Western Australian Department for Communities

REDRESS WA FINAL REPORT

Every effort has been made to ensure accuracy, objectivity and comprehensiveness in the completion of this report.

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Introduction

Approved by Cabinet on 3 December 2007, the $114 million Redress WA scheme was announced to the public two weeks later on 17 December by the then Labor Western Australian Government. In approving the scheme, Cabinet noted it would:

...provide a means of redress for all victims of abuse in State care, including those whose claims would be otherwise statute barred, that is less combative, more practical, more conciliatory and focussed on assisting victims with the healing process.¹

In other words, Redress WA provided eligible applicants with the opportunity to receive a measure of justice denied to them through the civil courts. In pursuing this course of action, plaintiffs encounter being out-of-time under Limitation Laws, the adversarial nature of court proceedings, the costs of funding legal cases and evidentiary problems with the passing of time.

Recognising that no amount of money could make up for the abuse some suffered in State care and its enduring impact, the provision of money payments was but one aspect of Redress WA. Accordingly, the scheme encompassed three other objectives; an acknowledgement through an official apology letter and the erection of a memorial; the provision of support and counselling services; and the referrals of named perpetrators to the Police and the Department for Child Protection.

Although most States have issued public apologies for the harm caused by abuse in State care,² Western Australia became the third State to set up a redress scheme; the others being Tasmania and Queensland. In late 2009, the South Australian (SA) Government indicated it would make ex gratia payments under section 31 of the Victims of Crime Act 2001 (SA). Of these schemes, Redress WA offered the widest coverage as foster care placements were included as well as all State-run institutions and missions and those privately placed into State care. The Queensland scheme only applied to a narrow range of State institutions;³ while in Tasmania, it was restricted to former State wards; and in SA, only those who experienced sexual abuse are eligible to apply.⁴

Background to Redress WA

Leading up to the implementation of Redress WA, a trilogy of national inquiries revealed that large numbers of children had been abused and/or neglected while in State care across all Australian jurisdictions. The reports of these inquiries all made specific recommendations regarding some form of monetary redress, the provision of an apology and/or memorial and counselling and/or support services.⁵ A number of

¹ Cabinet Minute 5.02 of 3 December 2007.
² On 7 April 2005, the then Labor Premier, the Hon Geoff Gallop, issued an apology in the WA Parliament.
³ Those covered by the Forde Inquiry (see fn.5).
⁴ See Appendix 1 for a comparison of State ex gratia schemes.
⁵ These are the Human Rights and Equal Opportunity Commission, Bringing them home, Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their
State-based reports had also uncovered the widespread mistreatment of children in care.\(^6\)

In Western Australia, an estimated 55,000 children were under State care during the twentieth century. Of these, up to 3,000 were Aboriginal children removed from their families, 2,921 were child migrants shipped to Australia from the United Kingdom and Malta, with the rest being Australian born, non-Aboriginal children.

To ensure as many people as possible applied, the scheme was advertised widely through the print and electronic media Statewide and in other States. It was also promoted through various government departments and relevant non-government agencies. Visits to the regions of Western Australia to conduct information sessions were also made early in the scheme.

Applicants had a twelve month period from 1 May 2008 until 30 April 2009 to submit their completed claims with Redress WA. For those who required more time to finalise their applications, they were able to register their personal details only by this deadline; they were then granted until 30 June 2009 to lodge their completed documents. Although 10,000 possible applications were registered at the 30 April closing date, 5,917 proceeded to the assessment stage.

