REDRESS WA

MANUAL OF INTERNAL STANDARDS FOR ASSESSMENTS:

ASSESSORS AND INDEPENDENT REVIEW PANEL MEMBERS

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January 2010
# Manual of Internal Standards for Assessment: Assessors and Independent Review Panel Members

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1. **THE REDRESS WA GUIDELINES**

The Redress WA Guidelines approved by the Minister for Communities will at all times override these standards to the extent that these standards are incompatible with the Redress WA Guidelines.

The Redress WA scheme was modeled on the Irish, Canadian, Queensland and Tasmanian redress schemes. It was designed to address the historical abuse and neglect of children who resided in State Care.

Whilst the scheme must necessarily take a legalistic approach to ensure accountability to the Government and to the public in general, it is also designed to provide justice and equity, and, avoid arbitrary approaches to assessment.

The scheme is nevertheless a compassionate scheme and not a defensive insurance scheme designed to minimize payments.

Each application will be assessed based on a standard approach to ensure consistency between applications and acknowledge the experiences of people who state that they were abused and/or neglected in State care.

Redress WA payments will be paid on an *ex gratia* basis, without establishing any liability or fault on the part of the State, or the facility in which the abuse and/or neglect occurred.

No right of reply has been provided to any individual or organisation against whom or which abuse and/or neglect has been alleged. In assessing applications Redress WA will not have regard to the circumstances which resulted in a person being placed in care. The assessment was made solely for the purpose of Redress WA and not for any other purpose.

The applicant’s story will be assessed to establish to the satisfaction of the Assessor that it is likely that the applicant suffered abuse and/or neglect, and this resulted in injury, harm or loss.

The assessment will then be reviewed and approved, to ensure that the Redress WA Guidelines were followed and that there is reasonable consistency across assessments.

2. **ELIGIBLE PERSONS**

A person eligible to be assessed under the Redress Guidelines includes those persons who are aged 18 and over at the closing date of the scheme, and:

2.2 who were Aboriginal and Torres Strait Islanders who were placed in State Care under the *Aborigines Act 1905* (WA), the *Native Welfare Act 1954* (WA) or the *Native Administration Act 1936* (WA);

2.3 persons placed in State Care under the *State Children Act 1907* (WA);
2.4 wards placed in State Care pursuant to orders made under the *Child Welfare Act 1947*(WA) including those placed under the control of the Department;

2.5 child migrants placed subject to the *Immigration (Guardianship of Children) Act 1946*(Cth) and the *Child Welfare Act 1947*(WA);

2.6 person placed under the *Young Offenders Act 1994*; or,

2.7 where persons who the Assessor is otherwise satisfied were placed in State Care including those persons placed into a subsidised facility who were otherwise not admitted under legislation.

Redress WA does not consider the reasons why a person was placed into care in terms of legality, reason or fault. There are many reasons why children were placed into care, and even if it may be seen as inappropriate by today's standards, or would not meet current measures of child protective standards, we must necessarily accept that the placement of the child occurred subject to proof of that placement.

It is not the role of Redress WA to investigate any suspicions as to whether the placement of a child into State care was legal, negligent or immoral. In some cases the government or non-government original files have been lost, inadequately recorded in, or destroyed, and it is sometimes impossible to determine what happened in the past. In some cases applicants were born in the 1920s and records were either not kept at this time, or have been lost.

In most cases the historical records are inadequate to successfully unravel what occurred in detail, or whether more could have been done to keep a child with their parent(s), or other close family. In the context of the period of time in question in any particular case it is apparent that historically the government of the day considered that children would be well cared for in religious and private facilities by well-meaning and interested persons and in later years in government operated facilities.

If an assessor establishes that based on the evidence before them that a placement into care was *ultra vires* then the matter should be referred to the Executive Director of Redress WA for appropriate recording and action including referral to State Solicitor's Office for legal advice.

Note that assessors are public servants, and Independent Review Panel are agents of the State, and as such all information is confidential and can not be disclosed to any other person, subject to the Redress Guidelines for the purposes of the Redress WA scheme.

Pursuant to the various legislative mandates of the times children were either placed into State care by the employees of the State subject to legislative requirements, by an order of the Court, by parents, or by religious organisations.

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1 *An ultra vires* act is an act beyond the legal power or authority of the person who took the action to remove the child from their parent(s).
It is the abuse and/or neglect that children may have suffered whilst in care that is being redressed by the Western Australian Government via an *ex gratia* payment, and it is not compensation for being removed from parents, or specific cultural groups.

The Government of Western Australia recognises that many people would be statute barred from bringing a civil action in any case, as their time in care occurred many years ago. The majority of applicants would therefore have no compensation option available to them and a redress payment will provide a degree of reparation and acknowledgement of their suffering.

3. **ASSESSABLE ABUSE AND NEGLECT**

The following categories of claims of abuse and/or neglect are assessable as defined in section 3 of the Redress WA Guidelines:

3.1 **Sexual abuse**

Means any sexual activity involving a person for which consent is not or cannot be given, where a person has been exposed or subjected to sexual behaviours that are exploitative and/or inappropriate to their age and developmental level as a consequence of that person being in the care of the State and includes, but is not limited to:

(a) fondling a person’s genitals;

(b) sexual intercourse;

(c) incest;

(d) rape;

(e) sodomy;

(f) exposure to pornographic material;

(g) exhibitionism;

(h) voyeurism;

(i) bestiality; and

(j) commercial exploitation through prostitution.

3.2 **Physical abuse**

Means any act, regardless of intent, that results in a non-accidental physical injury to a person as a consequence of that person being in the care of the State and includes, but is not limited to:

(a) hitting;

(b) pinching;

(c) shaking;
(d) burning;
(e) cutting;
(f) beating;
(g) attempted suffocation;
(h) excessive discipline or corporal punishment;
(i) inflicting burns;
(j) pushing; and
(k) physical restraint.

3.3 Emotional and psychological abuse

Means any behaviour, verbal or non-verbal, that results in a significant impairment of another person's emotional or psychological well-being, as a consequence of that person being in the care of the State and includes, but is not limited to:

(a) belittling;
(b) threatening;
(c) humiliating;
(d) blaming;
(e) ignoring;
(f) yelling;
(g) inappropriate control;
(h) isolating;
(i) persistent hostility;
(j) scape-goating;
(k) rejecting; and/or
(l) terrorising.

3.4 Neglect

Includes failure on the part of a caregiver, being an employee, agent or servant of the State or who provided care where the applicant was otherwise placed in State care, to provide, arrange, or allow the provision of adequate care for the person including but not limited to lack of suitable accommodation, clothing, footwear, food and educational and training opportunities, or effective medical, therapeutic or remedial treatment for the person which results in harm to the person.

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2 Note that this category includes stigmatisation by staff e.g. through repeated racist remarks or hurtful references to parents.
3 Note that this category includes depersonalisation e.g. through family ties being severed without justification, or through deprivation of affection.
This category can include the following:

(a) failure to protect child against abusive placements;
(b) failure to maintain contact between a child and their family;
(c) inadequate guarding against dangerous equipment in the workplace;
(d) failure to provide legally prescribed minimum of education as outlined in legislation or regulations;
(e) lack of appropriate vocational training; and,
(f) lack of training in life skills.

4. ASSESSABLE INJURY, HARM OR LOSS

The following categories of claims of injury, harm and loss are assessable as defined in section 3 of the Redress WA Guidelines:

4.1 Injury being any bodily harm, mental injury, mental and nervous shock or pregnancy;
4.2 Harm which has any detrimental effect of a significant nature on a person's well-being; and,
4.4 Loss being pain and suffering and loss of enjoyment of life and opportunities experienced by the applicant as a direct consequence of the injury suffered whilst in State care.

See Schedule 6 for a discussion on what impact/consequences maltreatment as a child has on the person both as a child and as an adult, and, summary of the impacts of injury, harm and loss from being abused and/or neglected in care.

Loss of earning capacity and stolen wages are not included in the assessment.

5. ASSESSMENT OF DAMAGES AT COMMON LAW

Damages flow from a tort and are assessable by estimating and quantifying the reasonable monetary value of a person's loss. Damages are also known as "measure of damages" or "quantum of damages".

At common law there are three heads of damages as follows:

(1) "economic loss" (special damages or pecuniary damages – these are quantifiable such as lost wages or medical and hospital costs)

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4 Compensation, usually a monetary sum awarded for injury or loss suffered
5 Means literally a wrong; A tort is a breach of a duty and interference with a person’s interest (such as bodily security) and is redressable by action for compensation – the law of torts therefore aims to restore the injured party to the position they were in before the tort was committed.
(2) loss of “amenities of life” sometimes called “enjoyment of life” (general damages or non-pecuniary damages)

(3) “pain and suffering” (general damages or non-pecuniary damages)

Redress WA aims to address general damages which are also termed “non-pecuniary” damages. “Non-pecuniary” damages includes pain and suffering. Damages may be awarded for ‘pain and suffering’ and such damages are assessable for past, present and future pain and suffering.

The standard legal rules that apply when assessing non-pecuniary damages are as follows:

1. Factual and legal causation must be proved where damage is part of the cause of action such as negligence.
2. Non-pecuniary damages are not capable of precise mathematical calculation.
3. Awarded for the period before the decision and also for future.
4. Given for both monetary and non-monetary loss.

At common law no action will lie for the negligent infliction of emotional distress, alarm, fear, anxiety, annoyance, anguish, embarrassment, or despondency, without any resulting recognisable psychological or psychiatric illness. This has been reinforced in most jurisdictions by statutory provisions prohibiting the award of damages for negligence causing mental harm except for recognised psychiatric illness.

General damages or non-pecuniary damages at law can therefore cover the following:

1. future hospital and medical expenses
2. economic loss in the future (e.g. loss of earning capacity)
3. loss of amenities and enjoyment of life (a loss of the capacity to enjoy life to the full as one might have done – awards both objectively for actual loss suffered and subjectively for the plaintiffs sense of loss)
4. pain and suffering – past and future (actual physical or mental pain (including psycho-social issues – can include disfigurement)
5. loss of expectation of life (life span is shortened)
6. loss of opportunity or chance (deprives plaintiff of a chance or an opportunity – provided the chance was not “negligible” or “speculative”)

Additionally aggravated damages can also be considered and this includes situations where there was:

1. Injury to the plaintiff’s feelings or dignity
2. Wrongful act aggravated by the manner in which the act was done.

Aggravating factors that be taken into account include the following:

1. Verbal abuse
2. Racist acts and comments
3. Threats
4. Intimidation/inability to complain; oppression
5. Humiliation; degradation
6. Sexual abuse accompanied by violence
7. Age of the child or abuse of a particularly vulnerable or already fragile and vulnerable child
8. Failure to provide care or emotional support following abuse requiring such care
9. Witnessing another child being subjected to an act of violence or aggravating factor
10. Use of religious doctrine, paraphernalia or authority during, or in order to facilitate the abuse
11. Being abused by an adult who had built a particular relationship of trust and caring with the victim (betrayal and/or grooming behaviour)

See Schedule 6 for an example of definitions of aggravation as used in the Western Australian Criminal Code.

The above section is included in this manual to demonstrate that the Redress WA assessment process is similar to the methodology used in civil litigation, however, Redress WA is not full compensation, nor does it take into account many of usual heads of damages.

6. SCOPE OF THE REDRESS WA SCHEME

Based on the above discussion of principles and the intention of the Redress WA scheme, it is not intended to make a Redress WA payment for economic loss including loss of past, present or future income, or stolen wages, or earning capacity.

Also not in scope are allegations of abuse and/or neglect in the following circumstances:

(1) Random criminal acts occurring in the community.
(2) Abuse and/or neglect whilst in a hospital.
(3) Abuse and/or neglect whilst attending a government or non-government educational facility unless the facility is a ‘home school’ or on the campus of the State care facility.
(4) Abuse and/or neglect whilst attending a sporting or recreational camp or activity unless the event is being operated by the State care facility.

It must also be noted that the Redress WA payment to be offered is not intended to represent full compensation for injury, loss or harm, as would be calculated by a court. The amount available in the scheme can in no way place the person in the position they were in before they were placed into care (see note below as to children who were abused and/or neglected before being placed into care).

The maximum amount in the Redress WA scheme has been capped at $10 000 for an interim payment, and, $45 000 for a final payment.
The final payment amount has been determined based on the number of applications received and the severity of the abuse and/or neglect reported, and the degree of injury, harm and loss suffered.

