

**A response to the Royal Commission into Institutional
Response to Child Sexual Abuse Consultation Paper
on Redress and civil litigation.**

Submitted on behalf of Australian Baptist Ministries

Introduction

Australian Baptist Ministries is the trading name of The Baptist Union of Australia. The Baptist Union of Australia is a voluntary association of State Baptist Unions and is incorporated under the Australian Capital Territory Associations Incorporation Act 1991.

Australian Baptists are a multi-cultural and multi-generational movement of people serving communities in metropolitan, regional, coastal, rural and remote Australia through a network of approximately 1,000 churches with a combined regular attendance of around 170,000 people. At the 2011 census 352,499 people listed their religious affiliation as Baptist.

Australian Baptist Ministries is a federated organisation, partnering with local churches through State Baptist Union entities.

While some local Baptist Churches are incorporated entities most operate as separate unincorporated entities. Many of our State Baptist Unions are incorporated by acts of state parliaments.

While the Baptist ethos values the autonomy of the local congregation, this submission is made by Australian Baptist Ministries on behalf of the Baptist movement in Australia.

The Baptist Church is a provider of education in the independent schools sector. Across Australia there are 38 schools with a total student enrolment of 10,000.

Baptist Care Australia is actively involved in the provision of residential care, retirement homes, and aged community care, with more than 300 retirement villages, nursing homes and social housing accommodation units, providing homes to over 6000 older and vulnerable Australians. They also provide support services to over 12 000 individuals and families through emergency care, counseling, disadvantaged youth programs and advocacy.

In this submission we have sought to directly respond to the questions highlighted in the Executive Summary of the Consultation Paper, which are particularly relevant to our Baptist movement.

Structural Issues - Chapter 2

We would concur with the 3 elements of redress as described in the paper and with the general principles for providing redress as the basis for a national standard for redress.

Of the possible structures for providing redress we agree that a common national scheme would be the optimum approach. However as the paper suggests this could be difficult to achieve. We would be very supportive of a national standard established on the basis of the recommendations of the Royal Commission that each state or territory implemented, involving both government and non-government institutions. The Australian Baptist practise is to seek to develop agreed national principles, which are then implemented by the individual State Baptist Unions and their affiliated local churches as fitting to their particular context.

Direct Personal Response – Chapter 4

We affirm the seven principles for an effective direct personal response detailed in chapter 4.

Counselling and Psychological Care - Chapter 5

We affirm the seven principles for the provision of counselling and psychological care as outlined in the chapter.

We agree that redress ought to provide funding but not the services. In terms of appropriate providers of counselling and psychological services we would encourage the development of a list of approved providers that would be made available to survivors.

We also agree that the institutions should fund these services to extend these services do not attract government funding through current medical benefit programmes. It could be that a new health care plan category is established under Medicare that specially relates to survivors of child sexual abuse that provides funding for therapeutic services. While not wanting to in any way diminish the lifelong impact of child sexual abuse and the obligation of the institution to appropriately fund these services, it is not always possible to distinguish between the effects of child sexual abuse and other factors that give rise to the need for counselling and psychological services. The combination of a Medicare payment and gap payment by the institution could be a more equitable system.

Monetary Payments - Chapter 6

We support the principle that a redress scheme should include a monetary payment. We also support the development of an agreed matrix that would provide the basis for monetary payments. We would see this as an agreed national standard and that survivors who had already received redress through established schemes and or civil litigation would be eligible, understanding such earlier payments would be taken into account.

Redress Scheme Processes - Chapter 7

We support the principle that any redress scheme should be open-ended and that the standard of proof would appropriately be a test of reasonable likelihood or plausibility. With regard to the matter of deeds of release we agree that there should be no confidentiality obligations imposed on the survivors and that the legal advice is provided without cost to the survivor. There does need to be some safeguard so that the any payment is not seen to be a fund for future civil litigation.

Funding Redress - Chapter 8

With regard to funding redress, we support the position that the institution in which the abuse occurred should fund the redress as outlined in the paper. In acknowledging the issue of institutions that no longer exist we support the proposition that the government should be the funder of last resort. We are in agreement with the proposition that the failure to protect children is a broader societal issue about which the government needs to accept some responsibility. It is also difficult to justify why a non-government institution ought to be responsible for abuse that occurred in another unrelated institution.

We also support the principles for the implementation of the redress scheme. As an organisation that has had a limited number of claims we would warmly support the principal that if and when, the Baptist church, or the scheme, receive an application for redress relating to a Baptist institution, we would engage with the scheme with the understanding that there would be a reasonable fee for use of the redress scheme.

Interim Arrangements - Chapter 9

We fully support the proposition that institutions adopt the Commissioners' recommended principles and approaches, which are to be released in mid 2015.

Civic Litigation - Chapter 10

With regard to limitation periods we are of the view that there should be no limitation period for actions relating to child sexual abuse and that any changes should apply retrospectively.

On the matter of duty of institutions, we are of the view that any reform should include imposing liability on institutions, unless the institution proves that it took reasonable precautions to prevent the abuse. While agreeing that the changes ought to apply retrospectively, "reasonable precautions"

ought to be understood in terms of the prevailing socio-legal environment at the time of the abuse.

As noted in the paper the issue of identifying a proper defendant has centred on the matter of incorporation. In a balanced comment there is the acknowledgement that incorporation does not guarantee longevity of an institution or financial viability.

In the introductory paragraph, it was noted that the majority of local Baptist churches are unincorporated bodies affiliated with a state union, which is an incorporated body, by act of the state legislature. All the affiliated Baptist churches and institutions are members of the Baptist Insurance Scheme that includes limited cover for redress for child sexual abuse. In our situation while each of the state unions has a property trust, the proper defendant would be the local Baptist church or institution where the abuse occurred. In the situation where the individual church or institution no longer existed the state union would be the appropriate defendant.

In conclusion we would want to thank the Royal Commission for the comprehensive paper and the opportunity to provide this submission.

Should you require any further information from us, please contact the National Ministries Director Rev Keith Jobberns on kjobberns@baptist.org.au or 0409 281 240.

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