**Redress WA Eligibility Criteria**

To be eligible, applicants needed to be aged 18 years and over at the closing date for applications, suffered abuse and/or neglect while in State care prior to 1 March 2006\(^7\) and who were:

- Aboriginal and Torres Strait Islanders placed in State Care under the *Aborigines Act 1905 (WA)*, the *Native Administration Act 1936 (WA)* or *Native Welfare Act 1954 (WA)*;
- persons placed in State care under the *State Children Act 1907(WA)*
- wards placed in State care pursuant to orders made under the *Child Welfare Act 1947 (WA)* including those children placed under the control of the Department;

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\(^7\) This cut-off date was set because those currently in the care of the State may pursue an abuse claim against the State through common law. The Department for Child Protection's Duty of Care Unit, established in 2004, refers children who allege abuse in care to an independent solicitor for legal advice.
• Child migrants placed under the guardianship of the State subject to the *Immigration (Guardianship of Children) Act 1946 (Cth)* and the *Child Welfare Act 1947 (WA)*;
• persons placed under the *Young Offenders Act 1994*; or
• persons who the Internal Member is otherwise satisfied were placed in State care.

People who had previously received payments for the abuse they had suffered from receiving agencies, such as the Catholic Church and the Salvation Army, were also eligible. So too were those already in receipt of criminal injuries compensation (CIC) for the same abuse and/or neglect of their Redress WA claim; however, these were taken into account when determining the levels of *ex gratia* payment to be offered.

**Statistical overview of Redress WA applicants**

A statistical analysis of the 5,917 applications received by Redress WA reveals:

- those of Aboriginal and Torres Strait Islander descent numbered 3,024 or just on 51 per cent of claimants;
- former child migrants sent to WA from the United Kingdom and Malta numbered 768 or just on 13 per cent of the total;
- others who for various reasons were placed in State care numbered 2,125 or 36 per cent;
- a total of 2,474 applicants, or 42 per cent of the total were under the age of 50 years;
- a total of 3,443 applicants, or 58 per cent of the total were between the ages of 51-105 years;
- a total of 2,878 applicants, or 49 per cent, of the total were males and 3,039, or 51 per cent were females; and
- almost 90 per cent of applicants still resided in WA, with about half residing in regional and remote areas.

Of interest is that Aboriginal community members and former child migrants made up 64 per cent of applicants. This can be explained by the fact that these groups are more organised and represented by various non-government organisations when compared to other and younger care leavers.

Also, 58 per cent of Redress WA applicants were over the age of 50 years, all of whom would be statute barred from seeking reparation through the civil courts. The majority of these, or just below 48 per cent, were aged between 51 and 70 years.

By their very nature, the pool of applicants required special handling considering their low levels of education and varying literacy skills, high levels of mental health issues and a reduced capacity to cope with delays and frustrations.

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8 See Appendix 2.
9 The oldest Redress WA applicant to apply turned 105 in May 2010.
10 See Appendix 3 for age breakdown.
11 See Appendix 4 for applications received by area/place.
Support Services

Redress WA understood the need for support services for applicants as they undertook the process of making a claim, especially considering their trust in governments had often been damaged. Wherever possible, a Statewide network of non-government agencies was contracted to assist with the process of lodging claims. For those potential claimants who resided outside of WA, the Sydney-based Care Leavers of Australia Network or CLAN, was contracted, as was the Child Migrants Trust, with an office in Melbourne as well as in Perth. Overall, the success of Redress WA in achieving its objectives would not have been possible without the strong support of many organisations, especially the service providers.

While some applicants stated that applying to Redress WA lifted a weight off their shoulders, others found the process emotionally distressing and waiting to receive an offer frustrating. To address these situations, three free hours of counselling was provided and they also had the chance to join specially convened Redress WA groups where they could support each other and make positive changes to their lives. To further assist claimants, a booklet entitled Support Services for WA care leavers was produced and sent to all applicants. When the scheme closed on 30 June 2011, close on 75 per cent of claimants had received either application support or counselling from Redress WA service providers at a total cost of $3 739 558.

Another vital source of support for applicants was the Redress WA Helpdesk as their first point of contact via a freecall number. Staffed by mostly senior social workers, it was integral to providing an empathetic and professional service to applicants. On average the Helpdesk responded to approximately 500 phone calls, 100 email queries and about 20 text messages each week.

