Submission to the Royal Commission
Into Institutional Responses to Child Sexual Abuse
on behalf of the
Melbourne Victims’ Collective
and
In Good Faith
FOUNDATION
CLERGY ABUSE RECOVERY

Issues Paper 6, REDRESS SCHEMES
JUNE 2014

For further information about this submission please contact:

Helen Last, CEO
In Good Faith Foundation
Email: Helen.Last@igff.com.au
Phone 03) 9326 5991
PO Box 38 North Melbourne VIC 3051
**Background**

In Good Faith Foundation (IGFF) – Clergy Abuse Recovery services founded in 2013, provide independent advocacy, case work, referral and support, to aid recovery for victims, their families and communities, responding to clergy, religious and lay abuse. The Foundation is built on 18 years of similar services provided through In Good Faith and Associates. Our long term specialised response acknowledges the value of personal and faith beliefs and applies restorative justice principles to family and community conferencing and circles of healing. These restorative practices specifically respond to the aftermath of sexual and other abuses, as victims’ experiences of unaware faith communities and religious systems can be traumatic. Our goal is to increase health, help and hope for those accessing In Good Faith Foundation services.

Currently, our services prioritise clients responding to Royal Commission processes and making submissions. We assist victims to present their primary and secondary experiences of sexual and other abuses as well as their experiences of seeking help from institutions bringing further harm through institutional complaints procedures. Our assistance to those making their Royal Commissions is comprehensive, providing referral to pro-victim lawyers, mental health practitioners, specialist police, pastoral and social carers.

Victims’ resilience and energy for change is also sustained through participation in our Melbourne Victims’ Collective, a healing group for survivors, families, professionals and supporters that was founded eight years ago in 2006. Its leaders and members also provide vital feedback on issues and directions to the new In Good Faith Foundation. The MVC meets in Melbourne every six weeks in person or by teleconference with Victorian regional members.

In Good Faith and Associates, the forerunner to IGFF, with the Melbourne Victims Collective led a campaign contributing to gaining the Victorian Parliamentary Inquiry in 2011-2013, through providing public information and support to Forums we coordinated around Victoria. We also provided significant case management for victims making Inquiry submissions and provided a major submission “United in Truth” presented to the Inquiry committee.

IGFF also shares its expertise as a “specialised community based service” through partnerships in education initiatives and pastoral projects. Long-term knowledge of victim’s experiences, families’ impacts and their community’s need for understanding of clergy sexual abuse dynamics, are all issues that we address in programs. Currently we are working in partnership and resourcing a unique pastoral aid project in Geelong, under the direction of a local committee built from survivors, their supporters, faith community members and local practitioners and leaders. The provision of pastoral care as social aid to survivors is a major goal of this Geelong project.

IGFF’s research into intervention and prevention for the purposes of community awareness and education has identified Victorian communities with significant levels of recent and
historical clergy and religious sexual abuse. Our resources are offered to help community leaders and members through our educational materials including referrals to independent organisations.

We will be launching a research report ‘How it Happened’ which has collated data from public sources on more than 200 Catholic priests, religious and lay offenders established through courts or church processes, who have been continuously relocated throughout Victoria from 1922 to 2013. The report examines connections between institutional systems and serious serial sexual offending in the Victorian Catholic Church.

Our response follows the guideline questions and topics set by the Royal Commission in relation to Redress Schemes:

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?

A major consideration to the choice of redress scheme over civil litigation processes is the application of the principle to do no harm, this is to be paramount. A best practice redress scheme would do all in its structural capacity to avoid what has been reported to our service as the inherent and adversarial nature of civil litigation with its plethora of additional stresses for victims. Victims of historical abuses including sexual violations with lifelong impacts, have already suffered deep and repetitive trauma. This continuation of their trauma includes, but is not restricted to, the institutions own representatives perpetrating the violations, the same institutions silencing and denial of these traumatic events, and more recently the institutions failure to vindicate, comprehensively care for and historically demonstrate awareness of their responsibility to protect and safeguard victims.

Pervasive fear and anxiety based in real events continues to be brought by victims to our service for professional help in the context of victims having been to institutional complaints schemes and experiencing what they say is repeated intimidation with a lack of natural justice applied to their situations. Living with fear of further diminishing and “pay-back”, points to the misuse of power towards victims still encountered in the institution management of victims complaints and issues. These institutional responses continue to have no victims’ rights or advocacy frameworks to call on.

Victims also say they have formally reported these complaints, which include feeling fear and intimidation, to the appropriate professionals and statutory bodies. Taking the time to document and focus their personal and emotional attention on these civil complaints to professional boards, that have taken up to twelve months in some cases to conclude their
findings, is another example of the devastating pressures on victims who will not ignore institutional abuses in their search for reform and some experience of justice.

In the setting up of a future redress scheme preferable to civil litigation, research could explore the documented histories of victims seeking resolution to their pain and damages through: seeking review and advice from civil damages lawyers only to have no ability to issue writs, or commencing a civil case on advice and not being able to continue, or paying for lawyers and barristers advice and representation only to find their case and court room contests blocked through institutional manoeuvres. These situations with civil processes have been accompanied by victims having to sell their business, mortgage their house, incur high bills that they could never pay but continue to feel indebted and distressed by, or pay their high civil legal billing from any settlement they might received out of court in a settlement they have to take. The legal costs are reported as very substantial, diminishing any sense of making the suffering and the legal struggle worthwhile from many viewpoints.

