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The Secretary,
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**Royal Commission into Institutional Responses to Child Sexual Abuse
Issues paper No 6**

(1) (a) Advantages of Redress Schemes

- If devised in close consultation with victims, such a scheme are best placed to provide some measure of justice to victims;
- Its jurisdiction and powers can be specific, focused, and designed for the task in hand;
- Can be tailored, as with other specialized tribunals (eg, VOCAT) to meet the peculiar requirements of the client group (victims) and “defendants” (offending institutions);
- Procedures can be devised to maximize appropriate outcomes, eg, facilitating evidence, whether anything need to ‘proved’ and if so to what standard; whether hearings involved or merely applications ‘on the papers’;
- Legal hurdles encountered in civil actions for damages at common law can be avoided by legislation, while building in appropriate safeguards for offending institutions; eg, need for formal pleadings; controlling use of lawyers; reforming/abolishing limitation of action periods; problems of vicarious liability; problems of incorporated accessible defendant against whom liability can be imposed; normal costs rules (eg, “follow the event” save in court’s ultimate discretion) can be adjusted or removed entirely; need to “prove” liability on an established tort basis, (eg, negligence, breach of statutory duty) can be avoided;

(b) Disadvantages:

- may not carry sufficient “ weight” to be recognized and accepted by all parties, eg, cf, court judgment or order;
- may duplicate already existing schemes (eg, in Vic, VOCAT) at taxpayers expense;

2. see above.

3 (a) Forms of redress offered through a redress scheme:

- Monetary compensation;
- Provision for personal apology, written and/or oral from offender and/or his/her employer;
- On-going medical, psychiatric, re-habilitation services, as required;
- Ability for victim to ‘tell his/her story’ if appropriate, directly to the offender if available;
- Ability to gather relevant material from offender’s files in order to understand more fully what occurred, including subsequent rejection of complaints, if any;

(b) Group benefits to be available?

- Yes, as one of various alternative remedies, and if appropriate to the circumstances of the case;

(c) Balance between individual/group redress?

- Depends on circumstances, eg, wealth of institution, size of group, similarity of offending conduct across the group; whether any member of group already obtained compensation for abuse complained of;

4 National Redress Scheme:

(a) Advantages:

- Common identifiable entity treating of all parties equally across the nation;
- Joint (additional?) funding of state-by-state schemes;
- National common principles & procedures may be established;
- Persons abused in more than one state need not apply more than once;

(b) Disadvantages

- Local circumstances/offenders confined to one state only may not be properly accommodated;
- State laws (eg criminal code) differing across the nation will need to be accommodated in a national tribunal, possibly producing complexity;
- Political considerations produce a “lowest common denominator” and thus a less powerful/useful scheme in the search for justice for victims;

(c) Should government institutions (Fed, state, territory) be embraced?

- Yes. Why not? – save for costs involved to governments/states/territories, (eg, for damages awarded to Wards of State)

(d) How Fund scheme, and by whom?

- Various funding streams may be accessed: eg, funded out of consolidated revenue of various states and territories, (general taxpayer) in accordance with a formula dependent upon, eg population/ numbers of known victims; from dedicated revenues eg, from seizure of assets equivalent to “Proceeds of Crime” legislation; from individual “worst offender” institutions, eg, Roman Catholic Church, Anglican Church and Salvation Army, at least, should all be required to fund Tribunal’s establishment and/or compensation award costs,

especially given their witnesses' acceptance of this principle (see, eg, evidence of Cardinal Pell, Sydney);

