Response to Consultation Paper
on

Redress and Civil Litigation

Royal Commission into Institutional Responses to Child Sexual Abuse

March 2015

Prepared
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Introduction

Child sexual abuse is one of the worst crimes human beings are capable of, yet for much of the twentieth century many communities largely ignored its existence, or refused to speak of it.

Within those communities there were large numbers of both victims and perpetrators, as well as many witnesses. All, willing or not, part of a code of silence.

Those who turned their backs, either in disgust, shock or complicit silence, were adults fearful of taking on powerful perpetrators and wealthy institutions.

While protecting themselves in this way, these adults abandoned defenceless children not just to the torture inflicted by those terrifying predators, but also to a lifetime of unendurable suffering. And allowed the spread of destruction amongst victims' families and communities for generations.

This code of silence imposed by the criminals on all who know the truth is the most powerful weapon against accountability for their crimes.

Such a child rape culture is achieved by silencing victims and denying the truth, by undermining efforts to uncover the facts, by playing the victim and demanding sympathy for their own plight while blaming and shaming the innocent, by spreading lies about victims' or whistleblowers' motivations or reliability, by minimising the harm inflicted, and by further abusing the imbalance of power and influence they originally exploited.

It would be naïve to imagine that such a consistent culture gains hold across a community, a nation, or large parts of the world as a result of the efforts of unconnected individuals working independently of each other.

The same excuses, the same minimisations, the same evasions and distractions are repeated by too many religious and charity officials, no matter the denomination, by certain media commentators, child protection authorities, headmasters, police, judges and politicians, as if they were working from the same manual.

The UK is currently dealing with the damage inflicted by gangs of powerful perpetrators connected via organisations such as the PIE (Paedophile Information Exchange) who, among other activities, publicly lobbied that children as young as four could legally consent to their own rape, and therefore to the permanent physical and psychological impairment inevitably inflicted at such a young age.

If the Royal Commission is to make real changes to Australian society in order to protect children in the future, and deliver some shred of justice to those who have been so devastatingly, deliberately denied it, dismantling our child rape culture is vital.

Denial of redress, barriers to civil litigation, and preventing victims from healing are all key aspects of the child rape culture.

As the Royal Commission public hearing evidence is beginning to show, past claims by powerful institutions to have 'done everything possible' to help the children they sacrificed are lies.

As the submission from John Saunders and SAMPSN shows, survivors of child sexual abuse, and particularly child sexual abuse within institutions, have been significantly unfairly treated compared to our needs, our rights, or to assistance provided to those who suffered from other forms of harm.

It would be hard to find a group more deserving of help.

Or less likely to receive it.

There are so many reasons why our rights to recovery and assistance, even human compassion, have been trampled underfoot for so many decades.

> To protect the wealth and reputations of 'compassionate' or 'holy' institutions.
>
> To similarly protect respected and influential individuals, and also to keep them out of jail.
>
> To save millions of dollars.
>
> To protect their ability to influence politicians and community leaders.
>
> To remain above criticism, so any other victims or evidence are less likely to be believed.

But most of all we have been denied help to recover in order to to keep us damaged, blaming and hating ourselves, believing we are too worthless to deserve to heal, unable to speak out, and denied access to civil litigation to keep damning evidence from being revealed in public.

In the US, where civil litigation is common, the release of secret internal documents as part of the court process is the single element producing the greatest child protection benefit, as communities finally realise they have been fed reassuring lies, begin to understand what is really going on, and insist on real protective action against the real risks.

And as the cost per survivor in the US is around $1million, at least for those institutions which don't conveniently declare bankruptcy, it is likely this cost will also have a long term protective effect against endangering children, if only from self interest.

This scale of cost per child harmed is certainly more likely to protect children than broken promises of zero tolerance, toothless review boards or councils employed and controlled by the institutions themselves, or voluntary guidelines that are routinely ignored.

A recent trend that is becoming common in the US is for survivors to request the bulk release of documents about how an institution has handled abuse as part of a civil court settlement. Often these documents relate to other cases, not the survivor(s) in question, since their documents would have already been revealed in the court proceedings. Yet survivors willingly forgo a significant part of their personal financial award in exchange for making the whole truth publicly available.

Institutions such as the Catholic Church have proved very eager to snatch back from survivors funds originally awarded for rehabilitation. Unfortunately they are not as eager to honour their side of such agreements, with delays of many years, and failure to fully disclose common.

