

Submission to the Royal Commission

Redress and Civil Litigation proposals

[redress@childabuseroyalcommission.gov.au](mailto:redress@childabuseroyalcommission.gov.au)



Dear Commissioners,

We submit the following ideas on Redress in the hope that the current references to a capped proposal are abandoned.

**1. The figures of \$100,000 to \$200,000 are inadequate.**

These figures are only marginally above the Catholic Church's revised caps which have been universally condemned as not acknowledging the seriousness of the crimes and are definitely not adequate compensation to victims for the damage and life-long misery caused by sexual abuse.

**2. The proposed 100,000 to \$200,000 capped compensation is a pittance and an insult.**

The capped concept appears to be saying that sexual abuse of a minor by a member of the church needs to be compensated but not to a level where a victim can now have significant happiness restored to his/her damaged life.

Capping compensation or setting limits on making restitution to victims fails to deliver justice.

Victims are looking to the Royal Commission to re-set the agenda in compensation not redraft current inadequate practices.

### **3. The Solution - The Need for an Upper Limit.**

We suggest that it is more sensible and practical to establish an Upper Limit of \$1 million/case with a sliding scale of compensation down to a minimum of \$200,000.

This scale will logically provide much scope to address the many unique situations that will arise when considering the trauma and life-long impact of sexual abuse case by case.

For example, where rape and molestation was over an extended period the Upper Limit applies, and where occasions of sexual abuse occurred (not necessarily rape but molestation, physical domination and authoritarian control occurred) the lower limits come into play.

### **4. Shades of Grey**

There will be shades of grey throughout this process but it is safer and fairer to start with a top figure and work down rather than close off the shades of grey with an absolute minimal cap.

### **5. Are We Beginning to Abandon Victims?**

Failure to establish a compensation template based on a significant Upper Limit (with a sliding scale of impact-trauma) will create a feeling of abandonment for victims.

Afterall, why was the Royal Commission established? Was it not established to expose the miserable institutional behaviour of

church officials, their cover-ups and their miserable compensation processes (including nil financial compensation!)?

## **6. Secondary Victims.**

There will also be an equally compelling need to address the impact of sexual abuse on the lives of the main secondary victims, especially the spouses who have often shared-shouldered the impact of sexual abuse over a lifetime of trying to cope with a damaged partner.

## **7. How to reflect the Royal Commission's findings?**

There must be an inbuilt additional amount of compensation in recognition of the Royal Commission's findings about the litany of negative, inadequate and even hostile responses by the Church which has added enormously to the burden of victims and their families.

It has become the Elephant in the Room and must be accounted for within the compensation process.

## **8. The Elephant in the Room factor - Create a New Term - "The Excess payable" (as in an insurance policy).**

The Excess payable is the "additional amount of compensation" which the church must automatically pay to all victims who went through the totally inadequate and amateurish systems called The Melbourne Response and Towards Healing.

**8a.** The "excess payable" is a flat rate (as per insurance claims) of \$50,000 and is an entitlement to compensation which recognises the additional trauma caused to victims who were

forced to engage with church processes and church personnel who were inexperienced and amateur, untrained and uncaring, and overall professionally unprepared to assist, guide and support damaged victims of sexual abuse.

In addition, as evidenced in the Royal Commission's public hearings, church personnel and the processes employed by the church were designed to protect church assets and the church's reputation.

We wish to reiterate the words of Prof. Patrick Parkinson in these disgraceful matters:

#### **Responding to Victims of Sexual**

**Abuse**<http://www.abc.net.au/religion/articles/2013/10/25/3877103.htm>

How well have churches addressed the problem of child sexual abuse? As I have indicated, the popular view would be that the handling of child sexual abuse cases in the past has been appalling.

Mostly, this is based upon the recurring stories of cover-up and malfeasance in the Catholic Church. However, it is important to emphasise that no church or other community organisation with a significant work amongst children is free from reproach.

The issues in the Catholic Church:

There are two issues that need to be confronted in the Catholic Church. The first is why rates of child sexual abuse seem to be so high, proportionate to other institutions and faith communities and perhaps proportionate to rates of offending in the general male population. The second is why there have been so many scandals about the way matters have been handled.

