



ISSUES PAPER 6

REDRESS SCHEMES SUBMISSIONS BY JOSHUA WARREN-DAVIS

30TH MAY 2014

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? **It would be an advantage to victims to provide a “Supplementary” system where damages awarded under the civil litigation process don’t go far enough to adequately support victims in their lives and a “Substitutionary” system for institutions to cover claims where the institution lacks insurance to cover a claim. The biggest disadvantage would of course be the large cost to governments, if a standardised redress scheme was supported by governments to take the burden off institutions unable to afford the compensation.**
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? **Governments should be fully responsible for redress for abuse occurring in government institutions. It would be most effective for non-government institutions to have insurance scheme with consolidated funds to take into account the varying wealth of individual institutions. It would be ineffective and unaffordable for all individual institutions to each have their own redress schemes.**
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? **Compensation should be offered and each person should be accessed on a case by case basis in relation to their individual needs. Governments should give bail outs to not for profit organisations, where they are not indemnified and letting the organisation go bankrupt or insolvent would cause an unjustifiable hardship to the broader community; this is the most preferred scenario for my common law action against the institution that I attended and was abused. The Queensland government should seek to resolve the matter between me and institution where I was abused in coming months, during the current pre court procedures that I am now going through; perhaps at the compulsory conference.**
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? **Governments themselves should cover compensation cases where abuse occurs in government institutions and an insurance scheme should exist for cases of abuse occurring in non-government institutions.**

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? **There should be an option to apply to a civil administrative or review tribunal in the State or Territory concerned, like for example the Queensland Civil and Administrative Tribunal to sort out disputes that may arise with institutions over redress schemes, if it were to exist for only a particular institution.**
6. Should establishing or participating in redress schemes be optional or mandatory for institutions? **Mandatory insurance scheme for all non-government institutions responsible for children, with an applicable tax deduction. Charities that don't pay tax should get government rebates. Government organisations should cover claims for redress in funds in the same way as they do when civil compensation claims are made against them.**
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? **Both a redress scheme and civil litigation compensation should exist separately and the option to seek both allowed should be allowed. The compensation awarded through the civil litigation process is frequently undervalued; particularly in relation to economic loss with the 5% discount rate applied in common law actions, combined with the usual 15% discount for vicissitudes and on top of legal costs of bringing the action that get taken out the overall quantum. The civil litigation process in effect only partly helps victims and ends up short changing them, without ability to recover the loss truly incurred, nor does it generally allow people to in a sense get direct retribution or punishment against the institution, for the actions of an institution to prevent sexual abuse, in the form of extra damages. Punitive and exemplary damages have been far too limited in their use and should become more widely used with greater payouts, to help victims recover.**
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? **An insurance scheme where all non-government institutions that are responsible for children pay a tax deductible levy, is the most effective way of catering for fairness. All claims should come out of consolidated fund, removing the need for fairness to be taken into consideration or where the institution ceases to exist. Although waiting periods may be needed to allow funds to rise again through subsequent levy payments, where they run dry. It should operate similar to the QLD premier's disaster relief appeal during the 2011 floods, where people applied for claims of funds, but it must be levied through an insurance scheme to work, instead of through donations.**

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? **As I said to question 7, there is a need to supplement the existing civil compensation mechanisms through the civil litigation processes with another redress compensation scheme. To solve both the affordability issue and the redress issue, the redress needs to be done through a dedicated insurance scheme for institutions are not government operated, to address the issue of institutions affordability of claims, where non-government institutions pay levies into a consolidated insurance fund, which is tax deductible. Government bodies should cover redress of victims as they do when other common law claims are made against them. Also in any redress scheme there needs to be substitution provided for any civil compensation claim, where as a result of an institution being uninsured, all or part of compensation entitled to cannot be recovered.**
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? **Establishment of a psychological condition, with causal link provided to incidents of sexual abuse, on balance of probabilities through expert medical opinion of the presence. Claims should only be rebutted where the institution can show they took all reasonable steps to prevent the sexual abuse or took all reasonable steps to minimise its effect on victims if it occurs, such as medical treatment or counselling that may be required. A strict liability test should be applied to make the institutions responsible for acts of sexual abuse whether by staff members or other students, to make institutions safer for children generally by imposing a direct legal duty on institutions to take all steps required to prevent abuse or take steps to minimise effects on victims where it does occur. This test of strict liability should be a replacement for the reasonable foreseeability test, currently existence in all common law claims, in respect of institutions which have responsibility for children. Institutions with responsibility for children should be urged to err on the side of caution at all times to prevent abuse. However it should be through an insurance scheme where damages get payed out in respect of non-government institutions and that the insurance agency should have investigative power to investigate claims.**
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? **Counselling should be available and General legal advice should be provided by organisations like Legal Aid or by private solicitors, however if there was a dispute, if it was civil or review tribunal.**

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? **No it ought to be supplementary, to pay out the difference from what the civil litigation fails to deliver, including the discounting of damages and the failure to add extra compensation to truly work to redress the wrongs of the actions of the institution.**

Notes: I would request a delay of the public availability of this submission, until after I have my private session with a commissioner which I have been approved for in coming months; to allow me to personally have an opportunity to fully discuss my personal circumstances, about my difficulties with obtaining compensation from the institution involved where I was abused first, with the commissioner, before this document is publicly published. In this instance there was systemic failure of the organisation including apparent failure to have a child protection policy at the time I attended in 2004 and 2005 and failures of many staff to report the allegations of abuse in relation the main student who perpetrated the sexual abuse against me to authorities and failure to separate me from the main perpetrator. Further the child protection policy introduced by the institution in 2006, appears that it would not have even protected me if I was there at the later time, as the reporting only needed to go as far as the CEO of the organisation, who could of chosen to not report the abuse. It was only procedure to report to authorities where a staff member was alleged to be involved in abuse of a child and not abuse between students. I am now involved in legal action over the institution's failings, where it is current in the pre court process.

Submissions should be made by **Monday 2 June 2014**, preferably electronically, to solicitor@childabuseroyalcommission.gov.au, otherwise in writing to GPO Box 5283, Sydney NSW 2001