

Submission of SNAP Australia

Issues Paper 5

Redress Schemes

**Royal Commission into
Institutional Responses to
Child Sexual Abuse**

4 June 2014

Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

By email: solicitor@childabuseroyalcommission.gov.au

Dear Sir/Madam,

Issues Paper 6 – Redress Schemes

Thank you for the opportunity to provide this submission to the Royal Commission into Institutional Responses to Child Sexual Abuse.

SNAP Australia

SNAP, the Survivors Network of those Abused by Priests, is the world's oldest and largest support group for clergy abuse victims. We've been around for 25 years and have more than 18,000 members in 79 countries.

Support for submission by Tzedek

SNAP congratulates Manny Waks and Tzedek on their excellent submission regarding redress schemes. SNAP endorses the points made by Tzedek in their submission as an excellent summary of the needs of survivors of institutional child sexual abuse.

We particularly wish to state our full agreement with Tzedek's core points as follows:

1.4. Tzedek submits that redress schemes should not be established to the exclusion of any other forms of redress, but that redress schemes could have a role to play as part of a multi-faceted approach.

1.5. To the extent that Tzedek supports the establishment of a redress scheme, Tzedek would support a scheme with the following features:

(a) Institutions must fund schemes, with government compensation as a "scheme of last resort"

(b) Institutional leaders must be personally liable for the actions or omissions of the institution, especially in the event that an institution is unable to meet a redress obligation

- (c) All schemes must provide ancillary support to victims*
- (d) All schemes must operate according to standards and processes applying nationally*
- (e) An independent statutory authority must be established to monitor and enforce compliance*
- (f) Complainants must not be precluded from simultaneously or alternatively seeking remedies from a court*

This submission builds on the work of Tzedek with additional points SNAP wishes to emphasize in the consideration of how to deliver a just and effective redress scheme.

Abuse of Power/Power Imbalance

Despite being sexual crimes, the core of child sexual abuse is an abuse of power by adults in positions of authority over children. Children are targeted because of their vulnerability, powerlessness, lack of credibility, and ease of manipulation and coercion.

Which particular child is chosen as prey is often more closely related to special vulnerability than any other factor, even availability. Many predators go to great lengths, and expense, to groom a particular

child.

Once successful in manipulating the child into a position where the child feels unable to avoid or stop the attacks, the abuse can continue for years, with little fear of the child being able to understand they have a right to complain, far less of actually making a complaint.

A particularly poignant example of this is the US case of Father Lawrence Murphy, who sexually abused at least 200 deaf boys, particularly targeting those unable to speak, and thus even less able than most child victims to ask for help to stop their abuse.

Once the sexual contact has ended, often after years of torture, the abuse of power, inflicted by the institution protecting and enabling the sexual predator, continues. Additional harm is inflicted through minimisation, disbelief, community ostracisation, threats, blaming and shaming, and denial of access to justice or assistance to recover.

The significant additional damage inflicted by this campaign of often deliberate re-abuse is traditionally ignored or underestimated.

When the few victims who manage to speak out about our abuse demand justice or redress, our needs are once again subjugated by manipulative, authoritative, well funded attempts to evade financial, moral and criminal responsibility, and publicity and public scrutiny, by the abusive institution.

All of these additional abuses of power push victims ever further along the path of self destruction that the sexual abuse set us upon. Far too many reach the ultimate destination of suicide.

Role of redress in child protection

In our experience, one part of healing is often overlooked or minimised. Many victims desperately and sometime unconsciously want to know or believe their suffering has not been in vain and that their courage has helped bring reforms and protect kids.

This happens best in many cases if wrongdoers are forced to experience harsh consequences, because victims rightfully suspect that harsh consequences will make other institution officials think twice before stone-walling prosecutors, deceiving victims, shredding evidence, threatening whistleblowers, discrediting witnesses, and protecting or moving predators.

