

MELBOURNE ANGLICAN REDRESS SCHEME

for participating dioceses

TERMS OF REFERENCE

At its meeting on 15 December 2016, the Archbishop of Melbourne with the consent of the Council of the Diocese approved the following scheme to provide, by a pastoral and therapeutic approach, redress to survivors of child abuse:

CHAPTER 1 – PRELIMINARY

PART 1.1 - INTRODUCTION

Preamble

1. (1) This Scheme may be known as the Melbourne Anglican Redress Scheme. The Scheme sets out the legal framework for the provision of redress to an eligible survivor either by agreement or by an adjudicated outcome. This is an interim scheme, pending consideration of the detail of any State or Commonwealth redress scheme.
- (2) Under the Scheme, the parties (the applicant and any participating respondent institution) may at any time reach agreement on the quantum and nature of redress to be provided to the applicant. The process involves referral of an application to an Assessment Board only if the applicant and each respondent institution agree to that referral.
- (3) The Scheme constitutes a Review Board but only to hear and determine an application to review a decision of the Assessment Board whether the governing criteria in clause 8 for the grant of redress have been met.
- (4) This Scheme is intended to bind the Melbourne Anglican Diocesan Corporation Ltd and a participating diocese, the Diocesan Bishop-in-Council and diocesan corporation, if any, of which—
 - (a) have resolved to be bound by these Terms of Reference as a participating diocese; and
 - (b) have agreed in writing with the Scheme Corporation on the payment of its fees and disbursements to operate the Scheme so far it relates to that participating diocese.

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Commencement, revocation, modification and termination

2. (1) This Scheme comes into operation on 1 February 2017 and in relation to the Diocese of Melbourne operates until—
- (a) modified on one month’s notice in writing to the Scheme Corporation by the Archbishop in Council of the Diocese of Melbourne;
 - (b) revoked on 3 months notice in writing to the Scheme Corporation by the Archbishop in Council of the Diocese of Melbourne; or
 - (c) terminated by 3 months written notice in writing of termination by the Scheme Corporation to the Diocesan Corporation.
- (2) This Scheme operates in relation to a participating diocese until—
- (a) revoked on 3 months notice in writing to the Scheme Corporation by the Diocesan Bishop-in-Council of the participating diocese; or
 - (b) terminated by 3 months written notice in writing of termination by the Scheme Corporation to the applicable Diocesan Corporation.

PART 1.2 – PROTOCOLS

Making and content of protocols

3. The Scheme Directors may from time to time consider and approve a protocol or protocols in relation to the matters the subject of this Scheme.

CHAPTER 2 – PROVISION OF REDRESS

PART 2.1 – GUIDING PRINCIPLES

4. The Church is committed to the mission of living out and extending the love, care and compassion of Jesus Christ to everyone; through the Scheme, the Church seeks to engage in the process with empathy, support and compassion,

having regard to the individual circumstances of any person harmed.

5. The following guiding principles and what they mean for you as a survivor inform the provision of redress under this Scheme—

(1) *Survivor focused*

The Scheme is committed to ensuring that your rights and choices are respected and supported. You are under no obligation to use the Scheme.

The Scheme will consult with you, as a survivor, on your priorities and needs and that your choices will be at the centre of what the Scheme does. The Scheme will offer you support during the process.

(2) *Trauma-informed*

The approach of the Scheme is trauma-informed, that is to say, it is underpinned by a clear understanding of the nature and impacts of child sexual abuse.

(3) *Transforming*

The key objective is by a pastoral and therapeutic approach to treat all survivors with compassion and justice, to enable them to feel validated and to rebuild their lives in a positive way to have a productive and fulfilled life.

(4) *Independence*

The Scheme has a process under which decision making and oversight is independent of all participating dioceses and entities and which is transparent and non adversarial; as a survivor, you will be kept informed during the process.

(5) *The process seeks to avoid the traditional Court approach*

The Assessment Board is not obliged to hold a formal hearing or to permit cross examination of witnesses.

(6) *Timeliness*

The Scheme is committed to a timely process, but one that will allow you the time that you need.

(7) *Accessible*

The Scheme is to be accessible to all survivors.

PART 2.2 – APPLYING FOR REDRESS

Application

6. (1) Subject to this Scheme, any person who has suffered harm as a result of alleged abuse and satisfies the governing criteria in clause 7 may at any time apply to the Scheme Corporation for the grant of a final award of redress against the Diocesan Corporation or other participating diocese.
 - (2) The applicant may specify the nature and quantum of the redress sought and any relevant respondent institution.
 - (3) The application must be in writing and in the form approved by the Scheme Corporation and may be lodged by another person on that person's behalf and with their approval.
 - (4) If the applicant alleges that they suffered more than one occasion of abuse or that one or other or all of the respondent institutions is responsible, the applicant must set out in the application all such allegations of abuse.
 - (5) The applicant may not submit separate applications in respect of separate occasions of alleged abuse.
 - (6) A person may not apply for redress or pursue that application if the person is prosecuting legal proceedings against the Diocesan Corporation or the Church authority or against a participating diocese or entity for compensation in connection with the abuse that is or may become the subject of an application for redress.
 - (7) A person under a legal incapacity may apply by their legal guardian for the grant of a final award.
7. On receipt of the application, the Redress Manager must—
 - (a) deliver a copy to each relevant respondent institution; and
 - (b) notify if possible the person alleged to have committed the abuse of the allegations made against them in the application.

