



YMA Australia Consultation Paper

Proposal for an approach to redress within the YMCA

January 2015

Preliminary Note: this paper refers to individuals who have experienced childhood trauma and abuse as 'victim/survivor'. The use of the word 'survivor' recognises the strengths of individuals as they seek to overcome the consequences of childhood trauma and abuse. It is also recognised however, that many people have not survived (as a consequence of suicide, drug and alcohol misuse, and other health consequences) and there are many people whose experience of childhood abuse has never been believed or recognised. For these individuals and their loved ones, the term 'victim' is sometimes preferred as this indicates the ultimate impact of their childhood trauma – and one for which they are still seeking justice.

1. Introduction

Please refer to the previous discussion paper entitled *"The provision of redress to victims/survivors of child abuse within the YMCA"* which outlined the elements of an effective and equitable redress approach and provided an overview of redress more broadly.

This second consultation paper outlines a way forward for the YMCA in our consideration of issues such as redress and proposes a detailed response in terms of principles, structure and process. The intention of this paper is to provide a basis for consultation with the Movement and your views in relation to each element of the proposed redress approach are valued and welcomed.

The provision of redress is a complex and challenging issue, both for victims/survivors and for organisations. Careful consideration of these complexities is required to achieve a balanced approach that meets the needs of victims/survivors while also ensuring the ongoing financial viability of organisations.

We now have an opportunity to develop an approach to redress and a response to victims/survivors that is empathetic, transparent and just. Given what is known about the long-term impacts of child sexual abuse and what is known about the failure of institutions to appropriately respond in the past, we have an obligation and a responsibility to ensure we do the right thing by those who have been abused in the care of the YMCA.

1.1 Royal Commission Consultations

A primary focus of the research and policy program of the Royal Commission over the past 6 months has been to understand the complex issue of redress, and examine previous and existing schemes in Australia and internationally.

In addition to the release of *Issues Paper 6: Redress Schemes* in 2014, the Royal Commission has held a number of private roundtable discussions in the preparation of a public discussion paper and public hearing scheduled for 2015. These consultations will continue to inform any recommendations the Royal Commission may make towards the development of a national redress scheme and recommendations to organisations/institutions regarding leading practice.

YMCA Australia has been invited to participate in these private roundtable discussions chaired by The Hon Justice Peter McClellan AM and Commissioner Robert Fitzgerald AM. These roundtable discussions have focused on issues of redress, civil litigation and pastoral care and have included representatives from faith-based organisations, community organisations, State governments and the Commonwealth, victim/survivor advocacy groups, the insurance industry and legal representatives.

This consultation paper has been prepared drawing on the work of the Royal Commission to date, submissions to Issues Paper 6 and learnings through the private roundtable and consultation process. The Royal Commission will be launching a public Discussion Paper on the 30th January 2015, to be followed by a Public Hearing on the issue of Redress and Civil Litigation and YMCA Australia will provide a response to this Discussion Paper. In June 2015, the Royal Commission will release a report and recommendations regarding leading practice for organisations and recommendations towards the establishment of a national redress scheme.

At each stage of our consultation process with the YMCA Movement, we will continue to learn from the Royal Commission and ensure our approach to redress reflects the leading practice recommendations of the Commission. The draft consultation timeline is attached at **Appendix A**.

1.2 YMCA National Insurance Program

When considering our response as a Movement to victims/survivors of child sexual abuse, it will be important to understand the interaction between our National Insurance Program and our proposed approach to redress.

The existing National Insurance Program is unlikely to respond to known historical matters undisclosed to insurers. In the case where it is a historical unknown matter recently notified to the YMCA and predating the National Program establishment in 2002, we will be guided by the Association liability insurance policy in place at the time of the abuse. For some claims of abuse that may be historical in nature, for example from the 1950s, 60s or 70s this presents a particular challenge as many YMCAs, like other predominantly volunteer organisations of that era, would not have held public liability insurance.

Note: In preparation for this surfacing we encourage all Associations to allocate all available resources to seeking their liability insurance records as far back as possible. Any evidence of historical insurance placement can assist us in achieving indemnity with insurers. Evidence can include payment, certificate, policy numbers or broker documents.

Limitation Periods applicable to civil litigation:

“Most states and territories have limitation periods of 3 or 6 years, which may not commence until the child turns 18, and with some provision for these periods to be extended in certain circumstances. In some states and territories, the period runs from when the cause of action was discoverable, but there might also be a ‘long stop’ period of, say, 12 years from the date of the tortious conduct (i.e. the abuse).

