



YMCA Australia Consultation Paper

Proposed Movement Approach to Redress

Updated 30 March 2015

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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

This updated consultation paper builds on a paper which was provided to the National Leadership Team and YMCA Australia Board in January 2015.

The intention of this paper is to outline a way forward for the YMCA in our consideration of redress and proposes some possible approaches in terms of principles, structure and process. This paper aims to provide a basis for consultation with the Movement and your views in relation to each element are valued and welcomed. This paper does not intend to assume a particular position in terms of the approach the YMCA should take, but rather provide the foundation for further consultation.

Proposals and possible options contained in this paper are based on existing research and leading practice as identified by the Royal Commission.

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 many 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 12 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 held a number of private roundtable discussions and YMCA Australia was invited to participate in these. Chaired by The Hon Justice Peter McClellan AM and Commissioner Robert Fitzgerald AM, the 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 launched a public [Consultation Paper](#) on the 30th January 2015, to which [YMCA Australia has provided a written response](#). Submissions from other individuals, organisations and governments are also on the [Royal Commission's website](#).

Commencing on the 25th March the [Royal Commission held three days of public hearings](#) exploring redress and civil litigation. YMCA Australia presented at these hearings alongside other community organisations, survivors advocate groups and some state government representatives.

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 for Australia.

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

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

On 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 closed on the 10th March 2015.

In Victoria, on February 25th [Limitation of Actions Amendment \(Child Abuse\) Bill 2015](#) was introduced into state parliament that seeks to significantly extend or remove limitation periods altogether, and apply these changes retrospectively. This Bill remains before the Parliament at this stage.

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 may present 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.

2.1 A remedy that fixes a wrong

Redress is not compensation for damages. Redress is about providing a holistic response to an individual and their partner/family and is not simply focused on a monetary payment. Each survivor will be seeking different outcomes from redress and any redress scheme needs to approach each case on an individual and personal basis. The application of redress needs to be flexible, adaptive and responsive to individual needs – while adhering to agreed principles and standards.

2.2 Why is access to redress important?

Without redress, the only course of action for survivors of child sexual abuse is to pursue civil litigation against an institution. Redress provides an alternative pathway that is less costly, non-adversarial, holistic and timely. Typically, litigation on historical child sexual abuse matters can be protracted, extremely costly for all parties involved and often contributes to significant re-traumatisation of the survivor.

2.3 Past failings of redress

The work of the Royal Commission has highlighted the failings of past and current redress schemes that have been implemented by both governments and institutions. Some of these include:

- a lack of independence and external oversight to decision making;
- an adversarial rather than pastoral approach and the power imbalance between the institution and survivors; and
- inconsistency and lack of transparency.

3. Elements of Redress

3.1 Direct Personal Response

Direct personal response generally refers to the key non-financial components of redress. Many victims/survivors are seeking understanding and compassion, an acceptance of responsibility by the organisation, and an assurance that actions are taken to prevent abuse occurring again. This may include:

If the survivor wishes to engage with the institution, this may involve:

- an apology and acknowledgement of the abuse (this can be provided in writing and/or in person)
- opportunity to meet with a senior representative of the institution (this needs to be directed by the survivor)
- Assurances as to the steps taken by the institution towards preventing further abuse.

Principles of direct personal response

- *This needs to be survivor-focused and directed by the survivor – institutions must be guided by what the survivor states they need and want*
- *Institutions need to be clear about what they can offer, not to make false promises – and above all else must do no further harm.*
- *Apologies need to be genuine, personalised (not general) and must acknowledge the impact of the abuse*
- *Those involved in providing a direct personal response need to be appropriately trained in the impacts of childhood trauma*
- *The institutions should create opportunities for and actively seek feedback from survivors about the response they have received.*

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.

Direct personal response may also include:

- 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.
- Referral to support services and counselling for partners and/or family members affected as required and directed by the victim/survivor.

3.2 Life-long counselling and psychological care

- Access to counselling and psychological care over the life-span is critical
- Redress is intended to supplement not replace access to existing services.

