

SECTION 2. STRUCTURAL ISSUES.

This chapter identifies the important matters and we wish to suggest that there are points of emphasis that could be made and a small number of additional suggestions that might be considered.

Current Failings.

We don't have any dispute with the observations that are presented here however we consider that the failings are understated and we would attribute this to a fundamental factor not being identified. The history has to be considered in the context of government powers and responsibilities in colonial Australia and then the division of these as a consequence of Federation. A key factor is the responsibilities accepted by the states for the welfare, protection and education of those children who were citizens. For almost a century (circa.1885 to 1960s) the social policy settings adopted and implemented by the state governments were in fact various projections of the English Poor Laws.

As enterprise in the states established wealth and assets, and as general living standards were improved, the nation witnessed a policy assault upon poverty. The most vulnerable were women in situations where they were trying to raise dependent children alone. Women too were seen as dependents with few rights, and for decades there were no social support mechanisms. Faced with common and dispersed situations where family units were in financial trouble because the supporting males were no longer present, the response of the state (and a section of society) was to separate the children from the mother.

This practice contrasts with the operation of the Poor Laws in Britain where families could be kept together even though they would often be re-located to an institution in the form of a Poor House. In Australia, the expedient way for the state to respond was to encourage charitable organisations to take the children. On page 46 (para.4, last sentence) mention is made of more recent acquisitions of regulatory powers which is correct. However establishing powers is one thing and resourcing agencies to inspect, conduct audits and maintain records is something else. In this country children have missed out and they continue to miss out.

Elements of Redress.

This section identifies three elements and these are appropriate. We believe that the effectiveness of the first element might be improved in terms of survivor satisfaction, if there was one further requirement included within this element. It would of course be subject to the survivor wanting the suggested additional information. In cases where an offender had been convicted or had admitted to offending, the additional information would be a statement from the institution of the amount that had been spent in defending and supporting this person since he/she was stood down from any role.

These costs would include legal defences, pensions, accommodation support etc. It has been our experience that in some cases the disparity between what the institution has offered in respect of monetary compensation to the survivor and what has been spent by the institution, on the offending member, has been very wide. The “General Principles” that appear on pages 53 and 54 are clear and appropriate.

Possible Structures for Redress.

Any consideration of options for possible structures must be directed by the first statement within the general principles – **“redress should be survivor-focused”**. If this is to be the case, then we cannot see how institutional schemes could be considered to have sufficient merit. We have little doubt that numerous survivors have informed the Commission about the inadequacies of some of the schemes to date. The perpetuation of these in any form will exclude numbers of survivors because they do not trust the respective institution and also, they will feel that a power imbalance remains.

We believe that a national scheme should be the recommended option and we concur with the conclusion presented at the bottom of page 58. The stated risk factors are acknowledged but we are also aware of the community action that could be mobilised to put pressure on our governments in regard to this matter. As well pressure can be mobilised through international forums.

Instances of child abuse in the future.

On page 62, comment is being sought about response mechanisms for children into the future. As an advocacy organisation, we have always been seeking a better outcome for the adult survivors who have contacted us and for years we have been calling for some sought of national redress. In respect of future situations we would hope that persons are able to seek damages at common law. Already there are encouraging signs that state governments are moving to legislate in various ways to enable this.

SECTION 4. DIRECT PERSONAL REDRESS.

The matter of any institution having to make a direct personal response if this is the wish of a survivor (and possibly other individuals) is very important. The document identifies just how important this aspect of a response can be to some survivors. We wish to argue that the ideal should be to have an apology (either written or given verbally) that is comprehensive. In respect of some past instances, the apology will therefore need to identify the wrong and harm that was done by a member of the institution and also the wrong and harm done by persons in authority at the time and beyond.

To date various spokespersons for particular institutions have been loathe to go this far even though senior members were engaged in cover-up, failed to inform police, moved known offenders to new locations where there was more access to children and they acted to protect the assets and reputation of the respective institution rather than help the survivor. In some cases these failures had the effect of ensuring that more children would be abused by the same offender. Thus the failure of those in positions of authority was systemic in nature.

Across pages 86-88 the document considers matters relating to public apologies being given. Again, those that have been given have not included the matter above and therefore they have not admitted to the fact that the particular institution had failed the broad Australian community. As a consequence of what has taken place a large number of citizens were marginalised and left to depend upon the community generosity and sense of fairness.

