

GOVERNMENT OF WESTERN AUSTRALIA SUBMISSION TO THE ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE: ISSUES PAPER SIX – REDRESS SCHEMES

The Government of Western Australia (the State) welcomes the opportunity to provide a submission to Issues Paper Six by the Royal Commission into Institutional Responses to Child Sexual Abuse.

The State has acknowledged the harm done to victims of child abuse whilst in government-regulated institutional care, having implemented two separate redress schemes in the last seven years, *Redress WA* and the *Country High Schools Hostels Ex-Gratia Scheme*. The Schemes were the broadest of all similar schemes at the time and involved research and access of care records for applicants dating back more than 70 years.

Redress Schemes in Western Australia

1. *Redress WA*

Redress WA was a \$144 million scheme that ran from May 2008 until December 2011. It was established as a finite scheme to acknowledge and apologise to adults who, as children, were abused and/or neglected while they were in the care of the State. The Scheme received 5917 applications for assessment, of which approximately 50 per cent were from Aboriginal people. Of those applications, 5325 offers of payment were made. *Redress WA* was intended to be a compassionate scheme to acknowledge abuse. The broad objectives of the Scheme were to make ex-gratia payments to applicants, to acknowledge their experiences through an apology and the erection of a memorial, to provide support and counselling services and to report alleged perpetrators to the Western Australian Police. Its unique administration differed significantly from other redress schemes, in that it coupled ex-gratia payments with an array of accompanying support services. The Scheme, however, was not intended to provide financial compensation for that abuse in the same way as a court would assess damages in a civil claim for damages.

2. *Country High Schools Hostels Ex-Gratia Scheme (the Ex-Gratia Scheme)*

Established in November 2012, the *Ex-Gratia Scheme* was established as a government response to the “St Andrew’s Hostel Katanning: How the System and Society Failed our Children” report, of a Special Inquiry undertaken by the Hon. Peter Blaxell. The State allocated \$6 million to the development and implementation of a finite Redress Scheme for people who were abused while boarding at Country Hostels operated under the *Country High Schools Hostels Authority Act 1960* between 1960 and 2006.

This Scheme received 105 applications for assessment, of which 90 were assessed as being eligible for ex-gratia payments.

Both schemes attempted to support applicants through four types of support:

- Giving the opportunity for applicants to have their story told;
- Referring reports of assault (where requested) to relevant agencies, including the Western Australian Police, the Department for Child Protection and Family Support; and the Corruption and Crime Commission;
- The provision of ex-gratia payments; and
- Providing applicants with counselling and support to deal with the long term effects of abuse, without re-traumatising applicants.

The WA Redress Schemes aimed to minimise distress to applicants and their families. Those administering the Schemes were made mindful of the possibility that applicants may be re-traumatised by the application process. Employed personnel, many of whom were trained social workers and psychologists, were provided with additional training and guidance to ensure the sensitive treatment of applicants throughout the process.

Applicants for both Schemes had their claims assessed a lower level of corroboration of information than would exist under a judicial based system of assessment and investigation. Assessments did not subject applicants to the burden of proof, nor were applicants expected to provide criminal or medical evidence of abuse.

Assessors were instructed, within reason, to accept claims of abuse disclosed by applicants:

- If they were within a known time frame;
- If other applicants made similar claims at the same institution and within the stated time frame;
- If they could be supported by other means such as government reports and media articles; and
- If the applicants was of an age where they should reasonably remember the circumstances of their boarding/State care years.

Furthermore, Scheme administrators bore responsibility for checking various record sources in an attempt to substantiate claims rather than pass that responsibility to applicants. For some applicants, this involved researching and accessing care records that date back more than 70 years.

Support Services

The provision of support services to assist victims in addressing past trauma was a paramount objective within the WA Redress Schemes. In the case of redress, the State recognised that financial payment was a symbolic gesture rather than compensation, and sought to accompany ex-gratia payments with wider support services.

Under the *Redress WA* Scheme approximately \$3.7 million was allocated to service providers to assist applicants to complete applications, and to provide continued support while they waited for their claims to be assessed. Applicants were also provided with counselling sessions. Approximately 75 per cent of applicants received either assistance with their application or received counselling.

The *Redress WA* Scheme also saw all successful applicants receive an apology letter signed by both the Premier and Minister for Community Services. Additionally, more than a third of applicants asked for and received copies of their assessment material, which laid out their claims and acknowledged the extent and impact of the abuse on their lives. Over one third of the applicants asked for details of their abuse to be referred to the WA Police. These support services were found to be an important and successful feature of the scheme, with feedback noting their significance in providing just recognition to the applicants.

