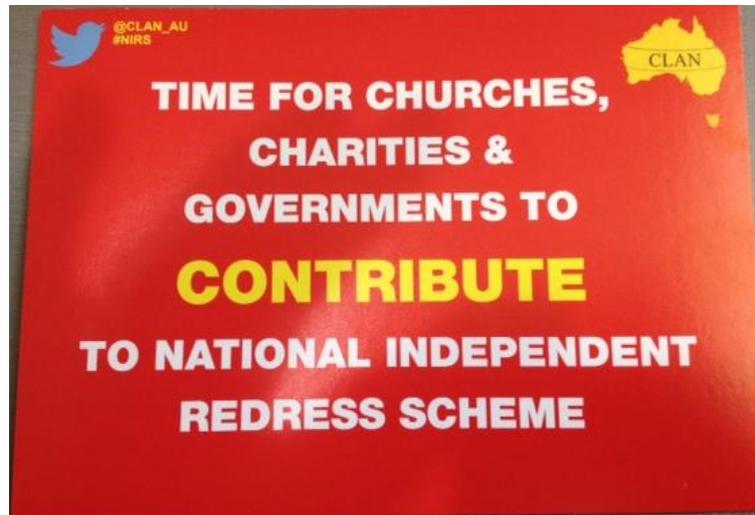




Response to the Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper: Redress and Civil Litigation

“I want Redress before I die”

- Struggling to keep it together, 2011



Care Leavers Australasia Network (CLAN) is a national, independent, peak membership body which represents and advocates for people who were raised in Australian and New Zealand orphanages, Children’s Homes, foster care and other institutions. CLAN’s objective is to raise community awareness of our issues, and to campaign for government assistance to redress them. Being raised without your family has lifelong implications that require lifelong support services. CLAN can provide information, understanding and emotional support and are campaigning for a National Independent Redress Scheme (NIRS).

Introduction

CLAN would like to commend the Royal Commission into Institutional Responses to Child Sexual Abuse for their comprehensive investigation of these issues and for understanding Care Leavers' perspectives and difficulties with redress and civil litigation issues. Whilst CLAN agrees with the majority of what has been included in this issues paper, there are some points on which we would like to comment. This commentary is informed not only from our 15 years of experience working with Care Leavers, but from the many surveys we have conducted both in the past and more recently from our members responses to a survey regarding the Royal Commission and related issues. We will supply the Royal Commission with these survey results when it is finalised. Please find some of the comments relevant to redress and civil litigation that were made in this survey in Appendix A. We hope you find our contribution and viewpoints valuable and take these into consideration when formulating your final recommendations.

National Independent Redress Scheme Vs State Redress Schemes

CLAN reiterates our position on a National Independent Redress Scheme (NIRS) as discussed in our submission to Issues Paper 6: Redress Schemes. CLAN firmly believes that the only fair and equitable way forward for Care Leavers is for there to be a National Independent Redress Scheme (NIRS). This would allow for greater impartiality, for the coordination of all state governments and institutions, and for prior injustices concerning state and institutional Redress Schemes to be addressed.

CLAN also feels that Care Leavers should have a Redress Scheme separate to other forms of institutional abuse which have been investigated through the Royal Commission. All state Redress Schemes discussed in your consultation paper have been solely for Care Leavers or those brought up in the following:

- Orphanages
- Children's Homes
- Foster care
- Other institutions such as hostels.

Whilst all forms of institutional sexual abuse deserve compensating, the Care Leaver experience is a unique one which deserves standalone recognition.

It is not just the sexual abuse that Care Leavers endured which has affected them today, it is the combination of the many characteristics of being in 'care' which have led to the deeply hurt and wounded individuals we see today along with damaged families from the many intergenerational impacts of a childhood in 'care'. In addition to the extensive sexual use

and abuse suffered by Care Leavers, other aspects which make their experience unique include:

- Physical Abuse to the extent of torture
- Psychological Abuse
- Lack of culture
- Lack of identity
- Lack of attachment
- Separation from family
- Neglect and deprivation
- Forced and unpaid labour
- Malnourishment
- Lack of education
- The State's and institution's failure in their duty to provide adequate care to vulnerable and disadvantaged children
- The neglect of children's basic human rights.

Whilst we are aware of the limitations of the Royal Commissions terms of reference, CLAN also supports a Redress Scheme which is inclusive of all forms of abuse; there are many ways to harm a child and these all need to be compensated not just sexual abuse.