So it's not helpful - and usually hurtful - when redress schemes are "watered down" out of alleged concern for the financial well-being and continuation of institutions that "do good work." In other words, institutions that have enabled and hidden horrific child sexual violence must be held responsible, regardless of alleged "hardships" this may cause that institution.

We do this when assessing individual penalties for wrongdoing. (Few judges are moved to give criminals lighter sentences because their families will lose a "breadwinner.") We should do this when assessing redress schemes for child sex abuse victims hurt in institutions run by reckless, callous and deceitful officials.

A Fair and Just System

There will no doubt be clever submissions put forward arguing for fairness and equality between the competing needs of survivors and the institutions which abuse, re-abuse and silence us.

But there has never been fairness. There has never been equality. There has only ever been abuse of power. The role of redress is to change a wrong situation to come to a final position of relative fairness.

In a just society the powerful protect the powerless.

We grew up in a society where the powerful see the powerless only as prey to be exploited. Where no one but the already damaged survivors are brave enough to speak the unbearable truth, and even when we do speak, no-one wants to hear or to help us.

The human rights of Australia's most vulnerable have traditionally been infringed and neglected, our needs ignored and the strident demands of powerful and wealthy criminal individuals and institutions have been acceded to for decades.

Institutions have been allowed far too many extra chances to prove, as they claim, to have "learned from the past", "made significant changes", be "doing so much better now" or have introduced "new guidelines" or "zero tolerance".

Where these claims have been independently verified they are invariably found to be baseless and self-serving. Children continue to be endangered, criminals continue to be protected and enabled to reoffend and survivors continue to be denied assistance and further harmed.

This is consistent regardless of country or institution. The lack of justice, lack of accountability and lack of transparency inherent in “in-house” systems of redress, or point blank refusal of redress never does change and will not voluntarily change.

Financial contribution to a redress fund must be compulsory for all institutions with claims brought against them by survivors or their families.

Standard of Proof

The combination of our existing criminal standard of proof, laws of evidence, statutes of limitations, and a range of other serious problems result in a criminal system which is far too heavily weighted in favour of protecting powerful criminals and denying their victims access to justice. Statistics from Australia and overseas point to between only 0.3-3% of these crimes ever resulting in convictions.

Not only does it fail miserably in delivering justice for survivors and safety for the community, this system brutally punishes those already

damaged by the crimes committed against us. And the fact that the job of defence lawyers is made easy by a toolbox of legal loopholes which provide numerous options to obtain a miscarriage of justice serves as a warning that even superhuman courage, even clear evidence of guilt, is not enough to stop a wealthy or powerful predator.

This system rewards and protects predators, leading them to consider themselves "untouchable", "above the law" and encouraging re-offending. Strenuous protection of the reputations of predators kept unconvicted by legal loopholes makes them even more dangerous as they claim to have been exonerated, and parents allow them access to their favourite prey.

This is completely unacceptable when we are talking about such serious crimes. It is even more unacceptable when this results in a society where most victims don't report because of insurmountable barriers to justice, where because known but unconvicted offenders are enabled to keep their reputations they are enabled to keep offending, and most importantly, where large numbers of Australian children are routinely exposed to danger.

The criminal standard of proof and the supporting legal system is an almost complete misfit for this type of crime. The usual time taken to report, features of the offences and type of damage inflicted all cry out for a more appropriate means of proving guilt.

For the purposes of redress it would be fairer to turn such a system on its head. Denying the vast majority of victims access to redress, as well as to justice, is untenable. Statutes of limitations and other such unjust barriers must never be used.

The number of false claims is miniscule, so initially believing survivors, which is beneficial to healing as well as just, is recommended.

We suggest forcing abusive institutions to hand over all relevant documents, which, if successful, will prove the best vehicle to confirm the truth of a survivor's claims.

The only method by which such documents are currently made available in Australia is through investigations such as this Royal Commission.

