



Submission in response to:

**Royal Commission into Institutional Responses to Child
Sexual Abuse**

**Consultation Paper: redress and civil litigation, January
2015**

Summary

Open Place welcomes the opportunity to comment on the Consultation Paper: Redress and Litigation

Open Place is the Victorian Support Service for Forgotten Australians. It commenced service in January 2010 following significant lobbying and advocacy work from Forgotten Australians themselves. Open Place receives funding from the Victorian Department of Human Services and the Commonwealth Department of Social Services. Open Place provides a range of services which includes records, family searching and family reunion, counselling, support and Royal Commission support. It provides an outreach service to regional and rural parts of Victoria. It is based in Richmond, an inner suburb of Melbourne, with a well used drop in and activities centre. It also services 12 social and support groups across Victoria.

Forgotten Australians are the survivors of institutional 'care' which was the standard form of out of home 'care' in Australia for much of the twentieth century. The 2004 Inquiry of the Senate Community Affairs Reference Committee, **Forgotten Australians**, estimated that more than 500,000 children have experienced life in an orphanage, Home or other forms of out of home care in the last century in Australia.

The Senate Committee reported that they had:

....received hundreds of graphic and disturbing accounts about the treatment and care experienced by children in out of home care....their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault...neglect, humiliation and deprivation of food, education and healthcare.

Open Place concluded in a submission to the Royal Commission in June 2014:

*The case for a nationally constituted redress scheme has been well documented and argued (see Senate Reports: **Forgotten Australians** (2004) and **Lost Innocents and Forgotten Australians Revisited** (2009). There is incontrovertible evidence that most of the current approaches to redress and compensation are limited and ad hoc, sometimes seemingly capricious and patronising (see *Betrayal of Trust* pages 515-546 and submissions 195 & 203). What is needed is a systemic and coherent national approach that assumes a wrong has been committed and, generously and as part of a reconciliation process, establishes a system that can ensure equity of access and justice of outcome.*

The Consultation Paper provides clear evidence of the central importance the Royal Commission places on redress as a means of ensuring justice for Forgotten Australians. Open Place believes that the Paper, with **one significant oversight**, addresses the vast majority of issues raised in previous issue papers and roundtable consultations.

However this one oversight mentioned is of significant importance and distress to Forgotten Australians. Open Place understands the position of the Royal Commission is defined by its terms of reference; namely its remit is to investigate institutional responses to sexual abuse. Open Place and many Forgotten Australian advocacy groups have argued consistently that the experience of a childhood spent

in institutional 'care' requires a national response along the lines of the national redress scheme that is proposed in the paper.

It is inconceivable that governments and institutions not be held to account for their acts of omission and commission that have been so painfully retold and relived to the Royal Commission by hundreds of Forgotten Australians.

Open Place is strongly of the view that, even though the remit of the Royal Commission is bounded by sexual abuse, it remains possible for the Royal Commission to recommend in its final paper, to be released in mid-2015, that parallel systems of redress, involving contributions from government and institutions should be established to allow all those Forgotten Australians who endured childhoods of neglect and physical abuse, as well as sexual abuse, to participate in a national redress scheme.

The common message Open Place has received from its service users is:

Don't forget us again.

A physician once asked Elie Wiesel, "How does one treat survivors of the Holocaust?" Wiesel replied, "Listen to them, listen very carefully. They have more to teach you, than you do them."

After years of neglect, Forgotten Australians are acutely aware that this Royal Commission offers the last opportunity for justice via a national redress scheme.

Forgotten Australians must be listened to.

Introduction

Achieving both a just redress scheme and an accessible civil litigation process remain fundamental issues of justice and affirmation for Forgotten Australians.

In order to assist Forgotten Australians to navigate the paper Open Place prepared some notes about some of the issues, important to Forgotten Australians that are discussed in the Consultation Paper. These notes were contained in the February edition of the Open Place Newsletter distributed to over 2000 Forgotten Australians. They were also posted on the Open Place web site. Open Place invited Forgotten Australians to comment on the paper either directly to the Royal Commission or to Open Place. Open Place also undertook to send out, on request, hard copies of the Executive Summary.

Feedback from Forgotten Australians to Open Place

Much feedback has been received. Each of the Open Place Social and Support Groups (12 in number) have had the opportunity to discuss issues of redress and civil litigation, often using the guide to the Paper provided in the Open Place Newsletter. Many Forgotten Australians (25) have spoken directly to staff or to the Manager. A number have given written contributions to Open Place and asked that Open Place forward these to the Commission. Open Place has also assisted groups of Forgotten Australians to make their own submissions.