CLAN also takes serious issue with the comment in the Royal Commission's consultation paper **"It is not clear to us that a recommendation for state and territory redress schemes is likely to create difficulties for survivors"**. There are many difficulties and downfalls for survivors should the Royal Commission recommend state and territory schemes. One of the biggest difficulties CLAN foresees is that the states who have already implemented schemes, albeit inadequate ones, will not reopen or institute another scheme. There have been many people who missed out on these schemes either due to eligibility issues or missing the deadline. The whole point of having a NIRS is to create a level playing field where everybody is treated in a fair and just manner.

Furthermore, it has been spoken about Care Leavers and other victims of sexual abuse not wanting to deal with the institutions they were abused in to obtain redress. The focus of this line of thinking seems to be firmly on churches, charities and other non-government past providers. However, according to the Royal Commission's own estimates there are at least 20,046 individuals who the various state Government's would be responsible for. This means there are 20 000 people who would be forced to return to their abusers to seek redress. This number most likely also doesn't account for the number of state wards who were also mistreated by the government and the child welfare system but were placed in a 'private' Orphanage or Children's Home.

If the Royal Commission did make a recommendation for state and territory Redress Schemes CLAN believes that we would be in no better position than what we are in now.

Although the Royal Commission would recommend guiding principles and a framework, it is up to each individual government to establish this, to find a way to involve the churches and charities to ensure they contribute their share to a Redress Scheme, and moreover the risk that governments who have already played a role in Redress Schemes will not implement a new scheme. The only way to ensure a fair, equitable and transparent situation is established is through a NIRS.

CLAN recommends that the Royal Commission establish clear recommendations and guidelines to be followed for Redress Scheme implementation. The less ambiguous the recommendations the more chance Care Leavers and other victims of child institutional sexual abuse have of there being a clear and consistent approach followed.

Future Abuse

The Royal Commission has asked for comment concerning whether recommendations should be made for future institutional child sexual abuse. It is CLAN's position that this is dependent on whether civil litigation will be made more accessible for those future victims. One of the reasons a Redress Scheme is needed now is because justice has been denied to Care Leavers for decades only adding to the trauma they have experienced. The civil litigation system presents too many barriers for most Care Leavers to be able to access it and obtain a result from it.

If the civil litigation system were properly overhauled then there would perhaps be no need for a Redress Scheme to apply to future instances of abuse, or at least from the time at which amendments are made to the civil system. In fact, those who are able to go through the civil litigation system will most likely receive a larger sum of compensation than they ever would through a Redress Scheme.

If however we see no change or limited change to the civil system then a Redress Scheme would be necessary to ensure that all future victims of institutional child sexual abuse have access to justice and redress.

Direct Personal Response

Care Leavers should have the option for a direct personal response by Past Providers/Institutions including the state governments. Many Care Leavers have spoken about the importance to them to be able to speak to someone and express to them what they went through and the impact it has had on them. Receiving a genuine apology has also been something of benefit to many of our members. On the other hand many of our members want nothing to do with the Orphanage/Home they grew up in and see no use in an apology or meeting.

Therefore it needs to be completely up to the individual as to whether they would like to seek a direct personal response or not. Furthermore, as mentioned in the consultation paper each past provider should make clear what direct personal response they offer so that the individual can make an informed decision before they decide to start that process. This information should be made available to the NIRS, who then conveys it to the individual as an option that is available. Even if the individual decides to seek a direct personal response it should still be done with support and with a facilitator/mediator.

CLAN also recommends that as part of the direct personal response, Care Leavers are given the option of including their version of their childhoods in their State Ward and Home records. This is not too dissimilar to current legislation under various FOI laws. They must be provided both written and oral communication instructions regarding this and all other options available through the direct personal response.

Lastly, it is vital that those representing the past providers/institutions have a thorough understanding of their abusive history to children in their care. Furthermore they need to understand Care Leaver needs and the effects their abuse has had on both the individual and the intergenerational impact also. All those serving as representatives should have adequate training as the effectiveness of a direct personal response is dependent on the way in which the representative is able to engage with the survivor and convey appropriate sentiment and genuineness. This should include cultural sensitivity training about Care Leavers.

Counselling and Psychological Care

Counselling and psychological care is one of the most important ways in which Care Leavers can cope with the abuse and maltreatment they were subject to in the 'care' system. As such counselling needs to be widely available and without limitations for Care Leavers to utilise throughout the rest of their lives. Currently, the restrictions on Medicare funded counselling and psychological care render it largely inadequate, if not pointless for many Care Leavers who require a much higher and intense need for counselling support than Medicare can provide under current rules.

