

# Recommendations

## Justice for victims

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1. A process for redress must provide equal access and equal treatment for survivors – regardless of the location, operator, type, continued existence or assets of the institution in which they were abused – if it is to be regarded by survivors as being capable of delivering justice.

## Redress elements and principles

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2. Appropriate redress for survivors should include the elements of:
  - a. direct personal response
  - b. counselling and psychological care
  - c. monetary payments.
3. Funders or providers of existing support services should maintain their current resourcing for existing support services, without reducing or diverting resources in response to the Royal Commission's recommendations on redress and civil litigation.
4. Any institution or redress scheme that offers or provides any element of redress should do so in accordance with the following principles:
  - a. Redress should be survivor focused.
  - b. There should be a 'no wrong door' approach for survivors in gaining access to redress.
  - c. All redress should be offered, assessed and provided with appropriate regard to what is known about the nature and impact of child sexual abuse – and institutional child sexual abuse in particular – and to the cultural needs of survivors.
  - d. All redress should be offered, assessed and provided with appropriate regard to the needs of particularly vulnerable survivors.

## Direct personal response

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5. Institutions should offer and provide a direct personal response to survivors in accordance with the following principles:
  - a. Re-engagement between a survivor and an institution should only occur if, and to the extent that, a survivor desires it.
  - b. Institutions should make clear what they are willing to offer and provide by way of direct personal response to survivors of institutional child sexual abuse. Institutions should ensure that they are able to provide the direct personal response they offer to survivors.
  - c. At a minimum, all institutions should offer and provide on request by a survivor:
    - i. an apology from the institution
    - ii. the opportunity to meet with a senior institutional representative and receive an acknowledgement of the abuse and its impact on them
    - iii. an assurance or undertaking from the institution that it has taken, or will take, steps to protect against further abuse of children in that institution.
  - d. In offering direct personal responses, institutions should try to be responsive to survivors' needs.
  - e. Institutions that already offer a broader range of direct personal responses to survivors and others should consider continuing to offer those forms of direct personal response.
  - f. Direct personal responses should be delivered by people who have received some training about the nature and impact of child sexual abuse and the needs of survivors, including cultural awareness and sensitivity training where relevant.
  - g. Institutions should welcome feedback from survivors about the direct personal response they offer and provide.
6. Those who operate a redress scheme should offer to facilitate the provision of a written apology, a written acknowledgement and/or a written assurance of steps taken to protect against further abuse for survivors who seek these forms of direct personal response but who do not wish to have any further contact with the institution.
7. Those who operate a redress scheme should facilitate the provision of these forms of direct personal response by conveying survivors' requests for these forms of direct personal response to the relevant institution.
8. Institutions should accept a survivor's choice of intermediary or representative to engage with the institution on behalf of the survivor, or with the survivor as a support person, in seeking or obtaining a direct personal response.

## Counselling and psychological care

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9. Counselling and psychological care should be supported through redress in accordance with the following principles:
  - a. Counselling and psychological care should be available throughout a survivor's life.
  - b. Counselling and psychological care should be available on an episodic basis.
  - c. Survivors should be allowed flexibility and choice in relation to counselling and psychological care.
  - d. There should be no fixed limits on the counselling and psychological care provided to a survivor.
  - e. Without limiting survivor choice, counselling and psychological care should be provided by practitioners with appropriate capabilities to work with clients with complex trauma.
  - f. Treating practitioners should be required to conduct ongoing assessment and review to ensure treatment is necessary and effective. If those who fund counselling and psychological care through redress have concerns about services provided by a particular practitioner, they should negotiate a process of external review with that practitioner and the survivor. Any process of assessment and review should be designed to ensure it causes no harm to the survivor.
  - g. Counselling and psychological care should be provided to a survivor's family members if necessary for the survivor's treatment.
10. To facilitate the provision of counselling and psychological care by practitioners with appropriate capabilities to work with clients with complex trauma:
  - a. the Australian Psychological Society should lead work to design and implement a public register to enable identification of practitioners with appropriate capabilities to work with clients with complex trauma
  - b. the public register and the process to identify practitioners with appropriate capabilities to work with clients with complex trauma should be designed and implemented by a group that includes representatives of the Australian Psychological Society, the Australian Association of Social Workers, the Royal Australian and New Zealand College of Psychiatrists, Adults Surviving Child Abuse, a specialist sexual assault service, and a non-government organisation with a suitable understanding of the counselling and psychological care needs of Aboriginal and Torres Strait Islander survivors
  - c. the funding for counselling and psychological care under redress should be used to provide financial support for the public register if required
  - d. those who operate a redress scheme should ensure that information about the public register is made available to survivors who seek counselling and psychological care through the redress scheme.