A sample of applications was assessed using the assessment matrix at Schedule 7. This assessment matrix was designed to include a summary of the key categories of harm and impact based on redress schemes in Canada, Ireland, Queensland and Tasmania. The matrix also addresses the issues raised in submissions and evidence reported in the following Senate enquiries:

(a) "Lost Innocents: Righting the Record" – Report of Child Migration, August 2001 (Senate Community Affairs References Committee).

(b) "Forgotten Australians" - A Report on Australians who experienced institutional or out-of-home care as children, August 2004 (Senate Community Affairs References Committee).

(c) "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families" Human Rights and Equal Opportunity Commission; known as the "Bringing them Home" report, April 1997.

See Schedule 3 for a discussion as to key findings of the Senate reports.

The sample of assessments was analysed by an actuary and based on the assessments and the size of the pool of funds available for the scheme, it was determined that the maximum redress payment would be $45,000.

The 4 levels of payment are as follows:

4. **Very Severe** abuse and/or neglect with ongoing symptoms and disabilities

   $45,000

3. **Severe** abuse and/or neglect with ongoing symptoms and disabilities

   $28,000

2. **Serious** abuse and/or neglect with ongoing symptoms and disabilities

   $13,000

1. **Moderate** abuse and/or neglect

   $5,000

**7. Core Assumptions**

7.1 All eligible applicants will be deemed to be truthful unless otherwise proven by documentary evidence or other credible contradictory statements or reports by third parties. Some applicants will be confused by the passing of time, have poor memory, or have incorrect information regarding their time in care due to their age at the time of being in care; however, this is to be expected and should not be used as a sign of a lack of credibility as to the truthfulness of their story.
7.2 The guidelines for assessing a Redress WA payment are set out in the Redress WA Guidelines and the Senior Redress Officers (Assessor), Team Leaders, Internal Members (Assessor) and Independent Review Panel are bound by those guidelines.

7.3 The Redress WA Guidelines sets the levels of payments to be used having regard to the seriousness of the abuse and/or neglect and the impact of the abuse and/or neglect, as defined in the Redress WA Guidelines (see Schedule 3 of the Redress WA Guidelines).

7.4 Assessors are empowered to make findings on credibility, severity of abuse and/or neglect and its impacts as set out in the Redress WA Guidelines.

7.5 The Redress WA Guidelines are designed to provide an individual assessment of abuse and/or neglect and impact suffered; and to generate redress levels consistent with methods used in common law jurisdictions, using a systematic and transparent assessment process. In the interests of fairness and consistency, assessors must follow the Redress WA Guidelines and this manual in applying the framework to the cases before them.

7.6 Redress WA payments are to be determined exclusively pursuant to the Redress WA Guidelines and this internal standards manual. While the actual abuse and/or neglect suffered is an important indicator of the appropriate level of redress, so too are the circumstances in which the abuse was suffered by the individual, and the particular impacts it had upon him or her.

7.7 The Redress WA Guidelines are expressly designed to avoid a mechanistic approach to redress by recognizing that a relatively less serious act can have severe consequences, and vice versa. To accomplish this goal requires both an objective assessment of the severity of the abusive or neglectful act(s), and then a distinct and highly subjective assessment of how that act affected the individual.

7.8 A Senior Redress Officer’s report that analyzes the applicant’s story will be provided to assist the Internal Members (in the case of Level 3 and Level 4 applications). Accordingly, the categories defining acts and harms must first be assessed individually and separately; however, the words in each category must be read within the context of the Redress WA scheme, which is by definition a compassionate scheme.

7.9 In particular, in determining the level of harm suffered by an applicant, assessors are to consider the abuse and/or neglect and each of the other categories are to be assessed separately. A consideration of the contextual situation such as age when placed in care and length of time in an abusive placement is also required in order to determine, which of the categories best reflects the applicant’s stated level of harm, injury and loss resulting from the abuse and/or neglect.
The context in which abuse and/or neglect occurred is important and there are particular facilities, and particular periods of time, that were worse than others and some recognition and understanding of this is required. For example, a child in a mission in an isolated rural location with an on-site school in the 1940s was more likely to suffer abuse and/or neglect than a child in a metropolitan orphanage, institution or cottage home who attended a local primary school in the 1970s or 1980s.

In reaching a decision the assessor will use their discretion and best judgment to determine a level of payment and it must be recognized that the application of the assessment matrix to an individual’s circumstances is not a pure science, but is an exercise of "questions of fact and degree, and matters of opinion, impression, speculation, and estimation, calling for the exercise of common sense and judgement". 6

By necessity because the Redress WA scheme has been designed to determine severity of harm and impact this means that there must be "the creation of a class of 'most extreme' cases which necessarily means that the cases may be different, and some may be worse than others". (see Schedule 2 for a discussion as to common law decision making in personal injury cases).

The role of review and approval by the Team Leaders and Independent Review Panel is to review the process followed by the Redress WA assessors and consider whether the Redress WA Guidelines and this manual were applied correctly to the facts of the case, and, in the spirit of the ex gratia payment intended by the Government of Western Australia.

The Team Leaders and Independent Review Panel are limited to approving assessments pursuant to sections 24, 25 and 38 of the Redress WA Guidelines.

If the Team Leader or Independent Review Panel consider that an assessment is not based on the Guidelines or they disagree with the assessment then they may substitute their own decision.

8. Civil Standard for Assessing Abuse and Neglect

The abuse and/or neglect that is being assessed in relation to, or arising out of the instances of abuse and/or neglect described in the application may have been committed by adult employees or volunteers of the government, or of a religious facility operated, subsidized, monitored or regulated by the State, or by foster parents approved by the State.

The instances of abuse and/or neglect described may have also been committed by another child resident, or an authorised visitor to the facility.

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7 Ibid, at 533.
In situations of unauthorised trespassing by strangers where physical or sexual assaults occur, or random criminal acts occur outside the facility, these situations are not intended to be within the scope of abuse and/or neglect in care, unless there is clear evidence that the institution did not have sufficient protective measures in place to safeguard children in their care.

One particularly difficult situation to assess is where a young person absconds from State care and places themselves in a position where they are taken advantage of, or are assaulted. This may include where the young person takes drugs or drinks alcohol and harms themselves, or they are sexually assaulted or participate in sexual behaviour which places them at risk. Each situation will need to be assessed based on the context of the situation.

Children who were abused whilst in a medical facility, or hospital, are not within the scope of the Redress WA scheme (as these are random criminal acts) unless that facility was also a long term residential facility and was an approved facility subject to the Child Welfare Act 1947(WA), or other relevant legislation.

Additionally situations that are not within the scope of the scheme where persons are alleging abuse that occurred at an educational facility but were otherwise not in State care as defined in the Guidelines, unless the facility was a “home” or “campus” school on site where the person resided in State care.

The assessor will assess cases and determine whether they are satisfied as to the reasonable likelihood that abuse and/or neglect occurred. This is similar to the civil standard of proof, being on the balance of probabilities, which means a fact is proved to be true on the balance of probabilities if its existence is more probable than not. See Schedule 1 for a discussion as to the parameters of assessing on the balance of probabilities.

Except as otherwise provided in the Redress WA Guidelines, the standard of proof is the standard used by the civil courts for matters The assessor may receive, and base a decision on, evidence provided with the application that is considered credible, or trustworthy in the circumstances.

In many cases the only evidence available will be the number of reports of abuse by other applicants, and the material that has been summarised in one of the many inquiries into children in care such as the Senate enquiries, or material written by individuals who were in care (See Schedule 3).

In some cases there will be some corroborating evidence in official records; however, it will be a rare case where official records document abuse or neglect.

In others cases the government or the religious entity operating the facility in question had, or should reasonably have had knowledge that abuse and/or neglect of the kind alleged was occurring at the facility in question during the time period of the alleged abuse, and did not take reasonable steps to prevent such abuse and/or neglect.
Ultimately, the assessors will in most cases make an assessment based on the likelihood that the person was abused given the overwhelming evidence available in the Senate enquiries.

9. Conferences

Redress WA was designed as a process that would reduce the stress and anxiety for applicants by requiring that applicants would in general not be required to attend a hearing or conference to tell their story again. For many applicants the act of telling their story for the written application was traumatic enough, and requiring a person to attend a hearing could be considered to be a form of secondary abuse in some cases.

Additionally, if hearings were used then applicants may have considered that they needed legal representation and this would have increased their costs significantly. This would have effectively reduced any Redress WA payment made to them as there would have been the need to include costs and taxation of costs (i.e. assessing whether the costs were reasonably and necessarily incurred).

The assessors may conduct telephone conferences in order to gather more information or clarify issues. At the time of writing this manual the requirement is that unless an applicant had been contacted within a reasonable time prior to the final assessment, they will be contacted by telephone to determine whether there are any further documents or information that they wish to submit. Assessors are required to follow internal policy and procedures as to how this contact is to be conducted.

Team Leaders and the Independent Review Panel will not conduct hearings and approvals of assessment decisions will be made based on the papers.

10. Proving Consequential Injury, Harm and Loss

In providing evidence to reach the conclusion that an individual has suffered consequential injury, harm or loss as a result of the care and treatment they received as a child in State care, it would normally be necessary to prove this by the lodging of psychological and/or medical reports.

The early experience of applications received under the scheme was that the majority of applicants did not provide any evidence of their time in care, or any expert evidence of impact or harm.

This would have meant that the majority of applicants under the original scheme would have received no more than a nominal amount under $10,000, assuming Redress WA could find historical records of them being in care.

Given the professional knowledge base of the impact of abuse and/or neglect on children in care from other redress schemes, from social sciences research generally, and, the information available from the Senate enquiries, it was decided that Redress WA would provide a Senior Redress Officer's report, which analysed the statements made by the applicant.
All Senior Redress Officers have suitable qualifications and the assessments and reports of the Senior Redress Officers replaced the need for psychological or medical reports. Note that if applicants did provide psychological reports that they would necessarily be advantaged by providing this material in terms of the level of evidence to show the level of impact of the abuse they received.

What is required to be assessed is how the physical, emotional/psychological, sexual or neglectful treatment has resulted in physical injury to the person or has negatively impacted upon the person’s capacity to function physically, economically, or psychologically, either as a child or as an adult.

This requires a critical analytical conclusion that demonstrates that the information conceptually demonstrates that the person has suffered such injury, harm or loss and that this has been caused wholly or partially by the abuse and/or neglect.

One area that is almost impossible to assess in most cases is: - what was the circumstances the person lived in, and what was their mental state before they entered care? In many cases children had been in dysfunctional or abusive circumstances for many years before being placed in care, or came into care in the State from child care facilities in another country.

Given that in most cases there was no psychological assessment of these children on being placed in care, it is not possible in most cases to determine what proportion of harm can be attributed to abuse and/or neglect in care, as opposed to harm caused in their family of origin, or in a care facility in another country (as is the case with some child migrants).

It is also hard to assess the affect on applicants of events after they left State care. For example, in some cases applicants joined the defence services and fought in overseas war zones and as such their experiences in these situations may have been extremely traumatic and left them with serious injury and harm.

A difficult area to assess are for those applicants who are part of the “stolen generation”. Many of these applicants consider that there have been major impacts on their family and cultural life, which has led to the loss of identity, culture, language, and family connections.

Australian courts have accepted the principle that the loss of cultural standing and fulfilment will be considered in an assessment of the general damages for loss of amenities and enjoyment of life of an indigenous plaintiff who had suffered negligent physical injuries.9

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8 Definition: “The Aboriginal people who were removed from their families as children and placed in institutions or fostered by white families”. - The Australian Oxford Dictionary (5th Ed), 2001.
The difficulty again is that there is generally in most cases no baseline upon which to make an assessment. That is, there is no information available as to whether the person spoke their tribal language, or was participating in cultural and ceremonial activities, prior to being placed in care, or of the degree of cultural involvement of their immediate family. Without the expert evidence of anthropologists is not possible to reach a firm determination in these matters.

It is clear however, that Aboriginal people did suffer from loss of contact with family and culture as a result of being placed into care, although their experiences differ depending on where and when they were in care and how much contact they had with their family during and after placement.

It should be noted that generally, an assessor would not limit their consideration to one sole factor when arriving at the conclusion that maltreatment had caused injury, harm or loss, although it is not unheard of for this to be the case. However, an assessor would look at the constellation of factors involved and weigh up their congruency, credibility and consistency and be informed by the areas articulated below.

