1 July 2014
CCYPD/14/353

Justice Peter McClellan
Chair
Royal Commission into Institutional Responses to Child Sexual Abuse
GPO Box 5283
Sydney NSW 2001

Dear Justice McClellan

Thank you for the opportunity to provide a submission to the Royal Commission’s Issues Paper 6 - Redress Schemes and Issues Paper 7 - Statutory Victims of Crime Compensation Schemes.

The recent report by the Victorian Parliament’s Family and Community Development Committee entitled Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations analyses many of the questions raised in this Issues Paper. The Victorian Commission for Children and Young People (CCYP) agrees with the report’s conclusion that ‘it is important to develop an alternative justice approach alongside the existing traditional civil justice avenues’ because of the ‘significant barriers to victims pursuing claims through traditional civil litigation’. It is felt that a national redress scheme would offer many benefits to victims, and the community, rather than enhancement of statutory victims of crime compensation schemes.

REDRESS SCHEMES

Advantages and design of a redress scheme
The CCYP supports the establishment of an independent redress scheme which should exist alongside other traditional remedies available through civil litigation.

Properly resourced and well-designed redress schemes can overcome many of the obstacles which preclude or deter people from seeking compensation through civil litigation.

As noted in the Betrayal of Trust report, these obstacles include:

practical barriers such as the financial and psychological position of victims of criminal child abuse, evidentiary issues relating to historical events, the difficulty in creating rights or obligations under the civil law retrospectively and the sometimes limited outcomes that the civil litigation system offers. (p.509)

Who should be able to access the redress scheme?
Any person who was sexually abused as a child should be able to access the redress scheme. The CCYP acknowledges that the creation of such a broad scheme would go beyond the terms of reference for the Royal Commission, as it would apply to all child sexual abuse, whether or not such abuse occurred within an organisational setting. The knowledge gained
through the extensive private submissions and public hearings of the Royal Commission about the devastating and long term impacts of child sexual abuse extends beyond the institutional context. The redress scheme provides an opportunity to use this knowledge to create a system which is well designed to meet the unique needs of people who were subjected to child sexual abuse.

Excluding some people from the scheme, because the sexual abuse to which they were subjected does not fall within the definition of institutional abuse, would be harsh and contrary to the responsibility we as a community have to support and assist all who have been sexually abused as children. Limiting access to particular victims would also risk complicating the scheme with a range of legal technical obstacles, as rules would need to be developed to determine the circumstances in which abuse would be covered and when it would not.

The redress scheme should also be available to those who have suffered vicarious trauma because of the sexual abuse of a person with whom they have a close relationship. For example, people who have been harmed because they resided in an institution where abuse was rife, but who themselves were not directly abused.

Features of a Redress Scheme
To be effective, the redress scheme must include the following features:

**National Scheme**
The creation of a national redress scheme would have a number of advantages, including a heightened degree of independence. State authorities have been, and continue to be, responsible for the licensing and regulation as well as the direct provision, of services to children. For this reason, we would expect that the actions of state bodies will be subject to review and scrutiny through the redress scheme. To reduce perceptions of conflict of interest, a national scheme should be created. The creation of a national scheme would also reduce the burden on victims who may have moved interstate or live in a border area, or who were abused by an organisation with assets or services located throughout Australia. Finally, a national scheme would facilitate the sharing of information about organisations and institutions where abuse is alleged to have occurred.

**Independence**
The independence of the redress scheme is vitally important to ensure those who apply to it can be confident that matters will be resolved in a manner which is respectful to victims, and one which is based on clear and transparent principles for determining levels of compensation. For far too long the sexual abuse of children within institutions has been hidden. In-house compensation schemes established by the very institutions whose own members committed abuse perpetuate the culture of secrecy which has been so detrimental to victims and to the broader community. Independence will also enable the community as a whole to have confidence that those who administer the redress scheme will take appropriate action if they become aware of any ongoing risks to children.