PART 2.3 – GOVERNING CRITERIA AND CONDITIONS

Governing criteria

8. (1) The governing criteria for the grant of redress are that—
 - (a) a perpetrator (whether or not identified) committed the alleged abuse;
 - (b) there is a relevant connection between that abuse and the respondent institution; and
 - (c) as a result of that abuse, the applicant has suffered loss or harm.
 - (2) A relevant nexus exists between the alleged abuse and the respondent institution when the alleged abuse took place, whether on the premises of the respondent institution or otherwise, in any of the following circumstances—
 - (a) in connection with activities or operations of the respondent institution in which the perpetrator participated, whether as the holder of a role office or position in the institution or otherwise;
 - (b) where—
 - (i) the perpetrator held a role office or position in the respondent institution; and
 - (ii) the institution significantly contributed to the perpetrator having the opportunity for access to the person harmed by the abuse and the exercise of purported authority over that person;
 - (c) where the person suffered the abuse whilst under a care program provided by the respondent institution, whether residential care, foster care, kinship care or some other kind of care.
9. There shall be conditions of the grant of redress pursuant to a determination of the Assessment Board or the Review Board that the applicant agrees and acknowledges that—
 - (a) the quantum of any lump sum financial assistance will not be assessed in the same strict manner as damages or compensation for any asserted perceived or possible legal liability of a respondent institution;
 - (b) in return for accepting a final award of redress the applicant releases to the extent permitted by law each respondent institution from all claims actions suits and liabilities that arise out of the circumstances of the application;
 - (c) the provision of that redress, whether on an interim or final basis or the consent to it will not be relied on to constitute any admission of liability of that respondent institution;

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- (d) in the case of a final award of a lump sum financial assistance, the lump sum paid is a final payment and no further application under this Scheme will be made or entertained;
- (e) the applicant must allow credit for any monetary or other benefit or assistance (including by way of interim redress) previously received by the applicant from the respondent institution or any other institution which has a relevant connection to the abuse, calculated net of all reasonable expenses in gaining that benefit including legal fees and Medicare repayments; and
- (f) on the death of an applicant prior to the determination of any application for redress under this Scheme, any right of that person to receive financial assistance of any kind under this Scheme does not survive for the benefit of his or her estate.

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PART 2.4 – RESPONSE OF THE SCHEME

How the Scheme is to respond after receipt of the application

10. As soon as practicable after the Scheme receives an application for redress, the Redress Manager must—
 - (a) acknowledge to the applicant receipt of the application and offer a therapeutic and pastoral response in accordance with the guiding principles in Part 2.1 and the other provisions of this Scheme;
 - (b) seek from the applicant a report of a qualified psychologist or psychiatrist, setting out the history of the abuse, a diagnosis, a prognosis and indicating whether further treatment is required;
 - (c) seek the advice of any case worker who has been appointed for the applicant and any other advice that may be appropriate;
 - (d) facilitate at such time as may be appropriate, by a settlement conference, mediation or other alternative dispute resolution process, engagement with each respondent institution, and the resolution of the application by consent;¹ and
 - (e) otherwise deal with the application in accordance with this Scheme.²

¹ It is contemplated that the Redress Manager would arrange either a settlement conference between the parties or a mediation of the matter by a mediator. That mediator could be, with the consent of the parties, one and the same person who would determine the matter as a member of the Board if no settlement was reached. The Terms of Reference specifically permit this approach in s47, adopting as a safeguard, provisions comparable to the scheme of the *Commercial Arbitration Act 2011*, s27D.

² The Redress Manager may refer the application to the Board under s36. The Board will determine the application under Part 3.3 below.

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Appointment and role of the case worker

11. (1) For each person who has applied for redress, the Redress Manager may with the consent of the applicant or his or her guardian appoint a case worker.
- (2) The functions of the case worker are—
- (a) to provide support and pastoral care to the applicant;
 - (b) to advise the Redress Manager at their request on the nature and extent of care and assistance that should be provided to the applicant, in response to any application, within the constraints of this Scheme; and
 - (c) to perform such other functions as may be prescribed by this Scheme or by the Scheme Directors.

If agreement quantum and nature of redress or facts

12. (1) The applicant may agree in writing with any respondent institution on the quantum and nature of redress to be provided.
- (2) Any such agreement will take effect according to its terms, without the need for any referral to the Board.
- (3) If no agreement is reached and the application is referred to the Board under clause 20, the applicant may agree with a respondent institution on certain facts relevant to the application and the submission of a statement of those facts to the Board or the Review Board.
- (4) The Board or the Review Board may in its discretion proceed on the basis of the statement of agreed facts and make such determination as it thinks fit, consistent with this Scheme.

PART 2.5 – APPLYING FOR INTERIM CARE AND ASSISTANCE

Application

13. (1) An applicant for redress may apply to the Redress Manager for a direction that a respondent institution pay or meet the expense of interim care and assistance.
- (2) Subject to this Scheme, an application may be made at any time and from time to time and must be dealt with in accordance with this Scheme.
- (3) A person under a legal incapacity may apply by their legal guardian under subclause (1) of this clause.
- (4) The interim assistance that may be provided from time to time must reasonably meet the individual circumstances of the applicant and should take into account any or all of the following—
 - (a) the immediate needs of the applicant;
 - (b) reimbursement of past out-of-pocket medical expenses;
 - (c) provision of, and payment for, counselling and other health-related support services on an ongoing and as-needed basis; and
 - (d) other ad-hoc forms of financial and in-kind assistance
 subject always to this Scheme;
- (5) An applicant is not to be taken to have waived any rights or causes of action in respect of the abuse alleged in the application.

PART 2.6 – DETERMINATION OF INTERIM CARE AND ASSISTANCE

Determination by the Redress Manager

14. (1) Within a reasonable period from receipt of an application for interim care and assistance, the Redress Manager must—
 - (a) consider the advice of the case worker from time to time in relation to the applicant if one has been appointed;
 - (b) subject to subclause (2), give each respondent institution the opportunity to make any relevant submissions on whether it is responsible for that care and assistance; and
 - (c) determine each application for interim care and assistance—

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- (i) in accordance with the schedule of benefits and the governing criteria;
 - (ii) based what is fair and reasonable having regard to the individual circumstances of each applicant; and
 - (iii) specifying provisionally pending the final award the respondent institution which is responsible to pay or meet the expense of that interim care and assistance.
- (2) In affording procedural fairness, the Redress Manager must not delay the provision of care and assistance to the applicant.
 - (3) The Redress Manager may procure counselling and other support services to the family of the applicant in accordance with the schedule of benefits, including in circumstances where the applicant may have died prior to any determination of the application.

Level of Proof

- 15. If on an application for interim care and assistance, the Redress Manager is satisfied on the basis of the available information that there are plausible grounds for concluding that a governing criterion is satisfied, the Redress Manager must treat the governing criterion as satisfied.
- 16. The respondent institution must pay or re-imburse the expense of any interim care and assistance determined from time to time by the Redress Manager pursuant to clause 14.

