



Submission in response to:

Issues Paper 6: Redress Schemes

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this submission contact:

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Introduction

Berry Street welcomes the opportunity to address issues relating to 'redress schemes' through a response to the Royal Commission's *Issues Paper 6*.

For over 130 years Berry Street has been supporting, assisting and caring for children and young people who are the victims of abuse, violence and neglect. We have seen and continue to see, how trauma in early childhood can severely disrupt and impair children's development with lifelong consequences.

At Berry Street nothing is more important than ensuring that children and young people, whose connection to Berry Street stems from some personal experience of harm, abuse, neglect or trauma, are not subjected to any subsequent harm whilst in our care. We acknowledge however that this has and does happen.

Berry Street accepts its responsibility to provide the highest quality services and to effectively manage the risks, typically complex and often with critical implications for children's well being, inherent in providing our services. Further, we accept responsibility to openly and honestly respond to any allegations of a failure in our duty of care towards a child or young person and to do so with their rights and life-long well-being as the primary considerations in how we respond.

The passage of time should never diminish our responsibility to fully respond to allegations of abuse and neglect. The passage of time does not of itself provide healing, recovery and restorative justice for children victims of abuse or neglect. What can be is the willingness to confront failures in caring for and protecting children, to place the interest of the victim ahead of organizational interests and to fully commit to reparations.

Berry Street has encouraged past and current clients to make submissions to this inquiry and will continue to promote the role and work of the commission. Berry Street has provided this submission as a public submission and does not wish it to be treated confidentially.

Berry Street will continue to review our policy and process to ensure our response to claims of past abuse is fair and appropriate. Berry Street will ensure we are using the Royal Commission as source material to assist that process.

Berry Street auspices Open Place and is strongly supportive of the work undertaken by Open Place in supporting Forgotten Australians. Berry Street draws upon the lived experiences of Forgotten Australians for this and other policy submissions. Berry Street is supportive of Open Place also responding directly to this issue paper as they are able to provide a deeper and fuller account of the views of Forgotten Australians.

Response to issues raised

Redress schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts.

Berry Street recommends that the development of a redress or reparation scheme should be a multi-faceted approach. The terms, reparation and redress, are often used interchangeably, whereas Berry Street believes that it is important to be clear that any action to address past claims of abuse should not be reduced to financial compensation alone, but be seen within a broader context which ought to include an apology, compensation, priority services, support, and action by the agency to ensure the abuse is not repeated. This issues paper response will use the term redress as it is defined in its broader sense to remedy past wrongs.

Berry Street accepts its responsibility, where past abuse has occurred, to acknowledge that past and accept the obligation we owe to survivors. We are committed to learning from past abuse claims to ensure, as far as possible, the abuse does not happen again.

Berry Street supports the development of a redress scheme for all people who have previously spent time in institutional care (including foster care). A redress scheme should include financial compensation, provision of

specialist support services and access to priority services such as medical, dental and housing services. A redress scheme should not be limited exclusively to claims of sexual abuse but should consider the inclusion of broader allegations of serious physical, sexual, emotional abuse and neglect.

Berry Street supports the recommendations made by the Senate Legal and Constitutional Affairs Committee (December 2010) in their review of Government Compensation Payments, which included recommendations that each State of Australian have redress schemes available for care leavers who experienced abuse or neglect while in institutional or foster care. Should schemes be developed through State and Territory governments, consideration should be given to a Commonwealth framework to ensure consistency of approach across all schemes.

Berry Street strongly supports the development of a redress scheme that ensures the inclusion of the wide and disparate institutional settings in which children have been abused. This may include settings such as scouts, schools, boarding schools, church settings, camps, sporting bodies, as well as out of home care settings. Alongside current day settings, the inclusion of historical institutional abuse victims such as forced adoptions, child labour, Forgotten Australians, the Stolen Generation and child migrants within a redress scheme is critical in acknowledging the scope of violations against children throughout societal and historical settings.

Berry Street recommends that a redress scheme should be based on a common platform of values, rights and shared procedures, which apply across all societal institutions. The articulation of the societal perspective through values, rights and procedures in the development of a redress scheme is critical in understanding the requirement for a redress scheme.

The features of a redress scheme

Berry Street has defined redress as measures taken by Berry Street where a complaint is upheld in order to acknowledge and remedy the harm caused to the victim or victims. The van Boven Principles as outlined by the United Nations Commission on Human Rights Sub-Committee on Prevention of Discrimination and Protection of Minorities guide Berry Street in our approach to past claims of abuse. Under these principles redress includes acknowledgement, apology, offers of support and assistance, undertakings to not repeat past injustices and offers of financial compensation.

These principles are supported by the Human Rights and Equal Opportunity Commission inquiry into the forced separation of Aboriginal and Torres Strait Islander children from their families and the resultant 1997 report, *The Bringing Them Home (BTH) Report*. The BTH report at recommendation 3 outlined the components that should form part of reparations. These included:

1. Acknowledgment and apology;
2. Guarantees against repetition;
3. Measures of restitution;
4. Measures of rehabilitation; and
5. Monetary compensation.