In administering the Scheme, the State understood that some potential applicants would have been unwilling to engage with government to seek redress. To ameliorate this reluctance, the State sought appropriate, independent front-line services and dedicated counselling support by engaging external service providers and non-for-profit organisations to provide such services. The use of external providers was effectively utilised to provide a number of support services in an attempt to address the negative perception applicants may have had towards government agencies and their related services.

Engagement and Communication

Through the *Redress WA* Scheme, a comprehensive communication strategy was established. This included a series of newsletters that were sent regularly to applicants and stakeholder institutions, detailing the scheme's progress, available services and projects of interest. The Scheme was communicated to community groups and organisations, as well as dedicated material sent to prisons. Information was advertised across a variety of media, including print, TV, radio, and a dedicated website, as well as national and international media releases.

Effective redress schemes should communicate and outline their objectives, clearly determining whether the intent of the scheme is to provide recognition and/or compensation. Responsible administrators should develop and communicate transparent assessment criteria, a timely, simple and easily accessible application process, and clear information for applicants on the proposed outcomes. Learnings from the WA Schemes demonstrate the importance of defining eligibility requirements for prospective applicants. Following the St Andrews Hostel Special Inquiry, it became evident that many people who were abused while living in country hostels did not seek redress under *Redress WA* as they did not realise they were eligible applicants. Clear communication and engagement in the redress process is critical to ensuring realistic expectations of scheme outcomes for applicants and other stakeholders.

Fairness, Equity and Sustainability

Both Redress Schemes established levels of financial redress for the purposes of identifying ex-gratia payments in accordance with the severity of abuse suffered. By establishing differing levels of severity and payment, the State aimed to provide a fairer scheme for applicants.

When undertaking assessment within financial redress schemes, sufficient consideration should be given to:

- Certain types of child abuse and/or neglect, and the impact this has on individuals in later life;
- Any long-term and chronic neglect including the impact of chronic malnourishment on children;
- Actuarial assessments planned and conducted thoroughly; and
- The appropriateness of varying legal standards (e.g. historical anomalies in the treatment of Indigenous and non-Indigenous people) in undertaking assessments to ensure contemporary standards apply to all individuals.

Designing a redress scheme requires a balance between providing a fair and equitable process and managing uncertainty, risks and delays. The more complex the scheme in ensuring fairness, the greater the uncertainty, risk and length of time required to respond to claims.

An appeal system is regarded as an important part of redress schemes to ensure fairness. The use of an independent (non-government) panel to set final ex-gratia payment amounts can assist with probity, fairness and transparency. However it is important that strict

guidelines be put in place to ensure applicants receive equitable treatment in the assessment of their application and that the integrity of ex-gratia payments is maintained.

Redress versus Civil Litigation

A critical component of the WA redress schemes is that the Schemes did not substitute for the applicants' right to seek compensation for abuse through the courts. For many applicants, pursuing civil action would have proved an onerous process due to the adversarial nature of court proceedings, the legal costs and the evidentiary problems associated with the historic nature of many of the offences. For a number of applicants, the WA redress schemes meant they were able to pursue a means of redress that would otherwise have been denied to them in the civil courts due to the nature of Limitation Laws.

The WA redress schemes aimed to provide applicants with a conciliatory, discretionary and compassionate means to redress. They were designed to acknowledge the harm suffered by individuals whilst in State care, while deliberately leaving applicants the choice to seek full compensation through the legal system. Such schemes allow much greater flexibility in the delivery of outcomes to applicants, notably through the provision of support services that could not otherwise be achieved through civil litigation.

Localised Approach to Redress

The State has acknowledged the harm done to victims while in government-regulated institutional care through the design and administration of two state-based schemes. WA strongly supports state-based model approaches to redress that attempt to appropriately support applicants through a range of support services. A homogenous national system is unlikely to provide for the needs of a state-wide or nation-wide response to redress, and there is a risk that a national scheme involving government and non-government organisations would be unwieldy and poorly targeted.

WA cautions against a new central bureaucracy and recognises that the real benefits will come from a scheme that is built around people and their local communities, leveraging off existing service-based relationships, systems and networks. A national model conversely would have to rely on an entirely new bureaucracy to deliver a comprehensive range of services and compensatory measures to an unknown number of child abuse victims. WA's experience has been that a typically bureaucratic response is ineffective in providing victims of abuse with appropriate acknowledgement and a person-centred service.