CLAN agrees with the principles set out for counselling and psychological care in this consultation paper. CLAN also agree with any Redress Scheme being able to supplement existing services and not displacing them. It is important for those funding a Redress Scheme to realise that many Care Leavers have been receiving counselling and other psychological support for many years now. They have established relationships, trust and rapport with certain services and individuals. To take funds away from these sorts of services rendering them incapable of providing the service they currently do, would be counterproductive to the needs of Care Leavers. This is not to say that further work should

not be done to enhance the availability of counselling and psychological care. Services like CLAN that are providing this sort of support should be given adequate if not extra funding to address the needs which arise from a Redress scheme. Furthermore the provision of counselling through Medicare could be extended to provide more options for Care Leavers also.

Questions have been raised in particular regarding Medicare and the expansion of the public provision of counselling. CLAN has long advocated for a scheme similar to the Department of Veteran's Affairs (DVA). Care Leavers themselves have supported the idea of having a priority card for Care Leavers which would give them greater and urgent access to a wide range of health services that they currently do not have. Although it has not been discussed in the consultation paper, counselling and psychological care is only one facet of health care that many Care Leavers require. As we outlined before there are a number of factors which make the Care Leaver experience a unique one, and it is also these factors which have led to many Care Leavers needing more access to health care than many other groups of society. Care Leavers medical and dental needs were not sufficiently provided for, and moreover for many the heavy labour they carried out as children has taken its toll on their bodies. This has meant that many Care Leavers require more comprehensive, intense and ongoing treatment than many other groups. This also needs to be considered, and can be addressed with a similar scheme to that of the DVA so that the larger community are also aware of Care Leaver histories.

If there is to be an expansion of the public provision of counselling, CLAN feel that service providers should be thoroughly trained to work with Care Leavers. This involves being aware of their histories, stories, and the uniqueness of the Care Leaver experience, not just being trauma informed, but being Care Leaver informed. Currently, the education system both secondary and tertiary are releasing graduates who are ignorant of child welfare history. This in turn means that many professionals are also ignorant of Care Leaver and child welfare history.

Professionals need to be aware of cultural and identity issues, attachment and abandonment, neglect, and separation from family, not just complex trauma caused by abuse. CLAN recommends that all professionals working with Care Leavers through any expansion of services or Redress Schemes are subject to training by services already working with Care Leavers (and other victims), and should be encouraged to join organisations such as CLAN. CLAN is the only organisation that provides a newsletter which publishes Care Leavers personal stories. This should be considered as part of their professional development so they are able to read people's stories and understand from their own words what they have been through and how they feel. Participating in this way will assist in a Care Leavers treatment experience and will contribute to a more holistic multifaceted approach to counselling and psychological care.

Monetary Payments

Firstly, it must be said that we understand there will never be enough money to compensate for Care Leavers lost and damaged childhoods. We also know that a Redress Scheme is not typically meant to have compensation amounts on par with civil litigation awards.

Nevertheless it is still expected that any redress amount should be sizeable enough to provide adequate recognition of the wrongs committed against Care Leavers. It must also be commensurate with the stress and tribulations of going through the redress process to attain whatever the amount is. Many have found in the past that the paltry amounts they have received have not outweighed the difficulties and trauma of going through the process to begin with.

Whilst we are well aware that some sort of assessment process like a table or matrix will need to be utilised, CLAN urges those creating it to understand the need to be able to individually assess people also. The aim of a Redress Scheme is not to de-individualise Care Leavers by scoring their applications in a mechanical manner, it is to provide recognition and acknowledgement of what they have been through. Therefore while we give qualified support to the introduction of a basic assessment process involving a table or matrix scoring system, we also endorse the view that whatever system is adopted needs to be open to individual assessment within these levels of scoring and be transparent.

CLAN would like to make comment on Table 26 proposed by the Royal Commission. As said previously we are not opposed to a table or matrix such as this, however we have had a lot of feedback concerning the impact of abuse playing a large role in redress assessment. As already mentioned in the consultation paper, many Care Leavers do feel that if they have been able to cope better than others with the abuse they have endured then they are punished under the assessment process of the Redress Scheme.