Likewise in the case of the loss of culture and family connections, whilst an exact assessment is not possible, it is possible to take account of the fact that an individual who was removed and isolated from their family, whether it be an Aboriginal, English, Irish or Maltese family, would in all likelihood suffer a loss of culture and experience a lack of family connections to some degree.

The assessors will guided by a combination of the following five areas:

- Relevant Professional Literature in respect of child protection and child development.
- Research - both qualitative and quantitative.
- Legislation/Policy/Operational Procedures.
- Practice Wisdom/Experience of the assessor and their supervisors or other experts in the field.
- Ethics and Values of the employing body or public sector or the profession of the care provider.

**Relevant Professional Literature and Research**

The relevant professional literature means theoretical literature that speaks to the impact that specific treatment has on a person’s physical, developmental, economic or emotional/psychological functioning either as a child or as an adult. Research is defined as the empirical evidence that demonstrates such impacts.

**Legislation/Policy/Operational Procedures**

In terms of legislation, policy and procedures it is necessary to ascertain what were the requirements at the time when the individuals who have made application for Redress WA payments were in state care.
This includes the legislation that applied at the time, which may have been harsh and punitive considered from today's point of view, however at the time it was considered reasonable and necessary.

For example, the *Native Administration Act 1905 – 1936 (WA)* Regulations (1938) stated the following in terms of discipline:

46. The discipline enforced with in an institution or reserve shall be mild and firm. All degrading and injurious punishments shall be avoided, such as the “boxing” of children’s ears. Girls' heads shall not be shorn as a punishment; neither are they to be deprived of their clothes and dressed in such a way as to hold them up to ridicule.

47(b). Corporal punishment may be inflicted for offences against morality, gross impertinence, or for persistent disobedience, but not for trivial breaches of discipline or dullness in learning.

47(d) For the purposes of these regulations “corporal punishment” means punishment by means of strokes of the cane inflicted on the hands in the case of females, but in the case of males may include the buttocks.

Note that for non-Aboriginal children the regulations under the *Child Welfare Act 1947 (WA)* were similar and that corporal punishment was not banned in government juvenile justice institutions until the late 1960s, and caning of school children continued in the general community until at least 1987.

**Practice Wisdom/Experience**

Practice wisdom refers to the knowledge and experience of the Assessor in conceptualizing, analysing and interpreting the information and taking account of historical evidence and recognized experts in the relevant field.

**Ethics and Values**

Finally, it is important to consider what were the ethical and value based behaviours that were required of those who provided the care in the various institutions. While there is some suggestion that certain negative institutional cultures existed at certain times, it may be necessary in a particular case to ascertain what were the formal, documented or ascribed values and ethical behaviours that were expected of the carers and institutions of the time.

Two further issues should be noted.

First, a caution must be raised when it comes to considering the impact on individuals who, for whatever reason, are fortunate enough to have a 'resilient' personality and who, at first glance, appear to have been minimally impacted upon by their care experience. Assessing an individual's current functioning is only one part of ascertaining the impact that the person experienced from their time in care.
It is necessary to not only consider their current functioning but also to ascertain two key elements - what opportunities may have been missed as a result of their care arrangements and what is the emotional or psychological costs to the individual of their current functioning.

In terms of missed opportunities an assessment and decision should consider what the individual has lost as a result of being in State care. Can it be demonstrated that, for example, they have lost the opportunity to gain a profession which they may have wished to have and had the capacity to enter, but did not achieve this because of the limited literacy and/or numeracy skills which formed part of their supposed 'education' in State care. As a result was the person only able to obtain a minimum wage job?

Furthermore, it is also necessary to establish what has been the 'cost to the individual' of their current functioning. Has, for example, it been difficult for them to achieve and sustain positive nurturing relationships - such as marriage or partnership, have they been able to easily bond with and form a positive close attachment with their children or has this been a struggle for them? Have they thus experienced a loss of 'enjoyment of life' as a result?

Second, the issue of the standards of the time needs to be put in the appropriate context. It is not reasonable to conclude that the care reportedly received by the children and young people in the care institutions in question equated to the standards of the time.

It is generally accepted that a care institution had at all times a duty of care to provide a reasonable standard of care, especially in those institutions which encouraged placement of children with them to provide a better environment, or greater opportunities than their parents or another overseas institutions could provide. Thus it would be reasonable to conclude that the institution should not just have been providing minimal standard of care, but had an obligation to provide standards of care that met the needs of children.

Additionally, in assessing the standard of care and reaching a decision that this had on the individuals concerned, it is not the institutional care standards that should be considered as the benchmark. What is required is an assessment and decision in respect to what was reasonable for a care giver or parent at the time, and, a decision as to whether the treatment the child or young person received in care would have been viewed as abuse or neglect had it occurred within parental care at that period of time.

Would such treatment by their parents have resulted in removal of the child or young person from the care of their parents had such treatment occurred within the family home?

11. **Taking “Judicial Notice”**

A number of issues will arise concerning the ability of Assessors to make use of information obtained or known beyond that provided by the applicant in each individual case.
There are several aspects to this matter including the use of background information and/or personal knowledge, for example in respect of:

1. schools;
2. child abuse and its impacts;
3. history of the residential care system;
4. an assessor’s qualifications and employment experience and history;
5. carry-forward of information from application to application, for example:
   
   (a) alleged perpetrators and the *modus operandi* of well-known abusers and perpetrators;
   (b) conditions at certain institutions;
   (c) credibility of findings;
   (d) use of precedents from other assessors; and,
   (e) ability of assessors to confer with each other.

Assessors, Team Leaders and Independent Review Panel Members will be supplied with orientation materials on the Commonwealth Government Senate enquiries into abuse in care, as well as on child abuse and its impacts.

Assessors are expected to inform themselves from this material so as to make findings of fact and to support inferences from evidence they find credible, on the balance of probability. For example, to conclude that trauma of a certain kind can be expected to flow from a physical or sexual assault on a child, or that missions and orphanages were often places of severe and harsh discipline and punishment over and above what they were regulated to do.

These latter uses of this information are justified by the fact that the Commonwealth Government Senate enquiries have found that many hundreds of people have testified that the child care institutions they lived in were places in which extreme child maltreatment took place.

Where the material is used in coming to a finding of fact, or drawing an inference, it should be cited and its relevance and the rationale for its use set out in the decision.

Some assessors may bring to the task of assessment an extensive background in dealing with child abuse, or may receive information on child abuse and its impacts at training sessions or continuing education programs, or through their own reading or research.

Assessors will be informed by the assessments they are making and develop a large data base of information about abuse in State care that may have never been previously available.
Assessors will be provided with a variety of documentary material and relevant books in respect of residential child care in Western Australia.

Internal Members are expected to inform themselves from this material, which may be used as a basis for findings of fact or credibility. Where any of this material is so used by Internal Members, it must be cited and its relevance and the rationale for use set out in any reports.

Because this information is specific to the particular institutions in question and is provided in advance, it is expected that assessors will be familiar with it before starting an assessment to which it is relevant.

12. **Assessing Quantum – the Final Redress WA payment amount**

**Preliminary Issues**

First, the quantum the applicant will receive is not determined by the assessors, the Team Leaders or the Independent Review Panel. The assessor will determine a level of severity and the Team Leader or Independent Review Panel will then either approve the decision, or in some cases substitute the decision with their own decision as to level of severity.

The quantum to be applied in each case will be an amount approved by the Minister for Communities for each level of severity and is based upon the number of applicants, the severity of applications statements and an actuarial assessment to determine a fair and equitable system of distributing the redress funds available.

Second, assessing the severity of abuse and/or neglect, and the degree of harm that a person has suffered whilst in the care of the State is a difficult task that requires careful examination of the material presented so as to ensure that each applicant is treated as an individual with due regard to the specific circumstances of each case.

Third, despite the design of the Redress WA Guidelines to attempt to provide standards to be used in the assessment of each case, there will be the need for assessors to use a degree of discretion and their best judgment in each case.

Fourth, given that the Redress WA scheme has been designed to determine severity of abuse and impact, there must necessarily be a comparison between applicants as to severity.

Fifth, Redress WA does not intend to disregard some of the claims made by applicants if a particular claim is not accepted as abuse and/or neglect. In some cases although the applicant considered that the treatment they received was part of the overall abuse and/or neglect they were subjected to, the treatment may have been to a large extent in line within the standards of the time and not abuse or neglect as conceived by the Redress WA scheme.
Examples of this are:

(a) Many children were routinely caned by teachers on the hands or legs until the mid-1970s in Western Australia for minor infractions - being caned six times was norm - it is the circumstances and the degree of punishment that is the issue;

(b) It was not uncommon for children in large families to have to wear second-hand clothing and not wear foot-wear to school - it is the circumstances and the adequacy of the clothing and footwear for the task that is the issue;

(c) Many families of poor means often ate bread and dripping and offal meals (such as brains, liver and tripe) due to their poor circumstances - it is the circumstances and the adequacy of the food that is the issue including issues such as whether the care givers were eating better food than the children; and,

(d) Many children from very poor or low income families of poor means left school by fourteen (14) or fifteen (15) years of age to enter a trade or the low skilled workforce - it is the circumstances and the adequacy of the education and support provided or even the opportunity to attend school that is the issue.\(^{10}\)

These examples are not meant to disparage the claims made by applicants and are intended only to point out to assessors that although standards have changed and the circumstances must be considered, the claims made must be weighed as to what is reasonable or not in the circumstances.

This is however, to accept that the prevailing norms for the care and treatment of children in past years must be blindly considered to be “normal” and within acceptable limits. Continual and focused abuse and/or neglect that go way beyond what was considered normal at the time can not be acceptable. Some of these actions were illegal then, and are still illegal now.

A child living in poverty or poor circumstances with their parent(s) may at least have had the comfort of knowing, or at least believing, that they were loved and protected. Compare this to a child living in poor circumstances who had nobody to love them or protect them.

For this child each harsh act or deprivation is simply part of the overall feeling that they were being abused and/or neglected in an unloving and uncaring environment.

The treatment that can be considered to be on the borderline of prevailing norms, should be considered in the light of the overall institutional abuse that the children were experiencing, which made anything less than normal seem to the child to be just another part of the abuse they were experiencing.

\(^{10}\) At law the loss of opportunity in terms of earning capacity must be proven and can not just be a wish list of desirable occupations, or unattainable occupations.
However, it must be kept in mind that children were placed into care in order to provide them with better care than they were receiving at home and therefore poor conditions were not expected to be the norm.

**The Redress WA Scale**

The assessment table in Schedule 3 of the Redress WA Guidelines which is displayed below (not schedule 3 of this manual) provides a scale of severity on which an assessor will make a decision.

The scale in the Redress WA Guidelines uses a four (4) level scale (see below) and is based on assessing abuse and/or neglect on an escalating range from moderate, serious, severe to very severe.

The maximum quantum payable will be determined by the number of applications received, the severity of the abuse and/or neglect and the impact as described in the application.

<table>
<thead>
<tr>
<th>Assessment Scale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Very Severe</strong> abuse or neglect with ongoing symptoms and disabilities</td>
</tr>
<tr>
<td><strong>Severe</strong> abuse or neglect with ongoing symptoms and disabilities</td>
</tr>
<tr>
<td><strong>Serious</strong> abuse or neglect with ongoing symptoms and disabilities</td>
</tr>
<tr>
<td><strong>Moderate</strong> abuse or neglect</td>
</tr>
</tbody>
</table>

The scale was intended to provide a guide to applicants so that they could understand the basis for generally how assessments would be made. The scale was not comprehensive and not intended to be a step-by-step guide that could be copied onto an application form without careful consideration of what actually occurred to that person whilst they were in care.

There will of course be some debate and argument about which forms of abuse and neglect are the most severe and therefore the most harmful. There will no doubt be applicants who have suffered extreme abuse and neglect, yet they have coped well with the experience and went on with their lives with minimal problems.
Some applicants may have denied or simply avoided thinking about what had occurred to them in care as a way of coping. A person may simply be a particularly resilient person, or have received good support post-care.

There may well be other applicants, who suffered relatively minor abuse and neglect, or less abuse and neglect than in fact they suffered in their own family of origin, yet they have developed extreme symptoms and have been detrimentally affected by their experiences.