**Accountable to the wider community**
The culture of secrecy surrounding child sexual abuse should be tackled in the structure and operations of the redress scheme. Decisions by the body charged with administering the scheme should be made public (with appropriate safeguards established to protect the privacy of victims), and general descriptions of the levels of financial compensation paid under the scheme should be included in annual or other reports of the scheme. In addition, victims should not be compelled to sign confidentiality agreements as a condition of receiving redress, which will assist in ensuring consistency in awards which has been an issue historically.
Government, organisations and individuals to provide funds

Government funding will be required to ensure the redress scheme is able to provide an appropriate level of support to victims of abuse. Government support for the scheme is an acknowledgement that the community as a whole will do all it can to support and assist those who have been subjected to sexual abuse as children. Government support of the scheme also reinforces the obligation that we as a community all share responsibility for keeping children safe from sexual abuse. Such public funding will enable redress to be provided to all, regardless of whether the institution or individual responsible for the abuse can be located or has assets.

In addition, a core part of the funding for the redress scheme must come from the institutions and individuals who were responsible for the abuse. The level of contribution should be proportional to the extent of the abuse which occurred within the institution. While the process of doing this will be complex, requiring organisations to contribute financially is part of holding them to account to victims, as well as to the broader membership of the organisation, and to the community as a whole. Financial and other contributions to the redress scheme will serve as an incentive for organisations to establish and maintain systems, practices and procedures which will reduce the risk of such abuse occurring again within their organisation.

Non-adversarial approach with a wide range of remedies

The redress scheme should develop processes and procedures which are non-adversarial in approach, with a reduced level of formality and legal complexity, to be respectful to victims, while still affording those alleged to be responsible for the abuse the opportunity to respond to allegations.

The types of redress available to victims should include a wide range of remedies including:
- financial support
- priority access to specialist counselling and support services, as and when they may require it
- apologies and acknowledgements from the individuals and organisations responsible for the abuse
- the opportunity for the victim to voice what would be of assistance to them.

Proactive and inclusive approach

The body established to administer the redress scheme should have a broad and proactive mandate to ensure the community is well informed about the scheme. This mandate should expressly include an obligation to produce materials and information in a variety of formats and languages.

Access to support

The processes by which victims are able to access the redress scheme must be supported by appropriately trained staff who can assist with completing relevant claim forms, as well as ensuring those who need urgent support are referred to appropriate counselling or other services. The process of seeking compensation or other forms of redress may itself trigger past trauma and mark a significant milestone in formally acknowledging their experience of abuse. Therefore counselling and other specialist support services should be made available to victims at the earliest opportunity. Specialist staff should also be available to ensure culturally appropriate and inclusive services and supports are provided for Aboriginal and Torres Strait Islander people, and for those who are from an asylum seeker, refugee or culturally and linguistically diverse (CALD) background. For those who may have disabilities, specially trained staff should also be available to ensure appropriate supports are provided to access specialist services. It is critically important that children in the care of the state also have access to the redress scheme and specialist support services at the earliest opportunity possible.
Creation of specialist support services
The redress scheme should be one part of a broader systemic response to child sexual abuse that includes the creation of new specialist counselling, health and other services. The capacity to access specialist services on an ongoing or long-term basis will assist in overcoming some of the limitations of current compensation schemes.

The Betrayal of Trust report notes the limitations of the current crime compensation scheme in Victoria, including 'its inability to assist victims who suffer ongoing or permanent injury. This is a significant limitation for criminal child abuse victims, many of whom suffer lifelong psychological harm'. (p. 558). The report also describes the types of services available through the Department of Veterans Affairs to veterans who have experienced trauma, and noted that the 'Committee concluded that Victoria can learn some important lessons from the DVA model when developing a scheme to compensate and support victims of criminal child abuse'. (p. 571).

The redress scheme could play an important role as a gateway to such specialist services. Once the claim by a victim has met the requirements of the redress scheme, the claimant could then be entitled to access these new specialist counselling and other services for victims of child sexual abuse. Access to such services should not be time limited, but rather people should have access to them when required.