SECTION 5. COUNSELLING AND PSYCHOLOGICAL CARE.

This section of the document is very thorough and gives due consideration to the need. It could be further improved by having a greater level of detail in some parts although maybe this has yet too be worked out by the Commission as final recommendations are determined?

As we see the situation, the Commission's activities have revealed a pool of people (survivors and some family) who continue to experience adverse, life-long effects that are attributable to their childhood experiences. Those experiences have blighted their enjoyment, opportunities and quality of living. They have low levels of formal educational attainment and they vary in chronological age. Often their psychiatric illnesses and psychological disturbances have never been diagnosed, let alone treated. Many of the older survivors may not be capable of responding to therapeutic treatment and their best option would be to have access to appropriate counselling/psychological/community supports at times when they need it. For younger survivors, their psychiatric illness may respond to appropriate treatments. The sooner that the right interventions take place, the higher are the chances of the best outcome. Successful treatment may prevent their illness becoming further entrenched and their quality of life could be improved to significant degrees.

Current services and service gaps.

The consultation paper identifies that a range of services already exist. This is true although we question the capacity and the skill/ experience level within some of these. What needs to be understood is that it takes time for professionals to gain the skills and if there is a sudden and large increase in demand for services, the capacity will not be there to meet it. There is an implied message in the Chapter as written that all support in this area has to be "face to face" and either government-provided or involving fee-for-service. It does not.

It would be possible for a service(s) to be set up where, after being assessed, a client was triaged in some way and then encouraged to discuss options for future support, engagement etc. These options could include the use of on-line services that are therapeutic, evidence-based and supervised professionally. These types of services are emerging and they are being shown to be effective. The client can participate at their own speed, according to their own timetable and they can be accessed at any time in any day. The material can be presented in a pictorial form and the client is given regular feedback either by telephone or email. Each client can participate either individually or as a member of an anonymous group. They allow a small number of professionals to supervise and support a large number of clients at any time. Three services that now have a very good track record are Mood Gym, E-couch and The Virtual Clinic. It should be possible for an appropriate service to be set up where the on-line materials were being offered on some license arrangement. If this option was included, then it might require some money to be directed to existing or expanded "Drop-in" centres as well as training programs about internet usage.

At the top of Page 22, the paper correctly highlights the access problems that survivors can experience if they choose to live in a situation that is regarded as rural and remote. The offering of on-line services would go some way towards addressing this matter.

Service gaps.

The Paper identifies some serious service gaps- resource limitations, access to Medicare, expertise etc. There is an important one that has been omitted. It is the fact that a significant number of the younger survivors will not "fit" within an established diagnostic category. Some of these will present with an eating disorder although a greater number will at times be demonstrating extreme behaviours and will be considered to be Borderline Personality Disorder or Schizo-affective Disorder. These people are poorly responded (if at all) in public mental health systems and, because of their behaviours, they can be avoided in community settings. Some treatment programs are available from some private provider but these are expensive because of the duration of the psychotherapy and other treatments. Victoria is unique in that the public mental health service includes a dedicated education service for clinicians that is called **Spectrum**. Consideration could be given to each jurisdiction setting up a service like Spectrum either within or alongside a National Redress Scheme.

Funding not services, and control/empowerment of survivors.

The question of funding being provided rather than appropriate services being provided within a National Redress Scheme needs careful consideration. During the recent past in this country we have seen particular services established by governments and then there has been a transition with the services being essentially privatised. Two instances that have current notoriety are the transition from the Commonwealth Employment Service to private job placement businesses and the transition of the TAFE system to private job training providers. In both of these cases there are now serious client, public and government concerns about the continuing effectiveness of each service with allegations of fraud, corruption and client exploitation.

Given this type of history and the comments that have already been made about service options, fee-for-service etc we believe that any additional services that are established, and which compliment existing services that are being provided, should be managed at least by the redress scheme. It may be a simple matter of clinical groups entering into some contractual arrangement. This should ensure that services were evidence-based, that standards were maintained (by use of audits), that cost-shifting was not occurring and that survivor' complaints could be investigated. The proper management arrangement should also ensure that services would be being driven by client demand and not by professionals' consideration of revenue opportunities.

Options for service provision and funding.