The various state and territory limitation periods are considerably shorter than the time many survivors take to report the abuse they have suffered or to seek compensation. The provisions for the limitation periods to be extended, while apparently of assistance to survivors, may lead to delay and expense if the issue is contested in the litigation.”¹

On the 23rd January, the NSW Government released a discussion paper to review the current limitation periods on claims of child sexual abuse as a reform to remove some of the existing barriers to litigation for victims/survivors. This acknowledges the difficulties faced by many individuals who may not feel able to report or disclose their experience of abuse for many decades, which often exceeds the limitation periods. Submissions to this discussion paper close on the 10th March 2015.

If agreed in each jurisdiction, changes to the limitation periods for civil litigation will significantly alter the context and environment in which claims are brought to organisations.

Conducting civil litigation in matters of historical child sexual abuse can often be a lengthy process, costly and adversarial. For many victims/survivors, the opportunity to seek redress from an organisation or institution is a preferable option.

2. What is redress?

The Royal Commission refers to ‘redress’ as a remedy that fixes a wrong. This may include financial redress, and the provision of non-financial redress including support services, acknowledgement of the abuse and apologies. Some other terms used include ‘reparations’, ‘restorative justice’, or ‘ex gratia payments’. For the purpose of this discussion paper, the term redress will be used.

Existing schemes differ in their design and development, their processes, features, oversight and outcomes for individuals. Various examinations by the Royal Commission to date have highlighted the positive elements of redress, in addition to revealing the manner in which redress schemes have failed many individuals. Elements of effective redress schemes are highlighted in the previous discussion paper.

¹ Royal Commission into Institutional Responses to Child Sexual Abuse (2014) Redress and Civil Litigation Background Paper, Private Roundtables September 2014.

3. A proposed approach for the YMCA

3.1 Preamble

The YMCA considers all forms of child abuse to be intolerable and inexcusable under any circumstances and we recognise the lifelong impact that child abuse can have on the health and wellbeing of individuals, families and the community. Wherever children have experienced maltreatment, abuse or neglect they must be given every form of support and assistance to heal, recover, have their experiences acknowledged and be provided with opportunities to realise their full potential. We accept our responsibility to ensure that any person who has experienced abuse as a child within a YMCA, or by a YMCA volunteer or employee is offered a response that is equitable and just.

3.2 Principles

Our approach to redress will be underpinned by the following principles:

The best interests of the victim/survivor are of paramount importance.

The process of seeking redress can assist victims/survivors in their recovery, however if the process is poor and does not maintain the best interest of victims/survivors, this can lead to re-traumatisation and cause further harm. By ensuring the best interests of victims and survivors are of primary importance, our processes must not inadvertently expose victims/survivors to harm. Maintaining the best interests of the victim/survivor include conducting and concluding the process of redress in a timely manner, ensuring that victims/survivors are kept informed throughout and have access to counselling during and after the process of seeking redress. It is also important for the process of redress to consider the impacts of child sexual abuse on the partners and family members of victims/survivors. This will also include adhering to principles of procedural fairness.

The rights and choices of victims/survivors will be respected and supported.

In seeking redress, it is critically important that victims/survivors are able to make informed choices about the course of redress and elements of the process, such as whether they would like to speak directly with the organisation/institution or whether they would like to engage with the process through a third party. The provision of clear, accurate and timely information to victims/survivors is essential throughout the process of redress. To ensure the rights and choices of victims/survivors are supported, it is important that the views and desires of the victim/survivor are actively sought throughout the process.

The YMCA will apply a standard of 'plausibility' and an 'appearance of reasonableness' when assessing allegations and claims.

To enable a process of redress that is supportive to victims/survivors, that is non-adversarial and one that can be resolved in a timely manner it is important that a lower burden of proof be applied than that of a criminal or civil process. This includes seeking as much information from the victim/survivor as possible (considering their best interests and the principle of 'do no harm') and seeking as much information from the relevant Association and historical records in order to clarify or verify the allegations within a framework of 'plausibility'.

Our approach to redress will be nationally consistent.

A common criticism of previous and existing redress schemes has been a lack of consistency for victims/survivors seeking redress in different jurisdictions and from different parts of an

organisation/institution. As a national movement, it will be important for the YMCA to ensure our process of offering redress to all victims/survivors is consistent and equitable.