Most Care Leavers have told us that they feel redress should be based more so on what happened to them rather than the impact of the abuse. It must also be remembered that all those who went through the 'care' system are scarred in one way or another, some of these scars may be more visible than others but it doesn't mean they are not there. As such CLAN propose, if 'Severity of Impact' is used in an assessment table, then its value be lowered so it is not worth as much as the 'Severity of abuse', and that when severity of impact is assessed it is done so carefully and comprehensively, even if it involves follow up with some, by those well versed in Care Leaver issues.

In its most recent survey regarding the Royal Commission, CLAN asked our members what they believe a fair amount of redress is. The responses from 367 participants are summarised as follows:

- \$0 - \$50,000 – 1%
- \$50,000 - \$100,000 - 11%

- *\$100,000 - \$250,000 – 18%*
- *\$250,000 – \$500,000 - 9%*
- *\$500,000 – \$1,000,000 - 3%*
- *\$1,000,000+ - 2%*
- *Never Enough – 11%*
- *No Response – 36%*
- *Unsure – 9 %*

CLAN support the idea of instalment payments for those who would prefer to receive their redress in that manner. However we also realise that this may place extra costs and undue burden on a Redress Scheme to be administered in this way. We suggest that a more feasible option may be that for each applicant who is awarded a monetary payment they must speak to a financial counsellor at least once before receiving their payment. Those who may require more ongoing assistance to manage their payments may have numerous sessions with the financial counsellor to ensure they are using their redress payments in the way most suitable for them. Whilst there are many Care Leavers equipped enough to deal with handling large sums of money, we have heard from many others that they would find it difficult to manage it on their own and they are worried they would spend it in a way not conducive to their own wellbeing.

CLAN are also of the belief that past compensation needs to be taken into account in order to ensure fair and equitable redress for all involved. Those who have received past compensation should be able to apply, have a new amount determined and have the gap paid to them as their redress amount. In saying this we do not support state Victims of Crime Schemes forcing claimants to repay any compensation received through Victims of Crime back to the state when they receive another compensation payment. This has been seen through the Royal Commission in case studies like Bethcar Children’s Home where 15 claimants were excused from repaying their Victims of Crime compensation once they received compensation from the state. Whilst this is a good outcome, it needs to extend all Care Leavers who receive compensation to bring about the most equitable situation possible.

CLAN also feel that those who have got past payments through civil means, whether it be litigation, settlements, or mediation should not be at the disadvantage of having the gross amount taken into account. It should be based on the net amount received. Many Care Leavers have been forced to use civil means because they have had no access to Redress Schemes, and therefore are forced to pay things like legal fees and Medicare reimbursements out of their payments. It would not be equitable for those who have received measly payments to have the whole payment taken into account when they would have received the minority of that payment.

Lastly, and of the greatest importance is the fact that any redress payments awarded should not affect Care Leavers pensions and other entitlements.

Redress Scheme Processes

CLAN has already made comment on a number of these factors throughout this response paper. As previously said, we believe the uniqueness of the Care Leaver experience warrants a separate Redress Scheme for those who grew up in 'care'. We are also of the belief that any scheme which is introduced for Care Leavers needs to be inclusive of all forms of abuse. Sexual abuse was only one aspect of the Care Leaver experience which contributed to the trauma many are suffering today.

CLAN support the establishment of an open ended scheme, allowing for those who are not ready or able to come forward as yet to apply at a later date. CLAN have seen many Care Leavers miss out on state schemes in the past with no course of action left for them to take. We would hate to see these same mistakes repeated with a NIRS. Although it is recognised that it would place extra administrative costs on a Redress scheme, CLAN has no objection to it being downsized as time goes on and fewer applicants continue to apply.

The Redress Scheme which is ultimately instituted needs to make provisions for those Care Leavers with literacy difficulties. Many struggle to read and write due to a lack of education or in some cases no education at all. All information disseminated regarding the Redress Scheme should be worded in simple, easy to understand English with technicalities kept to a minimum if at all. This should also be the protocol adopted by anyone working with the redress process who speaks to a Care Leaver. The literacy difficulties also need to be taken into consideration when funding is given to assist the redress process. The issues with literacy generally create a situation where more people will require physical help to fill in application forms or to have information explained to them. It is essential that those with literacy difficulties are given targeted help to ensure they do not fall through the cracks and are not disadvantaged again if they choose to go down another pathway like civil litigation. This can also be extended to those suffering from other disabilities, but especially intellectual disabilities who are left more vulnerable when going through processes like this. CLAN needs to receive funding to assist these sorts of disadvantaged groups of Care Leavers who will undoubtedly require extra support and assistance throughout a redress scheme process.