PART 2.7 – INVESTIGATIONS

The Scheme Manager to cause an investigation

- 17. (1) The Redress Manager may cause an investigation to be made of any matters relating to an application for redress.
- (2) The Redress Manager may by instrument in writing appoint, upon such terms and conditions as he or she may approve, a competent person to investigate matters relating to an application.
- 18. For the purpose of an investigation, the Redress Manager or their delegate may obtain such statutory declarations or written statements, recorded conversations, reports, documents and other material as the Redress Manager or their delegate considers necessary or advisable.
- 19. The Redress Manager may by notice in writing require a respondent institution by its nominated representative—
 - (a) to meet on reasonable notice with an investigator to answer questions in relation to the application;

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- (b) to provide a detailed report to the Redress Manager and supply any requested documents within 21 days or such further period as the Redress Manager may allow in relation to any matter relevant to the investigation; and
 - (c) to verify the report by statutory declaration or another manner specified by the Redress Manager.
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CHAPTER 3 – ADJUDICATION IF NO AGREEMENT

PART 3.1 – REFERRAL OF THE APPLICATION TO THE BOARD

20. (1) Subject to subclause (2), after completing—
- (a) any alternative dispute resolution process under Part 2.4 that has proved unsuccessful; and
 - (b) any investigation of an application for redress in accordance with Part 2.7 of this Scheme,
- the Redress Manager must, and an equivalent officer may, in either case with the written consent of the applicant and each respondent institution, refer the application to the Board.
- (2) The parties to the application are the applicant and each respondent institution.
- (3) If the applicant has lodged a complaint which raises a question about the fitness of the perpetrator to hold a role office or position in the institution in respect of the abuse alleged in the application, the Redress Manager or an equivalent officer may determine to defer referral of the application to the Board until the complaint has been determined or for such other period as it may determine.
- (4) The Redress Manager may by instrument in writing delegate their functions under this clause to an authorised officer of the Scheme.

PART 3.2 – PROCEDURE FOR REFERRAL

How the Redress Manager to refer matters

21. (1) The Redress Manager must and an equivalent officer may refer the application to the Board by delivering to the Secretary of the Board a copy of the application and a written report that includes—
- (a) any relevant information or documents; and
 - (b) a statement of any allegations of abuse made against the alleged perpetrator.
- (2) The report must be signed by the Redress Manager.

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Documents and materials to be delivered

22. Within 14 days of the date of the referral of a matter to the Board, the Redress Manager must cause to be delivered—
- (a) to the applicant and each respondent institution a copy of the written report; and
 - (b) to the alleged perpetrator notice of the referral to the Board and a copy of the statement of allegations made against the perpetrator.

The role of the Scheme Manager on the reference

23. The Redress Manager may but is not obliged—
- (a) to present to the Board—
 - (i) any evidence relevant to the application;
 - (ii) any findings on material questions of fact and recommendations he or she proposes that the Board should make; and
 - (iii) any submissions in support; and
 - (b) to appear by an authorized representative at any hearing of the Board to assist the Board in its enquiry into the application.

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**PART 3.3 – DETERMINATION OF AN APPLICATION FOR A FINAL
AWARD OF CARE AND ASSISTANCE BY THE ASSESSMENT
BOARD**

Determination by the Board

24. (1) When an application for redress is referred to the Board under clause 20, the Board must—
- (a) determine whether the governing criteria are satisfied; and
 - (b) otherwise determine the application—
 - (i) in accordance with the schedule of benefits and the governing conditions;
 - (ii) based what is fair and reasonable having regard to the individual circumstances of the applicant; and
 - (iii) specifying the respondent institution which is responsible to pay or meet the expense of any final award of redress, and if more than one, in what proportions.

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- (2) The Board may in its discretion as part of the award of redress—
- (a) direct that financial assistance be provided to the applicant in a lump sum, by instalments or in such other manner that the Board determines to be appropriate having regard to the circumstances of the applicant and consistent with the schedule of benefits;
 - (b) recommend that such other care and assistance be provided by a respondent institution to the applicant as the Board may in its discretion determine, consistent with the schedule of benefits including without limitation –
 - (i) counselling and psychological care;
 - (ii) vocational and educational training; and
 - (iii) pastoral care;
 - (c) recommend to the Church authority connected with the applicable respondent institution without binding that authority that—
 - (i) an apology or other acknowledgement be given to the applicant;
 - (ii) such other steps of a systemic or process or administrative nature be implemented by the respondent institution as may be judged worthwhile to prevent or diminish in future the incidence of abuse and harm to any person;
 - (d) determine whether the actual loss suffered by the applicant is substantially in excess of the maximum amount that can under the schedule of benefits be awarded to the applicant as a lump sum financial assistance;
 - (e) following a determination under paragraph (d), direct that within a specified period, a respondent institution participate in a mediation of any claim by the applicant for that excess in satisfaction of any legal entitlement, if request be made by that applicant in writing no later than 60 days prior to the expiration of that period;³ and
 - (f) settle the precise terms of the offer of redress to the applicant.
25. The assistance that may be provided from time to time must reasonably meet the individual circumstances of the applicant and may take into account any or all of the following—
- (a) the immediate needs of the applicant;
 - (b) reimbursement of past out-of-pocket medical expenses;
 - (c) past and future loss of earnings;

³ These provisions are to facilitate a mediation between the relevant parties to resolve that dispute.

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- (d) pain and suffering;
 - (e) provision of, and payment for, counselling and other health-related support services on an ongoing and as-needed basis;
 - (f) other ad-hoc forms of financial and in-kind assistance;
 - (g) expenses reasonably incurred in making a successful application
- subject always to this Scheme.
26. (1) The Board may at any time on application by a respondent institution refuse an application for a final award of redress if the applicant has previously by written agreement released the respondent institution from any liability in connection with the alleged abuse and in the opinion of the Board, there are no reasonable grounds for declining to give effect to that release.
- (2) In considering whether there are reasonable grounds for declining to give effect to a release given by the applicant, the Board must determine what is fair and equitable in the case at hand, having regard to all the circumstances including but not limited to those which in law or equity would entitle the applicant to have the release set aside including but not limited to—
- (a) duress;
 - (b) undue influence;
 - (c) fraud;
 - (d) misrepresentation;
 - (e) misleading and deceptive conduct;
 - (f) unconscionable conduct.