Our approach to redress will be transparent, accountable and be subject to independent oversight.

A mechanism of independent oversight is critically important to ensure transparency and accountability, to ensure that the best interests of the victim/survivor are maintained and that trust and public confidence in the YMCA is maintained. This also involves the provision of training and professional development support for managing the process of redress and continual efforts to review and improve our approach.

Our approach to redress will not be subject to time limitations.

For many victims/survivors it can take many years or decades before they feel able and willing to disclose or report their experience of abuse. It is important that there are no time limitations or restrictions for victims/survivors to enable them to come forward to the organisation/institution at the time when they feel most able and supported to do so.

Our approach to redress will complement, but not replace a victim/survivor's access to common law and civil litigation rights to bring a claim of damages against the YMCA.

By law, victims/survivors have the right to bring an action against an organisation or institution and the provision of redress should complement these rights. The provision of a redress approach that is just and equitable and meets the best interests of the victim/survivor will mitigate the likelihood of victims/survivors bringing a civil action against the institution.

Questions for consideration:

- A. Do these draft principles present any issues or concerns which need to be addressed?
- B. Are there other principles which should be included?

3.3 Governing Structure

It is proposed to establish a two-tiered governance structure that will oversee and manage the approach to redress and response to victims/survivors. This structure is outlined below.

Redress Panel

Structure and composition

- Will be independent and external to the YMCA
- 4 to 5 member panel
- Comprising: a senior legal practitioner/retired justice; victim/survivor advocate and/or trauma informed specialist counsellor; mediation professional; actuarial advisor.
- Authority to make recommendations to the Board Governance Committee (the Board Governance Committee has an obligation to endorse the recommendations unless a compelling and defensible case can be made as to why the recommendations of the Redress Panel should not be accepted).
- Will be convened on an as-needs basis.

Roles and responsibilities

- To review the claim/allegation and relevant information provided by YMCA regarding the matter.
- Make recommendations about what should be offered to the victim/survivor regarding non-financial redress and develop a care plan.
- Make recommendations as to a quantum of financial redress.
- Make any other relevant recommendations.
- Act as the primary point of contact for victims/survivors throughout the redress process and following.
- Manage the expectations of the victim/survivor.
- To conduct 'debrief' with victims/survivors following the conclusion of the redress process and make recommendations for the provision of any 'aftercare' that may be required.

Note: The establishment of the Redress Panel as proposed will bring associated cost. Alternative models may also need to be explored that reduce this cost while still ensuring an external structure that provides a level of independent oversight.

Redress Implementation Committee

Structure and composition

- Comprising: a member of the Board Governance Committee; National CEO; Executive Manager; Relevant Association President (if applicable); Relevant Association CEO (if applicable); Victim/survivor advocate (member of Redress Panel) in advisory role.
- Membership will be case-specific.
- Committee will be convened on an as-needs basis.
- Accountable to the Board Governance Committee and Redress Panel.

Roles and responsibilities

- Implementation of the care plan (as determined by the Redress Panel)
- Arrange for the provision of financial redress as per the recommendations of the Redress Panel
- Report back to the Redress Panel and the Governance Committee of the National Board about the implementation of all recommendations.

Questions for consideration:

- C. Do you agree with the proposed governing structure including the structure, composition and roles of these structures?
- D. Are there alternative models we could or should consider in terms of governance to also minimise cost?
- E. What issues might this proposed structure present for our current governance models?

Please also see **Appendix B:** Models of redress used by other organisations.

3.4 Process

Outlined below is a proposed process and series of actions or events that may occur during the process of redress and the subsequent response of the YMCA.