On page 2 of this response we have indicated our preference regarding instances of child abuse in the future but we note that in this section of the Consultation Paper comment is not being sought in regard to the specific services and responses that might benefit children. It needs to be understood that with mental health services in this country there is a huge disparity in the range and sophistication of services that are available to adults as compared to the situation for children. It is an undesirable fact that into the future some children will encounter sexual abuse in institutional settings and elsewhere. Hopefully as a direct consequence of this Royal Commission the frequency of these events will be much diminished as will the risks. We believe that the Commission has a real opportunity here to recommend a significant change for children.

At the present time the appropriate response services for children are grossly inadequate. The most sophisticated services are being delivered through children's hospitals, through some Capital City, public hospitals and by a small number of not-for-profit services providers such as the Council against Sexual Assault (CASA). Waiting times for new child clients are measured in months rather than days or weeks.

What is needed is a more standardised and national Early Intervention Service. Such a service would support parents, kinship persons and guardians and it would offer evidence-based interventions for children aged three years to thirteen years. It could be modelled upon and set up in front of the existing Head Space Program that provides appropriate services across Australia, to persons aged fourteen to twenty five years. A major objective of such a program would be to reduce the frequency of child victims transitioning in to adult mental health systems. Over time, the savings to mental health services would be massive.

SECTION 6. MONETARY PAYMENTS.

The consideration of this matter in the Consultation Paper is excellent although all parties should be aware that there will be a need for patience and dialogue with many successful applicants, particularly about the determination of any monetary amount. Even though those operating a scheme will endeavour to maintain complete confidentiality, the fact is that individual applicants will make comparisons amongst themselves and individual perceptions about fair treatment will vary.

Essentially the information that appears in Sections 6.1 and 6.2 and in page 152 will need to be brought together in a plain, summary form and there will be a need to bring applicants to a point where there is an understanding of the nature of an *ex gratia* payment and why this is what they stand to obtain. The goal should be that the applicant comes to recognise that in the circumstances, some level of justice has been achieved. Some applicants will not ever be convinced of this. At some point a decision must be made about which of the support services that are running in conjunction with the Royal Commission, will take on this role. This would mean that these services will probably need to broaden their own capacities by including staff able to give financial advice, options for life planning etc.

Monetary payments in the claims data.

We believe that there is a small amount of additional analysis needed in regard to payments made by some religious institutions. They will be the ones that ran out of home care facilities, primary and parish schools and some large “private” colleges. We are aware that the Anglican Church in Queensland for example ran children’s homes – Enogra Home for Boys and Tufnell Home for Girls as well as the private college in Toowoomba. It is our understanding that payments made to survivors from the two Homes were often capped at \$25,000 whereas settlements with former pupils who attended the private college were sometimes six-figure amounts. If such discrepancies exist in some of the claims data, it is our view that they should be exposed.

Severity of impacts.

In this section the Paper identifies three major impacts that it states are the findings of research. These are three important impacts but there is one other that is not identified at all. When a child experiences sexual abuse, it can be experiencing severe/extreme trauma at a time when the structures that will make up the limbic system of the child’s brain, are developing and becoming interconnected. Most of this development has to be completed by around 12-13 years. There are two very important capacities that the limbic system will control for the remainder of the persons life – the expression of emotions and the formation of memory.

When sexual abuse is encountered, the development of the limbic system is compromised and consequently these two capacities are compromised. This then determines that following the abuse, the child begins to have major difficulty with formal learning and education and this has life-long and detrimental outcomes. Page 152 re-states a view of the Law Council of Australia in its submission to Issues Paper #7. We feel that culpability should also describe the failures of past state governments as well as institutions. Inspections were often superficial and not always conducted. Given that the state was often using its powers to separate children from families, it then failed in its fiduciary responsibility.

Other payment issues.

Our experience tells us that if some applicants are to get the maximum personal benefit and satisfaction out of receiving and then using lump sum money, they will need expert advice, guidance and assistance. The process could begin with any interaction between the applicant and a service provider as we have suggested under the heading “Monetary Payments” on page 5.

SECTION 7. REDRESS SCHEME PROCESSES.

An important factor that often is either not recognised or is under-recognised is that for children who experienced sexual abuse whilst in out of home care, some had already been traumatised by being separated from their family and sometimes, then separated from siblings. We would like this to be recognised and responded to and there might be a simple way in which this could be achieved.

