



Geraldton Community Legal Centre

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By email: Karen.Bevan@childabuseroyalcommission.gov.au

Dear Madam

RE: ISSUES PAPER 6 – REDRESS SCHEMES

BACKGROUND

Geraldton Resource Centre Inc. (“GRC”), which incorporates Geraldton Community Legal Centre and Gascoyne Community Legal Service, along with a number of other tenancy, financial and community support programs, delivers a range of legal and social and community support services into a vast area of regional, rural and remote Western Australia throughout the Midwest, Murchison and Gascoyne regions. We regularly conduct outreach trips to the remoter communities within these regions from our two bases in Geraldton and Carnarvon. Our community legal service has specific programs to provide outreach legal services to rural and indigenous women. A significant number of

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our clients, particularly those accessing our legal services and prisoner support and re-entry programs, have experienced child sexual abuse and the flow on effects of dysfunction and disadvantage as a result of that trauma.

ISSUE

Our legal services were heavily involved in assisting clients to access the West Australian Redress and Country High School Hostels Reparation Schemes and lobbying the WA Government in relation to the limitations inherent in those schemes. More recently we have assisted a client in applying to the Towards Healing scheme operated by the Catholic Church and, as we were not in a position to comment on that scheme when Issues Paper 2 was open for submissions, we will be making some comments about that scheme in this submission.

SUBMISSIONS

1. *What are the advantages and disadvantages of redress schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts, particularly in comparison to claims for damages made in civil litigation systems?*

Advantages:

- They generally don't depend on precise identification or ongoing existence of the institution in which the abuse occurred.
- They generally don't depend on that institution having assets or resources to pay monetary compensation.
- Time limits have often expired in which to bring civil litigation and so they can provide an avenue for applicants with historical matters.
- The standard of proof and documentary obligations are generally less than in a civil litigation process.
- The application process and procedure is generally simpler, less time consuming and less threatening for victims.

- Usually, even if there are differing levels of financial recompense, these don't require detailed proof of damage, which can be quite degrading for applicants.
- They are generally lower in cost and more accessible to a disadvantaged group.
- They are generally less technical and applicants are able to put things into their own words rather than reframe it into legal pleadings and jargon.
- When applicants are fragile, they are more likely to go through a Redress process than civil litigation, as they can tell just one person their story rather than having to tell it over and over.
- Redress schemes can provide a process for non-financial forms of recompense such as an acknowledgement, an apology and psychological support and counselling depending on how the scheme is structured as opposed to the civil litigation process, which is based on a denial of responsibility.
- One good feature of our WA Redress Scheme was the opportunity (but not a requirement) for applicants to request referral of the issues to the police.

Disadvantages:

- There were significant issues caused in Western Australia with the State Government initially running the general Redress Scheme, which was for any person who was abused or neglected in institutional care, and then after that Scheme closed, announcing the WA Country High School Hostels Scheme, which was specifically for people abused in certain specific Government operated country high school hostels. We had many people who had missed out on the original Redress Scheme inquiring about the subsequent scheme but only one person who was eligible. Unfortunately this person didn't apply within the narrow time frame of the latter scheme. We wonder why the government chose to open the special scheme after the general scheme closed instead of just leaving the general scheme open, giving further time for everyone to apply, including those encompassed by the special scheme. Having multiple redress schemes available is confusing for potential applicants.
- The two Government schemes that operated in WA weren't based in legislation and so both schemes were announced without the full details, processes and guidelines firmly established. Neither scheme seemed to have been well thought out or soundly constructed in the beginning. The Redress

Scheme in particular changed significantly on several occasions during its operation, which was distressing and confusing for clients.