In the US, large numbers of incriminating documents have been revealed through civil actions, which are effectively denied to Australian survivors. Even more documents have come forward recently as US survivors have sacrificed financial compensation in their settlements in return for the full truth being revealed.

These US documents fully support the claims of survivors and add to the proof of just how deceitful respected institutional officials are prepared to be in order to protect themselves, the offenders, and the institution.

Unfortunately, given the scale and consistency of self serving deceit routinely seen from institutional officials in countries around the world, even under oath, there is little point in questioning them, except to delay justice and distress survivors.

As an example, in the Catholic Church there is mounting evidence of longstanding and still current Vatican policy requiring Bishops to coverup child sex crimes, and a policy of lying to those outside the church called Mental Reservation.

Questioning such officials is pointless as they have sworn their loyalty to the Pope above all others and simply will not reveal the truth.

Other institutions demonstrate similar behavior, whether or not they have enshrined their culture of coverup in specific written policies.

Properly experienced counselors are capable of discerning whether a claim of child sexual abuse is genuine or not. This, coupled with the independent verification of basic facts, would produce a far closer approximation to justice than the current criminal justice system.

Bearing the Cost

Bearing the cost of our harm has been pushed on to us, our families and the Australian taxpayer. The only ones not contributing, except in a powerfully negative way, are those who created the harm.

Redress which continues this injustice, and does not hold the abusive institution financially responsible will not be nearly as healing for survivors as knowing that the cost of our healing is being borne by those who knowingly and deliberately inflicted or enabled our harm.

Redress is needed not just for the original sexual offences, but also redress specifically for the equally harmful re-abuse. There is absolutely no justification for giving abusive institutions a free pass in relation to this cruel and unnecessary additional harm.

Plus by forcing redress to be paid for covering up crimes, re-abusing survivors and denying access to justice, this behavior will finally be discouraged instead of encouraged.

Choice and Control in the Hands of Survivors

Children who are violated are deprived of choices. Control of our bodies, our world, our lives was stolen from us by abuse. Taking control of our own lives, and indeed feeling as if we have a right to make our own decisions, is a key path to healing.

Choice is a crucial issue for survivors of child sexual abuse.

While certain key principles are common to the ability to heal for most survivors, exactly what will help a specific individual heal is unique and certainly not predictable.

The last thing survivors need is a restrictive redress scheme which offers no options for what is available or how it is delivered. Redress programs should try to give victims many choices and not be structured in a "one size fits all" manner.

It's Not All About the Money

The lies that are spread to undermine survivors and ensure we are denied understanding or assistance are yet another part of our harm. The lie that survivors are making up stories of abuse to underhandedly obtain money from innocent institutions is particularly harmful.

Because of this some survivors refuse to accept "blood money" or "dirty money" no matter how badly they need financial assistance as a direct result of their abuse.

Other survivors see money as the only language abusive institutions understand and can only feel that they have received justice if a sufficiently large sum is paid to acknowledge the enormous harm they have suffered.

As a direct result of our abuse many survivors are also lacking crucial life skills, including literacy and financial management, or are vulnerable to being manipulated or to feeling betrayed.

Some survivors are not helped by a lump sum payment. Some will

fritter it away, feel unable to manage it, blow it on drugs or other addictions, lose it or be conned out of it, and be no better off as a result.

Any redress scheme should be offered via properly trained trauma informed support personnel whose objective is to work with the survivor to identify what will help their healing, and decide what form any redress should be delivered in.

Many survivors are unused to having any form of choice and are unable to plan ahead, or have spent their lives in chaos simply responding to the traumas of a nightmarish world of abuse. Just realising that they have new options opening up to them to shape a better future and finally achieve some of their potential, will take some time to absorb.

Examples we have seen where survivors have identified what they need to rebuild their life include: the ability to pay a divorce settlement to a former spouse so a business did not have to be sold; the ability to study, start a business or buy a home; the ability to move to the country because the city is too traumatic; the ability to financially assist their children, or to ensure a disabled child's future needs could be met; or for older survivors a legacy to leave to their children because they feel they had not been a very good parent.