#### **Poor handling of child sexual abuse cases**

To some extent, the same patterns can be observed in the Catholic Church as in other churches when it comes to poor handling of child sexual abuse concerns. Children were not believed, while the word of a priest or brother

was hardly questioned. Barry Coldrey, of the Christian Brothers, reports in his history of his Order in Western Australia that many allegations of sexual abuse did emerge at the time, and were looked into by leaders; but the investigation did not proceed beyond the alleged perpetrator's denial of the allegation.

In one case, a leader in the Order in Melbourne wrote to a Brother in Western Australia, asking for his response to a boy's report that this Brother had interfered with him.

The Brother responded in these terms: "In answer to your letter referring to my behaviour towards a boy at ... I am pleased to say that the accusation is completely untrue as far as I am concerned. I am deeply grateful for this opportunity to clear myself of any doubt in your eyes."

Nothing more was done. If the alleged perpetrator denied the allegation, then it was the boy's word against the Brother's, and usually no further action resulted other than to give a warning to the Brother concerned.

These public revelations have left the church's reputation in tatters. Hence the need to now publicly rectify previous systemic blockages, lies, cover-ups and calculated denial of victims.

It is now time (we say essential) to provide an "excess payable" to victims as compensation for so much church structured denial and obfuscation.

**8b.** Alternatively, in calculating the "excess" it might be fairer (in terms of evaluating the multiple areas of grey) to simply "top-up" the final compensation with an additional percentage (notionally a minimal 20% up to 50% for those known cases of outright immoral and unethical denial by the Church).

The major advantage of an "excess" payment would be that is making a categorical statement about equity within the redress process as it seeks to directly compensate for the years of

obfuscation by the church in not substantially addressing victims' needs.

In other words the church is paying a penalty for its inadequate and flawed processes in responding to victims.

## **9. Finity Consulting's Actuarial Report & An Average Payment.**

The notion of an average payment using current numbers of victims as proposed by an actuarial report is not the appropriate place to start.

A fair and just compensation outcome must use the known incompetence and calculated denials used by the church and the attempts to crush victims and their claims.

There can be no fair and just compensation using an "average payment" for victims - that is an oxymoron.

But there can be developed a scaled-template which allows for accommodating all victims' circumstances as long as the Upper Limit is significant.

## **10. Establish The Relevant Context.**

Fair and just compensation for victims must properly reflect upon a church that:

- Has already paid millions for the services of legal teams to oppose victims at every turn, and
- Struggles to understand the need to underscore their recently acquired new perspective in sexual abuse matters as a crime (as proclaimed by the Truth Justice and Healing

Council) with complementary significant and uncapped compensation of millions of dollars to the victims.

We suggest that there is an urgent need for an audit of the church's financial resources so that the millions required for Upper Limit compensation to victims is sourced from asset sales as required.

Overseas church resource audits have seen the release of millions of dollars from church finances as required to fully compensate victims, their needs and their family's needs.

The Australian church's capacity to pay victims is unquestioned and a \$1million Upper Limit is the financial reality which must be pursued.

Conversely, the idea of cap is ludicrous for a church that has billions in assets.

And finally, any endorsement of a cap is approximating a "cap in hand" mentality which will do enormous damaged to the reputation of the Royal Commission. The Royal Commission must resist any ideas of "affordability" for crimes that were endemic to a blinked and heartless church - the same church is in a position to pay whatever it takes!!

## **11. Other Evidence**

Our Perspective is further supported in two articles; (A) Age Newspaper article "Church Reneges" & (B) CRIKEY.com "Air crash injury compensation".

We have highlighted some key issues in [blue](#).

## (A) Age Newspaper

### Catholic Church renegs on cap for compensation August 13, 2014

The Catholic Church wants to dump its maligned abuse compensation system, the Melbourne Response, and replace it with an independent national scheme, but victims are seething over a plan to cap payments.

The church, on Tuesday, made a submission to the Royal Commission into Institutional Responses to Child Sexual Abuse, which called for a new independent statutory body to investigate and compensate abuse claims. This would replace the Catholic schemes operated through the Towards Healing process and the Melbourne Response and deal with abuse by other institutions.

The Royal Commission will begin a two-week sitting in Melbourne on Monday. The commission had asked institutions to provide proposals on how cases could be investigated and compensated.

The federal government would operate the new independent body but institutions responsible for the abuse would pay for it, Francis Sullivan, chairman of the church's Truth Justice and Healing Council, said.

"We don't think that the Catholic Church should be investigating abuse cases about itself," Mr Sullivan said.