As mentioned elsewhere the harms that a child suffered before entering care are in the main not able to be measured or assessed in terms of long term impact.

There is no scale, or matrix of categories, that can measure with any degree of scientific preciseness the value of a person's harmful experience. Redress schemes worldwide have attempted to find ways of assessing claims using various scales and matrixes and have in common the desire to find a method that will provide a consistent and fair approach for all applicants.

The assessor after determining the applicant's basic eligibility and making findings will then place that individual at a level on the Redress WA scale. This begins as an objective exercise based on the statements presented and the evidence established. However, it turns into a subjective discretionary exercise because a judgment will have to be made that treats the application in a holistic manner and compares each applicant to other applicants in the scheme.

**Assessing Abuse and/or Neglect and Moderating the Assessment to take account of Compounding and Ameliorating Factors**

The assessment scale in Schedule 3 of the Redress WA Guidelines does not indicate what is contained in each category of abuse and/or neglect. This was intentional to avoid any criticism of applicants simply copying out a list of what was contained in a scale to receive a certain level of redress payment.

It was considered that it was more appropriate for applicants to report the treatment they received and describe their experiences, rather than attempting to assess themselves.

The Redress WA scheme has been designed so that the severity of abuse and/or neglect can be determined by the following assessment factors which are set out in the **Assessment Matrix** (see **Schedule 7**):

(a) type of abuse and/or neglect;
(b) frequency or excessive nature of the abuse and/or neglect;
(c) period of time in abusive or neglectful care;
(d) age of the child at the time they were placed in care away from their family, which can determine how well they can cope with the experience or how their development may be affected by the treatment they received in care;

(e) the isolation and depersonalization that occurred as a consequence of being in care;

(f) amount of contact the child has with their parent or extended family whilst in care;

(g) the position or role of the abuser in the organization;

(h) the extent of the injury loss or harm resulting from abuse and/or neglect11; and,

(i) aggravating circumstances (other than the above) which relate to such issues as racial discrimination, the particular vulnerability of the child, intimidation, humiliation, degradation, witnessing other children being abused and the use of religious doctrine to facilitate abuse – to be determined by the applicant’s statements and/or the assessment of the placement by assessor.

The first step for the assessor is to determine the level of severity of the abuse and/or neglect the applicant fits into. In many cases the applicant will not precisely fit into the same level of abuse and/or neglect for each category, and may other factors from several levels may apply.

To assist the assessor as to the level to be given on the Assessment Matrix they will consider the applicant as being in one or more bands on the Redress Assessment Table (see Schedule 9) for the differing claims made. This will take account of the abuse and neglect experienced in terms of severity of abuse and/or neglect.

Not every issue covered in each band is required in order for the applicant to fit into that band of severity of abuse type and frequency. The Redress Assessment Table is to generally provide assistance the assessor as to types, severity, frequency and other important issues.

In each case an applicant’s statement may place them on several different levels for each type of abuse and as such in determining the level of abuse and/or neglect the individual’s context as to age and circumstances will have some effect on the determination.

First, note that each type of abuse is to be assessed separately (in Section 1 of the Assessment Matrix) and the length of time in care, whilst an important factor, is not to determine the overall severity.

11 Initially the loss of opportunity related to post care employment was included in the matrix, however, given the lack of information about an applicant’s education before care, during care and their employment after care, it was considered that it was impossible to make a judgement on this issue and these issues would be considered under social harm in a general sense.
Second, to moderate the compounding and ameliorating factors, either up or down, the assessor will then determine the issues (in Section 2 of the Assessment Matrix).

Third, the injury, harm and loss suffered (in Section 3 of the Assessment Matrix) will be analyzed and assessed by reviewing the applicant's statements, psychological, medical or psycho-social reports if these are available. To this extent the Senior Redress Officer assessments and reports will inform the assessors as to severity of the harm and the extent of the level of the injury, harm and loss that has affected the person's life.

The issue of any loss of opportunity related to post care employment that may have resulted from inability to undertake or complete education or training will be taken account of under the category of social harm in a general sense.

Fourth, any aggravating factors can then be taken into account (in Section 4 of the Assessment Matrix). These factors may not have been considered or included as a statement by the applicant; however the assessor may reach their own conclusions in this section based on the information available.

The assessment will be entered onto an Assessment Matrix by the assessor as set out in Schedule 6. The use of this methodology is to result in the assessors being able to assess applicants in a consistent manner and arriving at a just and equitable assessment as between applicants as far as this is possible.

The final score can then be determined, however, the quantum of the payment will be determined by Ministerial approval subject to actuarial assessment of a sample of the total number of applicants.

13. Notice of Assessment Decision

The assessor will produce a “Notice of Assessment Decision”12 in a standard format that sets out briefly the applicant's claim and states what the decision is in terms of severity and the quantum assessed. Level 1 and 2 applications will have in addition to this an eligibility check list.

Level 3 and 4 applications will have in addition to the “Notice of Assessment Decision” a “Statement of Assessment Decision” outlining key findings and providing a rationale for the finding subject to the Redress WA Guidelines that the applicant is eligible for a Redress WA payment.

Assessors must produce a decision outlining their findings in each case. To help ensure consistency, fairness and efficiency, these decisions will be prepared in a standard format.

12 In the case of deceased applicant an eligibility decision will be written.
In the case of Level 3 and 4 applications the decisions are primarily to explain how the Internal Member’s decision was reached, but they may also support and facilitate consultation among Internal Members, and review for error, and allow the Independent Review Panel to carry out their review function to approve decisions.

The format of the “Statement of Assessment Decision” does not contemplate a narrative exposition of all information and evidence provided in the application. Instead, it requires a focus on relevant information and evidence and findings, and the rationale for those findings in a brief format. It is not the purpose of the “Statement of Assessment Decision” to provide a full record of the applicant’s experiences.

Timelines can not be provided as to when decisions will be finalized after 1 May 2009 (the closing date of the Redress WA scheme is 30 April 2009) due to the substantial number of applications to be processed and assessed.

The format for final “Statement of Assessment Decision” for Level 3 and 4 applications will be as follows:

**Notice of Assessment Decision**

A. **Applicant details** – name, date of birth, application no., date application received and date of decision.

B. **Reason for application** - for statement of reason why the application was made and which facility the person resided in as a child.

C. **Decision** – statement of decision and amount to be offered to the applicant or that the matter is dismissed with no Redress WA payment to be made.

D. **Notes** – relating to various issues that address *ex gratia* payments reason for assessment.

**Statement of Assessment Decision**

A. **Background** – Briefly summarizes the applicant’s details and the reasons for applying.

B. **Eligibility Requirements**– Sets out criteria for eligibility and summarizes evidence of being in the care of the State and proof of identity and age and reaches a conclusion as to same.

C. **Previous Compensation paid by State Government** – where relevant considers previous compensation paid subject to *ex gratia*, civil litigation or criminal injuries compensation.

D. **Is the Abuse and/or neglect established** – sets out applicant’s claims of abuse and/or neglect and the impact of that experience. Comments on evidence and supporting material or documents provided. Makes findings as to establishing that abuse and/or neglect occurred, as well as discussing any consequential harm.
E. **Assessment of Abuse and/or Neglect and Harm and Loss** – Sets out Guideline requirements and basis for how the matter is determined and the reason(s) for setting the level determined.

F. **Effect of interim payment** - sets out whether an interim payment was made and whether they fire a further final payment is to be offered stop

G. **Decision** - statement of decision and amount to be offered to the applicant or that the matter is dismissed with no Redress WA payment to be made.

H. **Internal Members Verification Code** - a verification code will be used to identify the Internal Member internally however due to security reasons the names of Internal Members will not be disclosed.

I. **Independent Review Panel’s Endorsement** - at the time of writing this manual it has been decided that Independent Review Panel will also not be identified. Will

Whilst the decision format appears simple, the method of stating the decision and how the decision was made must be briefly stated but include the following:

(a) **Cite each relevant statement of abuse and/or neglect, or linked series of statements, and set out the findings of fact pertinent to it. Internal Members are not required to outline every statement, or every piece of evidence.**

(b) **In making findings for each abuse or neglect statement or series of linked abuse or neglect statements:**

(i) if the evidence was uncontradicted, indicate whether, and the basis on which, it was found credible or not credible; or

(ii) if there was conflicting evidence, indicate which evidence was found credible and why; and

(iii) having regard to the evidence found credible, outline whether, and the basis on which, the civil standard of proof was found to have been met, or not met.

(c) **Having regard to the proven or accepted (on the balance of probabilities) statements as a whole, outline the harms and impacts and aggravating factors found, or not found.**

(d) **In relation to the statement made by the applicant, and the proven or likely abuse and/or neglect, and, plausibly-linked harms and impacts, outline the most serious acts or omissions and the rationale for making the assessment.**
14. **Independent Review Panel**

The function of the Independent Review Panel ("IRP") is to provide for review and approval of Level 3 and 4 applications to consider whether the Redress WA Guidelines and the Manual for Internal Standards for Assessment were applied correctly to the facts of the case and in the spirit of the *ex gratia* payments intended by the Government of Western Australia.

Note that Team Leaders will review and assess Level 1 and 2 applications.

It is not the role of the IRP to make a determination simply as to the quantum of the Redress WA payment. The function of review and approval is limited to a "process" review.

The IRPs function is to consider whether the Redress WA Guidelines have been followed in terms of the following:

1. Eligibility of the applicant pursuant to the *Redress WA Guidelines*;
2. The assessment is consistent with the degree of abuse and/or neglect and the extent of injury, harm and loss which resulted to those persons being assessed as compared to other applicants.

The IRP review and approvals are limited to the following outcomes:

1. Approve the determination of the Internal Member.
2. Not approve the determination of the Internal Member and substituting of the determination with the Panel's determination.

See Schedule 2 for the IRP decision format.

Note that if after approval by the IRP an applicant is not satisfied that the process followed was correct in terms of the application of the *Redress WA Guidelines*, then the applicant can make a complaint first, to Redress WA, and then second, to the Department for Communities complaints management process. In either case the applications may be referred back to the IRP for reconsideration.

An applicant may make a complaint on the grounds that there was an error of process, or an error of fact. Complaints as to all levels of applications, if they are found to have merit by the Complaints Manager, will be remitted to the IRP.

If the applicant is still not satisfied, they may apply to the State Ombudsman's Office for a review of the Redress WA process used under the *Parliamentary Commissioners Act 1971*.

It is intended that the Independent Review Panel Members will in the first instance be assigned to cases where they will not have a potential conflict of interest. That is, if an IRP Member is representing a particular interest group, applicants from that interest group will not be allocated to them for review.
The intention is that persons representing a consumer advocacy group will be able to use their particular knowledge and expertise for the benefit of any applicant who has been in State care. The potential for bias is to be avoided at all times.

Note that all Internal Members and the Presiding Independent Review Panel Member will be lawyers.
Schedule 1

Standards of Proof – Civil law Balance of Probabilities

In civil cases a Court takes the view that the more unpleasant the allegation then the greater the evidence required to prove it. The Briginshaw case established that in a civil matter where a finding would have grave consequences for the respondent the evidence against the respondent should be clear and compelling.

In order to fully understand the civil law concept of the “balance of probabilities” and the application of the “Briginshaw Test” it is important to understand the concept applied in criminal trials. That is, “beyond a reasonable doubt”.

There are many definitions as follows:

- The standard in a criminal case requiring that the jury be satisfied to a moral certainty that every element of a crime has been proven by the prosecution.
- Proof beyond a reasonable doubt is proof that leaves you with an abiding conviction that the charge is true.
- Entirely convinced; in a criminal case the defendant’s guilt must be proven to the jury to this extent. This is the highest burden of proof any party has in any proceeding.
- The burden of proof that the prosecution must carry in a criminal trial to obtain a guilty verdict. Reasonable doubt is sometimes explained as being convinced “to a moral certainty.” The jury must be convinced that the defendant committed each element of the crime before returning a guilty verdict.
- Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. However, it does not mean an absolute certainty.

On the other hand in a civil trial a lower standard of proof is required. In civil litigation, the standard of proof is either proof by a preponderance of the evidence, or proof by clear and convincing evidence. These are lower burdens of proof. A preponderance of the evidence simply means that one side has more evidence in its favour than the other, even by the smallest degree. Clear and convincing proof is evidence that establishes a high probability that the fact sought to be proved is true.