- Some of the changes were positive e.g. removing the requirement to relinquish any right to also pursue civil litigation and extending the deadline to apply.
- Other changes were devastating. In particular, the reduction of the maximum amount of financial recompense was extremely distressing to our client group. This was not so much because they were eligible for less money but because it led to further feelings of betrayal by a system that had already let them down. It was disrespectful and minimised their experiences of suffering. There was a general feeling that they had been abused while in institutions and then an institution was re-victimising them by changing the rules to suit themselves.
- The narrow time frame in which both WA schemes operated meant many people missed out. Sometimes this was because the people weren't aware of the scheme before it closed but in other situations the people were aware of the scheme and may have even started the process off but then they couldn't bring themselves to tear open the old wounds within the narrow time frame of the schemes.
 - We are still receiving inquiries today from people that are only just becoming aware that the redress schemes existed or who had made initial inquiries and are now following up on those but unfortunately are way too late to be considered.
 - The only client we had who was eligible for the Country High School Hostels Scheme did not end up lodging his application within the very narrow time frame of that Scheme. He disengaged from the process and, while we can't be sure of the reasons, we believe this to be because he was not able to bring himself to provide details of his experiences within that time frame.
- With both WA schemes there were very narrow eligibility criteria that excluded some genuine cases [*refer to Case Study 1*].
- The narrow time frame in which to lodge Redress applications meant that this became of necessity the primary focus of our work during the application period. An unacknowledged consequence of this was that the vicarious trauma caused to our workers was concentrated, with no time to recover between hearing the traumatic stories of our

clients. All of our workers had to utilise our employee assistance scheme during this period to help to process their own trauma. A concentrated time frame like this does not do justice to the workers in the field in terms of giving appropriate processing and recovery time. It was also traumatic for us in having to push people to tell their own stories before they were really ready to do so simply because of an artificial and uncaring deadline [*refer to Case Study 2* from one of our workers].

- Limitations of both WA schemes were that the right to monetary recompense did not survive the death of the applicant [*refer to Case Study 1*]. We believe that this fails to recognise the generational impact that childhood sexual abuse has on the family, particularly in those situations when the abuse was not acknowledged and dealt with appropriately at the time that it occurred.
- Neither of the WA redress schemes had set up clear referral pathways for counselling support and this was compounded in the remoter areas where access to services is so limited [*refer to Case Study 2*]. The Redress Scheme limited the counselling support to six hours per applicant, which is completely inadequate in most cases to lead to healing.
- While all people affected by this issue were definitely not Indigenous, the process and the support services were not culturally sensitive or based on an Indigenous model for healing.
- The monetary compensation amount is generally lower through a redress scheme than could be attained through civil litigation.

2. *What features are important for making redress schemes effective for claimants and institutions? What features make redress schemes less effective or more difficult for claimants and institutions?*

We have essentially identified these features in our answer to question 1 above but to summarise, we believe the important features for claimants are:

- Non-adversarial;
- Simple and straightforward;
- Non-time limited (open indefinitely);
- Sensitive and takes into account that it is individual people with individual experiences who need to relay those experiences in different ways and at different paces;
- An acknowledgement of the abuse and that it was wrong;

- An apology;
 - In relation to these last two points, putting an acknowledgement and apology in writing will be insufficient and unsatisfactory for some applicants. There are those would benefit from some kind of face to face or ceremonial process, for example, the Stolen Generations Apology by the Prime Minister of Australia was very powerful for many of the people affected by those experiences.
 - The option of a mediation style meeting between the applicant and either the perpetrator or a representative of the relevant institution could also be beneficial for some applicants, following the principles of restorative justice and victim-offender mediation.
 - Fully supported with counselling and other support services provided for the applicants and, in particular, the provision of culturally appropriate support services for Indigenous applicants, for example something like the Red Dust Healing program <http://www.threddust.com/>
 - Well thought out and planned prior to implementation with clear guidelines so that it becomes a stable and reliable process;
 - A healing and future focus rather than just a past and compensatory focus.
3. *What forms of redress should be offered through redress schemes? Should there be group benefits available to, say, all former residents of a residential institution where abuse was widespread? What should be the balance between individual and group redress?*

We have already addressed the issue of what forms of redress should be offered through redress schemes in our answers to the previous questions.

We believe that there should be group benefits available to all former residents of an institution where abuse was widespread because, even if a person in an institution wasn't directly abused, they were still affected by the abuse of those around them [*refer to Case Study 4*].

A culture or environment of abuse within an institution sets up a level of hyper vigilance among all child residents of that institution that will stay with them long after they leave the institution. They have to be on guard all the time to ensure that they aren't also subjected to abuse. The onus is put on the child within that institution to protect themselves instead of on the institution to protect the child. This will cause them to feel unsafe and

betrayed with no sense of security. They will often suffer from feelings of guilt at not being able to protect other children who were abused.

There is a trauma suffered when a child is personally affected by abuse but also when a child is part of system of abuse.

It has now been recognised in the family and domestic violence context that a child who is not personally subjected to violence but who witnesses violence between their parents suffers harm as a result of this. The same would surely have to be true when a child witnesses abuse of another child that they are in close relationship with.