11. Those who administer support for counselling and psychological care through redress should ensure that counselling and psychological care are supported through redress in accordance with the following principles:
  - a. Counselling and psychological care provided through redress should supplement, and not compete with, existing services.
  - b. Redress should provide funding for counselling and psychological care services and should not itself provide counselling and psychological care services.
  - c. Redress should fund counselling and psychological care as needed by survivors rather than providing a lump sum payment to survivors for their future counselling and psychological care needs.
12. The Australian Government should remove any restrictions on the number of sessions of counselling and psychological care, whether in a particular period of time or generally, for which Medicare funding is available for survivors who are assessed as eligible for redress under a redress scheme.
13. The Australian Government should expand the range of counselling and psychological care services for which Medicare funding is available for survivors who are assessed as eligible for redress under a redress scheme to include longer-term interventions that are suitable for treating complex trauma, including through non-cognitive approaches.
14. The funding obtained through redress to ensure that survivors' needs for counselling and psychological care are met should be used to fund measures that help to meet those needs, including:
  - a. measures to improve survivors' access to Medicare by:
    - i. funding case management style support to help survivors to understand what is available through the Better Access initiative and Access to Allied Psychological Services and why a GP diagnosis and referral is needed
    - ii. maintaining a list of GPs who have mental health training, are familiar with the existence of the redress scheme and are willing to be recommended to survivors as providers of GP services, including referrals, in relation to counselling and psychological care
    - iii. supporting the establishment and use of the public register that provides details of practitioners who have been identified as having appropriate capabilities to treat survivors and who are registered practitioners for Medicare purposes
  - b. providing funding to supplement existing services provided by state-funded specialist services to increase the availability of services and reduce waiting times for survivors

- c. measures to address gaps in expertise and geographical and cultural gaps by:
  - i. supporting the establishment and promotion of the public register that provides details of practitioners who have been identified as having appropriate capabilities to treat survivors
  - ii. funding training in cultural awareness for practitioners who have the capabilities to work with survivors but have not had the necessary training or experience in working with Aboriginal and Torres Strait Islander survivors
  - iii. funding rural and remote practitioners, or Aboriginal and Torres Strait Islander practitioners, to obtain appropriate capabilities to work with survivors
  - iv. providing funding to facilitate regional and remote visits to assist in establishing therapeutic relationships; these could then be maintained largely by online or telephone counselling. There could be the potential to fund additional visits if required from time to time
- d. providing funding for counselling and psychological care for survivors whose needs for counselling and psychological care cannot otherwise be met, including by paying reasonable gap fees charged by practitioners if survivors are unable to afford these fees.

## Monetary payments

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15. The purpose of a monetary payment under redress should be to provide a tangible recognition of the seriousness of the hurt and injury suffered by a survivor.