Principles for life-long counselling and psychological care

- *Should be available throughout a person's life (redress may also consider the counselling needs of partners/families)*
- *Should be available on an episodic basis recognising that survivors may need intensive counselling at particular points in time*
- *Survivors should be allowed flexibility and choice in the type, location and provider of counselling services*
- *There should be no fixed limits on the level of service provided*
- *Counselling and psychological care should be provided by trauma-informed specialists and those with suitable qualifications*
- *Ongoing counselling needs can be reviewed at assessed at appropriate times.*

3.3 Monetary Payment

The determination of financial redress is a highly complex and challenging issue and one which is being closely considered by the Royal Commission.

For each survivor, a monetary payment will represent different things – for some it will be an acknowledgement of the impact of abuse, for others it will be about enhancing their quality of life in the future, and for others it may signify a tangible way the institution has 'paid' for their wrongdoing or neglect.

Institutions need to be very clear about the purpose of a monetary payment and ensure this is conveyed clearly to survivors.

Assessment of a monetary payment may be made on the basis of a matrix which seeks to articulate the 'severity of abuse', the 'impact of abuse' and 'distinctive institutional factors'.

The Commission have illustrated a possible approach to this matrix below:

Factor	Value
Severity of abuse	1-40
Severity of impact	1-40
Distinctive institutional factors	1-20

The application of such a matrix is supported by detailed guidelines (developed from the research literature) and the assessment would be undertaken by a suitably qualified panel of experts from relevant fields. These guidelines and the research literature currently exist and could be utilised by an independent-decision making panel as described in **Section 4.3** of this paper.

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

Many victims/survivor have also expressed concerns about the conditions within Deeds of Release and associated confidentiality agreements that have prevented them from speaking publicly about the redress amount and the redress process. While it is essential that privacy provisions are maintained, victims/survivors should not be subject to confidentiality agreements.

The Royal Commission are currently advocating an approach which would suggest that any monetary payment provided through redress would be taken into consideration of an assessment of damages as a result of litigation.

4. What do we know?

Our analysis of known historical allegations and/or possible incidents of child sexual abuse within the YMCA or by a YMCA employee/volunteer suggests that up to **20** individuals may seek redress through the YMCA. Our knowledge of these cases and research would also suggest that in many of these 20 cases, there are likely to be multiple victims/survivors.

Of the 3000 people who have told their stories to the Royal Commission in Private Sessions to date, **30** (1%) of these relate to the YMCA. The Royal Commission anticipate that 7000 private sessions will be held before the conclusion of the Commission in December 2017, which may mean that this figure is likely to increase.

The people coming forward to tell their stories to the Commission represent a small proportion of the total population affected by abuse in institutions – they are the people who feel most comfortable, supported and able to come forward and tell their story.

Initial modelling undertaken by the Royal Commission estimates that up to **65,000 people** could be eligible to access a National Redress Scheme.

To date, there are 5 survivors with whom the YMCA is currently having direct communication.

It is important to note that these numbers are rough estimates only. Research has clearly demonstrated that child abuse is underreported and the average time taken to disclose abuse is more than 20 years.

5. A proposed approach for the YMCA

5.1 Draft 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 may 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 opportunity to access 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.

5.2 Draft Principles

It is proposed that our approach to redress will be underpinned by the following principles. These align with the leading practice identified by the Royal Commission and the principles contained in the Royal Commission's recent Consultation Paper.

PRINCIPLE 1: Our approach will be survivor-focused.

This includes maintaining the best interests of survivors as our priority: 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.

This also includes ensuring that the rights and choices of victims/survivors are 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.

PRINCIPLE 2: Our approach will be transparent, accountable and subject to independent oversight.

The Royal Commission have been unequivocal in recommending that organisations establish a means by which independent decision-making and oversight can occur.

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.

PRINCIPLE 3: 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.

PRINCIPLE 4: Our approach will be trauma-informed

Those responsible for providing the response to survivors and those engaged in the provision of redress should, at a minimum, have a foundational level of training in the impacts of child sexual abuse and be trained in a trauma-informed approach.

PRINCIPLE 5: Our approach to redress will be accessible

A redress scheme should be easily accessible to all survivors, regardless of their location, circumstance, cultural or language group. This means providing clear, easy to understand information about redress online and through support service providers and survivor advocacy support groups.