Counseling, legal and financial advice, healing and medical services, education and training, vocational guidance, rehabilitation and a range

of other services should all be available, and should be paid for by the institutions.

Protection from Exploitation

In Ireland, the redress scheme required survivors to utilise and pay for lawyers to complete application forms. Many lawyers overcharged survivors, extracting large portions of already inadequate redress payments, for a fairly routine task.

Officials of some Irish survivor support groups also personally profited while the lives of survivors often did not improve.

Tragically, in Australia we are already seeing vultures, such as lawyers and certain unprincipled support groups, circling around ready to feed off vulnerable survivors.

If a redress scheme is announced, their numbers would quickly multiply.

Protection against callous and opportunistic "service suppliers" profiting unfairly and relieving unsophisticated survivors of their precious redress is vital.

In particular, religions exploiting the vulnerability of still devout survivors to claw back redress payments through supplying self serving and potentially harmful services needs to be considered and

prevented.

No Limit on Counseling

There should be no limits put on counseling. Abusive institutions commonly promise counseling on the basis of "meeting the survivors' needs" but actually enforce a non negotiable cut off point to save money, for some reason usually after a manifestly inadequate 10 sessions. This enforcement is sometimes applied so brutally, to discourage further requests for assistance, that irreparable harm is done, leaving survivors worse off than if they had never received counseling.

Real healing leads to less need for counseling, but only the survivor and their counselor are the best judge of that need.

Counselors and other service suppliers should never be associated with or controlled by the abusive institutions. We have seen far too many examples of those associated with the institution pretending to help survivors but inflicting significant additional harm in their attempts to manipulate survivors into not reporting, not seeking assistance, or to blame themselves for the crimes committed against them.

Such, often untrained, self serving efforts can, and have, resulted in suicide deaths of survivors. Survivors must be protected from exposure to this very serious danger.

Survivor's own choice of counselor is vital. Working with the wrong counselor helps no-one, and survivors should be encouraged to reconsider their options if they do not feel they are making progress or their needs change.

The scale of the harm caused is huge, but with enough work with the right counselor, and other support, many devastated lives can be turned around.

Becoming Contributing Members of Society

Redress should not be viewed purely as an outpouring of cash and services towards survivors.

Many of the children targeted by predators were our brightest and best. Many of the survivors we have turned into are the most courageous and determined people you will ever meet.

While many drag ourselves only half alive through lives marred by suffering, chaos and dysfunction, some manage to heroically overcome suicide ideation, depression, addiction, dissociation and other serious problems. Some achieve good or even spectacular success in business or other fields of endeavor, often before everything falls apart as the long term effects of our childhood abuse kick in.

But we should never consider survivors as hopeless cases, and a financial drain, despite the damage we have suffered. Survivors are tough and hard working as well as fragile. Offered the right assistance, the assistance we always deserved but were deliberately, callously denied, many survivors will be eager to get off the disability pension to earn an income and pay taxes.

Offered the medical support and healing services we always deserved but were refused, we can become more functional and contribute more to society.

And if survivors are offered healing rather than re-abuse and abandonment, many of Australia's most destructive and expensive social problems will become less common, including drug and alcohol addiction, homelessness, prison overcrowding, family breakdown, domestic violence, depression and other mental health issues, eating disorders, and suicide.

International Treaties

A just, adequate and functioning redress scheme is necessary to meeting Australia's commitments under international treaties such as the UN Convention on the Rights of the Child and Convention Against Torture. The Committee Against Torture accepts the child sexual abuse inflicted by Catholic priests and other religious as falling within their

definition of torture.

SNAP's work with these UN Committees in relation to the Vatican has raised the Committees' understanding of the lack of adequate redress in States Parties where the Catholic Church has been allowed free reign to sexually abuse children. While both Committees hold the Vatican responsible because of control exerted over the offenders and those who coverup and enable these crimes, that does not remove the responsibility of the States Party where the abuse occurred.

