

Royal Commission into Institutional Responses to Child Sexual Abuse Consultation Paper on Redress and civil litigation

In June 2014, AnglicareWA made a submission to the Royal Commission regarding Redress Schemes. We have now viewed the Consultation Paper of January 2015 and make the following comments.

AnglicareWA supports the principles enunciated in the Consultative Paper regarding the elements of redress and the general principles of providing redress. It supports the view that an independent service should be established which requires all institutions and State, Territory and Federal Governments to participate in these processes.

Anglicare WA acknowledges that States which have already provided some redress, and those which have not, would be starting from different positions; financially, organisationally and in terms of relationships with the people involved.

In this context it could take a significant time to negotiate how previous contributions by States, and previous contributions to survivors by other institutions, can be accommodated during such an establishment. Any delay may be distressing for some applicants and the long wait might consequently deter their involvement in the process altogether. There will need to be a commitment from all parties to address these matters as a priority.

In addition Anglicare WA advocates for the maintenance of an ongoing redress organisation to provide services to future victims of institutional child sexual abuse. We support this in particular to ensure a focus on the ongoing financial, policy, systemic and ethical/moral obligations of both governments and institutions and to ensure the safety of children in their care.

This support is premised in an understanding that any costs will reduce over the lifetime of the organisation. Furthermore, if governments and non-government institutions continue to implement child safe practices, the ongoing costs should reduce quickly.

Anglicare WA believes an ongoing redress organisation could also be a focus for developing and demonstrating best practice for support to victims and survivors, institutional change and for research into child safe practices and their efficacy.

Anglicare WA acknowledges the importance of a direct personal response from organisations for many survivors, but also acknowledges the many difficulties faced

by vulnerable survivors. We support the principles for an effective direct personal response as enunciated in Chapter 4 of the Consultation Paper.

Of course, a proviso must be that any institution involved in such direct responses continues to demonstrate that real changes have been made. It would be an appalling scenario if a survivor receives a personal assurance only to discover that further abuse has occurred in the institution. Anglicare WA believes that monitoring of child safe practices in such institutions may be a valuable role for the redress organisation.

Anglicare WA believes that the involvement of counselling, case management and psychological care is a necessary prerequisite for many survivors making a decision to request a personal response. Further it may also be that more than one meeting must take place with the institution before the survivor feels they have said everything they want to say and that they have heard everything they want to hear from the institution.

For many people counselling, case management and psychological care will be necessary before, during and after such a response.

Anglicare WA supports the concept that each apology must be individually tailored and must address that person's individual psychological and social needs. Of course, this implies that someone in the organisation, or supporting the survivor, is able to effectively assess these needs.

In Anglicare WA's submission on the Redress Issue Paper, we commented that during the Redress WA process, survivors had been able to access their entire Department of Child Protection (as it was named at the time) case file although of course some names had been redacted and many survivors needed support whilst looking at their files. We also noted that since that time the Department of Child Protection and Family Services has reverted to a Freedom of Information request form which not only requires a fee but also limits the information that could be available to survivors.

It would be of great assistance to survivors if the redress process was able to negotiate with participant institutions to obtain the full disclosure of information for survivors about their past history at no cost. Counselling support at the time the file is made available will also be essential.

Anglicare WA believes that a critical function of any redress service provided by an independent body is to assist survivors to determine how they would prefer to have contact with the institution and to facilitate any initial contact. It must not participate, or be perceived to participate, in any institutional personal response.

Counselling, Case Management and Psychological Care:

In AnglicareWA's experience providing support to people seeking to approach the Royal Commission for private sessions, or who are requiring support whilst the Royal Commission is in operation, we have found that survivor's need for this support is variable. We agree with the Consultation Paper that the need for therapeutic care can be episodic. Depending on where survivors are in the process, they may require weekly support for some months or occasional support as the need arises.

Almost all the evidence available on therapy for child sexual abuse argues for coordinated care to be available long term. Different life stages can provoke the re-emergence of distress and the need for another period of intensive support.