CLAN also believe that we need to be funded to help target those living in rural communities if a redress scheme is implemented. Those who live out of major cities and urban areas are often at a disadvantage when it comes to accessing services. This is not only true for Care Leaver services but for health care and allied health services also. Whilst CLAN does it's best to provide services for many of our members and other Care Leavers who live remotely

through telephone counselling and support, newsletters, and socials, none of this replaces the ability to help these individuals face to face. Similarly, often those living in rural areas find it difficult to access other services like counselling due to a lack of service providers in these areas who understand the issues they are dealing with or even monetary constraints to pay for petrol to get to their nearest town. Furthermore, many Care Leavers who live rurally are concerned about the stigma they will face, as many of the buildings where counselling and support services take place have huge labels and signage across them, providing no option for discreet service. If a redress scheme is implemented CLAN needs to be funded to provide more outreach and face to face help for these individuals to navigate the redress scheme process.

Another group of Care Leavers that require special attention are those who are living overseas. CLAN has many members who now reside in other countries as they have told us that it was too difficult for them to stay in Australia after what our country has put them through. This group of individuals must not be forgotten or left at a disadvantage if a redress scheme is instituted. This is another example of where CLAN needs to be given extra funding to work closely and assist these Care Leavers through the redress process.

Similarly, CLAN also provide support to a lot of Care Leavers who were brought up in overseas Orphanages. Currently we assist Care Leavers brought up in New Zealand, Poland, South Africa, Ireland, and English orphanages. Whilst they do not fit into the terms of reference for this Royal Commission, it must not be forgotten that they are also vulnerable Care Leavers who have been triggered by this Royal Commission. CLAN does what we can to provide support and advocacy for these individuals also, but this cannot continue without adequate funding.

Any scheme which is implemented also needs to have a review process for those who are dissatisfied or disagree with the redress payment they have been awarded. The ability for review and appeal is of the utmost importance to ensure Care Leavers have their voices heard and to make sure the process maintains transparency.

CLAN would like to discuss the point of Care Leavers who die before their redress payment is either assessed or paid to them. Firstly, as a minimum entitlement we believe that funds should be set aside now to pay for Care Leavers' funerals. Many have no money or assets from which to pay for their own funerals, and many have no family capable of doing this either. This is something that many of our members are concerned about and CLAN would like to see the issue addressed. Similarly, part of this fund should include free support to write a will for those with assets or meaningful possessions. Writing a will gives many Care Leavers the chance to have some control over their lives once they are gone, and as well the peace of mind that their wishes are followed. This is especially important once Care Leavers have received a redress payment.

Furthermore, for those who have put in an application but die before it reaches an outcome, we feel that their redress payment should still be made to their deceased estate. The Governments, Churches and Charities should not be excused from their moral and ethical obligation to provide redress to all Care Leavers. If they had accepted their responsibility earlier and made adequate reparations earlier the person would have lived to make use of their redress payment. Since this has not happened and we are dealing with an ageing and elderly population, we believe they are still entitled to their payment if they do die during the process.

CLAN is also of the belief that reunion funds should be established through a NIRS. Like the British Government put aside funds for Child Migrants, we feel that the same should be done for Australian Care Leavers. Many Care Leavers were taken away from their families at such a young age, and today have either not been able to trace them or have never met them again. This includes parents and siblings, as well as extended families like aunts and uncles and cousins etc. For many Care Leavers meeting members of their families and finding out more about their past and identity is their last wish before they die. For some it may be as simple as finding their parents gravesites, but it is all meaningful work to help them understand their past. More funding needs to go towards helping Care Leavers trace their family histories, even if the rest of their family has passed away. As mentioned just above, Care Leavers are an ageing population and the Governments and Past Providers have an obligation to provide these people with a family and an identity that they took away from them as children.

With regard to the connection required between the institution and the abuse, we are of the opinion that if the abuse occurred whilst a child was in the care of the institution, the institution should be held liable. That is, the institution had a duty to look after each child who was in its 'care', and no matter who committed the abuse or where it occurred the institution should be held liable. It may be a matter of scaling liability when deciding on payments to more appropriately reflect the institutions duty and failure thereof. CLAN believes that this should be the case as the state had no issue with removing many children from situations which their parents may not have been at fault but children were nonetheless classed as being 'neglected' or being 'in moral danger' and were removed from their families. Why then should institutional liability be any different?