Still, thanks to the selflessness of these US survivors, more people now understand that they have been lied to by institutional officials, that these crimes have been enabled and covered up, and the industrial scale of the problem. And more communities have come to understand this is a problem that involves and affects them all, not just 'other people'.

The Consultation Paper contains a large amount of detailed information and many questions to answer. SNAP congratulates the Royal Commission on this work, which accurately records, reflects and understands the input of a range of survivors and survivor support groups. The points covered in the body of this submission are those where SNAP feels the need for additional input, to emphasise a point, or to answer a question or choose between options.

A summary of the overall issues which need highlighting follows:

- This process is not a balancing act between competing or equal interests. It is a reversal of an appalling injustice, where absolute power is abused to deny the rights of the absolutely powerless.

- Ability to pay should not be misused to minimise redress, since the large number of survivors, and additional long term damage inflicted by often brutal denial of justice, are a direct result of actions/inaction by the institutions.

- In the same way, blaming redress costs for cutting institutions' services unfairly attempts to undermine community support for survivors' right to recover. Redress costs are higher than they should be as a result of decisions by officials to continue to criminally endanger children, and to avoid responsibility for the damage caused by those decisions. Australian society also needs to consider whether social services should be allowed to be provided to vulnerable populations by institutions and individuals

with a track record of sacrificing children and protecting predators. Certainly no abusive institution should be permitted to provide recovery services to those they have already abused

- Continuing to allow institutions to manage any part of a response to their own crimes is unthinkable, due to overwhelming conflict of interest. Redress must be delivered by a national, independent body.

- Direct personal response should be available to those that want it, in the form they want it, but no survivor should feel pressured to engage with the abusive institution. In instances where institutions have contact with survivors, the national independent body must also have appropriate powers to deal with any survivor complaints about reabuse or mistreatment. A consistent pattern of what appears to be deliberate additional harm has occurred too often to imagine all survivors will suddenly be treated with respect, consideration or fairness.

- The focus of any service delivery to survivors must be on rehabilitation, flexibility to meet individual needs, trauma informed services, and respect for the experience and sensitivities of survivors.

- Utilising existing resources, with appropriate organisational structure and resources, is certainly preferred to the higher cost, duplication and steeper learning curve of starting from scratch. But a survivor focus is paramount. Department of Veterans Affairs staff for example, meet the criteria in the above point better than those from departments with a prime focus on minimising outgoings. Many state run counseling and support services provide(d) excellent services but have been defunded almost out of existence.

- Certain lawyers and other service providers will attempt to exploit survivors as a significant new source of revenue, and ways to prevent this need consideration. An example is lawyers in Ireland dramatically overcharging survivors for help filling out redress forms. Legal costs, and other ancillary costs such as assistance to complete forms for those denied an education by abusive institutions must be met by the institution and not siphoned from any monetary payment.

- Families of survivors, particularly those who died early or suicided as a result of their abuse, deserve support. To ignore the needs of this group is to continue to let institutions get away with their crimes and the widespread damage those crimes have caused.

- The terms ‘psychological care’ and ‘counseling’ should be broadened to ‘rehabilitation services’. Some survivors were abused by the mental health system itself, others have had traumatic experiences with mental health practitioners who were paid by the institution and worked against the survivor’s interests, who did not have appropriate qualifications or who misled survivors about their role. Even qualified mental health

professionals who lack specific experience with and understanding of complex trauma can do more harm than good. Indeed the mental health industry, including Freud himself in his later work, has a long history of applying a range of negative labels to survivors displaying symptoms which are the understandable result of severe trauma. Such labels have long been used to silence us, drug us, imprison us, rob us of our rights, undermine us and deny us the help we need. Survivors deserve to be able to decide for ourselves not just which service provider, but also which type of service, is most helpful to our personal healing. Seeking help outside the mental health system should not be financially penalised.

- The insurmountable barriers to survivors currently accessing the civil litigation system in Australia are a disgrace. All statutes of limitations relating to child sexual abuse must be removed. Any institution which exerts authority over children and demands their obedience must be able to be sued if they allow children in their care to be harmed. There should be absolute liability for abuses that occur within residential care, including boarding schools, or any instances where the institution demands total control or authority over the child. Where an offender exploits the respect, authority or trust conferred by their position within, or association with the institution, the institution should be able to be held liable for the abuse unless it can prove it took effective steps to prevent abuse. A culture accepting of child abuse, including for example, failure to report known abuse, failure to immediately remove known or suspected abusers from contact with children, returning children who report abuse to the abusive situation, others witnessing grooming or abuse and no action being taken to remove the child from the abuser, a code of silence, or intimidation, refusal to believe, or denial of assistance and support for victims and whistleblowers should all result in automatic liability for any abuse.