Reports also recount victims being drawn to the civil court process after years of struggle with their unfulfilled hopes, ideals and pragmatic needs to find progress in their lives financially, recapture some social capital, achieve “closure” in relation to pain and memories, have their day in court, and give the abusers and their institutions “the big stick”. They report that their righteous anger and outrage at the too little too late, to really step up to taking full and financial responsibility for the injuries and lifetime losses caused to victims points them towards using civil litigation regardless of these processes necessarily involving them in conflicted presentation and hearing of evidence that can certainly cause further psychological damage. Victims seeking our help are very rarely in any fit state to undertake these stressful adversarial dynamics.

Historically, as litigation processes are also slow and often long-delayed by defendants’ tactical actions, claimants have reported serious health complications, both physical, mental and emotional with increasing loss of ability to seek family and social supports. Most often these cases remain completely hidden from close or extended family, the victim attending professional advocates, a psychologist or just their litigation lawyers. This adds to the powerful disconnection between victim and the vital safety net of holistic practitioners they need to survive under adversarial and conflict driven pressure. Sometimes these cases have has been so prolonged that litigants have died while waiting adjudication.

A best practice redress scheme now has the advantage of undertaking research into processes for the victim litigants, impacts experienced by them and outcomes of victims’ civil cases in the light of victims having reported to services the significant human of engaging in this system.

Some advantages to victims within the civil system are: the gathering of expert and comprehensive reports to argue the scope, nature and prognosis of the injuries of the litigant.
A best practice redress scheme needs to consider truly independent assessments and reports of the impacts sustained and suffered by victims’ over their lifetime. These would be provided by practitioners with demonstrated expertise in victims’ experiences of sexual violence, as well as their physical, emotional, psychiatric and psychological, sexual, social, vocational and spiritual areas of development and functioning. Mental health testing and assessments are required, with recommendations for therapies, timeframes and goals, complimentary health treatments, occupational and social welfare, support services and groups and pastoral care.

Of great significance is the inclusion of appropriate and comprehensive care parallel to that discussed above but made available to secondary victims, partners, children of victims, parents of victims and other family members. This network of significant relationships to the victim forms an intentional circle of acknowledgement, vindication and recovery that has not been developed to its full capacity by institutional responses to date. Also victims’ membership in communities where awareness has been raised regarding the methods and intentions of sexual offenders in leadership of those communities is vital to the restoration of the victim, their family and supporters. Restorative justice conferencing is the best method used in our experience to bring stakeholders in restoration together for this common purpose. Our work in this area does not involve offending clergy as stakeholders but rather institutional leaders and members who are authorised to act in these capacities and demonstrate responsibility and compassion towards those harmed.

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?*

A best practice redress scheme needs to put the victims and their suffering at the centre of its construction in response to this dark period of our society and Australian history with its documenting of severe institutional and sexual violations. This responding redress scheme needs to demonstrate humanitarian responses of the highest order, with justice built on restating people to their safety, dignity and protecting their individual rights. Building the redress on stated human rights and restorative justice principles, values and practices[^1], contributes to achieving this high quality of redress, with due reference to criminal and where relevant civil processes. The redress must reflect the best qualities of our civil society and should be accompanied by open public acknowledgement of the wrongs involved – both the original abuses and institutional abuses of victims when they have previously been denied proper redress.

Healing needs to stem from the principles and practices of a humanitarian society responding to alienated and isolated victims’ communities. Our Melbourne Victims’ Collective is one such community expressing their perspectives on pathways to healing. We provide their collective summary document which identifies the pillars of help, health and hope needed to support their motivation for healing. The humanitarian work which drives the responses of a civil society is currently underway through the many inquiries held in Australia compiling the nature, causes, scope and history of victims long term violations and institutional responses to these victims. Through submissions, hearings and consultations with victims and victims based services the Commonwealth Government Royal commission into institutional responses to child abuse is set to identify best practice and other significant recommendations towards healing, also incorporating the report “Betrayal of Trust” from the Victorian inquiry into the handling of child abuse by religious and other organisations.

This vision of a redress scheme finally achieving ethical and expert provision of justice and healing, is significant to the victims of sexual and institutional violations participating in a further government offered process. Victims have stated “why should we believe and trust again?”.

Victims have reported responding to these significant components of “justice and healing” that have been promoted for the past 18 years by institutional complaints systems. The community and victims have observed that some institutional complaints responses have also put themselves out as “independent” of their institutions. Victims have also explained that they understood these institutions were providing them with help from the most expert practices these institutions and (their research into best practice) have had to offer. Thousands of deeply affected victims, their families and communities have believed in these “messages” and entered institutional processes in good faith only to find that the institutions have again diminished their victims’ needs and rights. Healing and justice has remained elusive.

Therefore any effective future redress scheme would rectify these unhelpful victims experiences in consideration of how desperation can influence victims’ into entering the systems offered. The future redress scheme, as it is informed by the Royal Commission, needs to communicate expert empathetic, compassionate and highly detailed information about its systems, personnel and practices. Victims say that this approach has been lacking in the institutions but it would go a long way to rebalance the victims’ original destructive experiences and contribute to the reconstruction of their lives and that of their families and communities.