On page 19, the Paper suggests that a matrix might be used (table ES1) as a way to obtain a numerical score for any applicant. The Paper suggests that three factors could be scored and the total score achieved would then have bearing upon the scale of response within a scheme. The matter of “separation from family” (and its impact) could be in an alternate matrix as shown below.

Factor	Value
Severity of abuse	1-35
Impact of abuse	1-35
Distinctive institutional features	1-15
Separation from family	1-15

Cut-off dates.

We accept the parameters that have been suggested by Actuaries and we therefore agree that a cut-off date is not appropriate. In respect of sexual abuse cases that may occur into the future, we have already indicated that we would see any complainants pursuing a common law settlement.

Duration of the Scheme.

We are of the view that a fixed closing date should not be fixed at the commencement. This might need to be considered at some point in the future as the numbers of applicants drops away.

Offer and acceptance of offer.

We note that the paper suggests that applicants who are made an offer should have a further meeting with the support service that each has been using. This is essential. On page 6, we suggest that at an appropriate time. The skills mix represented by staff in these services may need to alter so as to provide the most appropriate forms of support. One matter that is not addressed is the situation where a person decides that he/she will benefit by having some party being able to “manage” the monetary amount according to the wishes of, and in the best interests of the successful applicant. The operations of some form of Public trusteeship might be given consideration when the Commission formulates final recommendations. We acknowledge that this is a level of detail but we are also aware that many persons will have great difficulty in managing a lump sum amount and, at the present time in Australia, the financial planning/ advisory industry is not seen to be of high repute.

Deeds of release.

We agree with the suggestions that are made here.

SECTION 8. FUNDING REDRESS.

One broad area that has not received the attention that it warrants would include questions about the historical role of governments in the child abuse saga and also their role into the future. We acknowledge that there are constitutional issues here with state governments having retained powers and responsibilities in respect of child welfare, child protection etc. What is clear is that the performance of state governments has been anything but exemplary and even today, these governments struggle. We acknowledge that some state governments have operated redress schemes and we are of the view that all should have done so. Given the fact that these governments always had a fiduciary duty of care, it is our view that they must become significant contributors and the funder of last resort.

It is clear that the broad community has been shocked and amazed by the findings of the Commission to date it would expect its elected representatives to do the right thing by survivors. If this is not a government responsibility then who is responsible?

SECTION 10. CIVIL LITIGATION.

We are not qualified to make detailed comment about legal matters. However we know from the organisation’s experience with thousands of clients that many were, and felt that they were, treated very unfairly by the legal system. For years large numbers of people whose lives were blighted by their childhood experiences, have been excluded from legal process. The relatively small number who did manage to gain access then found themselves being represented in a contest where there was an extreme imbalance of power, financial resources and in the early years, public standing.

Section 10 identifies the legal constraints that have accounted for the various difficulties encountered by survivors, as well as options for reform. During the past decade some state governments set up parliamentary inquiries or they used a judicial inquiry process. The Australian Senate has also held inquiries. Some of the findings from all of these, as well as matters already identified by the Commission itself have encouraged some state governments to consider reform packages. It is difficult to determine whether there will be any uniformity. Linked to this is the question of the speed of proposed or likely reform. Another concern is the question of retrospectivity with any of the proposed reforms. It is our expectation that governments will make retrospective amendments to legislation.

We would like to see recommendation made in regard to these important questions. One possibility could be that an agreed legislative package and timetable be developed through the Ministerial Council of Attorneys General.

We suggest the following:

- A National Redress Scheme is needed to meet the needs of abuse victims. Such a scheme will require participation by the Australian government as well as state/territory governments and it should take the form of a statutory and sustainable fund that can pay for services and provide monetary payments to successful applicants. It must be managed by Independent Trustees with full transparency and it must be able to operate for at least twenty five years.
- A large proportion of the money required for such a scheme must be provided by the organisations and institutions that are the focus of the Royal Commission. They must have no part to play in its administration or operations.
- The establishment of a National Redress Scheme must not close off any person's right to seek compensation by means of a common law claim.
- There should be recommendations about the establishment of a National Early Intervention Program to respond to child victims of abuse. It would be directed at the age group 2-13 years. Over time this would have a major impact in lowering the burden of chronic adult mental illness across the country.

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