- All changes should apply retrospectively. Institutions have long abused an extreme imbalance of power to escape accountability. Decisions to endanger children are typically made in the full knowledge of the criminal nature of the offences against us, and in the belief that they are, and should remain, above the law. Offenders have been given free pass after free pass because of their willingness to frighten little children into remaining silent for decades, and ability to deceive or corrupt members of the establishment into ignoring evidence of wrongdoing. Far too many survivors will never see any justice. The very least we deserve is that those who finally feel safe enough to come forward not be unfairly denied justice again.

- Redress and civil litigation should be based upon accountability, not affordability. Survivors do not want to get rich, we want access to resources to be able to heal. We do not want to destroy institutions who so callously destroyed us, we want them to learn what it cost us and to never again do it to another child. The bill should be presented to those at fault, the institutions who deliberately chose wealth and power over child

protection. Supposedly not-for-profit institutions are hoarding treasure while taxpayers bear the costs of the harm they caused.

- Despite heavy dependence on a wide range of public support systems, survivors receive only band-aid solutions, and remain in a chaotic state of constant re-traumatisation and re-victimisation. And so the damage grows and envelops additional generations. Based on ASCA's recent research, if high needs survivors are supported with case workers and a range of appropriate rehabilitation services, such as is provided to veterans, many would instead be able to recover and eventually return to functioning as contributing members of society. With a focus on rehabilitation and recovery, the long term cost to the Australian public would be annual savings, not expenditure.

2.1 Justice for victims

Survivors of child sexual abuse are denied justice in every possible way. Far too many survivors have already died young or suffered in silence their entire lifetime without any acknowledgement or understanding of what happened to them, without anyone responsible ever being held accountable, and entirely without help to recover. For too many it is already too late to ever receive any form of justice.

Many survivors know, through experience, that our ongoing denial of justice is deliberate, to protect powerful individuals and institutions. There seems little political will in Australia for anyone to be held responsible for the additional suffering caused by the long term coverup of institutional crimes, even in those instances where the coverup is itself a crime and even where clear evidence of the criminal coverup exists.

In the absence of other forms of justice, it becomes imperative that redress measures are not inadequate, miserly, exploitative or token, as previous examples have been.

And, as highlighted in the Consultation Paper, universality, consistency, fairness, accessibility and equality, across institutions and states, are also vital. As children, we had no choice whatsoever in which institution was given absolute power over us, and whether or not they abused that power. Our access to redress should not be dependent upon something over which we had no control.

2.3 The complexity of the task

Recognising existing support services

Many survivor advocacy and support groups, and government funded services, do excellent work to assist survivors, as the Consultation Paper notes. Many literally are the difference between life and death for fragile survivors brutally denied assistance by callous and self serving institutions.

But when recognising the work of these bodies it is important to ensure the needs of survivors are, and remain, paramount. Past service, or the involvement of inspirational individuals who excel in one particular area, are no guarantee that as a survivor support organisation grows it will not itself succumb to clericalism, with the survival of the institution becoming far more important than those the institution purports to help.

Many have also sprung up out of dire necessity to meet urgent needs, run by amazing volunteers, but have grown without training, structures or management which ensure the most appropriate care for survivors.

Sadly, when money begins to flow on behalf of survivors, suddenly this area of operation also becomes attractive to those motivated by desires other than to right a terrible injustice.

As well, there is a quite appalling track record of those in the pay of the abusive institutions, whether openly or not, advancing the interests of the institution at considerable cost to already damaged survivors. Many suicide deaths result just as much from institutions' attempts to coverup their crimes by silencing and blaming survivors, as from the sexual violence which started the downward spiral towards destruction.

While recognising the important contributions of these bodies, it is important that they do not replace the abusive institutions in being considered above scrutiny. The very fragility of so many survivors requires that all bodies providing services to them meet appropriate professional standards. Survivors also need access to a complaints procedure which can result in removal of funding for services operating inappropriately or harming survivors.

2.5 General principles for providing redress

The Consultation Paper notes calls for 'restorative justice' as an approach to redress. It also notes the lack of agreed definition for this term and for 'therapeutic jurisprudence'.

Survivors report that some abusive institutions use, or rather misuse, the term 'restorative justice'. It has been misused to the extent that many survivors understand the term to mean 'no justice'.