PART 3.4 – APPLICATION FOR REVIEW

Application to Review Board on issue of governing criteria

27. Where the Board has made any decision under clause 24(1)(a) (governing criteria), an applicant or respondent institution aggrieved by it may within 30 days from the date of the decision or such further period as the Review Board may allow—
- (a) apply to the Review Board for review of the decision; and
 - (b) give notice of the application to the other party.

Stay

28. The application for review shall operate as a stay of the action on any determination required under this Scheme.

Documents and material to be delivered following application

29. Within 14 days of the date of the application to the Review Board or within 14 days of the date of the document or material coming to existence, whichever is the later, the Redress Manager must cause to be delivered—
- (a) to the secretary of the Review Board any documents and material relevant to the application for review; and
 - (b) to the perpetrator notice of the application for review.

President to determine membership of Review Board

30. Upon delivery of the report to the secretary of the Review Board, the President or Deputy President as the case may be must as soon as possible determine the membership of the Review Board for the purpose of the application for review.

Review Board may exercise the powers of the Board

31. (1) The Review Board may exercise all the powers of the Board under this Scheme and may—
- (a) affirm the decision under review; or
 - (b) vary the decision under review; or
 - (c) set aside the decision under review and make another decision in substitution for it; or
 - (d) set aside the decision under review and remit the matter for reconsideration by the Board in accordance with any directions or recommendations of the Review Board.

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- (2) For the avoidance of doubt, the Review Board may, on an application for review of a determination that a governing criterion has not been met, determine the quantum and manner of payment of financial assistance to the applicant.

Review Board to deal with application expeditiously

32. The Review Board shall deal with the application as expeditiously as possible and shall consider any further submissions from the applicant, the respondent institution and the Redress Manager if it chooses to file any.

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PART 3.5 - PROCEEDINGS OF THE BOARD AND THE REVIEW BOARD

How to conduct proceedings

33. In this Part, a reference to ‘the board’ means each of the Board and the Review Board.
34. In connection with an application for redress or the review of any determination on that application, the board—
- (a) must act with fairness and according to equity, good conscience, natural justice and the substantial merits of the case without regard to technicalities or legal forms;
 - (b) is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit; and
 - (c) is not acting as an arbitrator but as an expert assessor.

Powers of the board

35. (1) Subject to this Scheme and in particular the provisions of the preceding clause, the board—
- (a) may regulate the proceedings of its meetings as it sees fit;
 - (b) may conduct its business and any proceedings by video recording or video link, conference telephone or by any electronic means of communication;
 - (c) may inform itself from the transcript or other record of any court or tribunal and may adopt any findings, and accept as its own, the record of any court or tribunal;
 - (d) may give any respondent institution to whom notice of the proceedings was given a reasonable opportunity to make submissions; and
 - (e) is not obliged to hold a hearing at which evidence is adduced

- or submissions heard orally; and
- (f) must give reasons for any determination and recommendation, other than by way of directions in the course of an application, unless the determination is made by consent of the applicant, the respondent institution and the Redress Manager.
- (2) The board may but is not obliged to give an applicant or respondent institution any reasonable opportunity to examine or cross-examine witnesses.
36. (1) Subject to subclauses (2) and (3), any hearing of the board on or in connection with an application for redress must be held in private with attendance only by—
- (a) the members of the board (as the case may be);
- (b) the Secretary of the board and any person providing transcription services;
- (c) the Redress Manager and any person representing him or her;
- (d) the applicant;
- (e) a person whom the applicant wishes to have present for the purpose of providing support to him or her, who is reasonably available and who is approved by the board to be present⁴;
- (f) a person representing each respondent institution; and
- (g) any witness while giving evidence.
- (2) The board may direct—
- (a) that part of the proceeding be held in public; or
- (b) that any other persons or classes of persons specified by it may be present during the whole or any part of a proceeding.
- (3) The board may only make a direction under the preceding subclause if satisfied that the direction is both lawful and in the public interest in the proper administration of justice.

Review Board not obliged to hold hearing or admit certain evidence

37. Subject to this Scheme, the Review Board is not obliged to admit evidence that was not adduced before the Board in relation to the facts relevant to the application unless—
- (a) the evidence could not have been obtained with reasonable diligence for use at the hearing before the Board; and
- (b) that there is a high probability that the result would have been different had it been received at that hearing.

⁴ To adapt the language of clause 17 of schedule 5 of the *Magistrates' Court Act 1989* (Vic).

Preliminary conference

38. (1) As soon as practicable, after being constituted, and after inviting each of the parties to propose a provisional timetable for the matter, the board must—
- (a) hold a preliminary conference with the parties in person or by telephone or other means; and
 - (b) by directions set a procedural timetable for the matter.
- (2) The board may at any time extend or vary the procedural timetable.

The board may give directions as to documents and conduct of inquiry.

39. The board may at any time and from time to time give directions for—
- (a) the inspection by and supply of copies to the applicant, the respondent institution or any other person of the documents or material relevant to the reference;
 - (b) the service of any witness statements, summary of proposed evidence, submissions or other documents on which a party may wish to rely; and
 - (c) the conduct of its inquiry into the matter

and for that purpose the board when constituted by more than one person may be constituted by the presiding member alone.

The board may receive written evidence.

40. Without limiting the meaning and effect of clauses 34 and 35, the board may receive a statutory declaration or a signed statement without the need for the personal attendance of the maker of the statement and may also in its discretion use electronic means such as video recording, video link or conference telephone to receive evidence and submissions.