From our research, we recommend that the provision of help, health and hope services be provided in a parallel process that operates in tandem with the redress scheme. Examples of

Victims’ perspectives on achieving Healing and Justice; two years on from the Truth, Justice and Healing Council initiative:
the provision of some such services are now operating in the Irish ‘Caranua’ funded by the Irish Residential Statutory fund, Lotus Place in Queensland and Open Place in Victoria.

These services need to be well funded and ongoing after the redress process is completed and therefore need to be separate but both need to work closely together, particularly during the intake and information gathering process and any hearings that may be necessary so that the victim is case managed and well supported at all of these critical stages.

This means that the help, health and hope services need to be in place before intake to the redress process. Unfortunately in most redress schemes this has not been the case and the services were set up after lobbying by victims traumatised by the process.

Some further considerations are:

Psychological and sociological evaluation of ongoing needs for treatment, care and support;
The legal and other fees necessary to present their cases adequately, and to provide support during such presentation;
Ongoing financial counselling and advice to best utilise their resources if and when financial redress is available. This is recommended strongly as many victims are have limited capacity to manage “windfall” payments;
Any expected costs should be estimated by professionals skilled in forensic accounting of such matters;
All costs should be presented as “present value” estimated by actuarial consultants.

We urge that anything set up for redress or to provide services to victims should be subject to ongoing evaluation for effect and effectiveness as has been the case in Ontario Canada with the Grandview Agreement so that victims themselves have input into the system and best practice in responding to their needs can be provided.

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?

Redress schemes should consider that sexual violence impacts on the whole person, when considering the range of financial compensation to victims. Evaluations of injury should include physical, sexual, emotional, psychological, intellectual, spiritual, social and familial impacts.

Developmental and relational interruptions are significant, as is the religious and faith beliefs of the victims themselves, their family and intergenerational family systems. The disruption of these dimensions is very often overlooked in institutions responses to care and
compensation yet the victim most often suffers extensive dislocation and rejection from family, community and institution where the abuse occurred.

Services of help, health and hope should also focus on responding holistically to the presenting and ongoing needs of victims as potential for healing is found in remedial work across this whole range of impacts.

Secondary victims suffering from these holistic impacts should also be able to apply for redress based on their experiences of contact with the victim on the nature and severity of their suffering.

Where systemic abuse is recognised in an institution, it is highly probable that all residents suffered trauma to a significant degree and so, in justice, should have proportionate redress.

Again, in justice, individual victims should have further personal redress according to the nature, severity and impact of their personal trauma.

In addition victims want to know that their experience has led to evaluation of what occurred in the institution and that measures have been put in place to ensure that children today and in the future are protected.

For the above reasons, in the situation of a repressive residential institution where systemic abuse occurred, we recommend the use of the Canadian Grandview Agreement model of redress with agreed General, Group and Individual benefits.

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?

The Federal Government has led the way by establishing the Royal Commission with its findings, reports and recommendations, so it is consistent with best practice that a national redress scheme, covering all institutions be established. Victims, their families and their communities suffering from institutional and sexual abuses could be again deterred by a complicated and confusing scheme reproducing what they have already experienced in seeking justice and recovery. Ethical, legal, moral and practice standards need to be set to guide the whole response as well as reviews, audits and evaluations that are consistent.

Unswerving support for all victims of institutional abuses should be a community objective and is possible via one national scheme addressing clients from all institutions. Fragmented responses to this national problem are unlikely to work effectively. This is amply
demonstrated by the deeply fragmented responses of the Catholic church where there are clear differences in effectiveness of “Towards Healing” in different states and dioceses (e.g. Toowoomba, Wollongong and Sydney) and the Melbourne Response. These response procedures are developed by different Dioceses and their Bishops with the addition of localised Towards Healing coordinators and personnel. Victims say that this system contributes to arbitrary implementation and outcomes for their complaints.

We recommend that a national redress scheme be funded by a levy on the relevant institutions. Institutional tax concessions and government funding should be conditional on their support to this redress scheme.

Care should be taken to avoid some of the problems encountered in Ireland where costs eventually greatly exceeded optimistic estimates and the government had trusted those estimates allowing the Catholic church’s contribution to be limited to a proportion of the original incorrect estimates³.

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?

Institutions in Australia have established their own complaints responses through procedures to be followed by victims to establish on the grounds of probability that their claims are established. In return assessors have contributed to the fact finding process, recommending that facilitations be conducted with lawyers representing the responding authorities and insurance representatives contributing to the concluding financial offer of an ex gratia payment to the victim. Apologies have been conditional on the acceptance of these ex gratia amounts.

Financial provisions of some counselling to the victim has been a general aspect of these procedures. One response offers “lifetime” counselling, victims reporting that they do not feel secure in the promise of this assistance if they choose to publicly pursue their dissatisfactions and anxieties about this scheme. Victims have been able to express a diversity of items that may also help them into the facilitations of one of the main procedures, other victims have had to make random requests of institutions help services with no policy or consistent framework for the giving of extra benefits.