The principle of 'equal concern for all stakeholders' seems to have been interpreted as forcing a survivor to sit in a room where their rights are ignored, their experience is ignored, and they are expected to sacrifice their right to healing in order to help the dangerous individual who damaged them, has avoided accountability for their crimes, and is likely still harming other children.

SNAP has no confidence in abusive institutions controlling measures labeled as 'restorative justice'. The application of the restorative justice methods identified in the Consultation Paper, in truly independent hands, may be of assistance to some survivors, and should perhaps be an option that is available.

The values listed should be applied to all redress measures, with the exception of 'equal concern for all stakeholders'. This is inappropriate to be applied to institutional child sexual abuse because of the extreme power imbalance, and its ruthless exploitation.

Therapeutic jurisprudence as described in the Consultation Paper could only be an improvement on the current civil and criminal legal systems. These are both currently functioning as a means by which powerful individuals are enabled to commit large numbers of child sex crimes against the powerless with impunity, with very few exceptions. Those exceptions serve only to support the façade of a

justice, rather than judicial, system, while the experience itself is so brutally damaging to survivors as to serve as an example to others not to report and not to seek justice.

2.6 Possible structures for redress

Institutional schemes

Under no circumstances would SNAP support continued reliance upon institutional schemes. The Consultation Paper correctly identifies three major and largely insurmountable shortcomings. There is a fourth and more important shortcoming however.

Internationally, the track record of institutions in dealing with their own exploitation of vulnerable persons is appalling and appallingly consistent.

This is the inevitable result of combining conflict of interest, abuse of power, entitlement and lack of scrutiny with those who are powerless, vulnerable, yet possess extraordinarily damaging information.

In any situation except revered or all-powerful institutions, a secretive in-house response to crimes, criminals, child safety and the recovery of fragile victims would be unthinkable.

National scheme or state and territory schemes

It is vital the Royal Commission recommend a single independent national redress scheme.

The refusal of successive state and federal governments to adequately address this issue in the past, despite being provided detailed information of the widespread and criminal sexual violence being committed with impunity against Australia's children, is a national disgrace.

2.7 Past and future abuse

While providing redress for survivors of past abuse who have been denied justice is seen as a short term issue, in the long term there is likely to be an ongoing need for the national body, albeit at a much lower staffing level.

Redress for future abuse is one area that should remain available in the long term. While it is hoped Australia will introduce the most effective measures to prevent or protect against most future abuse, it would be naïve to imagine it is possible to completely eradicate these crimes.

Past abuse of those unable to come forward in a timely manner due to trauma should not be simply ignored, and this may also require the national body to continue.

As well complaints about those providing services to survivors, or about institutions re-abusing or intimidating survivors, or requests for a review of redress awards may all be best provided by the national body continuing to exist after the mass of redress has been delivered.

It is also possible the national body may have an ongoing role in the payment of invoices for counseling services, which will continue throughout survivors' lifetimes.

It may be an efficient use of resources to combine all ongoing supervisory, regulatory and training roles within a single national body, which is also able to meet ongoing needs for redress, funding of services and complaints handling.

3 Data

SNAP understands that the Royal Commission sought to examine the best comparable examples of redress schemes in their data collection exercise.

SNAP endorses the submission by SAMSN and John Saunders, which recommends that comparison with the VPI system administered by the Dept of Veterans Affairs, and with civil payouts in the US, be used to gauge the level of support survivors both need and deserve.

While many survivors' needs will be best met by an ex gratia redress payment, or by an award resulting from civil litigation, some high needs survivors desperately need more tailored support and rehabilitation services. These individuals are at high risk of suicide or early death without this assistance.

4 Direct Personal Response

The Consultation Paper correctly records that any direct personal response must occur only if the survivor wishes it, and only in the way they wish it to occur.

It is the opinion of the author, though not necessarily the position of SNAP, that survivors who wish to engage with the abusive institution are likely still trauma bonded to the institution. The institution has undermined the survivor's self worth to believe they cannot survive without community support, or religious worship, even an abusive community or religion.

The survivor remains in a powerless position - a shunned victim begging for acceptance from a powerful institution - instead of the institution and officials humbly asking for forgiveness, as they should, from the innocent and grievously wronged survivor.

There are far too many examples of self serving institutions cruelly exploiting survivors' need for acceptance to trust that such measures will be uniformly used to help not harm survivors. Survivors' need for pastoral or spiritual support cannot be disentangled from an imbalance of power too easily and commonly abused.

The answer lies in not trusting assurances of good intentions from those who think it better to protect dangerous criminals than the defenseless children on whom they prey.