We believe that the impact of child sexual abuse has very wide ramifications in terms of how, when and why survivors are able or willing to use existing social, health and welfare services. We also accept that a service provided as a result of the Royal Commission cannot meet all of these needs.

It may be appropriate therefore in any response to include funding for some case management (for the purpose of supporting survivors to access other services) so that counsellors and providers of psychological care can effectively refer and support survivors to make use of existing services.

In the case of children who have been recently abused, we support the importance of recognising (but not overestimating) childrens' resilience and working from a strengths based approach. This must, however, take place in the context of the potential global effects of complex trauma experienced at a young age. Anglicare WA supports the importance of accredited counsellors delivering evidence-based and best practice care, although we concurrently support openness to newly emerging therapies which have a sufficient evidence base.

The provision of service

Redress should supplement existing service and fill gaps

AnglicareWA acknowledges that there are services which currently provide assistance to both adult survivors of child sexual abuse and, separately, to recent child sexual assault victims.

Anglicare WA argues that although in theory there is significant commonality between those working with each target population, they are in fact quite different cohorts with quite different needs (even allowing for the vast variation between individual clients). We believe that there is a considerable shortage of skilled workers

able to provide in-depth and targeted treatment for adult survivors and that there is a considerable shortfall in services providing longer term therapy and case management for both target populations.

Anglicare WA supports the need for and use of trauma informed practices but at the same time does not believe they are sufficient on their own in the treatment of survivors, particularly adult survivors with long term complex trauma symptoms. Professionals require specialist training and experience with treatment modalities which have been shown to assist survivors to manage their symptoms. Anglicare WA supports professional development in these approaches, regular reviews and in-service training.

Who pays for the provision of counselling and how survivors access these services?

Anglicare WA supports the view of the Consultation Paper that counselling (and limited case work) could be accessed by survivors, using a specific Medicare Benefits Schedule item number.

AnglicareWA understands that case work is not currently available under Medicare and believes that this will need to be addressed should such a proposal proceed. Capacity must be provided to ensure liaison and integration with other services.

Eligibility for Redress

Given the recent paper written by Adults Surviving Child Abuse (ASCA) on the cost to society of childhood abuse¹ Anglicare WA argues for counselling to be available to all survivors of abuse as a cost effective way to relieve the health and welfare burden of such abuse on society.

We believe a specific Medicare Benefits Schedule item number assigned to redress survivors will minimise the potential for reluctance or shame for survivors when approaching their GP.

Ensuring counsellors are adequately qualified

Anglicare WA believes therapists must have accreditation from the Australian Psychological Society, the Australian Association of Social Workers or the Psychotherapy and Counselling Federation of Australia. This accreditation requires specialist training and ongoing professional education. Examples already exist where counsellors are required to demonstrate such matters before they can use the Medicare Benefits Schedule.

¹ Kezelman, C., Hossack, N., and Stavropoulos, P., and Burley, P., 2015 The Cost of Unresolved Childhood Trauma and Abuse in Adults in Australia Adults Surviving Child Abuse and Pegasus Economics Sydney

Monetary Payments

Anglicare WA believes that the provision of payments to victims is vexed and we believe it is critical that arrangements regarding financial redress are very clear. The greater the clarity about the amounts that are on offer to applicants and the process to seek payment the better in our view. In addition such information needs to be available immediately any opportunity is made available. We have a strong belief that applicants for redress should be advised of the ways in which their applications will be assessed and the time that is likely to be required.

Anglicare WA does not have a strong position on the actual amounts that should be available to survivors; although we note that the current costs of living make even \$65 000 seem quite modest. Anglicare WA advocates that the amount needs to be sufficient for applicants to feel that the institution is taking responsibility for the abuse and that it should reflect in some way the severity of the trauma experienced.