The main reason that the high proof standard of beyond a reasonable doubt is used in criminal trials is that such proceedings can result in the deprivation of a defendant’s liberty, or even in his or her death past times. These outcomes are far more severe than in civil trials, in which money damages are the common remedy.

However, in matters of divorce, sexual abuse, racial or sexual discrimination and administrative law there is a requirement for perhaps an intermediate standard between criminal and civil matters and along came Briginshaw.
In Briginshaw v Briginshaw, Dixon J stated:

"... Fortunately, however, at common law no third standard of persuasion was definitely developed. Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

Therefore the standard of evidence required to satisfy a decision-maker on the balance of probabilities is variable, depending on the kinds of factors outlined in Briginshaw.

In Australia now the Commonwealth Evidence Act 1995 at section 140 essentially reflects a "Briginshaw Test" as the standard in all civil matters as follows:

s140 (1) In a civil proceeding, the court must find the case of a party proved if it is satisfied that the case has been proved on the balance of probabilities.

(2) Without limiting the matters which a court may take into account in deciding whether it is so satisfied, it is to take into account:

(a) the nature of the cause of action or defence; and
(b) the nature of the subject-matter of the proceeding; and the gravity of the matters alleged."

In essence, the "Briginshaw Test" applies with respect to what will constitute reasonable satisfaction. In some cases it will require firmer evidence depending on the relevant factors, with the necessary strength of the evidence to achieve a reasonable satisfaction varying depending on the circumstances of the particular case.

A further relevant factor identified by Dixon J in Briginshaw is the inherent unlikelihood of the alleged occurrence. For example, in Australian culture would a person consider that it was likely that an adult sexually abuse a child? It is arguable given the number of sexual offences committed, and the research knowledge we have today, that it would be considered likely that a person would sexually abuse a child.

The nature of the cause of action must also be taken into account in considering the proper application of the Briginshaw Test in a particular context. For a statutory cause of action, that analysis must take account of the statutory subject, scope and purpose, just as the High Court has indicated must take place in relation to notions of causation when considered with respect to a statutory cause of action.
Thus, for example, in the assessment process under working with children legislation in Western Australia for the purposes of ss12(4) and (8) account should be taken of the beneficial objects of that Act - i.e. to protect children. The objects of the working with children legislation are undoubtedly remedial and beneficial.

It could therefore be argued that it would tend to defeat the beneficial purposes of the working with children legislation to treat decisions as automatically requiring a higher standard of evidence contemplated in Briginshaw. In effect, to do so would significantly limit the ability to establish a cause of action, in circumstances where Parliament has provided that cause of action to remedy the identified mischief.

In addition the High Court of Australia has affirmed Dixon CJ’s decision in Briginshaw that the standard of proof will vary according to the applicable circumstances. In Cassell v The Queen the High Court commented that:

> With reference to the requirement of ‘strict proof’, it is trite that, whatever force this expression may have as a forensic flourish, there is not some standard of persuasion which is fixed intermediate between satisfaction beyond a reasonable doubt required upon a criminal inquest and the reasonable satisfaction which in a civil issue may, not must, be based upon a preponderance of possibility. [emphasis added]

Finally in the United Kingdom case of In Re: H (Minors) [1996] 1 All ER 1 Lord Nicholls of Birkenshaw stated the following:

> The balance of probability standard means that a court is satisfied an event occurred if the Court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the Court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. Deliberate physical injury is usually less likely than accidental physical injury...Built into the preponderance of probability standard is a generous degree of flexibility in respect of the seriousness of the allegation. Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher. It means only that the inherent probability or improbability of an event is itself a matter to be taken into account when weighing the probabilities and deciding whether, on balance, the event occurred.
> The more improbable the event, the stronger must be the evidence that it did occur before, on the balance of probability, its occurrence will be established.
Conclusion

Note that the Redress WA scheme is a beneficial and compassionate scheme and this suggests that using the higher standard of the Briginshaw Test may defeat the beneficial purpose of the scheme. Noting the comments In Re: H (Minors) even if the allegation is serious this does not necessarily mean that there should be a higher standard of proof such as in Briginshaw. That is, the more improbable the event the stronger must be the evidence.

In this day and age the fact that children were sexually and physically abused, and neglected in State care is beyond argument, giving the findings of the Senate inquiries. Therefore the standard “balance of probabilities” test should be applied to Redress WA applications.

The definition of “balance of probabilities” or “civil standard” is as follows:

The weighing up or comparison of competing possibilities. A fact is proved to be true on the balance of probabilities if its existence is more probable that not, or if it is established by a preponderance of probability.\(^\text{13}\)

---

1. Briginshaw v Briginshaw (1938) 60 CLR 336.
2. www.id.uscourts.gov/terms-ab.htm
3. jury.duty.nashville.gov/portal/page/portal/JuryDuty/glossary/
4. www.utcourts.gov/resources/glossary.htm
7. This is so in the United States where ‘clear and convincing evidence’ is recognised as resting midway between the civil and criminal standard – McCormick’s Handbook of the Law of Evidence (2nd ed), 1972 at 796 -798
10. Remedial. That which affords a remedy; as, a remedial statute, or one which is made to supply some defects or abridge some superfluities of the common law. The term remedial statute is also applied to those acts which give a new remedy.
12. In Re: H (Minors) [1996] 1 All ER 1 at 16.

Schedule 2

Measuring Severity of Injury and Impact in Common Law

The Western Australian Government has introduced Redress WA to acknowledge the impact of harm suffered by children whilst in State care. The Western Australian Government deeply regrets that abuse and neglect has taken place and considers that it is appropriate that some payment is made available under the Redress WA scheme.

The Redress WA payment to be offered is not intended to represent full compensation for injury or loss, and the maximum amount has been capped at $10,000 for an interim payment, and $45,000 for a final payment.

It must be stated that all forms of abuse or neglect of children are of concern and it is a difficult task to place a measuring scale against a list of various forms of abuse or neglect and determine which form is the worst, or most serious.

Cases will be assessed for an offer of a final payment being assessed on the basis of being a proportion determined according to the severity of the harm experienced on a sliding scale for the maximum amount being for the most extreme abuse or neglect and/or serious long term injury, loss or harm suffered.

This approach and methodology follows the common law principles as set out in Den Hoet Anor v Barwick [2006] WASCA 196 (28 September 2006). In that case the WA Court of Appeal followed the reasoning in Southgate v Waterford (1990) 21 NSWLR 427, which was a decision of the Court of Appeal of NSW constituted by Gleeson CJ, Kirby P, and Meagher JA, that considered non-pecuniary loss in personal injury in the context of motor vehicle accident claims (at 440-441):
"There are a number of ways by which trial judges could approach the task of apportionment required by s79(2) and s79(3). It is inappropriate in this case for this Court to mandate any particular way of arriving at the 'proportion' required by s79(2). But clearly, because the task in hand is that of awarding damages for 'non-economic loss', it is appropriate for the trial judge to consider and make findings on those elements of the evidence which are relevant to such loss. This will require the judge to consider and make findings on evidence relevant to those heads of damage formerly considered in the award of general damages. Then it is necessary for the judge to conceive "a most extreme case'. Only for such a case may the maximum amount provided by s79(3) be awarded. The use of the indefinite article 'a' has already been noted. Opinions on what constitute 'a most extreme case' will doubtless vary. But clearly quadriplegia would fall into that class. The amount to be awarded must be apportioned somewhere between nil and $180,000; but in a ratio which the judge fixes keeping in mind the fact that the cap of a statutory maximum is retained for 'a most extreme case'.

... It is likely that, over time, experience will develop in assigning cases on the scale, just as earlier it did in the apportionment required for contributory negligence. But each case will necessarily depend upon its own facts. At least in the first instance, the determination of the 'proportion' is committed by law to the trial judge. He or she has the outside parameters which are fixed by the legislation. The task of determining 'proportion' which follows may not be scientific or normative; but it is not wholly at large. A wide measure of discretion has always existed is fixing damages for non-economic loss. All that this legislation does is to require that the damages under this head be fixed in harmony with the fact that Parliament has determined that a maximum will be laid down, varied from time to time and reserved for 'a most extreme case'."
The observations in this case were also cited with approval by the WA Court of Appeal in Thomas v Bass [2006] WASCA 59 at 30-31.

In addition the use of the words 'a most extreme case' “...provides for the creation of a class of 'most extreme' cases which necessarily means that the cases may be different, and some may be worse than others.” (Dell v Dalton (1991) 23 NSWLR 528 at 533). Handley JA in that case stated that a judge's assessment of whether a case is 'a most extreme case' involves "questions of fact and degree, and matters of opinion, impression, speculation, and estimation, calling for the exercise of common sense and judgement".(at 533-534).

It must be stated that all forms of abuse or neglect of children are of concern and it is a difficult task to place a measuring scale against a list of various forms of abuse and determine which form is the worst, or most serious. As stated in Dell v Dalton above each case will be determined and turn on its own facts.
Commonwealth Senate Inquiries

The Senate Committee Report (2004) "Forgotten Australians: A report on Australians who Experienced Institutional or Out-of-Home Care as Children" describes the statements made by many hundreds of people who were in State care across Australia who reported constant sexual, physical and emotional abuse and neglect.

The Senate inquiry (beginning at page 85) devotes an entire chapter to the issue of how children were treated whilst in care. Most people who were placed in care describe feelings of guilt and shame that haunts them for the rest of their lives. These feelings are often "the result of attitudes beaten, both psychologically and physically, into children during their time at so many of the institutions." (ibid).

The inquiry found that events and experiences that created these feelings included:

"being repeatedly and constantly subjected to deliberate and callous cruelty, humiliation, abuse and deprivation of basic necessities of life such as healthy food and diet, proper clothing, medical care and education, and most tellingly the emotional support, love and psychological necessities required by a young maturing child." (ibid, page 86)

The Senate inquiry found that if children were not physically beaten and sexually assaulted, they were deprived and neglected emotionally. The expectation that the well meaning church agency or a foster placement would provide appropriate care and nurturing that was not possible in the family or previous environment proved to be far from the reality.

The Senate inquiry addressed the question of whether the standards of the time in terms of peoples views and children's developmental needs were different to what they are now, however, this vexed question "fails to explain or recognise the severity of the documented behaviours" (ibid, page 141)
The reports by most ex-residents in the Senate inquiry described the following list (not exhaustive) of issues, which children who had been in care describe as a process by which they were herded into institutional care and treated like inmates of a prison:

- Health checks, delousing and body searches
- Removal of belongings and clothes
- Sub-standard buildings and accommodation
- Nutritionally sub-standard food
- Inadequate clothing
- Poor personal hygiene due to restrictions by staff
- Depersonalization and other forms of psychological abuse
- Lack of love and affection
- Suppression of identity and individuality
- Lack of privacy
- Various forms of punishment
- Isolation, including locked in cupboards and cells
- Standing on the spot for hours as a form of punishment
- Extreme physical discipline and physical assault
- Separation of siblings from each other
- Lack of education or minimal education
- Unmet health needs
- Hard manual work and exploitation of children in care
- Reduced or non-payment of wages (now known as “stolen wages”).
The various ways the children were treated can be described as psychological/emotional abuse and neglect. The psychological/emotional abuse of being treated like an inmate, and, the neglect by having the child's emotional needs for love and affection being almost totally ignored had severe life-long impacts on many people.

Institutions operated by Christian Brother were particularly harsh and abusive and the reports from many ex-residents of Bindoon and other Christian Brothers' facilities indicate that sexual abuse, physical abuse and neglect was widespread and it is highly probable that any person who resided in one of these facilities would have been subjected to at least one form of abuse whilst in care.

In fact the abuse and neglect was so widespread that the Christian Brothers have acknowledged what has occurred and operate a service known as the Christian Brothers Ex-Residents & Student Services to provide services to the ex-residents suffered abuse and have also made out of court settlements with a number of ex-residents.

In "Lost Innocents: Righting the Record" (Report on Child Migration, August 2001, page 76) in respect of the Commonwealth Senate inquiry into child migration reference is made specifically to the Christian Brothers at Bindoon, Castledare, Clontarf and Tardun, which states inter alia:

> The accounts of sexual abuse and assault at these four institutions are horrendous, supporting and amplifying the UK Committee's description of 'quite exception depravity'. The stories from the ex-residents of Bindoon, Castledare, Clontarf and Tardun provide an account of systematic criminal sexual assault and predatory behaviour by a large number of the Brothers over a considerable period of time.
Evidence was given of boys being abused in many ways for the sexual gratification of the Brothers, of boys being terrified in bed at night as Brothers stalked the dormitories to come and take children to their rooms, of boys as 'pets' of the Brothers being repeatedly sodomised, and of boys being pressured into bestial acts.