Possible options include a supervisory or review function for direct personal response activities, perhaps performed by the independent national body, or a complaints mechanism for survivors, operated by the independent national body. Even the possibility of a future review may prevent some misuse of this option, without requiring onerous detailed examination of every interaction.

It is also worth noting that some survivors experience an initial rush of exhilaration upon receiving an apology or meeting with an institutional official. This is because of the seeming change from the indifference of the past. Unfortunately many survivors subsequently learn that any supposed change was only a facade, a deception, and that officials actually remain as uncaring and neglectful as they ever were. This leaves behind the long term pain of additional betrayal.

SNAP is concerned that support and healing services should not be provided by abusive institutions to survivors, for three important reasons.

- First, many institutions have a track record of trying to keep any money in-house so that redress paid to survivors ends up back in the institutions' coffers. Such considerations represent a clear conflict of interest with the survivor's needs.
- Second, some institutions have a track record of using unqualified staff to perform roles that require training, misleading survivors about the actual role of certain staff, or trying to abuse trust by pretending staff are acting on behalf of the survivor when they are acting on behalf of the institution and to the survivor's detriment.
- Third, the culture of victim blaming is so ingrained in many institutions that even those in roles supposed to be supporting victims or helping them recover find it hard to hide their resentment towards victims, refuse to believe them or attempt to blame little children for their own rape.

For example the catholic church operates mental health facilities and seeks customers needing drug and alcohol rehabilitation services, yet protects many of Australia's worst child rapists, a leading cause of drug and alcohol issues.

Survivors report some catholic counselors are in denial of the cause of survivors' trauma, and instead aim to impose their own world view on survivors, which blames the survivor or minimises their harm, exonerates complicit officials and may even demand forgiveness for an unrepentant perpetrator.

There may be instances where a survivor only feels comfortable with a service provided by an institution. While undesirable, and open to exploitation, if the survivor insists, then their wishes should be respected, but the need for some form of scrutiny to protect the survivor becomes vital.

The Consultation Paper notes some examples from case studies where institutional personnel demonstrate a 'lack of understanding' when engaging with survivors.

Many survivors believe these personnel understand all too well, and that intimidatory tactics are so common as to be considered by many as standard procedure. Many survivors report being locked in a room, forcibly separated from support persons, or being bullied, misled, berated or screamed at, and of finally giving in to demands only because they were suicidal or in desperate financial need.

Survivors currently interacting with institutions report these practices continue today, and one survivor reports a meeting was held at the same premises where his rape took place, and that he believes the choice of location was no accident. This institution was trying to force the survivor to identify someone other than his rapist as the perpetrator, so his being unsettled by the venue could be expected to help. It did not succeed.

Another recent example is a survivor who needed an urgent life saving operation, as a result of his abuse. He needed a little funding to enable him to prepare for and make it through the process. The institution responsible for his abuse refused to help him and instead played a game of delay, one can only assume in the hope his time would run out and they need never meet their obligations to him. After referral to a lawyer the operation proceeded successfully and he can now look forward to having a future.

5 Counselling and psychological care

The Consultation Paper's section on counseling and psychological care effectively represents the needs of survivors and options to provide this type of care.

What needs emphasising is perhaps that while many excellent services currently exist, many are so underfunded as to be unavailable to new clients, and particularly to those who have been denied access to help for decades. Hard pressed service providers prioritise new rapes over old, possibly in the hope that timely intervention will reduce future need from this group. However it ignores the rights of those whose original harm, neglect, re-abuse and re-victimisation has led to an exponential growth in our need for assistance.

This is not some unfortunate fact of life but a deliberate choice of governments and institutions through the decades to deny us our human rights, and those governments and institutions should face up to this neglect with a determination to right this wrong. Not in a miserly fashion, but with the resources, whatever

they may be, to welcome us back into society as fully functioning members, not broken hangers on.

ASCA's current research clearly shows that an investment in our recovery now will lead to cost savings in the future, particularly if the abusive institutions finally shoulder their rightful financial responsibilities.

It cannot be understated how difficult it is for many survivors to manage paperwork, red tape or bureaucratic mazes, even or possibly especially those associated with support or redress. Most have severely compromised self worth as a result of our childhood mistreatment, and hurdles where we are made to feel as if we don't deserve help are very undermining.

If simplicity and ease of use for survivors is truly the top priority, then the ideal system would enable service suppliers to send bills direct to the funding body for payment, allowing the survivor to focus on healing, not paying bills.

