 years later, to the police in 2009. Initially the perpetrator pleaded not guilty. With excellent police work, 3 other boys joined the case so the perpetrator changed his plea to not guilty. A second [redacted] was now involved. Plea bargaining was utilised as none of the victims wanted to face a prolonged court case. In March 2011, the accused was sentenced to 12 years for the offences against 6 boys. Two boys did not want to be involved so the accused added them to the list to avoid another trial. It is obvious that some victims are not ready to tell their story. With the guilty plea and good behaviour prospects, the sentence was reduced to 7 years.

[redacted]

In April 2013 my son was overwhelmed by the coverage of the Rolf Harris case and the publicity in the press and on TV about the Royal Commission's painful disclosures. He registered for a private session and requested my support. The session was scheduled for May 2014. I rang the [redacted] and informed an understanding support person. The [redacted] were in the process of reviewing all historic cases that had not been dealt with. I also wrote to the

██████████ and informed him of our forthcoming session with the Commission. I requested a meeting with him and this was arranged June 2014. From this point on, invaluable and ongoing support has been given to my son and me from the support person (chaplain) from the ██████ Support from my new local Church was also forthcoming as I belatedly in 2014 shared with the assistant minister why I was now attending his Church. I needed his support for the upcoming meetings.

My son appreciated the opportunity to share his experiences with a Commissioner and his associate. He needed the assurance that the perpetrator committed a crime and that redress was desirable. This was a valuable experience for him as for the first time he was able to voice his feelings of guilt and responsibility. The Commissioner was able to assure my son that the actions of ██████████ criminal and my son was not to blame. The session was conducted in a warm and professional way. This meeting opened the way for more positive steps to be taken towards healing involving redress.

One of the benefits of the work of the Commission is that the public, including my son's family and friends are more aware of and understanding of the abuse issue. Although it has been confronting for him, he is aware that he is not alone. He is overwhelmed by the 65,000 who need to be supported by a fair and just redress system.

### **Recommendations**

The redress issue is a complex one but justice and equity for all survivors is the ideal goal. There needs to be common principles and a set of national minimum standards. Categories for monetary payments need to be established. Irrespective of whether the states, federal governments or institutions run the redress schemes, there needs to be a common redress scheme for all survivors. Up until now there has been a reluctance by many redress providers to make the welfare of the survivors their number one priority.

I favour, where possible, institutional redress being in the hands of the institutions particularly if the survivor and family can cope with reconnecting with the institution responsible for the abuse. The following aspects need to be carefully weighed up

### **Apology**

- a) A personal apology from family. I have found it difficult yet necessary to apologise for letting my son down and not protecting him. This apology has had to be reiterated when depression and self harm issues surface. My policy is never to broach the subject but to be sensitive and supportive when nightmares and self doubt surface.
- b) Apology from the institution. A personal apology from a senior representative of the Church needs to be spontaneous and genuine. It should not need to be asked for but

should occur as soon as possible when the abuse has been investigated and proven. There may be some survivors who do not want this but for those who do, acknowledgement of the abuse and its impact need to be broached. My son and I appreciated our meeting with [REDACTED] May 2014 even though this was 3 years after the court case. Naturally my son

has a very negative attitude to the Church so this meeting softened his negativity. At this meeting, assurances that measures have been put in place so similar incidents are less likely to occur were given. His apology was extended to me as well as my son. A warm follow up letter was also sent expressing concern for the repercussions for my son and myself. [REDACTED] clearly acknowledged the blame attributable to the church. A separate letter to my son would have been preferable. Maybe training is needed to fine tune these apology meetings and letters. In the [REDACTED] package the apology comes after the acceptance of the monetary offer. I feel the apology should be expeditious and separate from the monetary and counselling issues. I have expressed this opinion to the [REDACTED] personnel. What the apology did for my son was to make him feel less guilty that he had allowed the sexual abuse to have happened. Also it improved slightly his attitude to the Church. For my son's sake and mine I had moved to another church as he had difficulty with the particular church where the offence occurred and where the ministers contacted by the police showed no compassion. Child protection measures are now in place in the [REDACTED] so that mandatory reporting and Child Safety measures are practised. Clergy training has also been a new initiative so that clergy know how to exercise their pastoral skills in handling survivors and their families. Because I believe an apology from the institution is an important component in the survivor's acceptance of the Church's failings, the apology aspect of the redress package should be managed by the institution if possible. A Public apology as with the Lismore case and Archbishop Pell's case could be helpful. Needs to be spontaneous to come across as genuine. Openness is desirable.