As far as it is possible all of these comments have been included in this response.

Open Place welcomes this Consultation paper. It provides clear evidence of the central importance the Royal Commission places on redress as a means of ensuring justice for Forgotten Australians. As previously stated Open Place believes that the Paper, with **one significant oversight**, addresses the vast majority of issues raised in previous issue papers and roundtable consultations.

Elements of redress for child sexual abuse survivors

The Paper suggests that redress should consist of three elements:

- ***A meaningful apology from the institution, if the survivor wishes***
- ***Lifetime access to therapeutic counselling and psychological care***
- ***Monetary payment that recognizes the wrong a survivor has suffered***

These elements recognize the importance of a range of redress responses.

Open Place endorses the importance the Royal Commission places on monetary payment as a component of redress.

In terms of a meaningful apology from the institution many Forgotten Australians are deeply suspicious and wary of the capacity and motivation of the institution. One response Open Place received makes this comment: *In fact many would consider this nothing more than a PR exercise of the institution and something they want no part of, in part, due to the level of trauma such a meeting would evoke. In*

addition such meetings have in the past resulted in perpetrator organizations minimizing the abuse, or partially denying responsibility for it, a not uncommon occurrence which is devastating to survivors.

However the opportunity for a Forgotten Australian to receive a meaningful apology should be part of the overall redress scheme as some Forgotten Australians will want a face to face meeting with a senior representative of the institution.

Open Place welcomes the acknowledgement the paper makes in relation to life time counselling. However it is our view that this does not go far enough. A significant feature of a national redress scheme is the implementation of a whole of government approach to the provision of programs and services for Forgotten Australians across areas such as housing, health and aged care. In particular the needs of older Forgotten Australians are becoming increasingly urgent. We urge the Royal Commission to recognize the extreme disadvantage suffered by survivors of institutional care in relation to poor medical and dental care experienced as children. As Forgotten Australians grow older these needs have become more pressing and their capacity to pay is limited. The needs of this group must be officially and formally acknowledged so that planned access to these services can occur as a matter of priority. The Senate Report of 2009 (*Lost Innocents and Forgotten Australians Revisited*) notes that these recommendations were made to the Commonwealth in 2004 (*Forgotten Australians*). The 2009 Report states that “there is unequivocal evidence of these needs” and notes that governments have failed to recognise the needs of this group in the specific design or advertising of these services. Priority access to medical, dental and aged care must become a significant component of a redress scheme. One of our experiences at Open Place is that as a result of adverse childhood experiences many Forgotten Australians are ageing prematurely and are in desperate need of services that are not defined by age but by presentation of needs; eligibility for aged care packages is a good example of this.

The third essential feature of a national redress scheme is the continued funding of the national support services for Forgotten Australians (some of these support services also receive state government funding). These specialist services provide informed and individual support that is particular to the needs of Forgotten Australians. The experience of these support services is that, although available to the broad Forgotten Australian community, they tend to provide intensive and enduring support to the most vulnerable in this group. These services play an important role in ensuring that other services such as housing, aged care and medical are able to respond appropriately to the needs and vulnerabilities of Forgotten Australians.

Redress responses must be tailored to the task of addressing the restitution, rehabilitation and justice demands arising from the historic wrong that has been done to these survivors

Eligibility

The Paper states that “it would not be appropriate for us (the Royal Commission) to consider making recommendations about redress for physical abuse or neglect that is unrelated to sexual abuse”.

This definition of eligibility does not include all those Forgotten Australians who may have experienced criminal abuse ‘in care’ other than sexual abuse. This eligibility definition, if used in a national scheme, will exclude many Forgotten Australians.

Open Place understands the confines of the terms of reference facing the Royal Commission. However, Open Place urges the Commission to recommend in its final paper in mid-year that all governments and institutions respond to the neglect and other forms of criminal abuse experienced by Forgotten Australians by utilizing those national systems and processes that are likely to emerge for those who have been sexually abused. In other words Open Place believes that the significant neglect of the circumstances endured by Forgotten Australians in their childhood must not be perpetuated. All Forgotten Australians must be treated equally. The Royal Commission can do this by evoking what we would call the spirit of redress by calling on governments and institutions to enact the same degree of reconciliation and monetary provision to all those who were abused in 'care'.

Redress payment

The Paper does not have a fixed view on the monetary value of payments. It uses modelling to demonstrate how payments might be distributed and funded.