This could actually be a particularly efficient and cost effective option, if, once an acknowledged survivor has an ongoing relationship with an approved supplier, invoicing is done via email and bills paid electronically. The cost of staffing, training, infrastructure and premises, surely the largest administration cost components, would be significantly below any option involving processing claim forms and nationwide retail exposure.

Many survivors and survivor support groups believe that the best way to deliver healing services to high needs survivors, if survivor recovery is truly a top priority, is via a DVA type Gold Card system, assisted by a pension such as the disability support pension. This option has been called for repeatedly, and survivors are yet to hear a good reason not to pursue this option.

Indeed the suggestion to contract DVA to provide services, possibly under the name of an independent national body, has considerable merit, due to a rehabilitation focus, experience with trauma survivors and a long term drop in client numbers.

While SNAP appreciates the reasons for singling out counseling and psychological care as a core support mechanism, there are powerful arguments to broaden the definition to 'healing' or 'rehabilitation' services.

Some survivors were abused by the mental health system itself and would be traumatised by exposure to psychological services, others have had traumatic experiences with mental health practitioners who were paid by the institution and worked against the survivor's interests, who did not have appropriate qualifications or who misled survivors about their role. Even qualified mental health professionals who lack specific experience with and understanding of complex trauma can do more harm than good.

Indeed the mental health industry, including Freud himself in his later work, has a long history of applying a range of negative labels to survivors displaying

symptoms which are the understandable result of severe trauma. Such labels have long been used to silence us, drug us, imprison us, rob us of our rights, undermine us and deny us the help we need.

Survivors deserve the respect to be able to decide for ourselves not just which service provider, but also which type of service, is most helpful to our personal healing. Seeking healing outside the mental health system should not be financially penalised.

Some may need to move on from counseling to work more intensively in a particular area at a particular time. For some individuals emotional healing can be better and more efficiently found in services such as yoga, enegetic healing modalities, acupuncture, body work, soft tissue therapy, meditation, even dance, music or art therapy, or in intensive workshops. Healing should not have to be paid for out of the tiny monetary payments which are currently proposed.

6 Monetary Payments

An option for payment by installments is absolutely necessary to provide flexibility to those survivors who do not wish to or cannot manage a lump sum. However the redress scheme itself does not have to manage the installment payments and could outsource this role to a low cost but secure financial services supplier.

It is necessary for fairness between survivors that past monetary payments be taken into account. However counseling and psychological care costs should still be available, unless previous monetary payments significantly exceeded maximum eligible payments.

7 Redress scheme processes

There is no reason to recommend a finite length redress scheme, if the primary objective is to meet the needs of survivors. It will be possible however, to wind back the size of the scheme administration after a reasonable time, but still remain available for recent abuse or those unable to come forward earlier.

Review and appeals

The ability to access an external or internal review or appeal any determination of redress is vital if survivors are expected to trust a redress scheme.

Most survivors have more than enough experience of being in a position of powerlessness with no right of appeal, and with no-one providing oversight to those we feel are exploiting us.

Deeds of release

Deeds of release have been seriously misused in the past to strip survivors of our rights, without providing fair recompense, by callously abusing a significant imbalance of power. As a result, many survivors see deeds of release as a particularly harmful form of exploitation and re-abuse.

Claims that deeds of release offer the benefits of certainty and finality to survivors are ludicrously self serving. A deed of release provides certainty to the institution, not the survivor. A survivor can benefit from finality only if they perceive they have been treated fairly, otherwise it is oppressive. Finality and certainty are not delivered by being forced to sign a deed of release under duress, for inadequate recompense, and while denied any other option.

As the monetary payments currently proposed are so far below common law compensation, it would be unfair and exploitative to insist on deeds of release which give away common law rights.

Survivors would also like the Royal Commission to consider means to render all existing deeds of release null and void as they were obtained under severe duress, even torture. Very few survivors would have signed their deed of release without one or more of the following conditions:

- Feeling traumatised and/or suicidal
- Experiencing traumatic memory loss of the details of what went on when they signed
- Feeling that they had no other option and if they did not sign they would be unfairly denied assistance
- In such desperate need for financial assistance that they would accept anything, no matter how unfair or exploitative
- Denied access to legal advice about signing, or advised any offer of payment would be void if they sought legal advice
- Given an oppressive deadline to sign, at risk of losing any opportunity for financial assistance
- Bullied, harassed, intimidated or threatened into signing
- Locked up in a room until they signed
- Misled about their rights, or about the requirement to sign the deed or about what they were signing
- Told that the deed was an obligatory element of an in-house process, without explaining its true role
- Feeling completely powerless, in the clutches of an oppressive and intimidating institution and/or process with no say, no rights and no options
- Not understanding what was being offered, or what was being taken away from them, and not being in a fit state to make such a decision, yet pressured into doing so without time to recover sufficiently to make an informed or considered decision, or to gain an understanding of the situation

