

Broken Rites

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The Solicitor
Child Abuse Royal Commission
GPO Box 5283
Sydney 2001.
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Re. Issues Paper#6: Redress Schemes.

Broken Rites welcomes the opportunity to respond to this very important Issues Paper. In the course of the Commission's work to date, we believe that there are four matters that will already be apparent to the Commissioners themselves.

1. Private and confidential meetings have been taking place with persons who have experienced child sexual abuse and, as a consequence, individual Commissioner have now met with several hundred Australians whose lives have been blighted by the crimes that were committed.
2. As a consequence of some of the Public Hearings held to date, it is clear that many of these persons were treated very badly when they sought some form of recognition and/or compensation for the crimes committed.
3. Many of these people have had to deal with serious Psychiatric illness for much of their lives.
4. A large number of these people have not been able to access the justice system in order to receive compensation. As a result, many have extensive and complex, unmet needs.

What must be understood is that because of the matters listed, these people have had to rely upon the support programs and services that are provided through the welfare and transfer-payment systems that operate across this country.



The almond flower – a symbol of Hope

A consequence is that most of the costs to date have been borne by taxpayers and the various organisations that are the subject of so much of the Commission's inquiry, have contributed very little. For years, Broken Rites has been calling for a National Redress Scheme with the "offending organisations" being required to meet the full costs. It is our hope that at last, this matter will be given serious consideration as the Royal Commission goes about its work.

Yours sincerely,

Chris MacIsaac
President.



The almond flower – a symbol of Hope

General statement.

We appreciate the opportunity to respond to Issues Paper #6. We understand that the Commission is interested in receiving responses from individuals and organisations in regard to the set of questions that are listed, and we understand that the Commission does not consider its list to be exhaustive. However we also consider that the most important question has been omitted. **The question is, “How should a group in our society be responded to, recognising the fact that each was sexually abused with catastrophic consequences?”**

Not only was childhood innocence destroyed, the person could no longer trust, could not learn and therefore he/she missed all of the benefits that result from education. Many experienced the transition into complex and entrenched psychiatric illness and their lives were obliterated, as a consequence?

Considering of some of the Public Hearings held to date, it is clear that many of these persons were treated very badly when they entered into internal response processes to seek recognition and/or compensation for the crimes committed against them. It is also apparent that many of these people have not been able to access the justice system in order to receive compensation. As a result, many have extensive and complex, unmet needs.

Through the private and confidential meetings that have been taking place between individual Commissioners and individual victims, it will have become clear that many of these people have had to deal with serious psychiatric illness for much of their lives and they have unmet and complex needs.

Question 1. – Advantages/disadvantages.

There are several facts that are relevant to this question.

- As already identified in the “General Statement” above, most victims have not been able to access civil litigation and this situation is not likely to be changed in the intermediate term. Even if governments were to consider the question of vicarious liability at some future date, it is most unlikely that any future legislation to this effect, would be retrospective.

- The median age of most of the likely claimants is such that they need to be able to access redress in the immediate term.
- Comparisons with possible amounts awarded through civil litigation ignores matters of risk and chances of a case being successful

Question 2. – Features and dimensions

Any National Redress Scheme for abuse victims must take the form of scheme that is underwritten by a statutory and has sustainable funds. The Scheme must be able to operate for at least twenty five years and meet the needs of possibly 10,000 plus persons. The Royal Commission should be able to obtain actuarial advice about the financial details although an initial amount might be of the order of \$1 billion.

A key consideration here must be a capacity to make an appropriate response to the person who has complex needs. **Australia must not witness a repeat of what happened in the James Hardie response to asbestosis sufferers!**

Question 3. – Forms of Redress

The popular view is that victims are only interested in compensation in the form a monetary payment. I believe that there is convincing evidence now that this is not the case. Following limited inquiries by some state governments into institutional systems of “care”, those same governments have responded by providing funds to support particular organisations and to support the provision of particular services. In view of this, forms of redress should include monetary payments and the funding of services eg. Health services, supported accommodation of the elderly etc.

There is another area which should also be considered. This is the provision of rent supplements to enable some people to move out of public housing situations and into private rental arrangements where they will feel less threatened and insecure.

Question 4 &6. – Parties to a National Redress Scheme

Various institutions either have or will be exposed as this Royal Commission as it goes about its work. Their participation in any Redress Scheme must be mandatory and State governments should not be treated differently. The Commission’s public hearings into the new South Wales

government's custodial institutions for women, at Parramatta and Hay, testify to the systemic failures in policy and administration by previous governments in that state. It is possible (and even likely) that failures by other state governments may be exposed in future public hearings.