Regular Redress WA Newsletters were also sent to applicants as a source of information about the scheme's progress, available services and projects of interest, such as the National Library of Australia's Forgotten Australians and former Child Migrants Oral History Project and the National Apology to the 'forgotten' Australians and former child migrants delivered in the Great Hall of Parliament House in Canberra on 16 November 2009 by the then Prime Minister, the Hon Kevin Rudd. To honour this historic apology in Western Australia, the Minister hosted an event at Government House to watch a live broadcast which was attended by many Redress WA applicants. The Redress WA website also included such information as well as answers to frequently asked questions.

Police and other DCP Referrals

To provide further possible redress for applicants, they were able to agree to have their abuse details referred onto the police for decisions on whether or not there would be sufficient evidence to bring criminal charges. Given that much of the abuse occurred many decades ago, evidentiary problems and fading memories pose problems for the justice system. At the time of the scheme's closure, 2 231 or 38 per cent of applicants had consented to police referrals, with one abuse perpetrator
being charged, convicted and sentenced to six years imprisonment, and another awaiting trial. Investigations continue. Referrals were also made to DCP and the Corruption and Crime Commission in cases where the offender may still be a registered carer of children or a public sector employee.

Acknowledging the past

Of fundamental significance to applicants was the chance for them to be able to tell their stories in the knowledge they were finally to be believed. This belief was formalised for each claimant through a formal letter of apology signed by the Premier of Western Australia, the Hon. Colin Barnett MLA, and the Minister for Community Services, the Hon. Robyn McSweeney MLC. Once applicants were in receipt of their _ex gratia_ payments, the apology letters were the final piece of correspondence they received regarding their Redress WA claims.

Further acknowledgement was provided in December 2010 through the unveiling of a memorial in the Northbridge Cultural Precinct. Jointly funded by the WA and federal governments, the memorial was created by local artist Judith Forrest, in collaboration with author, Terri-ann White, to symbolise the abuse and neglect suffered by many when in State care.

To further assist applicants with often unanswered questions about their personal histories and/or identities, they were informed of how to lodge a Freedom of Information request to obtain their departmental files. They were also able to request their assessment documents from Redress WA, some of which incorporated useful information pertaining to their time in State care. This was dependent though on the amount of information found by Redress WA which varied for each applicant. For some, there was a substantial amount of information available, while for others records were either limited or had been destroyed. Approximately 1 300 applicants took up the opportunity to request their assessment documentation.

_Provision of _ex gratia_ payments_

The original intention was for the scheme to have two payment levels; a minimum of $10 000 and a maximum threshold of $80 000. However, after an early evaluation of a random selection of applications found that a large number involved severe abuse claims, it was realised the allocated budget could not sustain the top payment. Consequently, in June 2009, the WA Government requested the Department for Communities restructure the scheme without altering the $114 million allocated by the previous Labor Government. This resulted in the $80 000 maximum threshold payment being reduced to $45 000 to ensure a more equitable process could be delivered for all eligible claimants. Although a difficult decision to make, this amount still compared favourably with other similar schemes in Australia.

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12 See 'Australia's worst serial sex offender' jailed for six years', _West Australian_, 18 October 2011.
13 See 'Trial delayed in hostel sex case', _West Australian_, 25 November 2011.
14 See Appendix 5.
15 In Queensland, and Tasmania up to $40 000 and $60 000 was paid respectively, and in SA, up to $50 000 is available.
Prior to Redress WA commencing to send out final payment offers in February 2010, interim payments of up to $10 000 were made to applicants with terminal or serious life threatening illnesses, Aboriginal applicants 63 years and over and non-Aboriginal applicants 80 years and over. These claimants were then the first to receive the balance of their assessment offers. A total of $1 797 500 was paid as interim payments to 220 applicants. (Check)

Under the Redress WA Guidelines (Guidelines), the ex gratia payment amount offered to claimants was based on the severity and extent of abuse and/or neglect experienced, the amount of time spent in abusive State care and the consequential harm endured. When each applicant’s file came up for assessment, he or she was contacted by a Senior Redress Officer to give them the final opportunity to either add or clarify any details that could further their claim.