- In such psychological pain that they would do anything, say anything, sign anything, give away anything to make the pain, and the harassment by institution officials, stop
- Worried about their ability to pay their lawyers fees, and seeing signing the deed as the only way to do that, no matter how unfair the payment offered in exchange

It may be that action on previously existing deeds of release does not belong with redress proposals, however it is important to understand how intensely deeds of release are hated, despised and mistrusted by some survivors because of their past use as an instrument of torture by institutions.

Interaction with alleged abuser, disciplinary process and police

Most survivors are currently denied access to the criminal justice system, even in cases with strong corroborating evidence.

Those brave enough to report their abuser, but whose cases police refuse to investigate, prosecutors refuse to bring to trial or where wealthy institutions exploit loopholes and systemic biases to prevent access to justice for survivors, are left not just having to deal with their perpetrator evading responsibility for his crimes and enabled to re-offend, but also without acknowledgement that the crimes ever occurred.

So it is disappointing that the Royal Commission does not believe that a redress scheme should attempt or purport to make any 'findings' about those who commit these crimes.

Unfortunately this replicates the fantasy promoted by abusive institutions who, if forced, will apologise that survivors were abused, while avoiding details of the actual crimes committed and evading their own responsibility for allowing it to occur. Almost as if the 'abuse' were something more hypothetical than real, which occurs in a vacuum and for which no one is actually to blame.

If a redress scheme is not the appropriate vehicle to deliver a finding, and more than 90% of cases are denied access to criminal justice, how will survivors ever receive the acknowledgement, so vital to our healing, that the crimes actually happened, that the perpetrator committed them, that it was wrong and should never have been permitted to occur, that we should not have been denied help or disbelieved, and that they, not we, were lying?

8 Funding redress

Responsibilities of governments

In addition to the reasons listed for governments being held responsible for abuse within government institutions as well as non government institutions which they fund or regulate, governments are also responsible for the failings of

police and court systems to investigate and convict perpetrators, and any re-offending that results.

The failings in this area have been and still are significant, due in part to a lack of political will to enact legislation that protects children, not perpetrators.

The façade of a functioning criminal justice system promoted by governments and politicians serves only to further endanger children, as the general public assumes that:

- if a child sex crime has been committed, in the majority of cases the perpetrator will be held accountable and removed from access to children; and
- those accused but not convicted of a child sex crime must therefore be innocent and trustworthy.

Nothing could be further from the truth.

Funder of last resort

SNAP believes governments should assume the responsibility of funder of last resort, in particular for the reasons listed above and in the Consultation Paper under responsibilities of government.

It is less desirable to spread this responsibility to non government institutions as well, as this opens up the overused excuse of these institutions being unfairly targeted.

It is important for survivors that the public understands that institutions are finally being forced to accept the financial responsibility they have long shirked for the abuse they knowingly and deliberately enabled.

SNAP would not like to see non government institutions have any excuse to claim to be victims, as they are very likely to do if asked to contribute on behalf of survivors for whom they have no direct responsibility. This ruse has been much exploited in the past to deny survivors access to justice, and will cloud this issue and mislead the public.

Implementation

SNAP notes that institutions such as the catholic church have an international track record for sweeping public promises to co-operate in regards to this issue, but when it comes to actually delivering on such promises, reveal them to be highly qualified, seriously delayed, diluted or entirely meaningless.

SNAP encourages the Royal Commission and governments to explore the possibility that non co-operation with redress requirements could result in removal of tax free status and other forms of government funding for charitable and religious institutions.

9 Interim arrangements

The issues and options discussed in this section of the Consultation Paper represent a sensible approach to this difficult issue. However they are largely based on the assumption that institutional officials wish to help survivors.

Unfortunately the experience of survivors indicates that even today officials refuse to accept that survivors are the innocent party, not the wrongdoer, and that we deserve to be helped, not destroyed.

The examples discussed in Section 4 of this submission regarding direct personal response from institutions illustrate just how callous and harmful these officials are prepared to be towards survivors who deserve only compassion and respect.

By no means should we rely on institutions to behave responsibly towards vulnerable survivors, or assume that interim measures are an adequate response.