Question 5. – Operation of the scheme.

A key feature of a National Redress scheme must be absence of any influence from the institutions in the determination of its processes, in its administration and operations, and in respect of the details about the outcomes. It has to be realised that by now, institutions have had plenty of time and opportunity to respond to peoples needs. For a majority, the institutions have failed.

As already indicated, a National Redress Scheme must operate as a sustainable Scheme. It should be run by government-appointed, independent Trustees or Commissioners, its operations must be fully transparent and it should be required to report regularly to a corporate regulator and annually to the Parliament of Australia.

Where an individual puts a claim to the Scheme and this turns out to be unsuccessful, there must be provision for an independent review. There would be other areas where similar systems are already in operation such as the tribunals associated with Veterans Affairs.

There are some fundamental issues here that the wider community needs to understand. Many of the persons who have engaged, in various ways, with this Royal Commission, had their adult lives destroyed by their childhood experience(s). Each one's life journey has been severely compromised and each should be able to experience some quality of life in his/her remaining years. Without access to a fair and proper Nation Redress Scheme, their lives are not going to change because their needs have not, and will not, be met from existing services. Furthermore, if they continue only to have access to existing serves, then it is going to be taxpayers and not the institutions who will continue to meet all of the costs.

Question 7. – Access to compensation.

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. The National Redress Scheme would not however provide funds to meet in whole or in part, the costs for the person to go to the courts.

Question 8. – Fairness and inclusion of contributors.

There are a number of questions to be answered in regard to these matters. Advice from representatives of the insurance industry may assist. There would be the matter of liabilities (known or unknown) being transferred to one institution that has superseded another. In regard to the matter of spreading the responsibility, it may be that proportional responsibility is linked to a *pro rata* of the frequency with which respective institutions have been identified and accused by individual victims. With any redress scheme, claims by some persons will not be accepted. Some former institutions may no longer exist, have assets or have a successor, and claims made cannot be responded to. The Commission might explore whether these could be situations where governments accepted a response role.

In regard to fairness in the treatment of claimants, transparency of processes will be crucial and some claimants may be satisfied to get access to services if monetary payments are not possible in all cases. A consideration of these variables, time factors and chances of success, may mean that in total monetary terms, claimants going to a redress scheme do not receive amounts that are comparable with possible settlement amounts that could be delivered by the courts.

Provided that any claimant's access to civil litigation is not going to be closed off (Question 7), then it would be up to the claimant to decide which pathway to pursue.

Question 9. – Compensation and affordability.

Schedules of payments through a Redress Scheme will be determined to a significant degree by the size of the fund. Also the ability of claimant to access the appropriate services may offset individual expectations about cash payments. This was the experience of many of the claimants who went to the Redress Scheme in Ireland.

Question 10. – Assessment/verification of claims.

A key element of the Scheme has to be the independent and objective operations of some form of assessment panel. The Commission could get advice about how this operated within the Irish Redress Scheme. Assuming that the Panel has access to all records held by the institutions, there should be no role for an institution in the verification processes.

Question 11. – Support for claimants

Depending upon the processes that are set up and how they operate, there may be a requirement for claimants to have access to counselling at particular stages and in particular, if a claim is not successful. The seeking of legal advice should be Access to legal advice should be a matter for the claimant alone. The whole point of the person engaging with a Redress Scheme is that he/she has come to an understanding that the process is non-adversarial and the claim will be treated with fairness. Legal representation would have little to offer.

Question 12. – Previous compensation.

A person may have already received some compensation as a consequence of accessing some internal process that has been operated by the institution in question. This history must not act as a barrier to any person putting a claim to a National Redress Scheme. Depending upon how the Scheme is set up and operated, previous compensation may be taken into account in a consideration of the veracity of the individual's claim and the individual's stated needs.

Other matters.

There are other matters that are not covered by the set of questions. A very important one is the standing of secondary victims in relation to a National Redress Scheme. By now the Commission will be aware of the fact that often, persons other than the immediate victim have been affected by the crime. This is particularly the case for other members of the immediate family. There is one particular group who stand out and these are persons in a family unit where one or more experienced sexual abuse with catastrophic effect and eventually a suicide has occurred.

Two other matters relate to the role and responsibility of the Australian government. Under current arrangements, where a victims is paid some amount in compensation, that amount can be reduced because the recipient is required to pay back money to the Australian government for services that have been previously received (eg Medicare). The status of any Redress scheme in regards to such obligations of the claimant will need to be clarified. A second matter would be the possibility that the Australian government might agree to meet the administration cost of any Scheme.

Prepared by Wayne Chamley for Broken Rites