No victims complaints procedures have included funded independent advocates or legal representatives to put the rightful needs and case forward for the victim. The institutions

have paid for their own legal advisors and funded the institutions own choice of a psychiatrist to provide their professional reports on impacts and injuries to victims.

Victims say that these established internal procedures are in their experiences far from being considered appropriate redress schemes.

Once a national scheme is in operation, there should not be any private schemes operating due to the inherent possibility of the concealment of serious crime. If any organisation makes any ex gratia or compensation or in kind payment to any victim of sexual or physical assault on a child, they should be required by law to disclose the arrangement to a suitable nationally appointed ombudsman or the body established for the national redress scheme.

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

Participation in the national redress scheme should be mandatory. Registration as an organisation with the right to work with children, taxation concessions and other preferential treatment of institutions should be conditional on full compliance.

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?*

Claimants should have the option of seeking redress or compensation through a best practice redress scheme. Claimants should retain the ability to pursue civil litigation if they wish.

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?*

If individual institutions operated under authorisation of other institutions (e.g. Catholic institutions operating only with the authorisation of a bishop within a diocese) then that institution with oversight should be expected to cover shortfalls by the original organisation.

Failure to provide oversight to organisations working with children has contributed in some degree to the harm caused and therefore in the case of default should fund the redress.
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?**

Following the principles of justice the redress adjudicated for victims should, like a court award, be assessed to adequately meet the level of injuries and suffering experienced. “Affordability” by institutions, or rather the cries of “we are too poor” should be evaluated in the same way as judicially awarded damages were assessed against any other organisation.

Any shortfalls should be managed as suggested in item 8 above.

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?**

The rules for proof should be “on balance of probability” using all available information from all relevant sources.

All institutions should provide all available documentation to verify or contest a claim for the use of whoever does the adjudication but there should not be any cross examination by a representative of the institution in hearings as this is traumatic for vulnerable victims. The adjudicator should be the one asking the questions from the documentation provided.

In the past there have been cases of a victim coming forward who has little or no corroborating evidence and no other evidence to support the claim is known. This victim may have received some small ex-gratia payment or may have been refused anything. Later, if other victims or witnesses come forward to corroborate or produce evidence of similar fact, the previous claimant should be contacted and informed of this and be permitted to return for further redress.

Those given responsibility for the adjudication of these processes, no matter what their background or vast experience in making judgement in law should be thoroughly retrained for this onerous task. This training should incorporate the very latest understandings of trauma, PTSD and the many physical and psychological and psychosocial manifestations of
the consequences of childhood trauma. Listening to victims who have already been through redress processes talk about the experience must form part of this training.

The following excerpt from The Kaufmann Report into Canadian Redress schemes gives very valuable feedback on the adjudication process and steps taken to ensure that Grandview decisions were as fair as possible.

*Once an application had been validated, the applicant received a decision prepared by the adjudicator.*

*The Agreement stated that the reasons for the decisions were confidential and were not to be published by the parties. At the outset, the four original adjudicators deliberated as a group to establish a template that would be used to structure the reasons for the decisions.*

*This template was developed after consultation with counsel from the Ministry of the Attorney General and counsel for the GSSG. The actual decisions generally conformed to the template, but adjudicators departed from the standard format where particular cases so warranted. Most decisions were, therefore, uniform in structure, but unique in their description of the facts proven in the individual case.*

The decisions included both a narrative account of the incidents of abuse and a description of the consequences of the abuse – the harm or injury experienced by the applicant and the effect of the abuse on her life. At the outset, the adjudicators agreed that the account of the incidents should be quite detailed so as to capture the extent and range of abuse and mistreatment that occurred at Grandview, using the applicant’s own words to the greatest extent possible. In this way, each decision would create a detailed historical record of what transpired at the training school.

By contrast, references in the decision to the detrimental effect of the abuse on the applicant’s lives were deliberately left brief to avoid freezing the applicant’s life in relation to the damage done, or labelling an applicant in stereotypical terminology. These practices were adopted in light of the goal of the Agreement to make the process one in which healing could take place.
The reasons for the decision were written primarily for the applicant, not for the other parties to the proceeding or as a precedent for other cases. The narrative was designed to recount what the adjudicator concluded had been proven on a balance of probabilities. In addition, the narrative sometimes mentioned an incident which was not compensable, but was a source of pain and frustration for the applicant. The decision thereby sought to provide justification for the adjudicator’s findings and also served as a record of the applicant’s perspective of wrongs suffered. Feedback from the applicants after receiving their decisions suggested that this aspect of the decisions was very important to them.

Although adjudicators sat individually, each decision was informally reviewed by a second adjudicator before release. Two adjudicators were responsible for reviewing each other’s decisions for a defined period of time, with the pairs being changed every few months to ensure overall consistency. The review adjudicator made suggestions regarding changes to the draft decision, but the final determination remained with the adjudicator assigned to the case. Where a particular decision required special or difficult interpretation of the Agreement, drafts were circulated to all adjudicators for comment. The goal of this review process was consistency in the quantum of compensation and the interpretation of the language of the Agreement. In addition, it provided adjudicators with much wider knowledge and exposure to evidence being adduced during the hearings.