16. Monetary payments should be assessed and determined by using the following matrix:

Factor	Value
Severity of abuse	1–40
Impact of abuse	1–40
Additional elements	1–20

17. The ‘Additional elements’ factor should recognise the following elements:

- a. whether the applicant was in state care at the time of the abuse – that is, as a ward of the state or under the guardianship of the relevant Minister or government agency
- b. whether the applicant experienced other forms of abuse in conjunction with the sexual abuse – including physical, emotional or cultural abuse or neglect

- c. whether the applicant was in a 'closed' institution or without the support of family or friends at the time of the abuse
  - d. whether the applicant was particularly vulnerable to abuse because of his or her disability.
- 18. Those establishing a redress scheme should commission further work to develop this matrix and the detailed assessment procedures and guidelines required to implement it:
  - a. in accordance with our discussion of the factors
  - b. taking into account expert advice in relation to institutional child sexual abuse, including child development, medical, psychological, social and legal perspectives
  - c. with the benefit of actuarial advice in relation to the actuarial modelling on which the level and spread of monetary payments and funding expectations are based.
- 19. The appropriate level of monetary payments under redress should be:
  - a. a minimum payment of \$10,000
  - b. a maximum payment of \$200,000 for the most severe case
  - c. an average payment of \$65,000.
- 20. Monetary payments should be assessed and paid without any reduction to repay past Medicare expenses, which are to be repaid (if required) as part of the administration costs of a redress scheme.
- 21. Consistent with our view that monetary payments under redress are not income for the purposes of social security, veterans' pensions or any other Commonwealth payments, those who operate a redress scheme should seek a ruling to this effect to provide certainty for survivors.
- 22. Those who operate a redress scheme should give consideration to offering monetary payments by instalments at the option of eligible survivors, taking into account the likely demand for this option from survivors and the cost to the scheme of providing it.
- 23. Survivors who have received monetary payments in the past – whether under other redress schemes, statutory victims of crime schemes, through civil litigation or otherwise – should be eligible to be assessed for a monetary payment under redress.
- 24. The amount of the monetary payments that a survivor has already received for institutional child sexual abuse should be determined as follows:
  - a. monetary payments already received should be counted on a gross basis, including any amount the survivor paid to reimburse Medicare or in legal fees

- b. no account should be taken of the cost of providing any services to the survivor, such as counselling services
  - c. any uncertainty as to whether a payment already received related to the same abuse for which the survivor seeks a monetary payment through redress should be resolved in the survivor's favour.
25. The monetary payments that a survivor has already received for institutional child sexual abuse should be taken into account in determining any monetary payment under redress by adjusting the amount of the monetary payments already received for inflation and then deducting that amount from the amount of the monetary payment assessed under redress.

## Redress structure and funding

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### Redress scheme structure

26. In order to provide redress under the most effective structure for ensuring justice for survivors, the Australian Government should establish a single national redress scheme.
27. If the Australian Government does not establish a single national redress scheme, as the next best option for ensuring justice for survivors, each state and territory government should establish a redress scheme covering government and non-government institutions in the relevant state or territory.
28. The Australian Government should determine and announce by the end of 2015 that it is willing to establish a single national redress scheme.
29. If the Australian Government announces that it is willing to establish a single national redress scheme, the Australian Government should commence national negotiations with state and territory governments and all parties to the negotiations should seek to ensure that the negotiations proceed as quickly as possible to agree the necessary arrangements for a single national redress scheme.
30. If the Australian Government does not announce that it is willing to establish a single national redress scheme, each state and territory government should establish a redress scheme for the relevant state or territory that covers government and non-government institutions. State and territory governments should undertake national negotiations as quickly as possible to agree the necessary matters of detail to provide the maximum possible consistency for survivors between the different state and territory schemes.

31. Whether there is a single national redress scheme or separate state and territory redress schemes, the scheme or schemes should be established and ready to begin inviting and accepting applications from survivors by no later than 1 July 2017.
32. The Australian Government (if it announces that it is willing to establish a single national redress scheme) or state and territory governments should establish a national redress advisory council to advise all participating governments on the establishment and operation of the redress scheme or schemes.
33. The national redress advisory council should include representatives:
  - a. of survivor advocacy and support groups
  - b. of non-government institutions, particularly those that are expected to be required to respond to a significant number of claims for redress
  - c. with expertise in issues affecting survivors with disabilities
  - d. with expertise in issues of particular importance to Aboriginal and Torres Strait Islander survivors
  - e. with expertise in psychological and legal issues relevant to survivors
  - f. with any other expertise that may assist in advising on the establishment and operation of the redress scheme or schemes.