- c) Apology from perpetrator. This would possibly be a helpful scenario. If the offence involved a direct employee from the church, this should be facilitated by senior church bishops. In the case of my son, the perpetrator showed no remorse and is unlikely to have genuine compassion. His guilty pleas were purely to reduce the length of his sentence. Forgiveness is a difficult ongoing issue in this case.
- d) [REDACTED] organised apology. I mentioned that a clergyman from the offending Church neglected his pastoral duty when appraised of the offences in 1993 and interviewed by the police, 2009. Last week at my new church, together with the assistant minister, a meeting was arranged by the [REDACTED] support chaplain who has been diligently supporting my son and I. A written apology was sent and the meeting gave the now retired clergyman the opportunity to personally explain and apologise. This was a healing process for me.

## **Counselling and Psychological Care**

Counselling and psychological care should be an integral part of a redress scheme. It should not be tied to the monetary compensation aspect.

My son suffered severe mental trauma. Symptoms of depression, self harm, alcohol and drug abuse, panic attacks and nightmares were progressively evident from late teens to early forties. A climax was reached when in 2009 he was sectioned and sent to a mental hospital. Severe physical problems have arisen concurrently with his mental health issues thus affecting his quality of life and opportunities. No work satisfaction was experienced and since 2006 he can no longer work. I do recognise that there can be other contributing factors but the major causation was his sexual abuse and his inability to share his pain and avail himself of counselling. The psychiatrist at the mental hospital was emphatic in advising him to acknowledge his abuse and to report it or he would not be stable again. Subsequently in 2009 he reported the abuse to the police and a conviction ensued 2011. Counselling during and after this may have helped. Difficult to say whether he would have welcomed or accepted it. He has had bad experiences with counselling imposed by the court. My son has difficulty trusting adults especially males. Building up trust for my son may take time. I am aware of the danger of re-traumatising. Group therapy is not an option for survivors because of the pain of recounting painful episodes. This year the [REDACTED] is endeavouring to organise counselling for my son after last year's approaches were rebuffed. I'm hoping that the counsellor can include life skills as well as the trauma aspects.

I applaud the suggestion that support services for family members be provided. Last year the [REDACTED] organised 3 sessions for me with a clinical psychologist. I benefitted as I was struggling with some of the ramifications.

Counsellors need to be trained in sexual abuse aspects. It may be advisable for survivors to have access to counsellors who specialise in living skills as well.

Regular reviews during counselling are desirable. Achievable targets need to be set and liaison with the agency providing the service is desirable.

Some survivors will need long term counselling. There is no medical cure for the trauma. Episodic counselling needs to be made available. In the case of my son, he will definitely need support when the perpetrator is released from jail in March 2018. Already he has had nightmares that the perpetrator visited his home and stole his precious dogs.

Funding is a difficult issue. It appears that with the [REDACTED] package, counselling funding does not continue after the package is accepted. Arrangements need to be made to tap into the medicare /public counselling provisions if the institutional support is not ongoing.

The institutions should be encouraged to supplement, not duplicate existing programs and services

Survivors should not be expected to fund their own counselling if a package has not been accepted. The idea of a separate trust fund set up by governments and institutions has merit.

In conclusion, counselling should be a high priority in a redress package. It should stand alone and not be tied to other aspects of redress. Counselling should be continuing or episodic if necessary and handled by skilled practitioners.

### **Monetary payments**

*It goes without saying that no amount of monetary payment can fully compensate a survivor's trauma and lifelong effects. The social, psychological, physical, economic and spiritual ramifications are not quantifiable in monetary terms. What is important is that the process of monetary redress be made fair, equitable and expeditious. Flexibility is required. An independent assessment of the category of trauma is recommended. Transparency is needed. Deeds of release and privacy clauses may benefit the institution but are unfair to the survivors.*

*There are many advantages of ex-gratia payments made by institutions.*

*1 Institutions are accepting responsibility for harm done to survivors.*

*2 Clear guidelines and scales for quantifying monetary payments are established. The matrix proposal is a good suggestion. This could include the severity of abuse and the devastating impact of the abuse at the time of assessment. If a survivor has 20 to 30 years to survive rather than an expected 10 years then adjustments could be made. I do not have a valid opinion on the range of payments. I realise that affordability is an issue. What perturbs me is that some survivors may have to wait 10 years if a government scheme is implemented. How do you work out the order of payments? The level of payment needs to be meaningful, thus contributing to an alleviation of the impact of the abuse.*