- a. Disclosure made and victim/survivor contacts the YMCA or
Disclosure made and legal representative/other contacts the YMCA
- b. Determine whether claim is an insurance matter or whether a possible redress matter
- c. Provide information to the victim/survivor (and/or their representative) about the process of redress, who will be involved and possible timeframes. Seek their consent to refer the matter to the Redress Panel (also ask if they would like to meet with anyone from the YMCA directly at this stage, indicating that they can meet with anyone from the YMCA at any point in the process if they wish to). For many victims/survivors having the opportunity to tell their experiences directly to someone in authority in the organisation is important, while others may not wish to speak to the organisation. It is important that victims/survivors are offered a choice in this regard and that their choices are respected and supported.
- d. Refer the matter to Redress Panel (and notify relevant Association if applicable and notify Governance Committee of the National Board)
- e. Redress Panel to seek information from the victim/survivor about the detail of their claim – written, or through a face to face meeting or both if this is the wish of the victim/survivor.
- f. Redress Panel to seek information from the YMCA (YMCA Australia and relevant Association if applicable) about the claim and any documentation that can be provided.
- g. Applying a standard of ‘plausibility’ and ‘appearance of reasonableness’ the Redress Panel will assess the claim.
- h. Redress Panel to extend an invitation to meet with victim/survivor (and support person/representative) to undertake a needs assessment – this will form the basis of an individualised care plan. This may require several meetings. The overall purpose of the meetings will primarily be to listen to the victim/survivor, discuss their current and ongoing needs, and discuss what they would like from the YMCA (for example a written and/or verbal apology/acknowledgement? Also discuss whether they would like to meet with anyone from the YMCA directly at this stage.
- i. Redress Panel to formulate care plan (including timeframes for implementation) in conjunction with victim/survivor.
- j. Redress Panel to formulate recommendation regarding payment of financial redress – quantum, timeframes, and associated conditions/requirements of both the victim/survivor and the YMCA.
- k. Redress Panel to provide recommendations about non-financial redress (care plan), financial redress, and any other relevant recommendations to the Governance Committee of the National Board and to the Redress Committee.

- l. These recommendations, when accepted will be legally settled and formally agreed by both parties.
- m. Redress Committee will be responsible for implementation of the care plan
- n. Redress Committee will arrange for the provision of financial redress
- o. Redress Committee will provide a report regarding implementation of recommendations to the Redress Panel and to the Governance Committee of the National Board.
- p. Redress Panel will undertake a 'debrief' process with the victim/survivor.

Questions for consideration:

- F. Are there other elements of this process we need to include or exclude?

3.5 Non-financial redress and the development of an individualised care plan

With non-financial elements of redress, many victims/survivors are seeking understanding and compassion, an acceptance of responsibility, and actions are taken to prevent abuse occurring again. The provision of non-financial redress may include:

- A personal formal acknowledgement of the abuse and an apology and this may be written and/or verbal. It is important that an apology be victim/survivor-directed and responds directly to their needs. A formal acknowledgement includes acknowledging that the abuse occurred, that the victim/survivor is believed and that the abuse was not their fault. An apology needs to be personalised and respond to that individual's experience and not be generic in nature. Some individuals may not want an apology, and while some may choose not to have a face to face meeting, an apology provided in person (and in writing) can be a very positive experience for the victim/survivor. Again, the victims/survivors choice about this must be respected. An apology and acknowledgement from a senior person in authority within the organisation is often most beneficial and meets the expectations of victims/survivors.
- Referral to trauma-informed, specialist counselling services as required and directed by the victim/survivor.
- The provision of records, documents and relevant information that may be held by the organisation pertaining to the victim/survivor.
- Referral to and/or provision of health and wellbeing programs.
- Other non-financial requests as directed by the victim/survivor.
- Referral to support services and counselling for partners and/or family members affected as required and directed by the victim/survivor

Question for consideration:

- G. Are there other aspects of non-financial redress that the YMCA needs to consider?

3.6 The determination and provision of financial redress

The determination of financial redress is a highly complex and challenging issue and one which is being closely considered by the Royal Commission. Many victims/survivors report concerns about the perceived inadequacies of previously used schedules or formulae to determine amounts which should be offered. The views of many victims/survivors who have previously accessed redress schemes would suggest that there is simply no amount that could possibly compensate for the abuse that occurred and for the loss of their childhood. In developing the approach of the YMCA to financial redress, it will be important to understand the distinction between compensation for the harm and damage caused and the provision of financial redress to assist a victim/survivor to achieve a better quality of life. Most importantly, the requirements to achieve a better quality of life will be very different for each individual.

While many of these questions and issues will be addressed in part by the work of the Royal Commission it may be important for the YMCA to consider that financial redress may be determined on the basis of:

- Legal costs incurred by the victim/survivor in seeking redress;
- Past counselling costs incurred by the victim/survivor;
- Future anticipated counselling costs that may be required including lifelong treatment;
- Other medical/health treatment that might be required;
- Compensation for lost earnings where a victim/survivor is unable to work or has needed to reduce their work hours due to the impact of abuse; and
- The cost of counselling/support for partners and/or family members affected.