## Redress scheme funding

34. For any application for redress made to a redress scheme, the cost of redress in respect of the application should be:
  - a. a proportionate share of the cost of administration of the scheme
  - b. if the applicant is determined to be eligible, the cost of any contribution for counselling and psychological care in respect of the applicant
  - c. if the applicant is determined to be eligible, the cost of any monetary payment to be made to the applicant.
35. The redress scheme or schemes should be funded as much as possible in accordance with the following principles:
  - a. The institution in which the abuse is alleged or accepted to have occurred should fund the cost of redress.
  - b. Where an applicant alleges or is accepted to have experienced abuse in more than one institution, the redress scheme or schemes should apportion the cost

of funding redress between the relevant institutions, taking account of the relative severity of the abuse in each institution and any other features relevant to calculating a monetary payment.

- c. Where the institution in which the abuse is alleged or accepted to have occurred no longer exists but the institution was part of a larger group of institutions or where there is a successor to the institution, the group of institutions or the successor institution should fund the cost of redress.
36. The Australian Government and state and territory governments should provide ‘funder of last resort’ funding for the redress scheme or schemes so that the governments will meet any shortfall in funding for the scheme or schemes.
  37. Regardless of whether there is a single national redress scheme or separate state and territory redress schemes, the Australian Government and each state or territory government should negotiate and agree their respective shares of or contributions to ‘funder of last resort’ funding in respect of applications alleging abuse in the relevant state or territory.
  38. The Australian Government (if it announces that it is willing to establish a single national redress scheme) or state and territory governments should determine how best to raise the required funding for the redress scheme or schemes, including government funding and funding from non-government institutions.
  39. The Australian Government or state and territory governments should determine whether or not to require particular non-government institutions or particular types of non-government institutions to contribute funding for redress.

## Trust fund for counselling and psychological care

40. The redress scheme, or each redress scheme, should establish a trust fund to receive the funding for counselling and psychological care paid under redress and to manage and apply that funding to meet the needs for counselling and psychological care of those eligible for redress under the relevant redress scheme.
41. The trust fund, or each trust fund, should be governed by a corporate trustee with a board of directors appointed by the government that establishes the relevant redress scheme. The board or each board should include:
  - a. an independent Chair
  - b. a representative of: government; non-government institutions; survivor advocacy and support groups; and the redress scheme
  - c. those with any other expertise that is desired at board level to direct the trust.

42. The trustee, or each trustee, should engage actuaries to conduct regular actuarial assessments to determine a 'per head' estimate of future counselling and psychological care costs to be met through redress. The trustee, or each trustee, should determine the amount from time to time that those who fund redress, including as the funder of last resort, must pay per eligible applicant to fund the counselling and psychological care element of redress.

## Redress scheme processes

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### Eligibility for redress

43. A person should be eligible to apply to a redress scheme for redress if he or she was sexually abused as a child in an institutional context and the sexual abuse occurred, or the first incidence of the sexual abuse occurred, before the cut-off date.
44. 'Institution' should have the same meaning as in the Royal Commission's terms of reference.
45. Child sexual abuse should be taken to have occurred in an institutional context in the following circumstances:
- a. it happens:
    - i. on premises of an institution
    - ii. where activities of an institution take place or
    - iii. in connection with the activities of an institution

in circumstances where the institution is, or should be treated as being, responsible for the contact between the abuser and the applicant that resulted in the abuse being committed
  - b. it is engaged in by an official of an institution in circumstances (including circumstances that involve settings not directly controlled by the institution) where the institution has, or its activities have, created, facilitated, increased, or in any way contributed to (whether by act or omission) the risk of abuse or the circumstances or conditions giving rise to that risk
  - c. it happens in any other circumstances where the institution is, or should be treated as being, responsible for the adult abuser having contact with the applicant.
46. Those who operate the redress scheme should specify the cut-off date as being the date on which the Royal Commission's recommended reforms to civil litigation in relation to limitation periods and the duty of institutions commence.
47. An offer of redress should only be made if the applicant is alive at the time the offer is made.