- ***A range of redress payments, with an average of \$65,000. The level of payment should balance severity and impact of the abuse experience***
- ***Monetary payments should not be affected by any deductions eg. Medicare repayments would be paid by the redress scheme in addition to the redress paid to the survivor***
- ***Those who have already received a payment(s) should still be eligible to apply. Previous payments should be taken into account***
- ***A redress scheme should not exclude a survivor pursuing civil litigation***

The provision of monetary payment is central to any redress scheme. Many Forgotten Australians have commented that although a redress scheme must have a monetary component, no monetary payment can ever be enough to compensate for a lost childhood and an adult life **adversely affected** by these childhood experiences. Forgotten Australians have made two other points. Payments must be of sufficient magnitude to make a difference to both the survivor and to the institution. A payment must allow a survivor to have life experiences that otherwise would not be possible. The payment must also hurt the institution and by so doing so make the point that failure to learn the lessons of the past will continue to hurt the institution financially.

A majority of Forgotten Australians who have spoken to Open Place about the level of monetary payment take the view that the overall level and distribution of payments as proposed in this Paper is realistic.

A number of Forgotten Australians have posed the question about previous payments. How is the level of previous payment to be estimated? Is the estimated amount to include the fees paid to lawyers and the reimbursement to Medicare that is taken from the allocated payment? Open Place argues that the previous payment calculation should only include the amount that the Forgotten Australian has actually received. This is the payment amount with the lawyers' fee and the Medicare reimbursement removed.

Redress scheme process

The paper proposes:

- *The scheme should not have a fixed closing date*
- *Application and assessment should be kept as simple as possible. Survivors should not be required to provide evidence in person*
- *Higher levels of payment may have additional requirements*
- *The costs of the scheme should come from both government and institutions. The scheme should be independent from both government and institutions*

These propositions met with almost unqualified approval. Forgotten Australians agree that a scheme should:

- Establish an independent body with the authority to determine levels of monetary payments
- Engage survivors with respect
- Not be bound by legal parameters
- Be funded by responsible federal and state governments and relevant institutions
- Involve survivors and advocacy groups in the design and development of the process

Level of proof

The paper suggests that the standard of proof for assessing redress claims could be plausibility. This standard begins with the belief that the allegation may be true; the onus of proof is not on the survivor. Higher standards of proof are also options.

Plausibility, if used as a level of proof, avoids the need for the survivor to prove beyond doubt that abuse has occurred. The feedback to Open Place is that Forgotten Australians want to be listened to and believed. Forgotten Australians understand that the institutional context of their story is important and needs to be understood by those who may make judgments about levels of payment. This is why the makeup of the “tribunal” needs to include those with “lived experience” who can provide insight and support to those making a claim.

Severity of abuse and impact of abuse

The paper asks how a reasonable redress amount can be arrived at for individual survivors.

Should the amount in a redress payment be assessed using the combination of severity of abuse (what happened?) and the impact of abuse (what the abuse has meant for my life)? This issue has the capacity to become quite divisive. It is perhaps almost inevitable that comparisons will be made between perceived levels of suffering and abuse and different levels of monetary payments that may arise. This is why it will be critical to have advocacy and support services, of those who have suffered institutional

abuse in an orphanage or Home, represented on the working group that will need to be assembled to work through the operational nuts and bolts of a redress scheme. The credibility of the process must be endorsed by all groups. Not an easy task!

Role of governments

Many Forgotten Australians remain concerned that the role of state governments in exercising their guardianship responsibilities remains, to this point, unaddressed by the Royal Commission. Many Forgotten Australians were removed from their families by court order and placed under the 'care' of the State. The State argued that their family was no longer able to adequately care for them; the State presumably assumed it could do better. This has not been the experience of many, many Forgotten Australians whose 'care' circumstances, whilst under the guardianship of the State, provided opportunities for further abuse and continuing neglect. This comprehensive failure of the State, to act as 'in loco parentis', needs to be addressed by the Royal Commission, when determining the responsibility of the State in contributing to a redress scheme.

Conclusion

Open Place urge the Royal Commission to be inclusive and courageous in their recommendations to government and to institutions. The recommendations have the potential to provide significant life changing and life affirming possibilities to a large cohort of adult survivors of institutional 'care' abuse. This vital opportunity must not be missed. It would be a disaster if survivors were to be further re-traumatized by a failure to build the most inclusive and responsive redress scheme possible.

Acknowledgement

Open Place acknowledges the contribution many Forgotten Australians have made to this submission.