Question for consideration:

- H. What other elements of financial redress do we need to consider?

The determination of a payment amount and how these decision were reached must be transparent for victims/survivors.

The YMCA must also considered whether the application of a capped payment should apply and whether this cap is openly communicated or whether it takes the form of an 'upper range' of payment. For some victims/survivors a lump sum payment is beneficial, whereas for others a phased payment option may be more appropriate to meet their ongoing and future needs.

- I. What is our position in relation to the application of a cap on financial redress payment?

Many victims/survivor have also expressed concerns about Deeds of Release and associated confidentiality agreements that have prevented them from speaking publicly about the redress amount and the redress process. Views expressed by many organisations and individuals before the Royal Commission would suggest that Deeds of Release are no longer seen as an appropriate mechanism for organisations to use.

- J. What is our position in terms of providing financial redress without a Deed of Release or any conditions relating to confidentiality and/or pursuing civil action?

4. Proposed funding models for the Federation

When considering a model for funding our national approach to redress, the following realities need to be taken into consideration:

- Not all YMCA Associations will have the capacity to individually fund the provision of financial redress to the level that may be required in order to meet the needs of victims/survivors.
- Some victims/survivors seeking redress may have experienced abuse in a YMCA that no longer exists (and where this is no clear parent Association or legally responsible entity).
- The majority of historical allegations and incidents about which we have current knowledge are likely to be uninsured matters.
- Our growing understanding of how child sexual abuse occurs would suggest that multiple victims/survivors of a particular perpetrator may exist and in some circumstances this will result in multiple claims being brought for a particular YMCA Association.
- The nature of the long-term impact of child sexual abuse would suggest that financial components of redress will be significant and may present a risk to the viability of some YMCA Associations.

Questions for consideration:

- K. Given this context and recognising the current environment of the Royal Commission (that growing numbers of victims/survivors are now feeling able to come forward), which model of funding redress will ensure that the federation of YMCAs in Australia respond in the most ethical and appropriate way to victims/survivors?
- L. Would a model which required contributions from all Associations to a central fund provide the YMCA Movement in Australia with the capacity to provide an appropriately resourced redress approach that is sustainable and meets the needs of victims/survivors? Would this be an appropriate model to provide redress to victims/survivors where a YMCA no longer exists or where a YMCA does not have the financial capacity itself? What would be an appropriate approach to repayment into that fund?

APPENDIX A: Consultation Timeline

	2015											
	J	F	M	A	M	J	J	A	S	O	N	D
Discussion paper 1 distributed to Y Australia Board (Aug 2014)												
Discussion paper 1 circulated to NLT (Sep 2014)												
Consultation paper provided to Y Australia Board												
Consultation paper provided to NLT												
Legal and insurance advice (and other specialist advice as required)												
Consultation with Movement												
Revised Approach to Redress Paper developed												
Revised Approach to Redress Paper provided to Y Australia Board												
Further consultation with Movement as required												
Further specialist advice as required												
Final draft of Approach to Redress developed												
Further engagement with Movement as required												
Endorsement at AGM												

Appendix B: Models of redress used by other organisations

(Berry Street, The Uniting Church in Australia, The Anglican Church of Australia, The Salvation Army)

Example 1: Berry Street

Berry Street is an independent child and family welfare organisation providing services across Victoria including residential care, foster and kinship care, therapeutic counselling programs and other services.

Berry Street defines redress as “*measures taken by Berry Street where a complaint is upheld in order to acknowledge and remedy the harm caused to the victim or victims.*”² Berry Street’s approach to redress includes: acknowledgement; apology; offers of support and assistance; undertakings to not repeat past injustices; and offers of financial compensation.

Berry Street states that an important element of their current approach to redress is that they “*do not require claimants to enter into any undertakings, and they remain free to pursue legal action and/or return to Berry Street and re-open a claim.*”³

The following extracts are from Berry Street, 2012, Submission to the Victorian Parliamentary Inquiry into the handling of abuse allegations by religious and other organisations.

In recognition of the profound harm caused to many children and young people whilst in State care and for our part in those child welfare practices, Berry Street has made two formal apologies: an apology to Aboriginal and Torres Strait Islander families and communities impacted by the forced removal of their children, the Stolen Generations; and an apology to Australians who experienced harm in institutional care as children, the Forgotten Australians. These apologies are available on our website (www.berrystreet.org.au).