The question of redress payments being made in instalments is not supported. While such a strategy has the potential to foil humbugging and other complications presented by a large payment, we believe this option should be presented to recipients to assist them in managing their money. The decision to initiate instalments should always rest with the recipient.

Anglicare WA believes that at the point of an offer of a sum of redress, applicants should also receive an offer of financial counselling or support. Again, the decision to accept such support should always rest with the recipient.

Anglicare WA indicated in our previous submission that we support taking previous monetary amounts into account when determining Redress payments and we continue to support this.

Regarding the issues raised in Chapter 7, Anglicare WA supports the Consultation Paper view that the abuse must have occurred in relation to an institution's obligation to care for and protect children. AnglicareWA strongly supports the inclusion of peer-on-peer abuse when adequate supervision did not prevent it.

Anglicare WA also supports the view of the paper that redress should be provided in cases where abuse happened on the premises of an institution, in connection with the activities of the institution, is engaged in by an official of an institution and in other circumstances "where the institution is, or should be treated as being, responsible for the adult abuser having contact with the applicant".

We also believe that redress should be available to victims of abuse where the institution, through error or oversight enabled an abuser to have access to children and young people, where this is not covered by the criteria above.

Anglicare WA supports the Redress scheme being available in the long term for all the reasons articulated by the Consultation Paper including challenges in reaching victims/survivors and their difficulties in accessing effective advertising and information.

We have previously mentioned that Anglicare WA believes that allowance should be made for future abuse to be eligible for the Redress scheme. While the Royal Commission itself will greatly reduce the incidence of institutional child sexual abuse and the largest groups of survivors and potential applicants (Forgotten Australians, Child Migrants) will not be repeated into the future it is unlikely that institutional abuse will be permanently eliminated.

Anglicare WA supports the written submission approach to making claims with the proviso that it be made very clear to applicants that assistance in compiling such documentation is available at no cost to them and that those contracted to compile applications have specific training in the parameters of the job.

Regarding the standard of proof, Anglicare WA agrees that there must be some evidence of the applicant's attendance at the institution before redress is provided, however the burden of proof should take account the time since the abuse occurred and the inability of some institutions to provide comprehensive records. We believe verbal evidence from others who also attended the institution should be sufficient to satisfy the standard of proof.

Anglicare WA supports the view that deeds of release may assist applicants to finalise the matter in their minds and to bring an end to any action however we believe it will be wise to offer circumstances in which the deed of release could be set aside – for example when new or fresh evidence comes to light.

In relation to the discussion in Chapter 8 Anglicare WA believes that the burden of payment for any Redress scheme should fall directly to the institutions and governments to whom claims apply. While it may be impossible to accurately project such costs, any alternative model must be mindful not to either unduly burden an organisation that has led to a small number of claims or to benefit institutions facing large volumes of claims through a contributory scheme.

Similarly in relation to the question of the funder of last resort all action possible must be taken to minimise the need for such funding. The report cites numerous situations that may precipitate a need for such arrangements; Anglicare WA believes the logical funder of last resort is the Commonwealth Government.

We are also keen to ensure that the funder of last resort truly remains a matter of last resort and does not become a tool of institutions to defray their costs to the taxpayers of Australia.

Many clients of Anglicare WA's Royal Commission Support Service have been anxious to know what financial options are currently available or will be available to them as a form of redress. They have been advised that any decision is some time away from practical implementation but their need for health services, accommodation and the like is often pressing. In addition Anglicare WA is well aware that quite a few applicants to Redress WA were ill and dying at the time of their applications.

For many people then, interim measures may be critical. We understand that many factors may need to be sorted out before any scheme can be implemented but already some people are interpreting the Consultation Paper as evidence that something will be implemented soon. Once again, managing unrealistic expectations may be central to the way in which applicants view the current process.

AnglicareWA does not feel sufficiently qualified to respond to the complex matters regarding civil litigation. We do propose however that it would be of great benefit if there was less disparity between State Acts on the matter of civil litigation time limits.