## Duration of a redress scheme

48. A redress scheme should have no fixed closing date. But, when applications to the scheme reduce to a level where it would be reasonable to consider closing the scheme, those who operate the redress scheme should consider specifying a closing date for the scheme. The closing date should be at least 12 months into the future. Those who operate the redress scheme should ensure that the closing date is given widespread publicity until the scheme closes.

## Publicising and promoting the availability of the scheme

49. Those who operate a redress scheme should ensure the availability of the scheme is widely publicised and promoted.
50. The redress scheme should consider adopting particular communication strategies for people who might be more difficult to reach, including:
  - a. Aboriginal and Torres Strait Islander communities
  - b. people with disability
  - c. culturally and linguistically diverse communities
  - d. regional and remote communities
  - e. people with mental health difficulties
  - f. people who are experiencing homelessness
  - g. people in correctional or detention centres
  - h. children and young people
  - i. people with low levels of literacy
  - j. survivors now living overseas.

## Application process

51. A redress scheme should rely primarily on completion of a written application form.
52. A redress scheme should fund support services and community legal centres to assist applicants to apply for redress.
53. A redress scheme should select support services and community legal centres to cover a broad range of likely applicants, taking into account the need to cover regional and remote areas and the particular needs of different groups of survivors, including Aboriginal and Torres Strait Islander survivors.

54. Those who operate a redress scheme should determine whether the scheme will require additional material or evidence and additional procedures to determine the validity of applications. Any additional requirements should be clearly set out in scheme material that is made available to applicants, support services and others who may support or advise applicants in relation to the scheme.
55. A redress scheme may require applicants for redress to verify their accounts of abuse by statutory declaration.

## Institutional involvement

56. A redress scheme should inform any institution named in an application for redress of the application and the allegations made in it and request the institution to provide any relevant information, documents or comments.

## Standard of proof

57. 'Reasonable likelihood' should be the standard of proof for determining applications for redress.

## Decision making on a claim

58. A redress scheme should adopt administrative decision-making processes appropriate to a large-scale redress scheme. It should make decisions based on the application of the detailed assessment procedures and guidelines for implementing the matrix for monetary payments.

## Offer and acceptance of offer

59. An offer of redress should remain open for acceptance for a period of one year.
60. A period of three months should be allowed for an applicant to seek a review of an offer of redress after the offer is made.

## Review and appeals

61. A redress scheme should offer an internal review process.
62. A redress scheme established on an administrative basis should be made subject to oversight by the relevant ombudsman through the ombudsman's complaints mechanism.

## Deeds of release

63. As a condition of making a monetary payment, a redress scheme should require an applicant to release the scheme (including the contributing government or governments) and the institution from any further liability for institutional child sexual abuse by executing a deed of release.
64. A redress scheme should fund, at a fixed price, a legal consultation for an applicant before the applicant decides whether or not to accept the offer of redress and grant the required releases.
65. No confidentiality obligations should be imposed on applicants for redress.

## Support for survivors

66. A redress scheme should offer and fund counselling during the period from assisting applicants with the application, through the period when the application is being considered, to the making of the offer and the applicant's consideration of whether or not to accept the offer. This should include a session of financial counselling if the applicant is offered a monetary payment.
67. A redress scheme should fund counselling provided by a therapist of the applicant's choice if it is specifically requested by the applicant and in circumstances where the applicant has an established relationship with the therapist and the cost is reasonably comparable to the cost the redress scheme is paying for these services generally.
68. A redress scheme should offer and fund a limited number of counselling sessions for family members of survivors if reasonably required.

## Transparency and accountability

69. A redress scheme should take the following steps to improve transparency and accountability:
  - a. In addition to publicising and promoting the availability of the scheme, the scheme's processes and time frames should be as transparent as possible. The scheme should provide up-to-date information on its website and through any funded counselling and support services and community legal centres, other relevant support services and relevant institutions.
  - b. If possible, the scheme should ensure that each applicant is allocated to a particular contact officer who they can speak to if they have any queries about the status of their application or the timing of its determination and so on.