The BTH report made further recommendations for the Council of Australian Governments (COAG) to establish a national compensation fund to deal with the monetary compensation component of reparations. This included a national board to administer the fund and the broad principles and procedures for hearing of and determination of claims. These included the following procedural principles:

1. Widest possible publicity of the process
2. Free legal advice and representation for claimants
3. No limitation period
4. Independent decision-making and the participation of Indigenous decision-makers
5. Minimum formality
6. Not bound by the rules of evidence
7. Cultural appropriateness (including language)
8. Provision for a minimum lump sum in recognition of the fact of removal
9. Additional compensation upon proof on the balance of probability of the particular harm

Berry Street acknowledges the urgent need for any redress scheme to ensure it is culturally appropriate, expeditious, non-confrontational and non-threatening in its approach to all claims, including claims from Aboriginal and Torres Strait Islander peoples.

Given that Berry Street believes a key feature of any redress scheme should include an apology from the agency responsible, the development of a redress scheme should include a clear link to the agency involved, to ensure claimants are provided with an apology from the agency.

The assessment process of a redress scheme

Berry Street supports a redress scheme assessment process that is designed to minimise the potential for a claimant to be re-traumatised within the process of undertaking a claim.

It is important to consider the process through which redress or reparations schemes are administered. The assessment criteria on which a redress scheme is based should include a straightforward and non-technical approach, whilst delivering consistent and equitable results for claimants.

The Commonwealth has developed redress schemes for Forgotten Australians and Child Migrants, and has based these schemes on claimants who were in care prior to 1989. Berry Street supports the entitlement of this cohort of claimants to a broad redress scheme. Berry Street would also support the right of those children and young people who were abused in care post 1989 to also access a redress scheme.

As previously stated, a redress scheme should not only provide financial compensation but also access to specialised support services, as well as priority access to mainstream services. Berry Street supports the consideration of a two-tiered approach to providing redress. For claimants in care pre-1989, this approach may include a first tier of reparation, where claimants are only required to prove that they were in care, without being required to provide evidence quantifying the level of abuse or harm that they suffered. This would entitle them to a basic level of redress whilst minimising the potential for claimants to be re-traumatised through the assessment process. For claimants who were in care post 1989, this first tier of redress may involve providing evidence that they were in care and also suffered abuse or harm, to entitle them to a basic level of redress.

Should a claimant choose to seek a greater level of redress through the second tier of reparation, they would be required to provide further evidence of serious abuse or harm to support their claim.

Commonwealth versus State redress schemes

At present within the child and family welfare sector the practice of providing reparations for adult care leavers is dealt with at the level of individual agencies, both government and non-government. Whilst Berry Street feels confident in our own approach to reparations, a sector-wide reparations process, consistent with the van Boven principles, would benefit all adult care leavers, including former clients of Berry Street.

The reality is that the adequacy of the current response to an adult who suffered abuse in care is an accident of history. The response people receive today is by and large determined by the same agency that failed them in their duty of care in the first place. Clearly, larger agencies with a stronger financial position, the resources to maintain client records for generations, and the capacity to carefully investigate allegations should be in a better position to provide full and fair reparations to an aggrieved adult care leaver than an agency that lacks those resources.

It is critical to acknowledge that in relation to adults who suffered children maltreatment whilst in the care of non-government agencies, those agencies were providing services on behalf of the State. The State has some culpability in relation to the abuse of children in care as it holds a non-delegable duty of care to ensure the safety of those children and young people for whom it has assumed the parental role. In Berry Street's view the State also has a responsibility to ensure justice and procedural fairness for all adult care leavers.

It is also important to acknowledge the role of Commonwealth contributions towards a redress scheme. The Commonwealth, in its role with Child Migrants and Child Endowment payments, also has a duty of care responsibility to contribute to a redress scheme. The Commonwealth also has a responsibility, in Berry Street's

view, to ensure that adult care leavers are not disadvantaged by virtue of having experienced abuse in one State or Territory jurisdiction rather than another.

Berry Street, therefore, supports the establishment of a national redress scheme that provides a consistency of approach across all States and Territories of Australia. A national scheme would also enable care leavers residing in States and Territories away from the State or Territory where they spent time in care to more readily access the redress scheme. The scheme must also have a clear link back to the agency involved to ensure that measures are taken by that agency to acknowledge any failings, improve practice to reduce future risk and provide an apology to the claimant.

The independence of redress schemes

Berry Street supports the development of an independent redress scheme separate from agencies. An independent scheme should be established through consultation with relevant stakeholders, in particular victims, and it should ensure that all organisations implicated in past abuse claims or currently provide out of home care services, be they government or non-government services, contribute financially to the scheme. Consideration should also be given to requiring financial contributions from all agencies that provide services to children *in loco parentis* to ensure those victims of abuse are eligible for inclusion in a redress scheme.