When it comes to deciding on the appropriate standard of proof, CLAN supports a test of plausibility. Care Leavers should not have to prove that they were abused. As the Royal Commission is well aware evidence of this sort can be extremely difficult to come by. The historical nature of these crimes rarely permit a Care Leaver to prove beyond a level of plausibility that they were abused. All Care Leavers should have appropriate support throughout the process by those who have the experience and knowledge of working with this client group. The process should also be as simple as possible, and the less arduous it is the more effective it will be.

Lastly, when considering deeds of release CLAN are of the opinion that although they are undesirable, they may be the necessary trade off in order to encourage the establishment of a Redress Scheme. Deeds of release ask Care Leavers to relinquish their right to sue those who are responsible for their abuse. Many church and charitable internal Redress Schemes which have been in operation require this. CLAN are vehemently opposed to deeds of release being used in this way. Not only are many amounts that Care Leavers receive through these sorts of schemes minimal, but the way in which they are run are far from impartial or independent.

If deeds of release are to be required through a Redress Scheme they should never require confidentiality on the part of the Care Leaver who should be free to discuss their abuse and redress payment with whomever they please. Furthermore, as suggested in the consultation paper, the scheme should pay for a legal consultation so that the Care Leaver can understand their position, their choices, and their options or likelihood of success if they were to go down the civil litigation pathway instead. It is vital that any scheme which is implemented includes access to free legal advice to ensure that Care Leavers are not left vulnerable or at a disadvantage and are making the right decision for them.

Funding Redress

Each Past Provider should be responsible for funding the Redress Scheme proportionally to the number of Orphanages, Children's Homes and other Institutions that they ran and the number of children they accommodated. Similarly the State Governments should be responsible for funding in accordance with the amount of Homes/Institutions they ran, as well as the foster care placements they oversaw, and those children who were placed in mental institutions and abused whilst in their care. CLAN also believe that individual foster carers who abused children in their 'care' need to be made accountable. Whilst we are aware this can present many difficulties we do feel for justice's sake that it needs to be considered and taken into account also.

Whilst the abusive past providers should fund redress, an independent scheme should ensure that they have no say in determining the levels of compensation payments provided to Care Leavers.

CLAN strongly recommends that the Royal Commission needs to take a firm stance on redress scheme administration being taken out of the hands of abusive past providers. As a society we do not ask rape victims to seek justice from their rapists, why then is it acceptable for Care Leavers to have to seek compensation from representatives of organisations who employed paedophiles and child abusers. It is also clear to CLAN that Care Leavers as a group consistently get paid less compensation from past providers than other middle class Australians who were abused at schools, churches etc. The only way to

ensure past providers are kept honest, impartial, and transparent is to have a National Independent Redress Scheme, where their role is limited to funding redress.

Additionally, due to the states enhanced role in the care system, CLAN recommend that they take up the responsibility of being the funder of last resort as well as extra administrative costs.

It must be remembered that although many churches and charities ran Orphanages and Children's Homes, they did so under the systems the state governments created. The state was responsible for licensing and inspecting these organisations and the Homes. They provided funding to many of these past providers and they also sent many state wards who were under their guardianship to be 'cared' for in these private Homes.

The state governments need to take ownership of their entire role in the abuse and maltreatment that Care Leavers received, not just for the Homes that they ran.

Interim Arrangements

As mentioned earlier in this paper many Care Leavers are elderly, many are sick and many have died or are dying. Care Leavers cannot wait for years to have a NIRS established. There must be something implemented in the interim and this must prioritise the elderly and the sick.

Whilst it seems most likely that interim arrangements would not be a national or cohesive scheme, there must be something better established than having past providers continue to administer their own schemes. Even if the Royal Commission were to release recommendations, guiding principles and a framework for Past Providers to utilise, it would not be an ideal situation. The same issues of impartiality, transparency and independence would still be there. Just because certain groups require a speedier approach does not mean that they should suffer a negative experience and outcome than may have otherwise been achieved had they waited for a NIRS to be established.

It is CLAN's belief that the Royal Commission underestimate the re-traumatisation that occurs when Care Leavers have to return to their abusers to seek some semblance of justice and compensation. Care Leavers are incredibly angry at these abusive organisations and don't want to face them again. **One of our members Eunice stated "As I was abused in a Salvation Army Home in Geelong, I think it's very scary having to relive my abuse to the abusers –Salvos. I don't want to go to the Salvation Army for redress and I want as little as possible to do with them. I don't trust them, the salvos will put their own interests first instead of the victim."** Eunice is not alone in this sentiment, and it is echoed by most if not all Care Leavers.