- c. The scheme should operate a complaints mechanism and should welcome any complaints or feedback from applicants and others involved in the scheme (for example, support services and community legal centres).
- d. The scheme should provide any feedback it receives about common problems that have been experienced with applications or institutions' responses to funded counselling and support services and community legal centres, other relevant support services and relevant institutions. It should include any suggestions on how to improve applications or responses or ensure more timely determinations.
- e. The scheme should publish data, at least annually, about:
  - i. the number of applications received
  - ii. the institutions to which the applications relate
  - iii. the periods of alleged abuse
  - iv. the number of applications determined
  - v. the outcome of applications
  - vi. the mean, median and spread of payments offered
  - vii. the mean, median and spread of time taken to determine the application
  - viii. the number and outcome of applications for review.

## Interaction with alleged abuser, disciplinary process and police

70. A redress scheme should not make any 'findings' that any alleged abuser was involved in any abuse.
71. A redress scheme may defer determining an application for redress if the institution advises that it is undertaking internal disciplinary processes in respect of the abuse the subject of the application. A scheme may have the discretion to consider the outcome of the disciplinary process, if it is provided by the institution, in determining the application.
72. A redress scheme should comply with any legal requirements, and make use of any permissions, to report or disclose abuse, including to oversight agencies.
73. A redress scheme should report any allegations to the police if it has reason to believe that there may be a current risk to children. If the relevant applicant does not consent to the allegations being reported to the police, the scheme should report the allegations to the police without disclosing the applicant's identity.

Note: The issue of reporting to police, including blind reporting, will be considered further in our work in relation to criminal justice issues.

74. A redress scheme should seek to cooperate with any reasonable requirements of the police in terms of information sharing, subject to satisfying any privacy and consent requirements with applicants.
75. A redress scheme should encourage any applicants who seek advice from it about reporting to police to discuss their options directly with the police.

## Interim arrangements

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76. Institutions should seek to achieve independence in institutional redress processes by taking the following steps:
  - a. Institutions should provide information on the application process, including online, so that survivors do not need to approach the institution if there is an independent person with whom they can make their claim.
  - b. If feasible, the process of receiving and determining claims should be administered independently of the institution to minimise the risk of any appearance that the institution can influence the process or decisions.
  - c. Institutions should ensure that anyone they engage to handle or determine redress claims is appropriately trained in understanding child sexual abuse and its impacts and in any relevant cultural awareness issues.
  - d. Institutions should ensure that any processes or interactions with survivors are respectful and empathetic, including by taking into account the factors discussed in Chapter 5 concerning meetings and meeting environments.
  - e. Processes and interactions should not be legalistic. Any legal, medical and other relevant input should be obtained for the purposes of decision making.
77. Institutions should ensure that the required independence is set out clearly in writing between the institution and any person or body the institution engages as part of its redress process.
78. If a survivor alleges abuse in more than one institution, the institution to which the survivor applies for redress should adopt the following process:
  - a. With the survivor's consent, the institution's redress process should approach the other named institutions to seek cooperation on the claim.
  - b. If the survivor consents and the relevant institutions agree, one institutional process should assess the survivor's claim in accordance with the recommended redress elements and processes (with any necessary modifications because of

the absence of a government-run scheme) and allocate contributions between the institutions.

- c. If any institution no longer exists and has no successor, its share should be met by the other institution or institutions.

79. Institutions should adopt the elements of redress and the general principles for providing redress recommended in Chapter 4.
80. Institutions should undertake, through their redress processes, to meet survivors' needs for counselling and psychological care. A survivor's need for counselling and psychological care should be assessed independently of the institution.
81. Institutions should adopt the purpose of monetary payments recommended in Chapter 7 and be guided by the recommended matrix for assessing monetary payments.
82. In implementing any interim arrangements for institutions to offer and provide redress, institutions should take account of our discussion of the applicability of the redress scheme processes recommended in Chapter 11.
83. Institutions should ensure no deeds of release are required under interim arrangements for institutions to offer and provide redress.
84. If the Australian Government or state and territory governments accept our recommendations and announce that they are working to establish a single national redress scheme or separate state and territory redress schemes, institutions may wish to offer smaller interim or emergency payments as an alternative to offering institutional redress processes as interim arrangements.