However, there does need to be recognition of the individual stories and experiences and an acknowledgement that some did suffer more severely than others.

We believe that this can be recognised by the non-monetary forms of redress such as counselling support [*refer to Case Study 4*], an acknowledgement and an apology being available to all residents of the institution with monetary recompense available to those who were directly abused. We will comment further on monetary recompense later in this submission.

4. *What are the advantages and disadvantages of establishing a national redress scheme covering all institutions in relation to child sexual abuse claims? If there was such a scheme, should government institutions (including state and territory institutions) be part of that scheme? How and by whom should such a scheme be funded?*

The advantage of a national scheme is that it recognises it is a national issue that is not confined to particular States or even parts of States. It says it is a serious issue of national importance and provides equity throughout the nation.

The disadvantages are the same as with any national process or service in that there is a danger of it becoming too big and unresponsive to individual experiences and too centralised and therefore inaccessible to those in remoter locations. It would have to be a national scheme that was administered nationwide rather than just centrally.

Government institutions should be a part of the scheme. Both government (at all levels) and non-government institutions were responsible for the sexual abuse of children. It has also been government authorities such as welfare departments and police who failed to respond appropriately even when abuse was brought to their attention [*refer to Case Studies 1 and 4*].

A national scheme could operate in a similar manner to the WA Criminal Injuries Compensation scheme where there is one body to which

applications are made and which assesses those applications and makes appropriate awards of monetary compensation. The support services we have previously discussed could also be run either alongside that body or there could be strong and appropriate referral pathways put into place from that body to alternative services [*refer to Case Study 2*].

If a particular institution or offender is identified then the redress body has the option of pursuing that person or institution for reimbursement or recovery of the compensation award.

This should be funded initially by contributions from State and Federal governments (some funding could come from the proceeds of crime funds in the various States and Territories). Those particular institutions that have already been identified as having these issues associated with them could be invited to make voluntary financial contributions which could then be subsequently taken into account when considering direct recovery processes against them.

An independent and external body is better to deal with than the individual institutions.

Our only experience of such early dispute resolution processes is recently with the Catholic Church's Towards Healing process. We have found that even this process demands much from our clients in terms of time, commitment and a requirement to disclose large amounts of detail about their experiences that they are not able to provide either due to difficulties with recollection or the impact of reliving the trauma when disclosing details [*refer to Case Study 3*].

5. *If institutions have established internal redress schemes, should all or any part of the decision-making of the scheme be independent of the institution? Should the schemes be subject to any external oversight? If so, what?*

Yes and Yes.

However, as we've mentioned previously, it would be good to have the option for face to face meetings with the institution or a representative. This is actually a good feature of the Catholic Church's Towards Healing process, if you can get past the bureaucracy to that stage [*refer to Case Study 3*]. Not everyone will want that; but it should be an option because some applicants will find that to be a powerful thing that brings their experiences out of the impersonal application process and grounds them in reality. The down side of using an independent body is that it distances the perpetrators and their institutions from the reality of their wrong doing.

The option of receiving the apology and acknowledgement could be offered by the responsible institutions but this should be subject to certain consistent best practice guidelines across all institutions so as to ensure this does not become an occasion that results in re-victimisation of the applicants.

6. *Should establishing or participating in redress schemes be optional or mandatory for institutions?*

It should be mandatory for institutions.

The model that we have suggested would mean that the institution has the choice to engage and contribute financially and this will then give them some credit in the bank in terms of any subsequent recovery action. Any responsible institution that doesn't voluntarily contribute would become subject to the recovery process we've suggested.

7. *Should seeking redress or compensation through a redress scheme be optional for claimants? Should claimants retain the ability to pursue civil litigation if they wish?*

Yes and Yes.

For most of our client group civil litigation hasn't been a viable option to date but in the future, especially for more current incidents of abuse, it should remain available as an option.

A redress scheme should differ from civil litigation and so different outcomes will be available through both processes.

8. *How should fairness be determined in redress schemes when some institutions have more assets than others? How should fairness and consistency between survivors be achieved in these circumstances? What should be the position if the institution has ceased to operate and has no clear successor institution?*

The model we have suggested would result in fairness and consistency between applicants, as they would receive their entitlements regardless of the capacity or status of the institution. The redress scheme would then seek recovery from the institution depending on the extent that they are able to contribute. The applicant's entitlements are not affected and the institution responsible will reimburse to the extent that they're able.