Fundamentally, and as set out in section 8(2) of the Guidelines, the scheme was “...based on the principle that applicant’s statements [would] be acknowledged as their personal experience in State care unless there [was] evidence to the contrary.” However, to guide how individual claims were assessed, Redress WA established a clear set of criteria which took the form of four broad levels of abuse and/or neglect. Each level was accorded an amount to be offered as shown below.

<table>
<thead>
<tr>
<th>Level</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1:</td>
<td>Moderate abuse and/or neglect suffered</td>
<td>$5,000</td>
</tr>
<tr>
<td>Level 2:</td>
<td>Serious abuse and/or neglect suffered with some ongoing symptoms and disability</td>
<td>$13,000</td>
</tr>
<tr>
<td>Level 3:</td>
<td>Severe abuse and/or neglect suffered with ongoing symptoms and disability</td>
<td>$28,000</td>
</tr>
<tr>
<td>Level 4:</td>
<td>Very severe abuse and/or neglect suffered with ongoing symptoms and disability</td>
<td>$45,000</td>
</tr>
</tbody>
</table>

Once claims had undergone an initial assessment by the Senior Redress Officers, if they were in the top two levels, they were reviewed by Redress WA Internal Members or lawyers and then put to one of the three Independent Review Panels. See Redress WA Guidelines, Part 5 – Interim Payments. Guidelines, Schedule 3. These Panels were made up of lawyers and senior social workers with extensive knowledge of child abuse.

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16 See Redress WA Guidelines, Part 5 – Interim Payments.
17 Guidelines, Schedule 3.
18 These Panels were made up of lawyers and senior social workers with extensive knowledge of child abuse.
for endorsement or recommended changes. If they were in the two lower levels, they were approved by the Team Leaders.\textsuperscript{19}

As already stated, if an applicant had previously received an award of compensation or an \textit{ex-gratia} payment from the State in respect of the abuse or neglect, these were taken into account when determining the amount to be offered.\textsuperscript{20}

While $90.1$ million of the allocated budget of $114$ million was set aside for payment offers, at the scheme's end, a total of $117,940,500 had been offered as \textit{ex gratia} payments to applicants.\textsuperscript{21} Of this total, 20 offers totalling $x$ was placed into unclaimed monies, either because the concerned applicants were unable to be contacted or had refused to accept their offers on the grounds they were insufficient. These offers will remain with the Department for Communities for six years, after which they will be referred onto and held by the Department of Treasury and Finance. There were also 40 applications that were deemed lapsed and not assessed because, despite numerous attempts, the claimants were unable to be contacted.

Overall, applicants were assessed according to their claims and absolutely no pressure was placed on the assessors to keep to a budget. As a result, almost $118$ million was offered to applicants; an amount well in excess of the $90.1$ million originally set aside.

**Scheme changes**

Given this was the first time an \textit{ex gratia} payment scheme of this nature had been established in WA, as the scheme progressed, it became evident that changes would be required. The biggest and most controversial of these was, as mentioned above, the decision to reduce the maximum amount to be offered to claimants from $80,000 to $45,000. While there were some strong opinions on this reduction, it is worth noting that, for instance, claimants who received $13,000 and $28,000 offers may have received less under the original scheme.

To assist people wishing to apply but who required more time, a register was established whereby they could record their personal detail only by the 30 April deadline. They were than granted an extra two months to lodge their completed applications by 30 June 2009.