## Limitation periods

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85. State and territory governments should introduce legislation to remove any limitation period that applies to a claim for damages brought by a person where that claim is founded on the personal injury of the person resulting from sexual abuse of the person in an institutional context when the person is or was a child.
86. State and territory governments should ensure that the limitation period is removed with retrospective effect and regardless of whether or not a claim was subject to a limitation period in the past.
87. State and territory governments should expressly preserve the relevant courts' existing jurisdictions and powers so that any jurisdiction or power to stay proceedings is not affected by the removal of the limitation period.

88. State and territory governments should implement these recommendations to remove limitation periods as soon as possible, even if that requires that they be implemented before our recommendations in relation to the duty of institutions and identifying a proper defendant are implemented.

## Duty of institutions

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89. State and territory governments should introduce legislation to impose a non-delegable duty on certain institutions for institutional child sexual abuse despite it being the deliberate criminal act of a person associated with the institution.
90. The non-delegable duty should apply to institutions that operate the following facilities or provide the following services and be owed to children who are in the care, supervision or control of the institution in relation to the relevant facility or service:
- a. residential facilities for children, including residential out-of-home care facilities and juvenile detention centres but not including foster care or kinship care
  - b. day and boarding schools and early childhood education and care services, including long day care, family day care, outside school hours services and preschool programs
  - c. disability services for children
  - d. health services for children
  - e. any other facility operated for profit which provides services for children that involve the facility having the care, supervision or control of children for a period of time but not including foster care or kinship care
  - f. any facilities or services operated or provided by religious organisations, including activities or services provided by religious leaders, officers or personnel of religious organisations but not including foster care or kinship care.
91. Irrespective of whether state and territory parliaments legislate to impose a non-delegable duty upon institutions, state and territory governments should introduce legislation to make institutions liable for institutional child sexual abuse by persons associated with the institution unless the institution proves it took reasonable steps to prevent the abuse. The 'reverse onus' should be imposed on all institutions, including those institutions in respect of which we do not recommend a non-delegable duty be imposed.
92. For the purposes of both the non-delegable duty and the imposition of liability with a reverse onus of proof, the persons associated with the institution should include the institution's officers, office holders, employees, agents, volunteers and contractors. For religious organisations, persons associated with the institution also include religious leaders, officers and personnel of the religious organisation.

93. State and territory governments should ensure that the non-delegable duty and the imposition of liability with a reverse onus of proof apply prospectively and not retrospectively.

## Identifying a proper defendant

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94. State and territory governments should introduce legislation to provide that, where a survivor wishes to commence proceedings for damages in respect of institutional child sexual abuse where the institution is alleged to be an institution with which a property trust is associated, then unless the institution nominates a proper defendant to sue that has sufficient assets to meet any liability arising from the proceedings:
- a. the property trust is a proper defendant to the litigation
  - b. any liability of the institution with which the property trust is associated that arises from the proceedings can be met from the assets of the trust.
95. The Australian Government and state and territory governments should consider whether there are any unincorporated bodies that they fund directly or indirectly to provide children's services. If there are, they should consider requiring them to maintain insurance that covers their liability in respect of institutional child sexual abuse claims.

## Model litigant approaches

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96. Government and non-government institutions that receive, or expect to receive, civil claims for institutional child sexual abuse should adopt guidelines for responding to claims for compensation concerning allegations of child sexual abuse.
97. The guidelines should be designed to minimise potential re-traumatisation of claimants and to avoid unnecessarily adversarial responses to claims.
98. The guidelines should include an obligation on the institution to provide assistance to claimants and their legal representatives in identifying the proper defendant to a claim if the proper defendant is not identified or is incorrectly identified.
99. Government and non-government institutions should publish the guidelines they adopt or otherwise make them available to claimants and their legal representatives.