- 5 (a) Redress Tribunal's decision making to be independent of any Institution's internal redress scheme?**
- Clearly yes, especially since the Tribunal's jurisdiction and powers should include re-visiting, and re-assessing, victim compensation decisions already made by any internal institutional scheme, including any Deeds of Release;
- (b) Redress Tribunal subject to oversight?**
- Yes. Should be "administrative appeal" on questions of law only, eg, as per to superior court or tribunal, with no further right of appeal. Qs of fact should not be appealable, but all resolved, on the requirements of proof as laid down, by the Tribunal. (See, eg, VICAT (Vic), AAT (Cwth) appeal procedures)
- 6 Optional or mandatory for Institutions to be involved in establishing and/or participating?**
- **Establishment:** Any institution should be provided with the opportunity to have input to the scheme's devising;
 - **Participation:** the Tribunals powers should extend over all "institutions" as defined in the Tribunal's governing legislation (eg, any group, incorporated or otherwise, as listed in an Appendix to governing legislation or as otherwise defined, eg, if its members number up to 10, 100, 500 people?). If an institution chooses not to participate in a claim, that is its choice; it would still be subject to the Tribunal's determination and compensation orders, if any;
- 7 (a) Seeking redress through the Tribunal optional for Claimants?**
- Yes.
- (b) Claimants retain ability to issue civil proceedings for damages?**
- Yes, but a claimant should not be entitled to "double up" if he/she succeeds in a court of law. The scheme should be devised such that there is little advantage, to a victim, in terms of costs and legal hurdles, to opt for the civil courts.
 - If a victim fails at common law, question whether he/she might thereafter resort to the Tribunal for another go: questions of costs to the defendant institution, and achieving finality in the interests of justice then arise; (not to mention encouraging the victim to "move on" and put "litigation" behind him/her.)
- 8 (a) Fairness in redress schemes as between asset rich/asset poor institutions;**
- Difficult. If an "asset poor" institution causes harm, its assets must nevertheless be available; thereafter, the persons managing that institution against whom direct "negligence" or vicarious liability (as defined for the purposes of the Tribunal) is shown, their personal assets should be exposed to satisfy a judgment order of the Tribunal; thereafter, a state/national insurance scheme should be established, to be contributed to by all

institutions/governments, to cover any shortfall of an “impecunious” offending institution;

(b) Fairness & Consistence between survivors?

- Survivors’ (ie, victims’?) awards should be responsive to the seriousness of the offence, and short/long-term impact upon that person and his/her opportunities in life. This approach obviously will lead to different awards; similar offences and impacts should be the subject of consistent awards across the state/nation; if institutions have differing ability to meet compensation order from their assets, the above scheme of available alternatives sources to meet awards should make up the shortfall;

(c) What if offending institution has ceased to operate?

- See (a) above re fall-back options for securing payment. Ie, ultimately, the national/state insurance scheme.

9 (a) Advantages/disadvantages of the Tribunal calculating compensation on the same principles as common law civil damages:

- **Advantages:** victims likely to get more dollars; consistency with well-established common law experience of what injuries are worth in the eyes of juries;
- **Disadvantages:** nil.

(b) Should affordability for Institutions be taken into account?

- No – especially where it is shown the institution had reasonable opportunity to prevent/curtail the abuse.
- See further Answer 8 above.

10 (a) Verification/level of proof of abuse?

- Formal requirements of proof should be avoided wherever possible;
- An informal “screening” process might be introduced, eg, a mediation setting where, around a table, issues are agreed/disagreed; those disagreed then may be formally determined by the Tribunal on a civil “balance of probabilities” standard.

(b)How should Institutions be involved in verifying/contesting claims for compo?

- May be heard at Tribunal’s discretion;
- But heard on limited issues only, at Tribunal’s discretion, eg, re contested factual issues going to abuse; facts of institution’s responses to victim’s complaints to it, if any; ability of institution to meet, from its own resources, quantum awarded (but not as to other issues, eg calculation of quantum);

11 (a) Support available to claimants when participating in redress scheme?

- Such as is necessary, eg, legal, psychiatric, financial advice, medical etc. The processes put in place by the current Royal Commission, assisting victims to give evidence, are good precedents to follow;

(b) Should Redress scheme provide Counseling and legal advice?

- Yes, as required, and free to the victim, ie, part of the costs of running the Tribunal, such costs to be met as referred to above;

(c) Impose limits to such assistance?

- Yes, as appropriate, (eg, if victim refuses proper and clearly correct legal advice and demands further opinion) in context of other welfare schemes available in the community.

12 Should victim's prior receipt of compensation /services from another scheme (eg, RCC internal schemes such as The Melbourne Response; per court order after successful civil proceedings) be taken into account if a further claim is made to the Tribunal?

- Yes, provided the amounts awarded are for the same abuse/physical pain and suffering/economic loss.
- But note: The incidents for which compensation is awarded, and the extent of damages proven in a court, are almost always likely to be narrower (due to legal technicalities involving difficulties of proof, etc) than incidents likely to be accepted before the Tribunal.