The board may rely on decisions of other bodies

41. In any proceedings before it, where the board is satisfied that the perpetrator—
- (a) has been convicted by a court within or outside Australia of an offence involving abuse as alleged in the application for redress (“specified conduct”);
 - (b) has been found guilty (without conviction) by a court within or outside Australia of an offence involving the specified conduct;
 - (c) has admitted in proceedings before a court or tribunal within or outside Australia or before the Professional Standards Board or Review Board of the Diocese or equivalent body having engaged in the specified conduct;
 - (d) has been found by a court or tribunal or professional standards board

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or review board within or outside Australia to have engaged in the specified conduct; or

- (e) has been disqualified by a court or tribunal within or outside Australia from professional practice on account of the specified conduct,

then—

- (f) a certificate, reasons for judgment or other record from the court or tribunal or board (as the case may be) shall be conclusive evidence that the perpetrator engaged in the specified conduct; and
- (g) neither the perpetrator nor any other party shall be at liberty to call or give evidence or make submissions for the purpose of calling into question the conviction or finding of guilt of the respondent or denying that the perpetrator engaged in the specified conduct.

42. A determination of the board is not binding as against a respondent institution except for the purposes of the institution providing redress to the applicant under this Scheme.
43. A determination of the board is not binding as against the perpetrator.

Standard of Proof

44. The standard of proof for the board is that there is a reasonable likelihood that the governing criteria have been met, that is to say, that—
- (a) a perpetrator (whether or not identified) committed the abuse;
- (b) there is a relevant nexus between that abuse and the respondent institution; and
- (c) as a result of that abuse, the applicant has suffered loss or harm.

Procedural fairness

45. (1) Before making any determination, the board must give the applicant and each respondent institution a reasonable opportunity to adduce any evidence or make any submission relevant to the application.
- (2) The board is not to join a perpetrator as a party to the application.
- (3) A respondent institution may rely on the evidence of a perpetrator in connection with the application.
- (4) The alleged perpetrator may on his or her own motion and whether prior to or after referral to the board, provide to the Redress Manager or the board or both (as the case may be) a statement of facts relevant to the allegations made against that person but may not cross examine an applicant or otherwise act as a party to the proceeding.

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Legal representation

46. (1) The Redress Manager, the applicant and the respondent institution may each appoint a legal representative to assist them in the process.
- (2) The board may in its discretion allow in any final award a specified amount for legal costs of the applicant, as may be prescribed by the Scheme Directors.

Individual members of the board not to meet with parties

47. After an application has been referred to the board or an application for review has been made (as the case may be), a member of the board must not individually meet with either the applicant or a representative of a respondent institution or any one acting on their behalf to the exclusion of the other parties while the matter is in progress.

Power of Board member to act as mediator, conciliator or other non-arbitral intermediary

48. (1) A person may be appointed to constitute the Board determining the application either as the sole member or as one of three members, notwithstanding that the person has acted as a mediator at an alternate dispute resolution process for the application (**mediation proceedings**) if the applicant and each respondent institution have consented in writing to that person so acting.
- (2) Such a person acting as a mediator—
- (a) may communicate with the parties collectively or separately; and
- (b) must treat information obtained by the person from a party with whom he or she communicates separately as confidential, unless that party otherwise agrees.
- (3) If the applicant and each respondent institution have consented in writing consent under subclause (1), no objection may be taken to the conduct of subsequent proceedings by the Board member solely on the ground that he or she has acted previously as a mediator in accordance with this clause.
- (4) If confidential information is obtained from a party during mediation proceedings as referred to in subclause (2)(b) and the mediation proceedings terminate, the Board member must, before conducting subsequent proceedings in relation to the application, disclose to all other parties to the proceedings so much of the information as the Board member considers material to the proceedings.
- (5) In this clause, a reference to a **mediator** includes a reference to a conciliator or other non-arbitral intermediary between parties.

Disclosure and material personal interest

49. A member of the board must without delay disclose in writing any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, as they arise, to the Convenor or President and the parties unless he or she has already informed them of the circumstances.
50. (1) Where a member of the board has a material personal interest or other conflict of interest in a matter before it, the member shall be disqualified from participating in the matter.
- (2) The opinion of the Convenor of the Board or the Deputy Convenor of the Board in the case of the Convenor as to whether a member of the Board has a material personal interest or other conflict of interest in a matter shall be conclusive and final and binding.
- (3) The opinion of the President of the Review Board or the Deputy President of the Review Board in the case of the President as to whether a member of the Review Board has a material personal interest or other conflict of interest in a matter shall be conclusive and final and binding.

To whom a copy of the determination and recommendation to be provided.

51. (1) Subject to this clause, the board must cause a copy of the determination and recommendations together with reasons (whether under clauses 24 or 31 to be provided to—
- (a) the applicant;
- (b) each respondent institution; and
- (c) the Redress Manager;
- (2) The board must ensure that the determination and recommendations together with reasons are anonymised and redacted so as not to contain any particulars that identify or are likely to lead to the identification of—
- (a) the applicant;
- (b) any witness;
- (c) any person against whom a prescribed sexual offence is alleged to have been committed; or
- (d) the perpetrator (whether as a witness or otherwise), unless that person has admitted the abuse and in the discretion of the board, the disclosure of the identity of that person is necessary or desirable in the public interest.
- (3) If, to be effective, a recommendation must identify a person referred to in the preceding subclause, the board may communicate

confidentially the name of that person to a person referred to in subclause (1).

CHAPTER 4 – IMPLEMENTATION

PART 4.1 - THE OFFER OF REDRESS

52. The Scheme Corporation on behalf of a respondent institution must, as soon as is practicable after a determination of an application for redress by the Board or Review Board, by way of formal offer subject to the conditions above in clause 9—
- (a) notify the applicant in writing of the determination;
 - (b) provide the applicant with a copy of the determination of the application; and
 - (c) inform the applicant in writing of the offer and that it will remain open for acceptance for 90 days from the date of the offer by the applicant or such further period not exceeding 120 days as the Redress Manager may in his or her absolute discretion allow in writing prior to expiration of those 90 days.
53. (1) The applicant may by written notice to the Redress Manager within 90 days from the date of the offer or such longer period as aforesaid accept or reject the offer made by the Scheme Corporation in accordance with this clause.
- (2) An acceptance must be accompanied by—
- (a) a legal advice certificate that complies with subclause (3); and
 - (b) an acknowledgement that the applicant understands the effect of accepting the offer.
- (3) A certificate complies with this clause if the certificate—
- (a) is in a form approved by the Scheme Directors; and
 - (b) certifies, as required by the form, one or more of the matters specified in the form; and
 - (c) is signed by a legal practitioner for the applicant, as applicable in relation to the matters certified.
- (4) If an applicant does not accept the offer within that period, he or she will be taken to have rejected the offer.