In September 2009 and after the death of 29 applicants, the Minister made a positive change by introducing a $5,000 eligibility payment for applicants who passed away before their applications had been assessed. Considering the older age and often poor health of many applicants, and that the initial Guidelines stated that a claim ceased to be processed on the death of an applicant, this change was considered fair and just. Redress WA worked with the families of deceased applicants on a case by case basis to arrange the most appropriate way to make the $5,000 payment while reflecting the Guidelines.\textsuperscript{22} This was often achieved through the payment of

\textsuperscript{19} As set out in the Guidelines, sections 24 and 25
\textsuperscript{20} Guidelines, sections 8(3) and 28(2)
\textsuperscript{21} See Appendix 6 for a breakdown of amounts offered in each level.
\textsuperscript{22} Guidelines, sections 9 to 13.
funeral expenses. A total of 167 applicants passed away during the scheme’s operation.\(^23\)

The Minister also did away with the requirement for applicants to sign a Deed of Settlement or waiver when accepting their Redress WA payment offers, for which Redress WA was originally to provide $1 000 towards accessing legal advice. This change means that applicants are at liberty to take whatever further legal action the law entitles.

Although applicants were originally informed they would need to undergo or provide a psychological or medical report to be eligible for the higher level of payment, this condition was also removed. Not only did this change make the scheme fairer, it also enabled it to finish on time rather than claimants waiting even longer for their assessments to be completed.

With the Guidelines initially having no provision for applicants to appeal their offers, the complaint process was updated. Accordingly, under section 39(3) claimants could request a review if they could establish an error of process or fact had occurred. It was not possible however to request a review on the basis of the quantum of the offer.\(^24\) At the scheme’s end, 76 applicants had lodged review requests, of which 19 were upheld and 57 dismissed.

For those who still felt aggrieved from unsuccessful reviews and/or other complaint outcomes, they could lodge their complaint with the Department for Communities\(^25\) (DfC) or the State Ombudsman’s office under the provisions of the Parliamentary Commissioners Act 1971.\(^26\) Only four applicants took their complaints to DfC, and 13 to the Ombudsman.

**Complaints**

As Redress WA recognised that for the most part, applicants preferred not to engage with government departments because of their personal histories, an informal approach to complaints was taken. With complaints mostly received by telephone through the Helpdesk freecall number, the Complaints Manager dealt with these in the same manner; however, all written ones were responded to by letter.

Complaints received by the scheme were mainly to do with objections about the amounts offered, but not all these progressed to a formal review request. Although it was explained in a Redress WA Newsletter that *ex gratia* payments were not meant as compensation; nonetheless, many applicants viewed their offers in this way. The other main type of complaints made were from those who became frustrated at the lengthy delays experienced while waiting to receive an offer and those deemed

\(^{23}\) See Appendix 7 for data relating to deceased applicants.

\(^{24}\) Guidelines, section 39(2).

\(^{25}\) Guidelines, section 39(6).

\(^{26}\) Guidelines, section 39(7).
ineligible to receive a payment.\textsuperscript{27} Out of the 5,917 applications, a total of 518 were found to be ineligible on various grounds which were:

- not attained the age of 18 as at the closing date
- first placed in State care after 1 March 2006 and/or experiencing the first incident of abuse and neglect after this date
- experiencing abuse or neglect while in a subsidised guardianship arrangement or with persons receiving private foster carer subsidies for a defined period of time in which only financial assistance was provided
- experiencing abuse or neglect after an adoption order was made, unless placed elsewhere in State care subsequent to the making of such an order
- relatives of a deceased eligible person who died before making an application
- admitted to a hospital but otherwise were not in State care as defined in the Guidelines
- alleging abuse that occurred at an educational facility but were otherwise not in State care unless the facility was a school on site where the person resided in State care
- Aboriginal wards but lived with their parents or relatives when the alleged abuse or neglect occurred
- not provided an adequate statement of abuse
- the care records provided contrary evidence to the alleged abuse and neglect
- not in State care
- placement couldn't be verified.