This position is supported by the Victorian Parliamentary Inquiry report, *Betrayal of Trust*. Specifically, the report recommends that the Victorian Government review the functions of the Victims of Crime Assistance Tribunal (VOCAT) to consider its capacity to administer a specific scheme for victims of criminal child abuse.

An important element of Berry Street's current process is that claimants have an opportunity to share their experience directly with Berry Street. It can be very important for victims' sense of redress that the agency responsible for the harm from their perspective hears directly about that harm and its impact. Berry Street would recommend that any system of redress should include the opportunity for victims to share their experience directly with the agency responsible.

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

All institutions (Government and non-government) should be required to participate in a redress scheme. This is to ensure that all claimants are able to access equitable redress regardless of the organisation or institution responsible for the abuse.

Civil litigation and redress schemes

Berry Street's processes and approach to past abuse claims do not require claimants to enter into any undertakings, and they remain free to pursue legal action and/or return to Berry Street and re-open a claim. Berry Street would support the right of any claimant to undertake a civil litigation process against an organisation or institution should they wish to do so.

Should the financial compensation already received be taken into account in any new scheme?

If a claimant has previously received compensation through current schemes, this compensation should be taken into account when assessing the compensation within a new scheme. If a claimant has previously been assessed by current schemes as eligible for compensation, they should not be required to prove their eligibility again for a new scheme.

References

Human Rights and Equal Opportunity Commission Report (1997). *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Commonwealth of Australia.

The Senate Legal and Constitutional Affairs References Committee (Dec 2010) *Review of Government Compensation Payments*. Commonwealth of Australia

(http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/govtcomp/report/index)

United Nations Commission on Human Rights Sub-Committee on Prevention of Discrimination and Protection of Minorities E/CN.4/Sub.2/1996/17 *Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and Humanitarian Law*.
(<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>)

Profile of Berry Street

Vision and values

The Berry Street believes *all children should have a good childhood - growing up in families and communities where they feel safe, nurtured and have hope for the future*. The Strategic Plan 2007-10 (available at www.berrystreet.org.au) includes a statement of beliefs and assumptions, the context within which we operate and our 5 values (and what they mean to us) of:

- Courage,
- Integrity,
- Respect,
- Accountability,
- Working Together.

Berry Street provides an extensive range of services for children, young people and families across rural, regional and metropolitan Victoria. We work from 20 offices and a further 34 worksites, with the majority of services in the Gippsland, Hume, North & Western Metropolitan and Southern Metropolitan regions. Berry Street employs approximately 550 (EFT) staff and has the support of over 250 volunteer caregivers and in excess of another 200 other volunteers. The budget for 2010/11 is more than \$53 million. Our greatest challenges today arise from the dreadful impact on children and their families of domestic violence, substance abuse, mental illness, poverty and unemployment.

Today we are the largest independent child and family welfare organisation in Victoria, providing an extensive range of services across metropolitan, regional and rural Victoria, to many thousands of people each year. Incorporated under the Associations Incorporation Act, Berry Street is an independent, Not-for-Profit Public Benevolent Institution with Deductible Gift Recipient and Income Tax Exemption status. Our voluntary Board of Directors has responsibility for governance and stewardship of Berry Street's good name and resources.

Services

Residential care

Berry Street's residential care program is often the 'last resort' for young people whose traumatic childhood means they can't safely live at home or in foster care. Across Victoria, care is provided by rostered staff in small-scale group houses for up to four young people.

Foster & kinship care

When children can't live safely at home because of serious child abuse, neglect and family violence, the first preference is that they go to relatives (Kinship Care). Accredited volunteer foster carers also provide care for children and young people in their own homes (Foster Care). Our professional staff ensure these carers are properly screened, assessed and supported, as well as working directly with the children and ensuring they get the help they need to recover.

Therapeutic

Through clinical services and counselling programs, including Take Two, we work intensively with the distressed child or young person, their family, carer and other services, to help them recover from their trauma.

Education, training & employment

Too many of the young people with whom we work are either excluded from, or have dropped out of, school. We run an independent school with a number of campuses, and an extensive range of other education support and training programs. We strive to: maintain the participation of those who are at risk of disengaging from mainstream school; re-engage young people who are excluded from education or training; and promote pathways for young people into employment.

Youth

We know that adolescence is a 'window of opportunity' to help young people recover from traumatic childhoods and prepare them for a successful adulthood. Our youth services include case management, outreach, leaving care, life skills, mentoring, and accommodation.

Family

Our family services support parents to better care for and nurture their children and help resolve conflict between parents and their adolescents. We also play a lead role in the delivery of services for families experiencing family violence: we help women keep themselves and their children safe; and we provide contact services for parents who cannot manage safe access arrangements for their children.

Community

Our community work includes two key approaches. First, we deliver programs in local geographic communities, with a focus on the early years, financial inclusion and capacity building in rural communities. Secondly, we engage with particular groups within the community, with a significant emphasis on supporting Forgotten Australians, Aboriginal children and their families, and new arrival groups. We place a high value on working in partnership with and for these communities.