Adjudicators also held group meetings regularly to review the procedures being used in the hearings and the decisions being rendered. The adjudicators found these meetings extremely useful and recommended that they be incorporated as an on-going and integral part of adjudicators’ workload in future adjudicative processes.¹⁴

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?

Claimants need comprehensive and holistic support and advocacy when approaching any processes which examine their traumatic assault violations, the settings of these assaults, who abused them, who knew about the abuse and what was done about these experiences. Victims have also engaged in many processes which they feel examines them, their truths and their recollection of events. Many have participated in police proceedings, court action and VOCAT applications. Some have pursued their ability to have their case proceeded as civil litigation with all the difficulties that come with this option.

http://www.novascotia.ca/just/kaufmanreport/chapter16.htm
A large number of victims have proceeded with the Institutional responses and are now sharing their experiences of these with the royal Commission and formerly the Victorian Inquiry. Any support, assistance and advocacy needs to provide professional case work and management of their presenting needs. Their history of documented actions, options followed, pathways chosen would need to be assessed alongside documentation gathered and comprehensive case files prepared. Caring professionally for their mental health and emotional responses to this intensive case work is a priority as well as involving their significant relationships in their resilience and sustainability.

The costs of this comprehensive plan for support to claimants should be part of the redress scheme resources. Independent legal advice should be accessible at any point that the claimant finds difficult to engage with and understand from the perspective of their legal protection and rights. All previous legal files developed by lawyers engaged by the claimant should be made available to those approaching the new best practice redress scheme. Mental health care plans should also be covered in the financial resources of this redress scheme and should cover a claimant consulting independent, accredited mental health care practitioners of their choosing.

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?

A claimant who has already received any prior compensation should be eligible to receive further redress under the new scheme's guidelines. Adjudication should take into account the amount already received with appropriate adjustment for 'present value' and linkage with CPI.

The emotional and other costs to the victim in the process of applying for and receiving the original ex-gratia payment should be taken into account. In many cases victims have found that the processes through which they received these payments were problematic causing further trauma. In some cases this has amounted to systemic abuse which also needs to be addressed by the best practice redress scheme.

APPENDICES (Filenames):

1) Core Restorative Justice Values.pdf
3) Response to TJHC 30 May meeting.pdf
4) TABLE_Comparison of Aust State Schemes.pdf
5) TABLE_Comparison of Overseas Schemes.pdf

© In Good Faith Foundation and Melbourne Victims’ Collective (2014)
The vision and practice of restorative justice are shaped by a number of key values which distinguish restorative justice from other, more adversarial approaches to justice. The most important of these values include:

- **Participation**: Those most affected by the incident of wrongdoing – those directly harmed, the person(s) responsible, and their communities of interest – ought to be the principal speakers and decision-makers in the process, rather than trained professionals representing the interests of the State. All present in a restorative justice process have something valuable to contribute to the goals of the process.

- **Respect**: All human beings have inherent and equal worth irrespective of their actions, good or bad, or of their race, culture, gender, sexual orientation, age, beliefs or status in society. All therefore deserve to be spoken to and treated with respect in restorative justice processes. Mutual respect engenders trust and good faith between the participants.

- **Honesty**: Truthful speech is essential if justice is to be done. In restorative justice, truth entails more than clarifying the facts and establishing guilt within strict legal parameters; it requires people to speak openly and honestly about their experience of offending, their feelings, and their moral responsibilities.

- **Humility**: Restorative justice accepts the common fallibility and vulnerability of all human beings. The humility to recognise this universal human condition enables both the person harmed and the person responsible to discover that they have more in common as flawed and frail human beings than what divides them. Humility also enables those who recommend restorative justice processes to allow for the possibility that unintended consequences may follow from their interventions. Empathy and mutual care are manifestations of humility.

---

**Interconnectedness:** While stressing individual freedom and accountability, restorative justice recognises the communal bonds that unite the person harmed and the person responsible. Both are valued members of society, a society in which all people are interconnected by a web of relationships. Society shares responsibility for its members and for the existence of crime, and there is a shared responsibility to help restore those who have been harmed and reintegrate those responsible. In addition, the person harmed and the person responsible are uniquely bonded together by their shared participation in the offence, and in certain respects they hold the key to each other's recovery. The social character of an offence makes a community process the ideal setting to address the consequences (and causes) of the offence and to chart a restorative way forward.

**Accountability:** When a person wrongs another, they have a moral obligation to accept responsibility for having done so and for mitigating the consequences that have ensued. They can demonstrate acceptance of this obligation by clarifying their motives and certain facts relating to the offence, by expressing remorse for their actions and by making reparation for the losses inflicted to those whom they have treated disrespectfully. This response may pave the way for reconciliation or mutual recovery and healing to occur.

**Empowerment:** All human beings require a degree of self-determination and autonomy in their lives. Offences rob those who have been harmed of this power, since another person has exerted control over them without their consent. Restorative justice seeks to re-empower those who have been harmed by giving them an active role in determining what their needs are and how these should be met. It also empowers those who have committed the offence to take personal responsibility for their actions, to do what they can to remedy the harm they have inflicted, and to begin a rehabilitative and re-integrative process.