*Survivors who have received lesser monetary payments from governments or institutions should still be eligible if a new scheme is mandated. The previous payment should be deducted from the new scheme payments. Adjustments for inflation are a valid suggestion. Consideration needs to be given to the effects on pensions and tax issues. The payment offered by the █████ would not affect my son's disability pension.*

*3 Time factor. Avoiding lengthy court proceedings reduces the time taken to arrive at a settlement. Survivors often find it difficult to accept long delays*

*The [REDACTED] has a redress package implemented by the [REDACTED] Unit ([REDACTED]) Monetary payments range from \$25,000 to a maximum of \$100,000. A support person or chaplain initiates a claim by interviewing the survivor, collecting documentation and then penning a claim. All relevant aspects of the nature and effects of the abuse are collated. In my son's case, the support person had access to court reports, victim impact statement, psych evaluation and medical reports from GP and hospital. My son has been under the care of the one GP for 40 years so the doctor's analysis of the effects of sexual abuse on his physical and psychological well being was invaluable. At this stage an offer has been made but we are waiting the outcome of a challenge to the deed of release aspect(see below). The Church is willing to pay for legal advice to help my son fully understand the package before signing. The latter is a most desirable aspect and should be a recommendation for all monetary settlements.*

### ***Deeds of Release***

*As mentioned previously, the stumbling block for my son accepting the offer made by the [REDACTED] is the inclusion of the deed of release. At the meeting with the commissioner the deed of release was explained and we questioned the [REDACTED] also. He requested that [REDACTED] [REDACTED] follow this up The Director has assiduously done this and so far there has been no definite outcome. I had a meeting with my local minister and three [REDACTED] personnel to discuss both the apology issue and the deed of release. I have appreciated the open communication I've had with the [REDACTED] It was suggested by my son that any payment made via the [REDACTED] package should be deducted if there is successful civil litigation. He does not want to forego his common law right to make a civil claim. The deed of release negates this right. I question the rationale and morality of including the deed of release. It seems to be a protection for the institution and not caring for survivors.*

*I strongly recommend that if the Church continues with a separate redress scheme that the deed of release be excluded. My son is most unlikely to pursue a civil case because of severe psychological and physical issues but he does not want to forego his common law rights. After barely coping with the court case I feel that neither my son nor I could cope with the adversarial nature of civil litigation*

### **Confidentiality Issue**

*Openness is an important issue. The more the survivors, their families and the general public are informed, the more chance of a build up of trust in the organisations that have betrayed so many. Transparency of procedures and publicity of progress may help to allay suspicion. There has been far too many cover ups, mislaying or shredding of documents and blind denials.*

*The [REDACTED] monetary offer includes a confidentiality clause requiring recipients not to disclose the amount of their payment. Cannot see why this is desirable. My son would have great difficulty in not accidentally divulging details. The Church should be publicising their redress payments and establishing a data base for the public to access. Names need not be recorded but all other dates, facts and figures should be made public.*

*What is commendable in the [REDACTED] package is that recipients will not be constrained from talking about their abuse, a necessity for counselling that may follow the acceptance of a monetary payment..*

### **Civil Litigation.**

*I don't intend to comment on this issue in depth*

*The delay in reporting child sexual abuse is well documented. In my son's case it was over 30 years. Not all survivors are willing to divulge their experiences. Time limits do not appear to be applied with ex-gratia payments. No time limits are applied in the [REDACTED] package. It would be most desirable for time limits to be eliminated in civil cases for survivors of abuse*

*It would be good if a data base of pro bono solicitors be made available for survivors who do want to pursue civil litigation.*

### **Spiritual Issues**

*If the church is still involved in the redress schemes, it will have the opportunity to give pastoral and spiritual support to survivors and their families. As a Christian I have had invaluable support from the committed Christians in the [REDACTED] They are a dedicated bunch. Also the local church has exercised sensitive pastoral care. I believe sexual assault is assault of the soul as well as the body. Abuse shatters faith and every effort needs to be made to restore faith. My heartfelt desire is for my son to restore his faith in the fallible church and to believe in a caring and forgiving God Local churches will have an opportunity to be involved and there needs to close liaison between support providers. The [REDACTED] and my assistant minister have collaborated on many issues.*

*In conclusion, I commend the government for setting up the Royal Commission and extending the time frame. The Commission is to be applauded for its meticulous work. Public awareness and understanding has been heightened. The task ahead of recommending a redress scheme is a daunting one.*