This also means creating a redress process in which there is 'no wrong door' in terms of access and seeking support.

PRINCIPLE 6: 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.

PRINCIPLE 7: Our approach will apply a standards of plausibility and reasonableness.

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'.

PRINCIPLE 8: Our approach to redress will maintain survivors' rights to civil litigation.

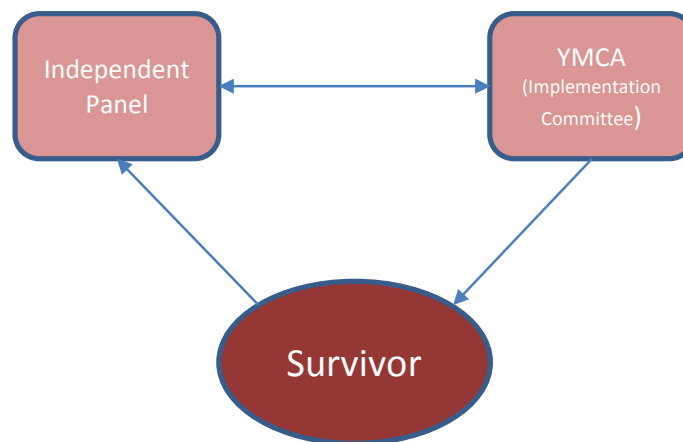
By law, victims/survivors have the right to bring an action against an organisation or institution and the provision of redress should complement these rights. The provision of a redress approach that is just and equitable and meets the best interests of the victim/survivor will mitigate the likelihood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

The Royal Commission are recommending that any payments made to survivors during a process of redress be taken into consideration during civil litigation and any resulting determination of compensation for damages.

5.3 Possible 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.

It is critical that victims/survivor have the ability to contact an independent structure or mechanism that sits outside the YMCA. This is an element of organisational-redress that the Royal Commission have been very clear in highlighting as leading practice.



Proposed Independent Panel

Possible structure and composition

- Will be independent and external to the YMCA
- 4 to 5 member panel
- Comprising: a senior legal practitioner; 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 Independent Panel should not be accepted).
- Could 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.

This may include the consideration of establishing an independent structure which could be 'shared' with other like organisations.

Proposed YMCA Implementation Committee

Possible structure and composition

- Comprising: a member of the Board Governance Committee; National CEO; Executive Manager; Relevant Association President (where applicable); Relevant Association CEO (where applicable); Victim/survivor advocate (member of Independent 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 Independent Panel.

Roles and responsibilities

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

6. Funding considerations for the Movement

The development of an ethical, responsive and nationally consistent approach to redress is critical for the YMCA, however without a sustainable funding model to support our Movement Redress Policy the provision of support and assistance to victims/survivors will not be realised.

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 financial viability of some YMCA Associations.

6.1 The development of possible funding models

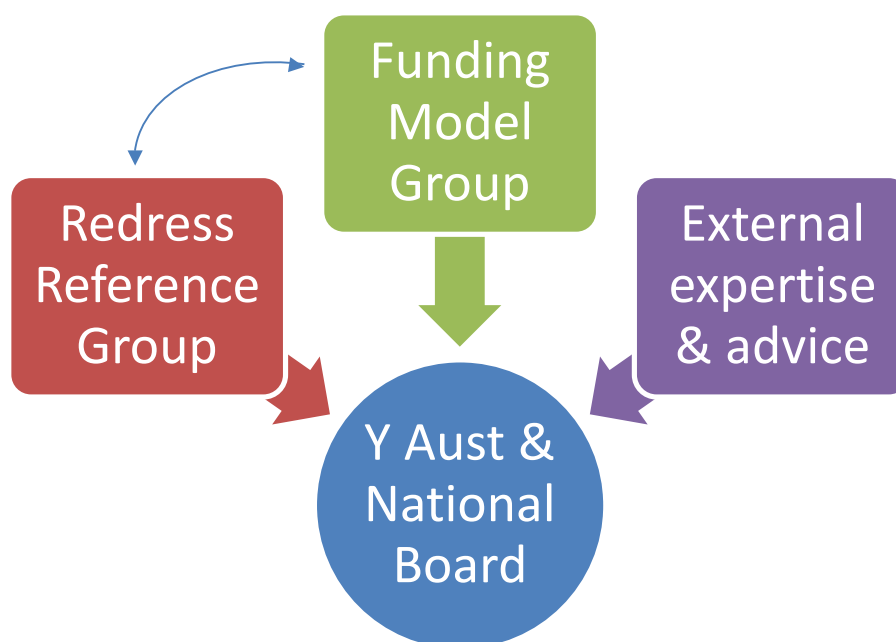
Given the complexities as described above, a technical advisory group has been established drawing on the financial, risk and governance expertise in the Movement to consider a number of possible models within a range of variables and parameters. As an initial step, the group has been asked to consider the following questions:

- What are the merits or otherwise of a national fund?
- If a national fund, what are the possible models?
- If not a national fund, how do we approach funding for redress?
- A consistent approach to monetary payments – how do we achieve this?
- What are the risks associated with this approach?

The group have also been asked to consider a number of possible models through which redress could be funded and the detailed information and data underpinning these models is currently being worked through. When further developed, the Movement will be presented with these possible models for consideration and consultation.

7. Process and consultation

7.1 Movement Redress Policy development and Funding Model development



	Composition	Roles and responsibilities
Redress Reference Group	National Board reps Association Board reps Staff: Risk and Policy <i>Skill-based and Movement representation</i>	Policy framework – principles and practice Governance structure of redress Advice to Y Australia/Board Champions in the Movement
Funding Model Group	National CEO Association CFOs Directors: National & Association <i>Skill-based and Movement representation</i>	Develop possible funding models Consider actuarial data Advice to Y Australia/Board
External expertise & advice	Legal Actuarial Governance Survivor Advocate	Provide specialist advice on an as needs basis.
Y Australia and National Board	National CEO Executive Staff National Board Members Project planning consultant	Work with all of the above to develop policy framework, governance structure and funding models Consult with and advise Movement Bring to AGM

7.2 Key outputs and milestones

Movement Redress Policy

This Movement Policy will provide the overarching framework for our approach to redress.

Primarily, it will include the Principles and outlines the Governance structure for redress. This Policy will articulate our agreed framework for working together as a federation.

Following consultation with the Movement and through the Board Engagement Strategy a final draft will be prepared for detailed discussion at the Presidents' Forum in late July.

Redress Funding Models Options Paper

In alignment with the Movement Redress Policy, the preparation of a detailed Options Paper will be prepared in consultation with the Movement in readiness for the Presidents' Forum in Late July.

Redress Procedure and Guidelines

Work to develop the procedures and guidelines associated with the implementation of the Movement Redress Policy will commence development. However, the precise procedures and guidelines will be dependent on the various elements of the Movement Policy and in particular the governance structures.

Information for Survivors

Following agreement and endorsement by the Movement at the 2015 AGM, a number of resources and information will be developed for survivors to ensure clear, accurate and timely information is provided about how redress can be accessed through the YMCA.

7.3 Consultation and communication methods

A range of consultation and communication methods will be used to ensure the Movement is widely consulted and provided with clear information.

Face to face: through regular fora such as National Leadership Team meetings, CEO Forums, Board Engagement Strategy.

YMCA Australia Update: information will be provided regularly to the Movement on the progress of the policy development.

YMCA Extranet site: information will also be provided through this project site which will be used by the Redress Reference Group and the Funding Model Technical Group as an online workspace. Access to general information and Movement communications will be provided through this site.

Movement Teleconference: these will be convened as required and will be an open forum for CEOs, Directors and senior staff.

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 actuarial advice (and other specialist advice as required)												
Consultation with Movement/Board Engagement Strategy												
Revised Movement Redress Policy developed												
Possible funding models developed												
Revised Movement Redress Policy and funding models provided to Y Australia Board												
Alignment with Royal Commission Report and recommendations												
Further consultation with Movement as required including Presidents' Forum end July												
Further specialist advice as required												
Final draft of Movement Redress Policy developed and distributed to Movement												
Further engagement with Movement as required												
Endorsement at AGM												