9. *What are the advantages and disadvantages of offering compensation through a redress scheme which is calculated on the same basis that damages are awarded by courts in civil litigation systems? Should affordability for institutions be taken into account? If so, how?*

The advantage is that it should result in reasonable and proper compensation amounts.

There are two main disadvantages that we can see with this.

First, it would generally require a high evidentiary burden of actual damage done. We suggest that the traumatic impact of sexual abuse is already well known and so proof of damage should not be necessary. The exact presentation will differ from person to person but it is well recognised that these events and then the further re-victimisation by not being believed at the time causes significant trauma.

Secondly, some of the feedback we've received from our clients is along the lines of it being quite insulting and humiliating to "prove" how damaged they have been by their experiences. It is disempowering and contrary to a healing model.

Our concern is that such a process also puts the focus on the victim and their behaviour and responses to the trauma rather than on the perpetrator and what he or she has done. The focus should be on what has been done to the person and monetary awards linked to the severity of the perpetrator behaviour.

The civil system only recognises an applicant to the extent that they are damaged goods. When they were abused the responsibility for that abuse was inappropriately levelled at them. Such an approach does not make the perpetrator responsible for what they did. If a victim is a resilient personality then they would miss out, which is not what a redress system should be about. It should be about perpetrator accountability. It should say that 'this perpetrator did this to you and because of what they did you are eligible for this amount'.

If we proceed from a starting point that sexual abuse in an institutional context will cause trauma to those who experienced it then the monetary compensation can be linked directly to perpetrator behaviour i.e. this was severe abusive behaviour or mid-level abusive behaviour etc.

It is the non-monetary forms of redress such as counselling, personal support, acknowledgement and an apology that can then be linked to the victim response, as the extent of the damage done to the individual will then indicate the level of support they require to move forward.

If the redress scheme is the same as the civil system then it doesn't seem to be a real alternative. The civil system is about apportioning blame and we believe a redress system should establish and re-direct responsibility to the perpetrator and create an environment for healing and moving forward for the victim.

We've covered the issue of affordability in our suggested model above. Affordability on the part of the institution should not impact on the applicant's right to monetary recompense, which is the major flaw of the civil litigation system. Affordability will affect the recovery process from the responsibility institution.

10. *Given that the sexual abuse of children mostly occurs where there are no witnesses, what level of verification or proof should be required under a redress scheme to establish that a claimant has been sexually abused? How should institutions be involved in verifying or contesting claims for compensation?*

We believe that it will be rare for there to be an isolated claim but rather clusters of similar experiences within particular institutions.

We believe that the institutions should be involved in providing documents to the redress body that will verify that particular applicants were resident at particular institutions at particular times and particular staff members were employed at those times.

The redress scheme should be able to accept that abuse occurred based on the statement (in whatever form) of the applicant, any documents made available by the relevant institution and any supporting evidence provided by the applicant as to injury they have suffered.

Under no circumstances should a redress scheme subject applicants to the potential for cross-examination or suggestion that abuse did not occur.

11. *What sort of support should be available for claimants when participating in a redress scheme? Should counselling and legal advice be provided by any redress scheme? If so, should there be any limits on such services?*

There should definitely be emotional and psychological support available to all applicants, not just post application, but throughout the application process. Counselling support needs to be available pre-application, as this is crucial in potential applicants being able to engage with the application process. We've found many people drop out of the application process because it is opening old wounds that have sometimes been sealed for decades [*refer to Case Study 3*]. The amount of counselling should be

assessed on an individual basis. You can't just say that it is, for example, six hours for everyone. As we've said, the support available should be linked to the damage done to the individual.

Legal support should be provided pre-application as initial advice about the merits or otherwise of proceeding with the redress scheme as opposed to other systems. If the decision is made to apply then application support should be available if the applicant wants or needs this.

12. *If a claimant has already received some financial compensation for the abuse through one or more existing schemes or other processes, should the financial compensation already received be taken into account in any new scheme?*

Other redress schemes do not generally provide full or adequate financial compensation and so this should only be relevant if the financial amount came from a civil litigation process and is full compensation for the full extent of the damage done to the applicant. Financial compensation should not affect the right to access the other aspects of the redress scheme.

Please feel free to contact us for any further clarification of any matters raised in this submission.

Yours faithfully

Alison Muller

Principal Solicitor

Geraldton Community Legal Centre