Berry Street believes that all children should have a good childhood. Wherever children have experienced maltreatment, abuse or neglect they must be given every form of support and assistance to heal, recover, have their experiences acknowledged and be provided with opportunities to realise their full potential. Berry Street knows and advocates that the impacts of childhood trauma can last a lifetime. We accept our responsibility to support and assist any adult, who as a child or young person in our care suffered some form of maltreatment, neglect or abuse.

Since January 2011 Berry Street, Victoria’s largest provider of OOHHC, has had only eight complaints in relation to past episodes of abuse or maltreatment. In the eight years prior to 2011 we had only one complaint which did not proceed after an initial meeting with the complainant. In relation to the eight complaints received during the past two years most complainants have only sought counselling, support, an opportunity to be heard and acknowledgement. Under our policy we can, will and have on occasions worked through a formal investigation and provided reparations with elements including an opportunity to be heard, acknowledgement, apology, counselling and support, undertakings to not repeat past mistakes and a financial payment.

² Berry Street, 2014, Submission in Response to Issues Paper 6: Redress Schemes, p. 3

³ Berry Street, 2014, Submission in Response to Issues Paper 6: Redress Schemes, p. 5

Berry Street's processes are managed confidentially but are not secret in that there is no obligation on the complainant to keep secret that they have made a complaint, the nature of the complaint or how Berry Street has responded. All complainants are advised that they should also consider making formal complaints to the police and that they will suffer no adverse treatment from doing so. Our process does not attempt or aim to come to a 'settlement' in that we ask for no particular undertakings from the complainant and complainants are free to come back to Berry Street at any time and seek further redress.

Berry Street's approach as authorised and monitored by the Board of Berry Street is based on the following guiding principles:

- *Allegations are seen as an opportunity to learn*
- *Any person who has been a service user at any time has the right to make a complaint about any aspect of their service experience, including a complaint involving allegations of abuse*
- *All complaints will be taken very seriously and will be addressed in the shortest time practicable*
- *The process will provide natural justice and procedural fairness for all people involved*
- *The process will be as open, transparent and accountable as possible, while respecting rights to privacy and confidentiality*
- *The process will reflect a commitment to address past grievances and, wherever possible, provide a pathway towards reconciliation*
- *Staff and independent contractors will maintain confidentiality & best practice record-keeping*
- *The concerns expressed by the person making the complaint will be addressed and managed in a compassionate, thoughtful, respectful and productive manner, which embraces the organisational Values of Courage, Integrity, Respect, Accountability and Working Together.*
- *The process will be responsive to the needs of the complainant when appointing the designated person and/or investigator (e.g.: it will consider complainants' gender, culture, language, accessibility needs, etc)*

Berry Street's policies and procedures for responding to claims of child sexual abuse from adult care leavers include the following key aspects.

Structure:

Designated Person: Is the person appointed by the CEO to manage the process. They are responsible for ensuring that the process is as supportive as possible for the complainant, keeps to agreed timeframes and considers what implications should be drawn from the complaint for current practice in Berry Street. He/she is specifically responsible for;

- meeting the complainant and clarifying their complaint and the outcome they are seeking,
- making appropriate support available to the complainant to assist them during the process, and
- appointing any independent assessors, mediators and counsellors that may be required.

The Designated Person will be the DEPUTY CEO/DIRECTOR OF SERVICES, unless the CEO makes a determination otherwise on a specific case by case basis.

Investigator: This is the person appointed by the CEO to investigate the complaint, inquire into allegations made in the complaint and prepare a report with findings on the complaint.

The policy provisions outlined by Berry Street include that:

The process used by Berry Street will:

- *Be based on principles of procedural fairness for all parties.*

- *Be as open and transparent as possible, while respecting rights to privacy and confidentiality.*
- *Take a person-centred, rather than legal approach.*
- *Reflect a commitment to address past grievances and provide a pathway toward recovery and healing.*
- *Ensure staff and independent contractors maintain confidentiality and appropriate record-keeping.*
- *Consider the complainant's expressed wishes, gender, culture, language and accessibility throughout the process.*

Authorities and accountabilities

Board of Directors

The Berry Street Board of Directors is responsible for determining the most appropriate response to the complaint and any reparations offered.

Chief Executive Officer

The Chief Executive Officer is ultimately accountable for ensuring that complaints from adult care leavers are handled in accordance with this Policy and its Procedures and that the Board of Directors are informed of these and any recommendations from investigations.