This mistrust for the abusive past providers is well founded. Unfortunately CLAN have been privy to too many horror stories concerning how past providers have taken advantage of

and manipulated vulnerable Care Leavers. CLAN have mentioned many of these stories in our submission to the Royal Commission on Towards Healing. We know of many Care Leavers with literacy issues who have been asked to sign documents including deeds of release for paltry amounts. One of our members [REDACTED] whose story was mentioned in a past submission was coerced into signing a deed of release for \$3000. Although the mediator [REDACTED], and the nuns he dealt with were aware of his difficulties reading, the document was not explained to him and he did not receive an option to seek independent legal advice.

CLAN have also been assisting another one of our members through the Towards Healing process which has been nothing but traumatic for this elderly lady. Towards Healing have subjected this lady to an assessment process where an investigator looks into her sixty year old case, and then recommended to the nuns that there was no case to answer. Furthermore, after numerous requests both verbally and in writing for Towards Healing to cease direct contact with our member because she was not coping, Towards Healing have continued to contact her directly. Any complaints that have been made about this conduct are then forwarded to those who are at fault for them to deal with. Suffice to say CLAN still have not received a response to the complaint that has been made.

Another case we mentioned in the Towards Healing submission was that of [REDACTED]. [REDACTED] was given \$5000 compensation and was told that she would not be compensated for the slave labour she was forced to perform as they were giving her an occupation.

With mentalities such as these, and underhanded tactics, not to mention complete disregard for Care Leavers emotional and psychological health, it is of the utmost importance that any interim arrangement which is established should be run by an independent entity. The abusive past providers cannot be trusted to be impartial, and Care Leavers should not be expected to relive their abuse to their abusers. The suggestion in the consultation paper of an independent entity offering a redress process on a fee for service basis seems more desirable than placing it back in the hands of the past providers.

Civil Litigation

CLAN's position has been outlined in our previous submission to Issues Paper 5: Civil Litigation. We have not changed our view since this submission. Furthermore, CLAN wholeheartedly supports the recent Victorian amendments regarding their limitations laws and the civil litigation system. We urge the Royal Commission to recommend that all other states follow in Victoria's footsteps regarding limitations laws.

We are of the firm belief that limitation periods need to be reformed and perhaps completely removed when considering matters of child sexual abuse and that these amendments should apply retrospectively. CLAN does not feel that any of the arguments put forward for the justification of limitation periods are enough to outweigh an individual's

right to justice and compensation for the abuse they suffered as a child. Australia should follow in the footsteps of other countries around the world and abolish limitation periods for child abuse cases.

Laws relating to vicarious liability of institutions do need to be reformed so as the existing constraints for Care Leavers are lessened to allow more interaction with the civil litigation system. Absolute liability seems to be the only option that can deliver consistent outcomes, and which allows someone to be held liable for any wrongdoing that has occurred. For Care Leavers and other victims of child sexual abuse, absolute liability is the only option which is straightforward enough to reduce the risk of re-traumatisation and to deliver them a semblance of justice through civil litigation. Even if the onus was on the institution to prove that they had taken all reasonable precautions, CLAN believes that many institutions would still be able to take advantage of this, and it may come down to who has better legal representation. When children are abused, those who are charged with their care have the utmost responsibility and liability. It is time that all institutions who worked with children in the past and who currently work with children accept this obligation.

CLAN would also propose that all organisations who are funded and who work with vulnerable people be incorporated and adequately insured in order to continue receiving funding. CLAN also recommend that there be Amendments made to the **Roman Catholic Church Trust Property Act 1936** to allow Care Leavers and other abuse victims to sue the church and seek compensation from the Property Trusts, in effect overturning the Ellis defence. This will hopefully stop other organisations using the same tactics to stop plaintiffs from pursuing civil action or from strongarming plaintiffs into accepting substandard compensation payments.

Lastly, model litigant approaches especially concerning child abuse should be required from both government and non-government agencies where power disparities arise. These should also be written and be enforceable. If the policies are not written they are not transparent and many Care Leavers and other victims would be unaware of their use and application. Similarly, if these policies were not enforceable then they would be pointless.

Whilst it is discussed in the consultation paper that implementing model litigant policies for non-government organisations may not be feasible, CLAN consider that non-government agencies who receive government funding should only receive their funding on the proviso that they institute model litigant policies. Thus, if they fail to implement or adhere to these policies it is possible that their funding can be revoked. Any guidelines or policies that are drawn up, either for government or non-government agencies do need to be enforceable. Without enforceability these sorts of policies become moot and rely only on good faith.