**Hope:** No matter how severe the wrongdoing, it is always possible for the community to respond in ways that lend strength to those who are suffering and that promote healing and change. Because it seeks not simply to penalise past offences but to address present needs and equip for future life, restorative justice nurtures hope - the hope of healing for persons harmed, the hope of change for those responsible, and the hope of greater civility for society.
Restorative and Therapeutic Justice


Restorative Justice

The term ‘restorative justice’ refers to a broad range of practices which attempt to repair the harm caused by a crime by collectively including those with a stake in the offence in its resolution. Restorative justice initiatives can be incorporated at any stage of the criminal justice process, or exist independently of it. In the context of the criminal justice system, restorative justice has, to date, almost exclusively been applied where there is no substantial need for adjudication. It is not a fact-finding process but, rather, operates at a stage in the process when the offender is prepared to take responsibility for his actions, and the victim is ready and willing to participate.

While restorative justice practices are also employed in a range of civil matters, including child protection and workplace disputes, in the context of this paper the term restorative justice is used with reference to its application in the criminal justice system.

Restorative Justice Conferencing

Restorative justice conferencing is one of the more common applications of restorative justice in the criminal justice system. It involves a scheduled, mediated encounter between a consenting victim and offender, and/or their representatives and, in some cases, their families and broader communities, in order to decide collectively how to repair the harm caused by a crime.

In this paper the term ‘restorative justice conferencing’ is used broadly to cover both the adult and youth jurisdictions and refers to a process that can apply at multiple stages of the criminal justice system, or independently of it. The term also includes practices traditionally called youth conferencing, adult conferencing, pre-sentence conferencing, victim-offender mediation, family group conferencing and diversionary conferencing. All of these practices can be captured under the umbrella term restorative justice conferencing, as they have largely common characteristics.

Therapeutic Justice

Therapeutic justice practices are intended to have a positive and therapeutic impact on parties to proceedings by improving court procedures and outcomes. This is achieved by removing any processes that alienate or stigmatisate; by ensuring that parties engage with and understand the

---

J Braithwaite, Restorative Justice and Responsive Regulation (Oxford University Press, 2002);
3 What ‘community’ means will differ from case to case. Some cases do not involve community, however when they do, it most often involves support people for the victim and offender, such as friends, broader family, Elders, religious groups or community support people.
4 See generally, Strang, above n 1.
Restorative and Therapeutic Justice

relevant process; and by giving attention to the underlying reasons for the offending. Therapeutic justice processes traditionally exist within the adversarial system, and usually operate once an offender has indicated a plea of guilty.

Truth-telling processes

Truth-telling practices provide victims with an opportunity to tell their story in a safe and supported environment, and to communicate the impact of the offending to a body or a person of standing, such as members of the judiciary, members of parliament or an expert panel. Truth-telling practices focus on affirmation and validation of the victim’s experience. Truth-telling practices are not contingent on offender participation, acknowledgement or consent, and instead focus on providing victims with the opportunity to have formal acknowledgement of the harm done to them.

from
Innovative Justice Responses to Sexual Offending – pathways to better outcomes for victims, offenders and the community  Centre for Innovative Justice RMIT May 2014
http://mams.rmit.edu.au/qt1qG6lwV0q3.pdf
**Victims’ perspectives on achieving Healing and Justice; two years on from the Truth, Justice and Healing Council initiative:**

<table>
<thead>
<tr>
<th>Help</th>
<th>Health</th>
<th>Hope</th>
</tr>
</thead>
</table>
| - ‘Victim/Survivors Centered’ approach is required (public health perspective; ‘Individual Centered’ model)  
- Survey of victim/survivors needs is essential (public health perspective)  
- Victim/survivors have access to considered, appropriate, specialist services including pastoral care services  
- Internal avenues for help and support (Towards Healing/Melbourne Response) limits victim/survivors health and hope  
- Non institutional support groups are required for individuals, families and communities introducing restorative justice process and conferencing | - Recognition of sexual violence as criminal behaviours by clergy, religious and lay offenders causing lifetime harm  
- Response to victim/survivors actual needs (example Lifeboat pastoral project, Geelong)  
- Response to individuals, families and communities as vital health determinants (Public Health perspective)  
- Evaluation and critique of organisations listed as support services by TJHC is needed (e.g. mainstream, non specialist organisations are listed etc.)  
- Prevention and primary intervention initiatives (Public Health perspective)  
- Sustainable provision of victim/survivors care (through principles and practice of help, health & hope) | - Actions that are hopeful are essential to victim/survivors as is caring and accessible leadership  
- Historically, ‘hope’ is seemingly provided, then not delivered (victim/survivors need support now, between the establishing of ‘Betrayal Of Trust’ recommendations and the outcomes of the Royal Commission)  
- Victim/survivors need evidence or proof that the mistakes of the past are being rectified (e.g. transparent and accountable management of perpetrators and institutional collusion)  
- Community based support services represented on Truth, Justice & Healing Council with transparent victim/survivor representation for equitable balance  
- Hope is nourished through intentional communities for victim/survivors; staying regularly informed, connected and active in regard to one’s own hope – (such as last 7 years of the Melbourne Victims’ Collective)  
- Healing and justice is provided through process, not end points (restorative justice processes and conferencing) |