Deputy CEO/Director of Services is responsible for:

- *Acting as the Designated Person in accordance with this Policy and its Procedures in handling all complaints from adult care leavers.*
- *Providing annual, de-identified and aggregated statistics to the Executive Management Team and Board of Directors regarding complaints from adult care leavers. The Board of Directors may deal with any review of de-identified and aggregated reports via its Quality and Risk Management Committee.*

The Executive Officer is responsible for maintaining a register and file system of all complaints from adult care leavers.

The complainant does have the opportunity to have any decision about redress reviewed through making a request to the CEO of Berry Street to re-examine the claims.

Example 2: The Uniting Church in Australia

In March 2013 the Uniting Church in Australia's Assembly Standing Committee issued a statement that included:

We will say sorry to anyone who was sexually abused when in our care and, in consultation with those so affected, actively seek ways to make amends for what happened in the past and identify how we can best offer support into the future...We must be willing to examine our own motives and behaviour and be open to accept the close scrutiny of others.

The Uniting Church believes that redress must be available to survivors of past abuse, including in a culturally sensitive manner for survivors from Indigenous, immigrant or culturally and linguistically diverse communities.

The Uniting Church have been operating redress and support schemes in a range of institutional settings for over a decade.

While current redress schemes do not have a level of independent or external oversight, the Uniting Church in Australia has recognised that a national redress scheme which is independent of the institution is the most appropriate way forward to best meet the needs of victims/survivors and also to ensure the institution is held to account.

“The Uniting Church supports the rights of survivors to retain control of how they deal with the harms they experience. As such, it believes their participation in the national redress scheme should be optional. If survivors wish to pursue other avenues, whether litigation or alternative schemes, that should be their choice. However, in order to maintain the efficiency of the court and redress systems, the effective targeting of funding, and the avoidance of ‘forum shopping’, the Uniting Church believes that a survivor should access one or the other system, rather than both...It is standard for redress schemes in this area to require survivors to waive the right to pursue civil action.”⁴

Current features of Uniting Church policies in relation to redress and responding to allegations of child sexual abuse include⁵:

- Having the policy and procedure documents widely available
- Engagement with survivors at their request
- Encouragement for survivors to access support through the process
- Request for written details and the impact of abuse, but complaints can be made orally and assistance can be provided to document in writing.
- Check for any known facts about the situation.
- Survivors are not required to provide proof of claims.
- Meeting arranged with senior representative
- Survivor’s story is listened to with empathy and compassion
- Survivor offered sincere apology on behalf of the Church and the particular institution
- Survivor offered assistance in line with expressed need, current circumstances, length and severity of abuse. Any financial award is within a small range of pre-set parameters.
- Survivors receive monetary assistance promptly
- Survivors sign deed of release

The detailed policies of the Synod of Victoria and Tasmania in responding to allegations of child abuse can be found in the [Synod’s submission to the Victorian Parliamentary Inquiry](#).

Example 3: Anglican Church in Australia

A number of dioceses comprising the Anglican Church of Australia have in place ‘pastoral care and assistance schemes’ to respond to those who have suffered child sexual abuse. While the terms of pastoral care and assistance schemes vary, the common feature is that they are established on a relational basis to address the on-going needs of survivors of child sexual abuse to promote their healing, including social, emotional and spiritual dimensions.

The Anglican Church states that its pastoral care and assistance scheme has several advantages over a civil litigation process, in that⁶:

- (a) Survivors are responded to holistically in a wider pastoral context to meet physical, emotional, social, spiritual and financial needs necessary to bring about healing.
- (b) Care and assistance can be provided immediately, without having to wait for determination of a dispute.
- (c) Survivors are given the opportunity to tell their story to a senior officer of the institution.

⁴ Uniting Church in Australia, 2014, Submission to Issues Paper 6: Redress. P.11

⁵ Uniting Church in Australia, 2014, Submission to Issues Paper 6: Redress. P.17

⁶ Anglican Church of Australia, 2014, Submission to Issues Paper 6: Redress. P. 2

- (d) The institution has the opportunity to declare that it accepts responsibility for the harm. Such responsibility could be legal and moral or moral such as where no legal responsibility attaches to the institution for the abuse.
- (e) The institution has the opportunity to offer a genuine apology by a senior officer of the institution.
- (f) While a settlement agreement concludes the legal aspects of the process between a survivor and the institution, it does not necessarily conclude the pastoral relationship. For example ongoing counselling may be continued in appropriate cases.
- (g) The survivor has more control over the pace of the process to suit their own needs.
- (h) Survivors can participate with or without legal representation. If they are legally represented, the legal costs are usually borne by the institution.
- (i) The process is not adversarial.
- (j) There is often no limitation period to making a claim.
- (k) A lower threshold of proof is generally required. It is not necessary to prove all the elements of relevant legal causes of action.
- (l) The financial cost to survivors of engaging in a pastoral care and assistance scheme is lower than would be expended in court proceedings.
- (m) The process is generally more timely than pursuing civil litigation.