"We think there should be a completely independent process from the church."

**While other Catholic dioceses had uncapped schemes, the Melbourne Response has been widely criticised for being capped and Mr Sullivan has previously said any new scheme should be uncapped and said policy back flip was "regrettable".** Mr Sullivan said government-run institutions would be included in the scheme and Australian governments did not sign-up for uncapped schemes.

"We have seen this at state level, they do not provide uncapped redress schemes," Mr Sullivan said.

**"That is, unfortunately, the real-politik and that is what we have had to come to terms with. There is no question that our initial position has changed."**

Monetary redress would be capped, indexed and in line with "community standards". Other supports, like housing, counselling and employment assistance, would be unlimited.

**Anthony Foster**, father of two girls raped by a Catholic priest, was angered by the policy change.

**"What we have is a situation of untold harm to victims ... and they want a capped system. Because of this untold harm we need an uncapped system to restore victims, it is the only that this is going to work," Mr Foster told the ABC's Jon Faine show.**

Angela Sdrinis, who has represented many victims, criticised the cap.

**"I think it is important that there is no cap in a redress scheme because this puts an arbitrary value on the suffering of victims which at the outset has the capacity to make a victim feel that their suffering is tested on a scale with the worst cases getting the maximum and anyone else's suffering being in some way minimised or discounted," Ms Sdrinis said.**

.....

**(B) Crikey Online** Sunday, February 1, 2015

## **AIR CRASH INJURY COMPENSATION**

**Air crash injury compensation, is a fixed figure fair?**

[Ben Sandilands](#) | Sep 14, 2012 9:12AM

Last month the government announced an increased maximum limit or cap on compensation to people injured or killed in air crashes, such as the Pel-Air ditching in 2009, where according to the recent televised interviews of some of those seriously affected, they hadn't been paid a single dollar, close to three years after the accident that ruined their lives.

However the government has been unable to reply to requests for more advice on what this really means except with gibberish that doesn't deal with the obvious questions arising from its press release, which is quoted below

### **BETTER PROTECTION FOR AIR ACCIDENT VICTIMS**

Today I [the Minister for Infrastructure and Transport, Anthony Albanese] introduced new legislation which will significantly increase the payout available to air accident victims on domestic flights and make it easier for them to access this compensation.

#### **The Aviation Legislation Amendment (Liability and Insurance) Bill 2012 increases the cap on payouts from \$500,000 to \$725,000.**

While Australia has a proud aviation safety record, it is important we continue to strengthen protections for people flying domestically.

**The increase in the cap is the right thing to do to ensure that victims of air accidents and their families are adequately compensated. It brings the cap, which has not been adjusted since 1994, into the 21st century to reflect current costs, rather than those of nearly two decades ago.**

The level of mandatory insurance for airlines is also being increased by the same amount to ensure that adequate funds are available for proper compensation of air accident victims and their families.

**Together, these important reforms will ensure that airlines move quickly to a fair settlement with victims and their families in the event of an air accident.**

The changes to the compensation laws will move Australia closer into line with international practices established under the Montreal Convention and implemented by over 100 countries around the world.

The Bill continues this Government's comprehensive overhaul of consumer protection arrangements for airline passengers announced in Australia's first Aviation White Paper.

The issue is whether or not this bill effectively prevents a concert virtuoso whose arms are burned off from receiving more, much more, than a manifestly unfair and inadequate payment for losing his or her ability to perform their music and make a living.

Does it really mean a sporting celebrity, or even your average professional footballer, whose legs are burned off, gets only \$725,000 in compensation, apparently in the far distant future if Pel-Air is any guide, in an accident recently blamed on the actions of the pilot rather than the operator responsible for the pilot in a scandalously incompetent and vindictive inquiry by the ATSB?

Will Minister Albanese, burned, blinded and crippled in a hypothetical crash, accept that he only gets a maximum of \$725,000, probably to the same time scale that the Voyager disaster victims were compensated by a grateful and caring succession of governments that screwed our sailors so hard most of them died before any justice was done to them?

If this compensation is truly capped at this amount for a plane crash some serious injustices will be done.

**The capped payment was explained to me as something that was fair because of the speed and certainty it brought to crash victims, which is manifestly rubbish.**

Guidance as to whether there is any recourse for crash victims to sue for and recover more realistic and appropriate compensation is sought from any legal authorities that care to venture an opinion.