Many survivors who approach support groups such as SNAP experience urgent financial needs stemming from a lifetime of denial of our rights. While wealthy institutions quibble over details, it would be appropriate to make an interim pool of emergency funding available to those in most need.

10 Civil litigation

10.2 Limitation periods

SNAP's position on statutes of limitations for criminal child sexual abuse is that there is no reasonable justification for such limitations to exist in any form.

International trends show an increasing number of jurisdictions removing limitation periods altogether.

The details provided in the Consultation Paper are a perfect illustration of how the current system serves to comprehensively deny survivors of such crimes access to civil actions, and protects powerful perpetrators against ever being held responsible for their own actions.

Survivors' experience also shows that barriers to civil actions including limitation periods currently serve to turn survivors into beggars, who have no option but to accept whatever crumbs are callously tossed to them by abusive institutions who know they are safe from civil justice.

More worrying is the possibility that the existence of limitation periods may actually contribute to the high incidence of these crimes.

The overpowering reasons supporting the removal of statutes of limitations retrospectively for these crimes can be summarised as follows:

- An extreme imbalance of power, especially where powerful institutions are involved, and even more so for religious or government institutions
- It is normal for the child victim of these crimes to take decades to be able to face the abuse, or even understand they have a right not to be abused, and a right to compensation
- The abuse of power fundamental to these crimes is also employed to threaten, overpower, shame or bully the victim into fearful silence about the crimes committed, and to confuse them about what happened, their human rights, and who is responsible.
- The abuse of power and imbalance of power make it extraordinarily hard for the victim of these crimes to report, to be believed, to ask for or receive any sort of help, or to take on the belligerent lawyers and officials protecting all powerful institutions from justice
- The perpetrators deliberately hunt down the most vulnerable, those least likely to be able to speak up
- Any delay in launching a claim results from the perpetrator's actions in attempting to evade justice, not from delay by the survivor. Most survivors will bring an action as soon as they feel able to do so.

The Consultation Paper accurately reflects the legal system's current bias towards guarding the reputation of powerful perpetrators, while happily ignoring their powerless victims' right to justice, and yet somehow painting the ones causing harm to others and exploiting the system as the parties needing protection.

10.3 Duty of institutions

The current approach to vicarious liability and duty of care/negligence is confusing. If clarified, this could function as a mechanism to force institutions to take their child protection responsibilities seriously.

SNAP supports reform to specifically include within the scope of vicarious liability all the major roles, such as priests and other religious, that have been exploited or might be expected to be exploited by sexual predators.

SNAP supports institutions being held absolutely liable for child sexual abuse by their employees or agents in certain circumstances, such as residential care or boarding schools, and in all other circumstances liable unless able to prove they took reasonable precautions to prevent abuse. An institution exhibiting a culture of minimising, ignoring or covering up child sexual abuse should result in absolute liability.

A higher level of award should also be available where there is evidence of particularly reckless or deliberate endangerment, where help to stop ongoing abuse was denied, requests for assistance to recover ignored, where crimes were

covered up, or where survivors or whistleblowers were punished for speaking out.

10.4 Identifying a proper defendant

SNAP supports the requirement that institutions establish a proper defendant able to be sued and which has the financial capacity to meet claims, and that failure to do so be linked to removal of tax exemptions or other forms of government funding.

10.5 Model litigant approaches

SNAP supports measures to ensure less exploitative and adversarial approaches by institutions to claims by survivors. However SNAP notes that there is little evidence, other than highly qualified admissions of inadequacy reluctantly dragged from entitled institutional witnesses, that institutions understand the depth of the problems with their past behavior, or honestly intend to act any differently in the future.

There is currently ongoing re-abuse and re-traumatisation of survivors via in-house processes such as Towards Healing, seemingly designed to batter survivors into bending to the institutions' will.

Class actions

SNAP would also like to see the Royal Commission examine ways to make it easier for survivors to seek justice via class actions, especially in those cases where abuse was engaged in on an industrial scale. This may also make justice available to those survivors who do not feel able to stand up on their own but could cope as one in a crowd.

Retrospectivity

SNAP would like to see all reforms applied retrospectively, despite the fact the legal profession is not very comfortable with this issue. The exploitative nature of the original crimes, the cover up of those crimes, the re-abuse of survivors and our denial of access to healing or to justice, all of which were callously deliberate, require that the traditional policy of not changing the rules after the event should not apply to these appalling abuses of power against the most vulnerable in society.