Australia is not currently in compliance with either of these treaties in relation to redress for all institutional child sexual abuse, not just the Catholic Church.

A SNAP Australia representative visited Geneva in May 2014 to speak to the UN Committee Against Torture, giving examples from Australia that have raised that Committee's specific interest in Australia's compliance.

International Responsibility for Redress

Both the UN Committee on the Rights of the Child and Committee Against Torture have indicated their intention to hold the Vatican, which claims to be an independent state, financially responsible for redress for the child sex crimes of its priests, no matter where in the world the abuse occurred.

So even if the Australian Catholic Church claims poverty, goes into bankruptcy, shifts assets and takes other actions to shield assets from the justified claims of survivors, the Vatican can and should be held ultimately financially responsible.

This principle could also be applied to other international institutions.

The form of redress

Survivors from Ireland, QLD and WA, where limited forms of redress have been made available under the auspices of the state, report that many survivors feel betrayed or retraumatized by an inadequate system. In some cases, no redress would be preferable.

On behalf of Australian survivors we urge the Royal Commission not to support an inadequate, underfunded, restrictive, or less than independent redress scheme.

Any redress scheme, to be of benefit to survivors, should:

- Be funded by the abusive institutions

- Acknowledge and include re-abuse by institutional officials as well as the original child sexual abuse

Be flexible, offering a range of choices to suit individual needs, and be able to work with other options including civil and criminal legal actions

Treat survivors respectfully and recognise that redress is what we always deserved but were previously unjustly denied

Never be delivered by anyone associated with abusive institutions, and all those who have contact with survivors should be trained in dealing with trauma

Be subject to independent national standards, regulation and audit

Include ancillary services which should be paid for by abusive institutions

Protect survivors from exploitation by lawyers and other service suppliers

Offer assistance to family members such as dependents, and those whose lives are impacted by the behavior of survivors denied access to healing, or have lost loved ones to suicide resulting from child sexual assaults

Be able to be extended to include abuse beyond the Royal Commission's Terms of Reference, such as abuse of vulnerable

adults, torture, physical abuse, psychological abuse, spiritual abuse, and abuse within the family

For Too Long Survivors Have Been Deliberately Denied Our Right to Heal

As a final point, SNAP Australia would like to emphasise our strongly held belief that the abuse of power manifested in the deliberate campaign to silence survivors and prevent our access to justice and healing is just as dangerous and damaging as the original child sex offences and should be treated just as seriously.

This campaign exposes more children to danger and has resulted in many, many preventable child sex crimes being committed.

This campaign exponentially increases the harm suffered by those already damaged by child sex crimes, and means that if we are ever offered access to healing, we have a much more complex and difficult task before us.

This campaign exists because of the belief by criminal individuals and institutions that they are above the law. Despite an existing law in NSW that recognises that the coverup of child rape is a crime, and documentary evidence of such a coverup in many cases, there has never been a conviction for this crime.

That is a national disgrace.

As is the fact that, until now, many thousands of Australian kids have been subjected to horrendous crimes right under our noses, and almost nothing has been done to stop the crimes or help the survivors recover.

Even this Royal Commission was denied to survivors for decades, despite the existence of a 30,000 strong petition asking for a Child Abuse Royal Commission.

As little as one or two years before this Royal Commission was announced, SNAP Australia was still being told by our State and Federal politicians "Forget about it. It'll never happen."

Not "There is no need for it".

The need was always there. And was always ignored.

This is our one chance to provide a remedy for the hurts of the past, so that many courageous survivors can finally emerge from our cocoon of childhood pain and learn what it is like to live. And show the world what we have to give.

But we should never forget that for far too many, it is already too late.

Thank you again for the opportunity to provide you with this submission.

Yours faithfully,



Nicky Davis

Leader

SNAP Australia