In his book *The Scheme: The Christian Brothers and Childcare in Western Australia* (Argyle-Pacific Publishing, 1993), Dr Coldrey (a Christian Brother) refers to five (5) Brothers who were multiple offenders and six (6) Brothers who admitted to an offence with a teenage boy.

In a later publication *Reaping the Whirlwind: A Secret Report for the Executive of the Christian Brothers – Sexual Abuse from 1930 to 1994*, Dr Coldrey stated that the sexual abuse of boys was on a large scale with the existence of paedophile Brother 'sex rings' at Bindoon and Castledare. Both of these publications were referred to in the Senate Inquiry at page 77.

The Senate Inquiry "Lost Innocents" (at page 78) made further mention of some twenty (20) Brothers who have been named by witnesses as sexually assaulting children in their care. These twenty (20) Brothers were named in the inquiry because there were multiple references to them; however, in fact there are a number of other named Brother who are alleged to offended. As of 2001 only two (2) Brothers have ever been before the courts and successfully prosecuted.
INDEPENDENT REVIEW PANEL DECISION

Applicant: <<APPLICANT NAME>>  Redress WA Application No.:<<___>>

Panel Members:
Presiding Member: - PM1
Ordinary Member: - OM1

Date of Panel Decision: <<DATE>>

The Independent Review Panel, having had regard to:

The statements in the application form of <<APPLICANT NAME>>; and;
The determination of the Redress WA Internal Member dated <<DATE>> and
supporting documents;

Approves the determination of the Internal Member to make an offer of
payment of $___________ to <<APPLICANT NAME>> under the Redress
WA scheme;

OR

Does not approve the determination of the Internal Member for the following
reasons:

1.
2.
3.

and substitutes the Internal Members recommendation with an offer of payment of
$_________ to <<NAME OF APPLICANT>> under the Redress WA scheme.
INDEPENDENT REVIEW PANEL DECISION SIGNATURE SHEET

Redress WA Application No.: xxxx

Independent Review Panel
Signed:

<table>
<thead>
<tr>
<th>Presiding Member</th>
<th>Ordinary Member</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent Review Panel</td>
<td>Independent Review Panel</td>
</tr>
</tbody>
</table>

Dated this __________ day of __________ 2010
INDEPENDENT REVIEW PANEL DECISION

PROCESS REVIEW REQUEST

Applicant: Application No:

Panel Members:
Presiding Member: PM1
Member: IM1

Date of Panel Decision:

The Independent Review Panel, having had regard to:

1. The statements in the application form of; and;
2. The determination of the Redress WA Internal Member dated ........ and supporting documents;

☐ APPROVES the initial determination of the Internal Member to make no payment offer to <<NAME OF APPLICANT>> under the Redress WA scheme due to ineligibility;

OR

☐ DOES NOT APPROVE the determination of the Internal Member for the following reasons:

1. 
2. 
3.

The Independent Review Panel substitutes the Internal Member's recommendation and determines an offer of payment of $_______ to <<NAME OF APPLICANT>> under the Redress WA scheme.
INDEPENDENT REVIEW PANEL DECISION SIGNATURE SHEET

Independent Review Panel

Signed: ______________________  ______________________
       Presiding Member     Independent Member
       Independent Review Panel

Dated this  day of  2010
Schedule 5

RELEVANT REFERENCE MATERIALS

SENATE INQUIRIES

"Lost Innocents: Righting the Record" – Report of Child Migration, August 2001 (Senate Community Affairs References Committee)

"Forgotten Australians" - A Report on Australians who experienced institutional or out-of-home care as children, August 2004 (Senate Community Affairs References Committee)

"National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families" Human Rights and Equal Opportunity Commission; known as the “Bringing them Home” report, April 1997.

GOVERNMENT REFERENCES

“Children in State Care - Commission of Enquiry: Allegations of Sexual Abuse and Death from Criminal Conduct” Children in State Care Commission of Enquiry, South Australia, March 2008 (known as the Mullighan Report

“Signposts” – A Guide for Children and Young People in Care in WA from 1920 (Department for Community Development, 2004)

BOOKS BY EX-RESIDENTS


Kate Davies, “When Innocence Trembles: A Survivor’s Story”, Kapak Publishing, 2004


JOURNAL ARTICLES


BOOKS


The Criminal Code (Western Australia)

Definitions of aggravation -

801. Circumstances of racial aggravation, meaning of
In sections 313, 317, 317A, 338B and 444 —

*circumstances of racial aggravation* means circumstances in which —
(a) immediately before or during or immediately after the commission of the offence, the offender demonstrates hostility towards the victim based, in whole or part, on the victim being a member of a racial group; or
(b) the offence is motivated, in whole or part, by hostility towards persons as members of a racial group.

[Section 801 inserted by No. 80 of 2004 s. 6.]

Chapter XXVI — Assaults and violence to the person generally: Justification, excuse and circumstances of aggravation

[Heading amended by No. 38 of 2004 s. 63.]

221. Circumstances of aggravation for offences in this Part
(1) In this Part —
*circumstances of aggravation* means circumstances in which —
(a) the offender is in a family and domestic relationship with the victim of the offence;
(b) a child was present when the offence was committed;
(c) the conduct of the offender in committing the offence constituted a breach of an order made or registered under the *Restraining Orders Act 1997* or to which that Act applies; or
(d) the victim is of or over the age of 60 years.
(2) In this section —
*family and domestic relationship* has the same meaning as it has in section 4 of the *Restraining Orders Act 1997*.

[Section 221 inserted by No. 38 of 2004 s. 64.]

Chapter XXXI — Sexual offences

[Heading inserted by No. 14 of 1992 s. 6(1).]

319. Terms used in this Chapter
(1) In this Chapter —
*circumstances of aggravation*, without limiting the definition of that expression in section 221, includes circumstances in which —
(a) at or immediately before or immediately after the commission of the offence —
(i) the offender is armed with any dangerous or
offensive weapon or instrument or pretends to be so armed;
(ii) the offender is in company with another person or persons;
(iii) the offender does bodily harm to any person;
(iv) the offender does an act which is likely seriously and substantially to degrade or humiliate the victim; or
(v) the offender threatens to kill the victim;
or
(b) the victim is of or over the age of 13 years and under the age of 16 years;

Chapter XXXIIIIB — Stalking
[Heading inserted by No. 38 of 1998 s. 4.]

338D. Terms used in this Chapter
(1) In this Chapter —
circumstances of aggravation, without limiting the definition of that expression in section 221, includes circumstances in which —
(a) immediately before or during or immediately after the commission of the offence, the offender is armed with any dangerous or offensive weapon or instrument or pretends to be so armed; or
(b) the conduct of the offender in committing the offence constituted a breach of a condition on which bail has been granted to the offender;
## Assessment Matrix

### 1. Severity of Abuse and/or Neglect

<table>
<thead>
<tr>
<th>Scale for this section:</th>
<th>Moderate</th>
<th>Serious</th>
<th>Severe</th>
<th>Very Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Sexual/Physical Abuse</td>
<td>1</td>
<td>2</td>
<td>3-4</td>
<td>5</td>
</tr>
<tr>
<td>b) Emotional/Psychological Abuse</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Neglect</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Frequency Nature of Abuse and/or Neglect</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 2. Compounding or Ameliorating Factors

<table>
<thead>
<tr>
<th>a) Period of Time In Abusive Care</th>
</tr>
</thead>
<tbody>
<tr>
<td>The longer the period in abusive care, the more adverse the impact on the child's development and well being.</td>
</tr>
<tr>
<td>Moderate (&lt;3 yrs) = 1</td>
</tr>
<tr>
<td>Serious (3-5 yrs) = 2</td>
</tr>
<tr>
<td>Severe (5-10 yrs) = 3</td>
</tr>
<tr>
<td>Very Severe (&gt;10 yrs) = 4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>b) Age of Child at Entry to First Abusive Care Placement</th>
</tr>
</thead>
<tbody>
<tr>
<td>The younger the child the more adverse the impact abuse and/or neglect may have on the child's development and well-being</td>
</tr>
<tr>
<td>Moderate (&gt;13 yrs) = 1</td>
</tr>
<tr>
<td>Serious (10-13yrs) = 2</td>
</tr>
<tr>
<td>Severe (6-10 yrs) = 3</td>
</tr>
<tr>
<td>Very Severe (&lt;6 yrs) = 4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>c) Isolation and Depersonalisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Isolation as it relates to being in a mission or other institution with no or little contact with the outside world, or being in a foster care situation but not permitted contact except for school and/or de-personalisation as it relates to being placed in an institution or mission and living in dormitories and/or being dressed in similar clothes not being called by your name etc</td>
</tr>
<tr>
<td>Moderate = 1</td>
</tr>
<tr>
<td>Serious = 2</td>
</tr>
<tr>
<td>Severe = 3</td>
</tr>
<tr>
<td>Very Severe = 4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>d) Amount of Contact with Parent(s) or Extended Family</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Use contact time while in care, regardless of whether or not it was negative or positive)</td>
</tr>
<tr>
<td>Moderate (&gt;5 contacts) = 1</td>
</tr>
<tr>
<td>Serious (3-5 contacts) = 2</td>
</tr>
<tr>
<td>Severe (1-3 contacts) = 3</td>
</tr>
<tr>
<td>Very Severe (No contact) = 4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>e) Position or Role of Abuser in the Placement or Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stranger or Visitor = 1</td>
</tr>
<tr>
<td>Gardener or Cleaner = 2</td>
</tr>
<tr>
<td>Manager, Team Leader, Other Residents, Volunteer, Relatives = 3</td>
</tr>
<tr>
<td>Parent, Foster Parent, Group Worker, Parent or Significant Carer = 4</td>
</tr>
</tbody>
</table>

### 3. Consequential Harm - Extent of Injury, Loss or Harm Resulting from Abuse and/or Neglect

<table>
<thead>
<tr>
<th>Scale for this section:</th>
<th>Moderate</th>
<th>Serious</th>
<th>Severe</th>
<th>Very Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>a) Physical Harm (consider care period and ongoing consequences)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>b) Psychological/Psychiatric Harm (consider care period and ongoing consequences)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c) Social Harm - Behavioural/psychosocial (consider care period and ongoing consequences)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d) Sexual Impact (sexual dysfunction, negative body image, anxiety about sex etc)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### 4. Aggravating Factors (combined with acts of abuse and/or neglect that occurred during care)

| Scale for this section: Moderate level or short time in care = 0.5 |
|------------------------|------------------|
| a) Verbal Abuse | |
| b) Racist Acts | |
| c) Threats/Intimidation (le direct threats) | |
| d) Intimidation/inability to complain; oppression (le indirect threats) | |
| e) Humiliation; degradation | |
| f) Sexual abuse accompanied by violence | |
| g) Abuse of particularly vulnerable child (eg age<6; disability; language; absence of parent) | |
| h) Failure to provide care or emotional support following abuse requiring such care | |
| i) Witnessing another child being subjected to abuse | |
| j) Use of religious doctrine, paraphernalia or authority during, or in order to, facilitate the abuse | |

### Total

| Subtotal | 0 | 0 | 0 |

| Level | 0 | 0 | 0 |
Abuse and Neglect Domains

Impact and Consequences of child Maltreatment: Abuse and Neglect Domains (contributed under contract by Dr Barbara Meddin - Child Protection Consultant)

The purpose of this section is to provide indication of what impact/consequences maltreatment as child has the person both as a child/young person and as an adult.

This section was particularly difficult to produce. The literature concerning the impacts of child maltreatment is endless and thus a book rather than a brief section would not likely have done justice to an articulation of the potential impacts on the person either as a child or as an adult. This section is an attempt to summarize the most frequently or likely impacts/consequences and to give a brief overview of what situations and factors may either aggravate the extent or severity of these impacts or may serve to ameliorate them.

Types of maltreatment in terms of this discussion include harm as articulated in other sections of this document and include physical, sexual, emotional/psychological, and neglect. It should be noted that when looking at the impact neglect has on the child and on the adult, it should be recognized that neglect includes not only lack of food, clothing, shelter, education and medical care, but also includes lack of effective supervision and monitoring as well as the provision of a nurturing loving environment that would reasonably expected to be provided by the person or institution acting 'in loco parentis'.