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54. Where an applicant accepts the offer, the applicant will be bound by the conditions above in clause 9 and will be taken to have agreed in writing to release to the extent permitted by law each respondent institution from all claims actions suits and liabilities that arise out of the circumstances of the application.
55. Upon acceptance by the applicant of the offer in accordance with this Part, each respondent institution found to be responsible must comply with the award and pay or re-imburse the applicant in accordance with the terms of the award.

CHAPTER 5 – ASSESSMENT BOARD

Establishment of Board

56. There shall be an Assessment Board of members constituted and appointed in accordance with the provisions of this Part.

Board may be an equivalent body

57. The members of the Board may constitute an equivalent body either generally or for a particular case or matter.

Function of the Board

58. Subject to the provisions of this Scheme the functions of the Board are to enquire into and determine an application for redress in accordance with this Scheme.

Panel of Board members

59. The member or members of the Board in a particular case shall be appointed from a panel, comprising—
- (a) a Convenor and a Deputy Convenor appointed by the Scheme Directors, each of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
 - (b) at least 7 other persons having professional qualifications and experience —
 - (i) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (ii) in child protection, investigations, social work, ethics, medicine or counselling.

Appointment of members of Board Panel

60. (1) The members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the Convenor of the Board.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.
- (3) The members of the panel may constitute or include the members of an equivalent body either generally or for a particular application.

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Filling vacancies in the Board Panel

61. Any vacancy in the membership of the panel shall be filled by the Scheme Directors.

Convening a Board

62. (1) The member or members of the Board to be convened for any matter shall be determined by the Convenor or, if there is a vacancy in the office of convenor, by the Deputy Convenor.
- (2) For the purpose of any application to the Board, the Board shall consist of either –
- (a) the Convenor or Deputy Convenor, and two other members of the panel; or
- (b) at the discretion of the Convenor or Deputy Convenor, a single member from the Panel who is either one of them or a person of appropriate expertise and experience for the relevant matter.
- (3) So far as it is reasonably practicable, the Board consisting of more than one member shall include at least one man and at least one woman.
- (4) If the applicant and each respondent institution agree on the member or members of the Panel to act as the Board, the Convenor or Deputy Convenor as the case may must appoint that member or members.
- (5) For the purposes of this clause, a vacancy in the office of Convenor includes a situation in which the Convenor is not able to act because of a personal interest in a matter, illness or absence from the Diocese.

Note: The intention is to give the Convenor a discretion so as to constitute the Board in a manner that best suits the nature of the matter to be considered.

63. A member of the Board agrees in acting as a member of the Board to abide by the provisions of this Scheme.
64. (1) Before appointment, a prospective member of the Board must sign a statement of availability, impartiality and independence in any form prescribed by the Scheme Directors.
- (2) The prospective member must disclose in writing to the Convenor of the Board any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

Quorum

65. The quorum for a meeting of the Board consisting of more than one member shall be a majority of the members of the Board, except where the Board by its Convenor or Deputy Convenor makes directions under 39 of this Scheme.

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How questions decided by Board

66. A question before the Board constituted by more than one member may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the opinion of the presiding member shall prevail.

Secretary to the Board

67. There may be a secretary to the Board who shall be appointed by the Convenor of the Board on such terms and conditions as may be determined from time to time by the Convenor of the Board.

A single member may constitute Board for certain purposes

68. The rules of the Board made under this Part may provide that, in relation to the exercise of specified functions of a Board consisting of more than one member, or in relation to matters of a specified class, other than the determination of the application by such a Board, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

Separately constituted Boards may sit simultaneously

69. The Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

Board's proceedings valid despite vacancies etc

70. An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

CHAPTER 6

THE REVIEW BOARD

Establishment of Board

71. There shall be a Review Board of members constituted and appointed in accordance with the provisions of this Part.

Board may be an equivalent body

72. The members of the Review Board may constitute an equivalent body either generally or for a particular matter.

Function of the Board

73. Subject to the provisions of this Scheme the functions of the Review Board are to enquire into and determine an application for review of any decision of the Board under clause 24(1)(a) (governing criteria).

Panel of Board members

74. The member or members of the Review Board in a particular case shall be appointed from a panel, comprising—
- (a) a President and a Deputy President appointed by the Scheme Directors, and Senior Members, each of whom shall be or shall have been either a judicial officer or a practising barrister or solicitor of at least 10 years' standing of the Supreme Court of a State or Territory; and
 - (b) at least 7 other persons having professional qualifications and experience —
 - (i) in psychiatry or psychology with current or recent clinical experience with patients who have been victims of child abuse or sexual misconduct; or
 - (ii) in child protection, investigations, social work, ethics, medicine or counselling.

Appointment of members of Board Panel

75. (1) The members of the panel shall be appointed by the Scheme Corporation by resolution of the Scheme Directors after consultation with the President of the Review Board.
- (2) The members of the panel shall hold office on such terms and conditions as may be determined from time to time by resolution of the Scheme Directors.
- (3) A person may be a member of the panel notwithstanding that they

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may constitute or include the members of an equivalent body either generally or for a particular matter and may be included on any panel of any Professional Standards Board to determine fitness of a perpetrator.

Filling vacancies in the Board Panel

76. Any vacancy in the membership of the panel shall be filled by the Scheme Directors.

Convening a Review Board

77. (1) The member or members of the Review Board to be convened for any matter shall be determined by the President or, if there is a vacancy in the office of President, by the Deputy President.
- (2) For the purpose of any application to the Review Board, the Review Board shall consist of either—
- (a) the President or Deputy President, or a Senior Member who shall be the presiding member, and two other members of the panel; or
- (b) at the discretion of the President or Deputy President, a single member from the Panel who is either one of them or a person of appropriate expertise and experience for the relevant matter.
- (3) So far as it is reasonably practicable, the Review Board consisting of more than one member shall include at least one man and at least one woman.
- (4) If the applicant and each respondent institution agree on the member or members of the Panel to act as the Review Board, the President or Deputy President as the case may must appoint that member or members.
- (5) For the purposes of this clause, a vacancy in the office of President includes a situation in which the President is not able to act because of a personal interest in a matter, illness or absence from the Diocese.