There is most likely ample recourse available in law, but, why couldn't the government actually say so, and explain the position in more detail, using the above hypothetical examples?

## 12. In Conclusion

Our submission is written from the viewpoint of two people who have spent much of the past 10 years confronting the church on the basic issues of providing substantial yet fair compensation.

Over those 10 years we were ignored, mismanaged and left in a worse psychological condition every time we used church processes.

It is now our turn to have real justice via the Royal Commission and we must not be let down.

We want and look forward to a chance to restore happiness to our lives and move on with our family with the full financial compensation provided by a richly resourced church.

We thank the Royal Commission for its dedication to re-crafting the Australian landscape in addressing the long term impact and pain of sexual abuse and giving much needed guidance to the church.

We also look forward to the Royal Commission adopting a bold and outrageously supportive redress platform in full support of victims to the exclusion of everything else. **IT IS TIME!**

Thank you,

[REDACTED]

Date: 2<sup>nd</sup> February 2015

---

**From:** [REDACTED]  
**Sent:** Saturday, 31 January 2015 6:30 AM  
**To:** [REDACTED]  
**Subject:** [REDACTED]

Dear Justice Peter McClellan,

I have very recently written to you expressing my dismay and astonishment with a capped system of compensation. I have not been able to sleep thinking about the absurdity of the proposal.

I need to tell you that the TJHC is overjoyed at this announcement as it plays nicely into their plans to minimise future payments to victims. In other words nothing has changed.

The TJHC talks about a financial component which will "meet a ceiling". This means that compensation will be minimal.

I am gutted as this attitude is what I have fighting against for not than 10 years - I have been trying to get the Melbourne Response to have no caps. In fact it eventually became clear that the Catholic Church said that there should be an uncapped system.

Now the Royal Commission has played right into their hands and the TJHC is preparing to go back to protecting their money. The Royal Commission needs to be aware that the TJHC is touting the advantages of a capped scheme because it is less adversarial....deja vu!!

The TJHC is effectively saying 'take a small amount because otherwise its going to be a battle'.

What the Royal Commission should be doing is making the church available for litigation so that we have a viable system where victims can receive true compensation.

Please give us real options for some degree of happiness in our remaining years - currently I am terribly disturbed by this trend toward a capped compensation process - it is wrong and does very little for victims.

Thank you, [REDACTED]

## Redress Submission



11<sup>th</sup> February 2015

Dear Royal Commissioners,

Re: Redress and Civil Litigation Consultation Paper

As a result of a recent Blog by Francis Sullivan (Catholic Church fully supports redress and civil litigation consultation paper - Francis Sullivan 4 February 2015) we write again to express our concerns about aspects of the Redress and Civil Litigation Consultation Paper.

The TJHC is apparently only too happy to be fully onboard with the current Redress and Civil Litigation Consultation Paper. This in itself should be sounding alarms bells at the Royal Commission.

A close reading of the Blog reveals that Francis and the TJHC are almost overjoyed with the compensation template. The question is why?

We write to ask about a hypothetical (yet typical) example of compensation to victims. Is it true that within the anticipated redress structures any victim who has previously received a paltry amount of say \$35,000 from the church (of which \$15,000 had to be paid to lawyers) he/she will have any additional amount of compensation from the National Redress Scheme adjusted downwards by the amount already received from the church?

This must not be the preferred scenario.

It would make a further mockery of "just compensation" in cases where the church fought tooth and nail to minimise the original compensation (as perfectly illustrated in the John Ellis case and every other case the Royal Commission has exposed).

The church, as clearly indicated in Francis Sullivan's Blog, appears almost overjoyed at the implementation of the draft scheme, because it will reap the financial benefit of never paying a "just amount" in the first place.

It seems to us that the Royal Commission's current parameters of an average payment within minimal bands of "degrees of compensation" are an insult and are not going to work or bring genuine justice to victims who have been fighting for so long with a church that added much trauma and strain to already highly stressed and highly tense personal and family situations.

The only answer is to dramatically expand the upper figure to a minimum of \$1million thus allowing compensation to be realistic, just and "generous"; this is the word used by Francis Sullivan. I ask that the Royal Commission take him at his word and provide a "generous" upper limit.

We must be fully supported by the Royal Commission and our efforts at fighting for justice must not be downgraded within a meagre and insufficient compensation template that would no doubt please the Catholic Church insurers!

Thank you for your time,