In relation to independent oversight of redress, the Anglican Church holds the view that:

“It is not necessary for all or any part of the process to be conducted independently of the institution if there are national minimum criteria and survivors have access to independent legal advice before making any financial agreement.”

“To interpose an independent body in the decision-making process is likely to add complexity, delay and cost and deprive the parties of the opportunity to address the matter relationally and holistically.”⁷

With regard to access to civil litigation, the Anglican Church holds the view that:

“Survivors should be free to pursue civil litigation independently of a redress scheme. Where survivors seek redress through a redress scheme, institutions should be able to stipulate that, if a resolution is reached under the redress scheme, then the survivors should forgo the right to pursue civil litigation in relation to the same set of facts.”⁸

Example 4: Salvation Army

The redress schemes of the Salvation Army are informed by the following common principles:

- (a) To act with complete propriety and fairness towards survivors of child sexual abuse and their representatives;
- (b) To seek to resolve any claim through negotiation, without requiring the survivor to issue proceedings in court;
- (c) To make an early assessment of The Salvation Army’s liability and , where appropriate, to concede liability;
- (d) Not to require a survivor to prove any matter which the Salvation Army knows, or reasonably suspects, to be true;

⁷ Anglican Church of Australia, 2014, Submission to Issues Paper 6: Redress. P. 5

⁸ Anglican Church of Australia, 2014, Submission to Issues Paper 6: Redress. P. 6

- (e) Not to take advantage of a survivor who lacks resources;
- (f) Where liability is conceded, to offer redress that is fair and reasonable and, to the best of The Salvation Army's knowledge, comparable to the redress provided to other survivors in similar circumstances; and
- (g) To apologise where The Salvation Army is aware that it has, or its past or present officers, employees or volunteers have, acted wrongfully or improperly.

In the view of The Salvation Army, elements of an effective redress scheme from an institution's perspective include:

- Clear terms of reference;
- Placing survivors at the forefront and respecting the survivors, to ensure that the process of resolving the claim does no further harm;
- The involvement of senior and appropriately skilled/qualified persons;
- An understanding of the interests of both the survivors and the institution;
- A willingness to accept moral and legal responsibility;
- Being proactive in addressing claims;
- Following a fair, transparent and consistent process in working through survivors' claims;
- Providing an appropriate personalised apology or statement of regret to the survivor;
- Clear guidelines of policies to work through forms of redress;
- A willingness and ability to address systemic issues;
- Providing for review and reflection of how any scheme may be improved;
- A clear understanding of the regulatory and legal environment in which claims need to be considered;
- Providing for referral of aspects of claims to the police, other regulatory agencies or for internal investigation/action;
- Promoting finality, in the sense that all parties have certainty of outcomes and the process delivers peace of mind to a survivor; and
- Appropriate record keeping.

In relation to achieving independent oversight, The Salvation Army holds the view that:

*"An internal redress scheme may take various forms and so it is difficult to determine hypothetically whether and to what extent decision-making of a redress scheme should be independent of the institution. The Salvation Army does not support the suggestion that an internal scheme provide for decision making independent of the institution. The Salvation Army does not agree that an independent decision maker would better address the needs of, or achieve a better outcome for, survivors."*⁹

In relation to access to civil litigation, The Salvation Army holds the view that:

*"Participation in a redress scheme should be optional for survivors and they should be free to reject such a scheme and elect to pursue civil litigation if they wish...if a survivor participates in a redress scheme, then they should not be permitted to 'double dip'; that is to make a claim from the redress scheme and then bring a common law claim against the institution."*¹⁰

⁹ The Salvation Army, 2014, Submission to Issues Paper 6: Redress. P.13

¹⁰ The Salvation Army, 2014, Submission to Issues Paper 6: Redress. P.15