Note: The intention is to give the President a discretion so as to constitute the Board in a manner that best suits the nature of the matter to be considered.

78. A member of the Review Board agrees in acting as a member of the Board to abide by the provisions of this Scheme.
79. (1) Before appointment, a prospective member of the Review Board must sign a statement of availability, impartiality and independence in any form prescribed by the Scheme Directors.
- (2) The prospective member must disclose in writing to the President of the Review Board any circumstances likely to give rise to justifiable

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doubts as to his or her impartiality or independence.

Quorum

80. The quorum for a meeting of the Review Board consisting of more than one member shall be a majority of the members of the Board, except where the Board by its President or Deputy President makes directions under clause 38 of this Scheme.

How questions decided by Review Board

81. A question before the Review Board constituted by more than one member may be decided by a majority of the votes of those present and voting and in the case of an equality of votes, the opinion of the presiding member shall prevail.

Secretary to the Review Board

82. There may be a secretary to the Review Board who shall be appointed by the President of the Board on such terms and conditions as may be determined from time to time by the President of the Board.

A single member may constitute Review Board for certain purposes

83. The rules of the Review Board made under this Part may provide that, in relation to the exercise of specified functions, or in relation to matters of a specified class, other than the determination of the application, the Board may, at the direction of the presiding member, be constituted by a single member sitting alone.

Separately constituted Boards may sit simultaneously

84. The Review Board, separately constituted in accordance with this Part, may act simultaneously for the purpose of applications made to it.

Board's proceedings valid despite vacancies etc

85. An act or proceeding of the Review Board is not invalid by reason only of a vacancy in its membership or in the membership of the panel and, notwithstanding the subsequent discovery of a defect in the nomination or appointment of members of the panel or the Review Board, any such act or proceeding is as valid and effectual as if the member had been duly nominated or appointed.

CHAPTER 7**CONFIDENTIALITY AND PUBLICATION*****Duty of confidentiality***

86. Subject to the provisions of this Scheme, the office holders of the Scheme, a member of the Board or the Review Board, a Church authority or a person employed or engaged on work related to the affairs of the Redress Manager, the Board or the Review Board must not divulge information that comes to his or her knowledge by virtue of that office or position except—
- (a) in the course of carrying out the duties of that office or position under this Scheme;
 - (b) for the purpose of sharing information with other office holders in the Scheme Corporation carrying out duties under professional standards legislation or any protocol approved under it;
 - (c) as may be authorised or required by the National Register Canon 2007 or any canon prescribed by General Synod in substitution for that canon;
 - (d) in any proceedings before a diocesan tribunal, a provincial tribunal or the special tribunal;
 - (e) as may be required by law; or
 - (f) to any insurer or insurance broker of the Diocese where the information may give rise to or be relevant to a claim for indemnity by the Diocese or any of the members of the Church in the Diocese or groups of such members against the insurer or is relevant to obtaining or continuing insurance cover.

Scheme Manager to report annually to Scheme Directors

87. Without disclosing the identity of any applicant, the Redress Manager must report annually to the Scheme Directors, the Diocesan Corporation of each participating diocese and the Diocesan Bishop-in-Council on the activities of the Scheme for that calendar year.

CHAPTER 8

PART 8.1 – INDEMNITY

Indemnification of those with functions under the Scheme

88. For each matter in which the Diocesan Corporation is a respondent, the Diocesan Corporation will indemnify and keep indemnified the Scheme Corporation and—
- (a) each office holder of the Scheme and any delegate of that person;
 - (b) any carer appointed under this Scheme or any protocol;
 - (c) the Redress Manager;
 - (d) any delegate of the Redress Manager;
 - (e) the members of the Board and each of them;
 - (f) any person appointed by the Board or pursuant to this Scheme;
 - (g) the secretary to the Board;
 - (h) the members of the Review Board and each of them;
 - (i) the secretary to the Review Board;
 - (j) any person appointed by the Review Board pursuant to this Scheme;
 - (k) the Church authority or if more than one, each Church authority—

for and against any act or omission respectively by them in good faith and in the exercise or purported exercise of powers or functions, or in the discharge or purported discharge of duties under this Scheme.

PART 8.2 – PROCEDURE FOR GRIEVANCE ABOUT PROCESS

89. (1) Any grievance about the operation of this Scheme or any protocol approved under it must in the first instance be addressed in writing to the Executive Director.
- (2) The Executive Director must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Executive Director may allow.
- (3) The Executive Director must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.

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90. (1) If the person aggrieved about the operation of this Scheme or any protocol approved under it remains so after receiving the response from the Executive Director, that person may address their grievance in writing to the Redress Scheme Ombudsman.
- (2) The Redress Scheme Ombudsman must consider the grievance and forward the same to the Director and to the investigator or other staff member if any involved for a written response within 14 days or such longer period as the Redress Scheme Ombudsman may allow.
- (3) The Redress Scheme Ombudsman must provide the person lodging the grievance and the Scheme Directors with a written response and an outline of any proposed action.

CHAPTER 9

INTERPRETATION

91. (1) In this Scheme, unless the context otherwise requires—

“**abuse**” means—

- (a) sexual abuse; or
- (a) serious physical abuse related to sexual abuse

of a child including psychological abuse where it is associated with an act of physical abuse or sexual abuse of a child;

With the consent of the Diocesan Corporation in a particular case, “abuse” may be extended to cover sexual abuse of an adult and serious physical abuse of a child or an adult;

“**application for redress**” means an application to the Scheme for the grant of a final award that one or more of the Diocesan Corporation and a participating diocese or entity make redress to the applicant and “**apply for redress**” has a corresponding meaning;

“**Assessment Board**” means the Assessment Board established under Chapter 5 of this Scheme;

“**Board**” means the Assessment Board;

“**child**” means a person under the age of 18 years;

“**Church**” means the Anglican Church of Australia within the Diocese;

“Church authority” means the Diocesan Bishop;

“Diocesan Bishop” means the Archbishop/Bishop of the Diocese and includes a person appointed Vicar-General or Commissary pursuant to legislation of the Synod of the Diocese and any Administrator of the Diocese within the meaning of that legislation;

“Diocesan Bishop-in-Council” means the Diocesan Bishop acting with the advice and consent of the Diocesan Council;

“Diocesan Corporation” means the Melbourne Anglican Diocesan Corporation Ltd and, in particular case, includes the relevant diocesan corporation of a participating diocese and, where a participating diocese does not have a diocesan corporation, means the Diocesan Bishop-in-Council;

“Diocesan Council” means the Council of the Diocese constituted under an ordinance of the Synod of the Diocese.