© Prepared by In Good Faith Foundation with the Melbourne Victims’ Collective for the MVC Meeting on 30 May 2014
<table>
<thead>
<tr>
<th>Comparisons</th>
<th>QUEENSLAND</th>
<th>WESTERN AUSTRALIA</th>
<th>TASMANIA</th>
<th>SOUTH AUSTRALIA</th>
<th>NEW SOUTH WALES</th>
<th>VICTORIA</th>
<th>NORTHERN TERRITORY</th>
<th>AUSTRALIAN CAPITAL TERRITORY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name</td>
<td>QLD Government Redress Scheme</td>
<td>Redress WA</td>
<td>Abuse in Care Review Program</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Round 2: 2005 - 2006
Round 3: 2007 - 2010
Round 4: 2011 - 14/12/12 | 2008 | No redress scheme | No redress scheme | No redress scheme | No redress scheme |
<p>| Administered by | | Peter Cranswick QC | Attorney General through Victims of Crime Act | | | | |
| Cut off Date | 30 Sep 2008 | 31 Dec 2011 | 4th round closed 15 Feb 2013 | | | | No closing date |
| Total pool | Up to $100 million | Originally $114 million – $91m for payments $24m admin and legal fees etc | $118.7 million was eventually paid out | $52.8 million | | | Out of Court settlements to 2008 - more than $4 million |
| Type of payment | Ex-gratia | Ex gratia | Ex-gratia | | | | |
| Deed of Release Required | Yes | No | Yes | Yes | | | |</p>
<table>
<thead>
<tr>
<th>Payment range</th>
<th>$7,000 - $40,000</th>
<th>$5,000 - $80,000 Cap reduced to $45,000 in 2009</th>
<th>$60,000 limit at first Now capped at $35,000</th>
<th>$30,000 - $60,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levels of payment</td>
<td>2 levels re: degree of serious harm</td>
<td>4 broad levels 1. Moderate abuse or neglect 2. Severe abuse or neglect with some ongoing symptoms and/or disability 3. Severe abuse or neglect with ongoing symptoms and/or disability 4. Very severe abuse or neglect with ongoing symptoms and/or disability</td>
<td>Decided by the Attorney General</td>
<td></td>
</tr>
<tr>
<td>Number of Applications</td>
<td>10,200</td>
<td>2,358</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of Successful Applications</td>
<td>Level 1 - 7,400 including Level 2 – 3,500 receiving extra $6,000 - $33,000</td>
<td>1. 859 2. 1813 3. 1477 4. 1063 5,225 offers; 5,212 payments 120 died before receiving payment</td>
<td>1685</td>
<td></td>
</tr>
</tbody>
</table>
| Other areas addressed | 4 pillars of support | - Opportunity for police report  
- Apology  
- Support and counselling services  
- Ex gratia payments | - Apology  
- Acknowledgement that abuse most likely occurred  
- Assurances that system has changed  
- Guided access to personal dept files  
- Professional counselling | - | - |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Criteria</td>
<td>Placed in a detention centre or licensed children’s institutions QLD covered by Forde Inquiry TOR and were released from care or turned 18 on or before 31 Dec 1999 and had experienced institutional abuse or neglect</td>
<td>Adults who, as children, were abused and/or neglected while they were in the care of the state. It covers those put voluntarily into foster care, or institutions as well as wards of the state</td>
<td>Those who suffered abuse while in state care.</td>
<td>Former residents in State care who experienced sexual abuse</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
# AUSTRALIAN STATE REDRESS SCHEME COMPARISON TABLE

| In place now | Only civil litigation for payments  
Lotus Place information and referral for services including counselling, reconnection with family, obtaining records, individual advocacy, education, theatre and art projects | After Care Support Program  
1300 654 583 | 1. Settlements may be made to claimants where legal liability exists on a case by case basis  
2. Sue the Department of Community Services  
3. Claim through victims of crime | Victims must proceed through the legal system settlements are dealt with on a case by case basis |


APPENDIX 4: TABLE_Comparison of Aust State Schemes.pdf
# OVERSEAS REDRESS SCHEME COMPARISON TABLE