Social workers, psychologists, psychiatrists and other professionals who deal with individuals who have as a child experienced abuse or neglect are well aware that the impact on the person as a result of the actions or inactions on the part of the child's care giver can have both immediate consequences for the person as well as delayed or as is more likely, on-going impacts.

In providing a typology for assessing the impact of maltreatment on person both as a child and as an adult, it is necessary to understand the pervasive nature of these impacts. As James (1989) indicates

survivors of abuse are affected physically, emotionally cognitively behaviourally, relationally and spiritually.

Starr et al indicated that typically children who experience maltreatment also are impacted upon in terms of attachment issues and in cognitive, moral, social and emotional development. Most authors in the field indicate that the consequences of maltreatment appear to last a life time.(Draper, 2007)
For the purposes of this section specific domains have been used for identifying initial and life long consequences. These factors have been identified in the theoretical literature, in empirical research, as a result of practice experience/wisdom of the author and other senior professionals who have worked in the child abuse and neglect field or via description/identification of survivors themselves. In some instances impacts have been arbitrarily assigned to a particular category where they appear relevant to one or more domains.

The domains are physical, sexual, financial/economic, psychiatric, behavioural/psychosocial and compounding/mediating circumstances. It should be noted that the compounding and mediating domain is particularly significant in regards to the ultimate impact maltreatment has on the person. Finklehor (Finkelhor 1994) indicates that an assessment of the career of the child’s victimology is the significant predictor of the impact maltreatment will have on the child, both as a child and as an adult.

For the sake of brevity the impacts will be provided in tabular form. Where an impact has a particular professional definition, introduction explanation of the impact is contained in the table. If this explanation does not provide sufficient clarity for the decision, it is important that consultation occur with a relevant senior professional to gain a more comprehensive understanding and description of the issue.

It is also important to note that several erroneous assumptions must be dispelled such as a belief that because a person appears to be functioning well (Feinauer, 2003) there are no consequences to them as a result of their maltreatment or that the treatment received by the children in the care arrangements in question was merely the standard of the time. The Senate Subcommittee Report of 2004 indicates, such behaviours were clearly abusive and excessive and had they occurred in the context of the child’s biological family would have been labelled child abuse.

The Senate Community Affairs References Committee of 2001 goes even further when it concluded that much of the physical abuse experienced by the individuals who were subject to their inquiry that such treatment would be defined as torture had the children in the institutions been prisoners of war, rather than in a state run care institution(also see Feerick, 2005). The 2001 Inquiry likened their treatment similar to those experienced in the Holocaust or Gulag and the literature on Holocaust survivors affirms this. The Inquiry concludes by stating:

that the treatment these children in care received was clearly excessive and went far beyond anything that could conceivably be argued as normal for the time. (p.105)
**Domain 1 – Physical impact/consequences of Maltreatment.**

A review of the relevant literature portrayed a range of physical consequences to the person who has been maltreated. Frequently these consequences were identified as occurring at the time of the maltreatment, but most if not the majority were seen as enduring up to adulthood and throughout the person’s life time. These included:

<table>
<thead>
<tr>
<th>Physical injuries as a result of physical abuse such as fractures, cuts/welts/bruises, burns, loss or bad teeth, ringing in the ears, permanent hearing loss, damage to vital organs, etc. resulting in on-going disability or impaired functioning.</th>
<th>Lack of protection from harm by others such as other children, employers, other carers, thus exposing the child to further, on-going abuse</th>
<th>Placement in other instructions such as mental institutions or institutions for the intellectually delayed because child was a behaviour problem. Such erroneous placement continued into adulthood for some.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unmet health needs, untreated injuries resulting in complications or disability or serious illnesses such as pneumonia due to neglect.</td>
<td>Lack of childhood vaccinations.</td>
<td>One or more health problems as an adult such as heart disease, diabetes, migraines, eating disorders – either anorexia, bulimia or obsession with food, obesity chronic fatigue, epilepsy, Chronic pain, fibromyalgia, back pain, genital or pelvic pain, and organic and non organic failure to thrive</td>
</tr>
<tr>
<td>Altered genes/ genetic make up that impairs capacity to cope with stress, results in abnormal stress response that can be passed on genetically to their to own off spring</td>
<td>Arrested physical development or growth rate such as small statue – possibly due to lack of adequate nutrition, severity of childhood illnesses which were a result of inadequate medical care or failure to provide adequate protection from the extremes of the physical environment.</td>
<td>Body constantly in ‘flight or flight’ response emotionally, impacts on physical health such a cardiovascular disease, cancer, etc.</td>
</tr>
<tr>
<td>Exposed to/use for testing experimental medication and drugs with both immediate and long term physical harm, disability</td>
<td>Ceasing menstruation/loss of fertility</td>
<td>More sick days from work than non abused population</td>
</tr>
<tr>
<td>Inability to make informed decisions based on knowing family medical history/risks</td>
<td>Impact on nervous system and increased physiological response to stress</td>
<td>Greater risk of being a smoker and the associated health consequences</td>
</tr>
<tr>
<td>Lower cognitive ability</td>
<td>No extended family to care for the person in old age or during times of illness due to loss of family connections</td>
<td>Absence of or provision of inadequate leaving care support</td>
</tr>
<tr>
<td>Public humiliation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Domain 2 – Sexual impact/consequences of Maltreatment.

The literature and research identify some specific impacts and consequences to those who have been maltreated as a child. The impacts appear to be primarily related to functioning and generally are linked to those who have been sexually abused. It should be noted that the impacts listed below are in respect to physical consequences. Behavioural impacts will be articulated under Domain 4.

<table>
<thead>
<tr>
<th>Loss of capacity to interact with the opposite sex</th>
<th>Lack of joy or satisfaction in terms of sexual relationships</th>
<th>Viewing sexual relations as dirty, violent, degrading or painful</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative body image</td>
<td>Inappropriate sexual relationship boundaries</td>
<td>Promiscuous/unsafe sex</td>
</tr>
<tr>
<td>Anxiety about sex</td>
<td>Ambivalent relationships</td>
<td></td>
</tr>
</tbody>
</table>


**Domain 3 – Financial/Economic**

This third domain looks at the financial/economic impacts that maltreatment as a child has on the person both as a child and as an adult. It is noted that most of the financial consequences impact significantly on the person in their adulthood.

<table>
<thead>
<tr>
<th>Poorer educational outcomes – lower grades, more absences, more likely to end up in special education classes and likely to continue into adulthood, thus reducing positive life chances, potential for income</th>
<th>Loss of opportunity to pursue desired career due to limited education, literacy or numeracy skills. Note: Whereas institutions have reported that the child was provided with an education, generally the education was aimed at learning how to undertake the domestic or menial labouring required by the institution rather than providing an education that would prepared the child for future adequate employment</th>
<th>Deprived of financial security as a result of either limited earning capacity, loss of/non payment of actual wages when worked in care arrangement or at times loss of inheritance taken by care institution rather than being given to the person in care</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lost earning capacity with the result being more likely to live in poverty and experience financial consequences such as homelessness.</td>
<td>Can’t afford medical/dental care due to limited financial capacity</td>
<td>Inability to complete complex tasks/ complete complex forms such as Centrelink forms. It is not unheard of for those maltreated as children to devise a ‘false’ identity, history due to not knowing theirs or shame at what has happened to them and then when needing to apply for benefits being faced with being ‘caught’ out in respect to the identify so devised.</td>
</tr>
</tbody>
</table>
**Domain 4 – Psychiatric**

Those impacts/consequences in this domain relate to those that meet the definition of a mental health problem as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM –IV). Published by the American Psychiatric Association it defines all recognized mental health disorders pertaining to children and adults. It should be noted that depending upon one’s perspective, some of the impacts or consequences listed in this domain could just as easily be included under the behavioural/psychosocial domain.

<table>
<thead>
<tr>
<th>Clinical Depression – either chronic or major episode</th>
<th>Post traumatic stress disorder (PTSD)</th>
<th>Thought disorders, cognitive difficulties</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fear of rejection</td>
<td>Agoraphobia, claustrophobia</td>
<td>Impulsive, emotional instability</td>
</tr>
<tr>
<td>Anxiety, either free floating anxiety or in response to specific prior traumatic experiences. Tension which results in impacts such a tension headaches and migraines also linked to anxiety responses.</td>
<td>Poor mental health outcomes in general</td>
<td>Mood disorders such as bipolar disorder, depression, drug induced mood disorders</td>
</tr>
<tr>
<td>Fear or Paranoia and at times resultant psychosis.</td>
<td>Personality disorders such as Borderline personality, Antisocial Personality, Paranoid Personality, Histrionic or Narcissistic Personality, and Schizoid or Schizotypal personality. Note: Person who have suffered childhood maltreatment have been found to be twice as likely to experience personality disorders</td>
<td>Disrupted attachment or other attachment issues such as insecure or anxious attachment.</td>
</tr>
<tr>
<td>History of suicide attempts</td>
<td>Flashbacks</td>
<td>Impaired capacity to self soothe</td>
</tr>
<tr>
<td>Obsessive/compulsive disorders</td>
<td>Somatic (medically unexplained) symptoms</td>
<td>Loss of capacity to experience emotionality as a result of on-going attempts to shut out painful or fearful emotions. Generally this occurs as a result of on-going dissociation at the time of the actual maltreatment. Consequently the person not only avoids painful or negative emotions but as a consequence of shutting down emotional responses, cannot experience the positives ones either. Frequently person describes always feeling empty or devoid of feelings. The person is often described as demonstrating a lack of compassion, being cold, unemotional or impersonal, impersonal. Result is lack of capacity to express affection Compromised capacity to express either positive or negative emotions/feelings</td>
</tr>
<tr>
<td>-------------------------------</td>
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</tr>
<tr>
<td>Social phobia</td>
<td>Dissociation</td>
<td>Stuttering</td>
</tr>
<tr>
<td>Emotional dysregulation</td>
<td>Unmet emotional needs</td>
<td>Emotional fragility</td>
</tr>
<tr>
<td>(impairment of capacity to regulate emotions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Retraumatization</td>
<td>Repressed memories resulting in minimizing/denying impact of maltreatment</td>
<td></td>
</tr>
</tbody>
</table>
**Domain 5 - Behavioural/psychosocial**

This domain lists the behavioural or psychosocial impacts that maltreatment has been shown to have on children and adults who have been maltreated as children. Psychosocial for the purposes of this document can be defined as those behavioural or relationships consequences that impact on either psychological or social aspects of functioning. It should be noted that depending upon one's perspective, some of the impacts or consequences listed in this domain could just as easily be included under the psychiatric domain. It should be noted that by far this domain accounts for the largest number of impacts/consequences both as a child and as an adult in respect to having been maltreated as a child.