“Diocese” means the Diocese of Melbourne and includes a participating diocese;

“equivalent body” means a body of the State or another diocese or of the Anglican Church of Australia exercising powers, duties or functions equivalent to those of the Scheme Committee, the Board or the Review Board as the case may be;

“equivalent officer” means an officer of the State or another diocese or of the Anglican Church of Australia exercising powers, duties or functions equivalent to those of the Redress Manager as the case may be;

“Executive Director” means the Executive Director of the Office of Professional Standards of the Scheme Corporation and includes an acting Executive Director and a Deputy Executive Director;

“medical” includes psychiatric, psychological and other areas of health practice;

“participating diocese” means a diocese, the Diocesan Bishop-in-Council and diocesan corporation if any of which -

- (a) have resolved to be bound by these Terms of Reference as a participating diocese; and
- (b) have agreed in writing with the Scheme Corporation on the payment of its fees and

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disbursements to operate the Scheme so far it relates to that participating diocese.

“**perpetrator**” means the person who committed the abuse or, as the context requires, who is alleged to have committed the abuse;

“**physical abuse**” means any intentional or reckless act, use of force or threat to use force causing injury to, or involving unwelcome physical contact with, another person but does not include an act or omission committed in circumstances that constitute—

- (a) a lawful justification or excuse to the tort of battery; or
- (b) any other lawful exercise of force;

“**protocol**” means any protocol approved from time to time by the Scheme Directors under Part 1.4;

“**referring body**” means the Redress Manager or an equivalent body which refers a question or questions under clause 20 to the Board;

“**respondent institution**” means one or more of the Diocesan Corporation and other participating diocese who is respondent to an application for redress and includes only where the context so requires, the Church in the applicable diocese and the applicable Church authority;

“**Review Board**” means the Review Board established under established under Chapter 6 of this Scheme;

“**redress**” means —

- (a) care and assistance, interim or final, that may be provided under this Scheme; and
- (b) any other action that may be taken under this Scheme in response to an application for redress;

“**Redress Manager**” means the person appointed for the purpose by the Scheme Corporation by resolution of the Scheme Directors and includes an acting Redress Manager and any deputy Redress Manager and any officer of the Scheme authorised by the Scheme Directors to act in that capacity;

“**Redress Scheme Ombudsman**” means the Redress Scheme Ombudsman appointed by the Scheme Corporation by resolution of the Scheme Directors and includes an

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acting Redress Scheme Ombudsman;

“schedule of benefits” means the provisions set out in the schedule to this Scheme;

“Scheme” means the scheme constituted by these Terms of Reference and includes in relation to an application for redress, the Scheme Corporation;

“Scheme Corporation” means Kooyoora Ltd, a company limited by guarantee retained by the Diocesan Corporation to administer this Scheme;

“Scheme Directors” means the board of the Scheme Corporation, acting in accordance with its constitution;

“sexual abuse” means sexual assault, sexual exploitation or sexual harassment and in relation to a child includes the use of a child by another person for his or her own sexual stimulation or gratification or for that of others;

“sexual assault” means any intentional or reckless act, use of force or threat to use force involving some form of sexual activity against or with a child.

“sexual exploitation” means any form of sexual contact or invitation to sexual contact with another person, with whom there is a pastoral or supervisory relationship, whether or not there is consent and regardless of who initiated the contact or invitation;

“sexual harassment” means—

- (a) an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or
- (b) other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.

SCHEDULE OF BENEFITS

The Scheme is committed to providing a holistic response to survivors of institutional child abuse. The following care and assistance is available:

A. *Interim care and assistance:*

- (1) Immediate support from an independent, experienced Support Person;
- (2) Counselling with the trauma-informed counsellor of the applicant's choosing up to a reasonable cost approved by the respondent institution;
- (3) Other care and assistance services, dependent on individual need and circumstances, as the Redress Manager may determine, up to a cost of \$5,000 or a greater amount with the prior consent of the respondent institution.
- (4) For the family of the applicant, counselling and other support services up to a cost of \$5,000 or a greater amount with the prior consent of the respondent institution.

B. *Final award of care and assistance:*

- (1) Acknowledgement of the claimant's experiences by a senior office holder of the institution and an apology which may be written and/or verbal
- (2) A financial redress payment not exceeding \$150,000 determined with the guidance of the matrix set out below. This may be in addition to support provided for counselling and psychological care.
- (3) Other care and assistance services, dependent on individual need and circumstances, as the Board may determine.

C. *Legal representation*

The Scheme will allow, and the respondent institution will pay such sum as the Scheme Directors may generally from time to time approve, with the consent of the respondent institution—

- (a) towards the legal costs of a successful applicant up to but not including referral to the Assessment Board; and
- (b) for legal representation during the second stage of adjudication or a greater sum if a hearing is required.

D. *Matrix*

A matrix as recommended by the Royal Commission in its report on redress and civil litigation will be used to guide the assessment of the financial amount, as follows:

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- | | | |
|----|---------------------|------|
| a. | Severity of abuse | 1-40 |
| b. | Impact of abuse | 1-40 |
| c. | Additional Elements | 1-20 |
- (i) whether the applicant was in state care at the time of the abuse – that is, as a ward of the state or under the guardianship of the relevant Minister or government agency;
 - (ii) whether the applicant experienced other forms of abuse in conjunction with the sexual abuse – including physical, emotional or cultural abuse or neglect;
 - (iii) whether the applicant was in a ‘closed’ institution or without the support of family or friends at the time of the abuse;
 - (iv) whether the applicant was particularly vulnerable to abuse because of his or her disability.