CLAN's Recommendations

- That the Commonwealth should take the initiative through COAG's leadership in coordinating Redress Schemes for all states.
- Those contributions to a NIRS should be made by the Commonwealth and the respective state governments as well as ALL the churches charities and other past providers of Orphanages, Children's Homes, foster care and other institutions.
- There should be a separate scheme implemented for Care Leavers due to the uniqueness of the Care Leaver experience compared to other institutional abuse. This should include all forms of abuse, not just sexual abuse.
- The Royal Commission MUST NOT recommend a Redress Scheme operated by states and territories in preference to an NIRS.
- Clear recommendations should be made regarding the implementation of a Redress Scheme. The clearer the recommendations are the less chance of ambiguity and inequity of implementation.
- Care Leaver's should have the option for a Direct Personal Response if this is what they desire. It should be conveyed via the Redress Scheme and should still be mediated. Also any organisational representatives need to have appropriate training.
- Existing services continue to be funded to provide both the counselling and psychological care that they already do, as well as to assist with the application and support process of any Redress Scheme which may arise.
- That a system similar to that of the DVA scheme be established to increase the public provision of counselling and psychological care, as well as to provide access to other health care services.
- Any tables of matrices which are utilised need to be flexible enough to allow for individual assessment rather than merely scoring individuals applications.
- The inclusion and weight of severity of impact should be reviewed as many Care Leavers feel it is unjust it plays such a big role in redress outcomes.
- Those who have received redress or civil litigation payments in the past should still be eligible for a new Redress Scheme.
- Those who are sick, elderly, and who have not received any sort of compensation in the past should be made the first priority.
- There should be interim arrangements implemented as many Care Leavers have already died, and many are now sick and elderly waiting to receive justice. Any scheme which is instituted needs to be independent.
- A funeral fund needs to be set up to pay for those Care Leavers who cannot pay for their own funerals.
- Limitation periods should be abolished in all states for child abuse.

Appendix A: Comments Regarding Redress and Civil Litigation from CLAN survey 2014

- “No amount of money could ever compensate.”
- “No amount would be sufficient to counter-act the effects sexual abuse have had on the lives of those tormented as children.”
- “God? How do you put a price on pain- mentally, physically abusive, and taken away our liberty as a human being? Just a child with no voice?”
- “It took away my future, my self-respect, my ambition, I thought I could only be a ‘cleaning lady’ or a prostitute – so I did do that. I am unable to bond, even with my own children.”
- “It should be based on numbers of abuses, not types and not just sexual. With set payments for all, with additional funding for those with more episodes of abuse, evident in ACES study.”
- “I cannot estimate an amount of money for suffering for 60 odd years, of shocking memories and flashbacks of the treatment received when a young child.”
- “If a person’s life has been ruined, what price do you put on that?”
- “That is such an arbitrary question, one cannot put a \$\$ sign on life-long suffering. At the very least, people need unlimited access to counselling, therapy.”
- “In my case I didn’t have the opportunity to be a child, what value could you put on that?”
- “Unsure, as some would have ongoing issues from their time locked away, it’s impossible to price each issue individually.”

The following comments are made by those who have already received some form of compensation/redress and their views regarding the adequacy of these payments:

- “No way, it should never have happened to me, or others.”
- “How do you put a monetary value on emotional scars? Further exacerbated by the processes they put you through?”
- “No, incredible suffering. Australia has a lot to answer for.”

- “How do you put right something like this? What on earth were children doing in with the criminally insane? Who does that?!”
- “I have not got one cent for being raped, bashed, whipped, tortured, made to eat my own vomit, drink up my urine, that’s only half of it. I suffered 14 years of hell!”
- “NO. 2 sexual assaults, 2 nervous break downs, 3 years of torture, raised under a false name, and a life time of anxiousness and mistrust of people. “
- “Definitely, definitely, definitely not!”
- “No, child slave labour and abuse for 11 and a half years of innocence. I worked in place of school, children were looking after babies and other children.”
- “I have no answer for this, I have an ache in my throat and tears in my heart.”
- “I am still suffering, hurting, crying.”
- “No amount of money could repay the 6 years of hell I endured.”
- “No, my situation is such that I cannot wait any longer, I will be dead soon.”

***The above comments are just some of the comments we have received so far. Once we have collated the full results from this survey we will make a copy available to the Royal Commission.**