<table>
<thead>
<tr>
<th>Compromised capacity to develop one’s potential, compromised life chances</th>
<th>Limited verbal accessibility Verbally compromised thus being inordinately shy, unable to communicate with family and social networks and limits ones capacity to respond to treatment</th>
<th>Impaired social functioning, withdrawal, socially isolated lack of supportive friends, Rejection by peers, probably because of behavioural issues, poor social adjustment, social anxiety, poor capacity to adapt to social situations, also results in capacity to develop and show of empathy.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sleep disorders such as insomnia, nightmares</td>
<td>Loss of enjoyment of living</td>
<td>Distorted beliefs, world view, delusions, sense of alienation, negative world view</td>
</tr>
<tr>
<td>Low self esteem, history of failure, negative self perception, loss of self confidence, feelings of inadequacy unequal to others in society.</td>
<td>Unable to manage day to day lives/inability to take control of their own lives – link to lack of social skills/life skills, impaired coping skills</td>
<td>Overly complaint</td>
</tr>
<tr>
<td>Anger management problems, low frustration tolerance, Violent/aggressive behaviours, use of violence to solve problems,</td>
<td>Engaging in self destructive behaviours or risk taking behaviours such as substance abuse, prostitution, associating with dangerous individuals or gangs.</td>
<td>Limited or impaired life skills</td>
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<tr>
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</tr>
<tr>
<td>Hyper vigilance</td>
<td>Bed wetting</td>
<td>Loss of self direction</td>
</tr>
<tr>
<td>Panic attacks</td>
<td>Loss of trust. Feelings of betrayal.</td>
<td></td>
</tr>
<tr>
<td>Loss of positive parenting models, limited or impaired parenting capacity, Loss of capacity to nurture own children. Outcome may be punitive parenting styles or conversely over compensate/spoiling their own children, more anxious style of parenting</td>
<td>Feeling of powerlessness, frequently leads to being angry, violent, aggressive or to withdrawing from situations</td>
<td>If living in a hostile environment, experience loss of capacity to form healthy adaptation to adverse situations</td>
</tr>
<tr>
<td>Self blame, guilt in some instances feeling that some how they should have been able to protect their siblings from maltreatment even it would not have been possible to do so, feelings of, shame about what happened to them as if somehow it was their ‘fault’ that they were abused.</td>
<td>Antisocial behaviour such as criminality, juvenile delinquency. Some criminality may be driven by obsessive behaviours such as obsessive stealing or hoarding food. Those who have been maltreated have been found to be twice as likely to be arrested in adult life</td>
<td>Maladaptive social information processing thus not being sensitive to social cues. The result is likely to be inappropriate social behaviour and resultant rejection.</td>
</tr>
<tr>
<td>Becomes abuser of own or other children/young people</td>
<td>Conduct disorders, acting out behaviour, Increased attention disorders, adjustment problems</td>
<td>Emotionally needy, impact may be to choose or remain with violent partners as feel need the person for survival</td>
</tr>
<tr>
<td>Inability to develop intimate relationships – Note: loss of capacity to develop and sustain sexually intimate relationships is referred to under the sexuality domain. The impact described here means lack of capacity to develop socio-emotional relationships such as in terms of choice of and sustaining relationships with spouses/partners, with one’s children and ones extended family and friends. Thus marriage breakdown, alienation or distance relationship with ones children or being socially isolated or bereft of connections with ones extended family or in terms of developing social networks is what is referred to here.</td>
<td>Impact on brain development and concomitant pervasive emotion and behaviour injuries, neurological and psychological damage including personality and intellectual development and memory capacity.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td><strong>Loss of innate personality, identity and individuality</strong></td>
<td><strong>Chronic perception of danger, injustice</strong></td>
<td><strong>Learning disorders</strong></td>
</tr>
<tr>
<td>Loss of love and affection</td>
<td>Decreased problem solving capacity, lack of capacity to cope with the demands of day to day living</td>
<td>Identification with the aggressor as has been clearly articulated in hostage situations</td>
</tr>
<tr>
<td>Loss of family of origin</td>
<td></td>
<td></td>
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<tr>
<td>Loss of relationships with parents</td>
<td></td>
<td></td>
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<tr>
<td>Loss of siblings</td>
<td></td>
<td></td>
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<tr>
<td>Loss of childhood</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loss of identity and connections</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Loss of family history loss of culture, transmission of culture and loss of language associated with specific culture, loss of religious beliefs.</strong></td>
<td><strong>Idealized concept of their childhood education or some aspect of care related to self blame, shame</strong></td>
<td><strong>Lack of impulse control, over excitability, distractibility, and over stimulated sexual and aggressive behaviours. Poorly modulated affect and self control</strong></td>
</tr>
<tr>
<td>Impaired capacity to express love to their spouse</td>
<td>Rapid speech</td>
<td>More school suspensions</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>--------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Loss of emotionally/psychological security</td>
<td>Feelings of Alienation</td>
<td>Not amenable to short term treatment and intervention</td>
</tr>
<tr>
<td>Loss of privacy</td>
<td>Preoccupation with need to control</td>
<td></td>
</tr>
<tr>
<td>Feeling of abandonment and rejection. Pattern of rejecting others to avoid what they perceive is likely rejection by others.</td>
<td>Fear/lack of trust of authority and as a result unable to apply for/hold down jobs, apply for benefits that are needed and that they are entitled to</td>
<td>Impact on nuclear family, multigenerational effect</td>
</tr>
<tr>
<td>Excessive spending as compensatory behaviour or as a result of lack of financial management skills</td>
<td>Feelings of rejection by birth family coupled with self blame made they feel as if they must not have been loved or even loveable to deserve to be sent to the institution where they were treated as they were. That somehow it was their fault.</td>
<td>Living in violent relationships due to self esteem issues, also evidence that those maltreated as children experience a high incidence of domestic violence</td>
</tr>
<tr>
<td>Poor educational outcomes at all levels Limited or no literacy and numeracy skills as a result feeling as if different, dumb, being excluded by peers, subject to bullying Loss of opportunity for secondary/tertiary education</td>
<td>Fear of institutions and thus reticent/unwilling to go to hospital, enter care when required</td>
<td>Difficulty in obtaining passports and other official documents as had not birth certificate, couldn’t give parents names or mother’s maiden name, place of birth, date, all of which are routinely required for obtaining official documents, financial transactions and applications, benefits</td>
</tr>
<tr>
<td>Loss of children conceived as a result of sexual abuse</td>
<td>More likely to engage in substance abuse – licit and illicit drug use/alcohol and/or other substances</td>
<td>Fewer social contacts, friends, thus limited opportunity to form networks and the positive emotional, financial and opportunities these provide</td>
</tr>
<tr>
<td>Irresolvable grief, despair</td>
<td>Loss of dignity,</td>
<td>Sense of hopelessness, despair and emptiness</td>
</tr>
<tr>
<td>Damaged/anxious attachment</td>
<td>Perception of poor health</td>
<td>Transient lifestyles</td>
</tr>
<tr>
<td>Becoming institutionalized and thus experience problems living outside of formal structured institutions</td>
<td>Experiencing racial denigration, thus contributing to self hate, low self esteem.</td>
<td>More likely to be victims of abuse as adults, includes physical, emotional and sexual abuse, general increased risk of victimization</td>
</tr>
</tbody>
</table>

**Domain 6 – Compounding or Ameliorating Factors.**

The literature and research provides evidence to suggest that some situational factors have the potential to either compound and acerbate the impact childhood maltreatment has on the individual both as a child and as an adult.

Note the presence of compounding factors are seen as predicting a poor prognosis or indicates the potential for a greater impact on the individual as a result of childhood maltreatment. These impacts/consequences can eventuate either in childhood or when the person is an adult. Professional literature and experience have also identified other factors that theoretically have the potential to ameliorate the impact of such
maltreatment but empirical evidence suggests that there are a constellation of other variables they may impact on their ameliorating capacity. It is also noted that there is a scarcity of such factors noted in the literature.

**Compounding Factors:**

<table>
<thead>
<tr>
<th>Combination of physical neglect, physical abuse and verbal abuse results in greater impact</th>
<th>Neglect frequently produces the poorest outcomes/least positive for children as children and as adults</th>
<th>Number of perpetrators</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>More serious consequences where children have entered care as already fragile/disadvantaged children. Thus it is erroneous to conclude that the maltreatment did not cause the impact on the person, that it was the already disadvantaged circumstances that was responsible for the impact. Rather it is reasonable to conclude that the impact of the maltreatment has been exacerbated by the child’s prior circumstances. Thus the institution should have been seen to have a duty of care to act to redress the prior circumstances rather than have contributed to making the consequences for the child more damaging.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chronic pain, genealogical problems, irritable bowel, arthritis, diabetes, headaches, cardiovascular problems, abnormalities to hypothalamic, pituitary and adrenocortical CK quote glands and resultant hyper arousal, susceptibility to mood disorders such a bipolar disease, depression, aggression and impulsivity, limited social skills, and high risk taking behaviour, nb: Harsh discipline is seen to result in aggressive behaviour</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chronicity —more likely to develop clinical level of problems, particularly behavioural and mental health problems, more enduring the impact of these.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Impact/consequences of child hood maltreatment appears to intensify at midlife</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical and sexual abuse impacts on adult physical and mental health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child’s interpretation of the maltreatment</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Age of the child, the younger the child, the more serious and more enduring are the negative impacts</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Numbers of impacts, more impacts are a predictor of more serious and enduring consequences.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impact/consequences worse when compounded by life time stressors and disadvantage.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nature of the relationship with the perpetrator – i.e. in position of trust</td>
<td>Severity of the incident(s) – more severe, more significant and enduring are the consequences of maltreatment.</td>
<td>If maltreatment involves, use of coercion, then consequences are likely to be more severe.</td>
</tr>
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</tr>
<tr>
<td>Developmental stage when abuse occurs – more critical the development stage at the time, the greater the impact both in terms of consequences and the enduring nature of those consequences</td>
<td>Length of Time in Care – longer in care the more likely serious consequences</td>
<td>If abuse includes physical contact of any kind including sexual contact greater trauma, intensity and duration</td>
</tr>
<tr>
<td>Length of symptoms</td>
<td>Extreme, sadistic abuse</td>
<td></td>
</tr>
</tbody>
</table>

**Ameliorating Factors**

<table>
<thead>
<tr>
<th>Social support of family, friends at the time of the harm – Nb – most of the children were separated from their support networks at the time of their maltreatment, thus reasonable to conclude the impact of them of the abuse would have been more severe</th>
<th>Significant lifestyle changes can have a positive impact, issue is sustainability</th>
<th>Length of time in care, shorter the time, all other things being equal, the more likely to recover from the consequences of abuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>Network of supportive and reliable friends.</td>
<td>Developing family relationship/reconnecting with family post leaving care/post maltreatment experience.</td>
<td>Successful engagement in on-going professional therapy</td>
</tr>
<tr>
<td>Maturation</td>
<td>Innate resiliency</td>
<td></td>
</tr>
</tbody>
</table>

**Bibliography**


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<table>
<thead>
<tr>
<th>Redress Assessment Table</th>
<th>Schedule 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severity of abuse and/or neglect and harm</td>
<td>Redress Points</td>
</tr>
<tr>
<td>64</td>
<td>243</td>
</tr>
<tr>
<td>Level</td>
<td>Description</td>
</tr>
<tr>
<td>-------</td>
<td>-------------</td>
</tr>
<tr>
<td>Extreme</td>
<td>Excessive harsh discipline and emotional or physical abuse of an ongoing or sustained nature inconsistent with care standards of time - Loss of family contact/identity - Multiple placements resulting in isolation and depersonalisation over a sustained period of time - Denial of rights including educational opportunities over a sustained period - Sexual abuse of a sustained or severe nature (ongoing incidents) resulting in severe psychological trauma and/or social impacts - Possible need for counselling or other assistance on a long-term basis - In care 10+ years</td>
</tr>
<tr>
<td>Severe</td>
<td>Excessive harsh discipline and emotional or physical abuse of an ongoing or sustained nature inconsistent with care standards of time - Loss of family contact - Multiple placements resulting in isolation and depersonalisation over a sustained period of time - Denial of rights including educational opportunities over a sustained period - Sexual abuse of a more sustained or severe nature or over a long period of time by a caregiver or someone authorised to supervise the child resulting in long term psychological harm - In care 8–10 years</td>
</tr>
<tr>
<td>Serious</td>
<td>Excessive harsh discipline and emotional or physical abuse of an ongoing or sustained nature inconsistent with care standards of time - Loss of family contact resulting in ongoing psychological or social harm - Denial of rights including educational opportunities - Sexual advances of a mild or limited nature by a caregiver or someone authorised to supervise - In care 5-6 years</td>
</tr>
<tr>
<td>Moderate</td>
<td>Excessive and harsh discipline of a severe and ongoing nature inconsistent with care standards of time - Denial of rights, including for example, loss of educational opportunities - Loss of family contact - Mild psychological or social impacts of an ongoing nature - Sexual advances of a limited or mild nature by someone other than caregiver or person in authority - In care 3–4 years</td>
</tr>
<tr>
<td>Harsh</td>
<td>Excessive discipline/moderate physical abuse of an ongoing nature (multiple incidents/ongoing) inconsistent with care standards of time - Loss of family contact - Mild loss of rights, including educational opportunities - No allegations of sexual abuse - In care up to 3 years</td>
</tr>
<tr>
<td>Harsh</td>
<td>Harsh discipline/mild physical abuse inconsistent with care standards of time - Short period - Minimal ongoing psycho-social impacts - No allegations of sexual abuse - In care up to 2 years</td>
</tr>
<tr>
<td>Harsh</td>
<td>Harsh discipline/mild physical abuse inconsistent with care standards of time - Limited period of placement - Minimal ongoing impacts - No allegations of sexual abuse - In care up to 12 months</td>
</tr>
</tbody>
</table>