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>IRELAND</th>
<th>JERSEY</th>
<th>CANADA</th>
<th>GERMANY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name</strong></td>
<td>Residential Institutions Redress Board (RIRB)</td>
<td>Historic Abuse Redress Scheme</td>
<td>Ontario Grandview Agreement Compensation Scheme</td>
<td></td>
</tr>
<tr>
<td><strong>Reason for establishment</strong></td>
<td>Commission to Inquire into Child Abuse (Ryan Inquiry report 2009)</td>
<td>Media coverage of widespread abuse in Jersey institutions following police Operation Rectangle 2007-2010</td>
<td>Pressure from victims group Grandview Survivors Support Group (GSSG)</td>
<td>Round table negotiations - Church and Govt</td>
</tr>
<tr>
<td><strong>Established</strong></td>
<td>10 April 2002</td>
<td>29 March 2012</td>
<td>Mediation began May 1993</td>
<td>2011</td>
</tr>
<tr>
<td><strong>Administered by</strong></td>
<td>Residential Institutions Redress Board</td>
<td>Lawyers appointed by the Minister 29/3/12 – 30/9/13 Mourant Ozannes 1/10/13 -- Lacey Advocates</td>
<td>Overseen by Eligibility and Implementation Committee: 2 GSSG reps, 1 government rep and mutually agreed chairperson.</td>
<td></td>
</tr>
<tr>
<td><strong>Cut off Date</strong></td>
<td>17 Sep 2011</td>
<td>30 Sep 2012</td>
<td>2 Jan 1996</td>
<td></td>
</tr>
<tr>
<td><strong>Total pool</strong></td>
<td>€1.6 billion in total including €181 million in legal fees from which €12.4 million cost of High Court proceedings</td>
<td>?</td>
<td>$16,400,000</td>
<td>€100 million</td>
</tr>
<tr>
<td><strong>Type of payment</strong></td>
<td>Ex gratia</td>
<td>Ex gratia</td>
<td>Ex gratia</td>
<td>Payment for ongoing therapy only</td>
</tr>
<tr>
<td><strong>Deed of Release Reqd</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>yes</td>
<td></td>
</tr>
<tr>
<td><strong>Payment range</strong></td>
<td>Average €62,500 Highest €300,500</td>
<td>£60,000</td>
<td>Range $3,000 - $60,000 Average payment $4,000</td>
<td>Max. €10,000 (A$13,000)</td>
</tr>
</tbody>
</table>

APPENDIX 5: TABLE_Comparison of Overseas Schemes.pdf
## OVERSEAS REDRESS SCHEME COMPARISON TABLE

<table>
<thead>
<tr>
<th>Levels of payment</th>
<th>1. Up to €10,000</th>
<th>2. €10,000 - €20,000</th>
<th>3. €15,000 - €35,000</th>
<th>4. €25,000 - €60,000</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Physical and/or Sexual Abuse</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>V €200,000 - €300,000</td>
<td>0.30%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>IV €150,000 - €200,000</td>
<td>1.79%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>III €100,000 – €150,000</td>
<td>13.39%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>II €50,000 – €100,000</td>
<td>48.61%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I Up to €50,000</td>
<td>35.90%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Physical and/or Sexual Abuse
1. Aggravated Physical and/or Sexual Abuse
2. Rape and/or prolonged aggravated Physical and/or Sex Abuse standard
3. Rape and/or prolonged aggravated Physical and/or Sex Abuse upper bracket

According to weightings for severity of abuse and physical/mental illness and psycho-social sequelae

| According to nature, severity and impact of abuse Matrix agreed upon by GSSG. |
|---------------------------------|-------------------------------------------------|
| 1.                              | $3,000                                          |
| 2.                              | $10,000 - $20,000                               |
| 3.                              | $20,000 - $40,000 (physical)                    |
| 4.                              | $20,000 - $40,000 (sexual abuse)                |
| 5.                              | $40,000 - $60,000                               |

### Number of Applications

- 16,151
- 133
- 329

### Number of Successful Applications

- 11,748
- 70 (the rest are still being settled as at 24/9/13)
- Most were validated

### Review

Claimant can appeal to the Residential Institutions Review Committee who can uphold or revise a decision by the RIRB

Review available
Cost borne by claimant (approx. €1,000) if upheld or revised down or upgraded by less than 20%

### Other areas addressed

Successful claimants pre 15/12/2005 are eligible to use the services of Caranua funded by the Irish Residential Statutory Fund established in March 2013.

Services include
- education;
- healthcare;
- housing assistance
- ongoing support

Medical and psychiatric expenses - extra payment
Legal fees – reasonable fees are also covered

Funding for legal advice $1,000
counselling
(not exceeding $5,000 per year)
Residential therapy program
(Up to $5,000)
$10,000 for exceptional medical or dental treatment
Provision of education funding and financial counselling
Special scheme for removal of scarring or tattoos that stem from time in institutional care

### APPENDIX 5: TABLE_Comparison of Overseas Schemes.pdf
## OVERSEAS REDRESS SCHEME COMPARISON TABLE

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Criteria</th>
<th>Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applications from persons who, as children, were abused while resident in industrial schools, reformatories and other institutions subject to state regulation or inspection.</strong></td>
<td><strong>Child resident in Jersey institution 9/5/45 - 31/12/94</strong></td>
<td><strong>All former residents of Grandview 1932-1976 eligible for basic payment.</strong></td>
</tr>
<tr>
<td>Must not have already claimed damages</td>
<td>General benefits for Community Group benefits for all residents</td>
<td>Individuals benefits for pain and suffering according to agreed matrix.</td>
</tr>
<tr>
<td>Relatives cannot claim for deceased victims</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>In place now</strong></td>
<td><strong>Independent Jersey Care Inquiry 6/3/13 – still in progress</strong></td>
<td><strong>Civil litigation only avenue for compensation.</strong></td>
</tr>
<tr>
<td>Redress closed</td>
<td>Public inquiry</td>
<td>Statute of limitations increased to 30 years.</td>
</tr>
<tr>
<td>Civil litigation</td>
<td></td>
<td>Church set up €500,000 fund for victims from 30 + years ago to each receive €5,000</td>
</tr>
<tr>
<td>Independent Jersey Care Inquiry</td>
<td></td>
<td></td>
</tr>
<tr>
<td><a href="http://www.jerseycareinquiry.org/">http://www.jerseycareinquiry.org/</a></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>