The government's decision to reduce the maximum threshold payment was also a major source of complaint; however, being a government determination, these were not recorded by Redress WA as complaints.

\textbf{Problems encountered}

As Redress WA was the first large-scale scheme of its kind run by a government in WA, problems were to be expected.\textsuperscript{28} As the scheme progressed, the need for new procedures and changes implemented often affected workflow. For instance, when verifying care placements as required under the Guidelines, the scant nature, fragmentation and destruction of departmental records often posed problems. Consequently, Redress WA established a number of protocols with the receiving agencies and, at times, further searches were undertaken at the State Records Office and with hospitals and schools.\textsuperscript{29}

Delays with file processing were also experienced because the scheme received many incomplete applications. Given the literacy and mental health problems of

\textsuperscript{27} See appendix 8 for the number of and type of complaint received.
\textsuperscript{28} For a comprehensive analysis of the problems experienced by the scheme, see the Evaluation Report.
\textsuperscript{29} In some instances, Redress WA accepted Statutory Declarations from persons with knowledge of the applicant's time in State care.
many claimants, their capacity to cope with the scheme’s formal requirements was diminished. Consequently, staff were continually attempting to contact applicants to ensure their files were complete through, for example, the provision of certified identification and name change documentation. This was a particular problem for Aboriginal applicants living in remote parts of WA and for whom English was often their second language. These delays exacerbated what was already a time-consuming process to assess claims, a reality that often caused frustration among claimants and became a source of complaints received under the scheme.

There was also a misunderstanding about the scheme’s parameters. For instance, as Redress WA coincided with the possibility of an Aboriginal ‘stolen generations’ class action being brought against the State, many Aboriginal applicants assumed that Redress WA would compensate them for being ‘stolen’ from their families. This was not an aspect of abuse that was assessed under the Guidelines, nor was the reason any other care leaver was taken into care. The assessment process only considered the abuse suffered in State care, the amount of time spent in care and the consequential harm endured.

Redress WA also received many requests from people who had missed out on applying, which was unfortunate. However, to manage the scheme efficiently it was imperative that new claims were not accepted once the closing date for applications had passed. In total, of the 171 requests received, only 27 were accepted for one of the following reasons:

- service providers in remote Aboriginal communities requested permission to submit after 30 June 2009 because many of the registered only applicants were involved with traditional lore business or sorry business or widespread flooding;
- service providers had made an error in not submitting an application before the close-off date;
- the application was lost in the post; or
- an error had been made by Redress WA.

Another problem encountered was staff burnout because of the nature of the work required to assess applications. Being privy at times to horrific stories of abuse and dealing with distressed and upset applicants had a cumulative adverse effect on some staff. Nonetheless, for the most part, staff remained committed to their work and carried it out with empathy and professionalism.

**Conclusion**

As a measure of the scheme’s success, Redress WA regularly received letters and messages from applicants expressing their appreciation for the sensitivity and supportive manner in which their applications had been handled. For many, having had the opportunity to disclose their pain and suffering and to have it believed and formally recognised has been a healing milestone in their lives. When the scheme ended, the following message by the Minister was delivered as part of the final Redress WA Newsletter:
While I have been deeply saddened to learn about the distress expressed by many applicants as a consequence of their time in State Care, I have also been inspired by the courage demonstrated as applicants told their stories and recounted the wrongs done to them. I thank all applicants for their patience as they waited for their applications to be processed.

The success of the Redress WA scheme in achieving its objectives would not have been possible without the strong support of many organisations and people in the Western Australian community. I would especially like to acknowledge and thank the Redress WA service providers for working alongside us to support our applicants.

I also extend my sincere gratitude to Redress WA staff. I know from the many letters received from applicants that your dedication, commitment and compassion has not gone unnoticed.

To all our applicants, I sincerely hope the Redress WA experience has assisted in some way to provide closure on your past experiences in State Care and I hope that love and kindness is given to you in the future.