Individuals who have previously accepted compensation from organisations should not be denied access to the redress scheme (although previous awards of compensation may be taken into account in determining the level of financial redress), and should be able to access any specialist services established.

Specifically Vulnerable Groups

Services for Aboriginal and Torres Strait Islander People
The design of the redress scheme must also be appropriate to the needs and circumstances of Aboriginal and Torres Strait Islander people. This includes acknowledging the historical abuse and exploitation of Aboriginal and Torres Strait Islander children and their families, and its continuing impact on communities and individuals. Information about the scheme, the ways in which people can access it, and the support and remedies available through the scheme, must all be provided in a manner which is culturally appropriate for Aboriginal and Torres Strait Islander people. Consultation with Aboriginal and Torres Strait Islander communities, elders and organisations will be essential to ensure this occurs.

Services for Asylum Seeker, Refugee and Culturally and Linguistically Diverse Backgrounds
The redress scheme must also take into consideration the specific needs of those from asylum seeker, refugee or CALD backgrounds. Asylum seekers and refugees are likely to have experienced trauma as a result of conflict in their country of origin, which has been compounded during their journey to flee this, and then compounded by sexual abuse whilst in immigration detention or an alternative setting. Their heightened vulnerability in these circumstances may provide a greater opportunity for sexual abuse, with a perception that offenders are less likely to be held accountable. Information about Australian laws in relation to criminal child abuse, the nature of the scheme, how it can be accessed, and the support and remedies available must be provided in a manner taking into account this context. In addition, for all those from culturally and linguistically diverse backgrounds, communication about the scheme and the specialist services offered must be provided in a culturally appropriate way that addresses the issues of language proficiency and literacy, such as the provision of resources in community languages and the mandatory use of appropriately trained and qualified interpreters.

Services for those with a Disability
Those individuals with a disability are acknowledged to be at a greater risk of sexual abuse given a range of factors including their dependency upon others, especially when personal
care needs are concerned, potential communication impairment and lack of access to formal complaint processes. The redress scheme must therefore be designed to accommodate these special needs with information about the scheme and how it can be accessed being provided in a range of modalities including Easy English format and braille. Access must also be available to support services delivered in an appropriate manner, such as online counselling, use of TTYs and specialized counselling support.

**Children in the Care of the State**

The design of the redress scheme should ensure that support and assistance is made available to victims at the earliest opportunity. If abuse occurs while the child is in care, the state may be required to contribute to the redress being sought. Independent advocacy and support will be required to overcome any actual or perceived conflict of interest the state may have in supporting claims to be made on behalf of such children.

**STATUTORY VICTIMS OF CRIME COMPENSATION SCHEMES**

In light of the discussion above, it is not proposed to describe in detail the nature and merits of Statutory Victims of Crime Compensation Schemes. The main disadvantages of statutory victims of crime compensation schemes relate to the caps on payments, the variability across the different state jurisdictions, and the lack of financial contribution by the institutions and individuals responsible for the abuse which is a very important element of holding them to account and promoting systemic change. Statutory victims of crime compensation schemes will usually have time limits on making claims and accessing support services which are especially problematic for victims of child sexual abuse, who on average will not disclose their abuse for 22 years, and are more likely to have a pattern of requiring support on a recurring basis, sometimes for a very extensive period. The nature of this crime, associated with the historical nature of many incidences, means that a requirement for it to be reported to police to be eligible may present a significant barrier. A national redress scheme has the further advantages of consolidating specialist expertise on the nature of child sexual abuse, how to most appropriately address historical matters, the range of specialist support services available and any service gaps, and it offers the potential for research into more effective approaches for preventing child sexual abuse and supporting survivors.

In addition to this written submission, I would be pleased to answer any questions the Commission has, or to provide any further information you may require.

If you would like to discuss any of these issues in more detail, please contact myself on tel: (03) 8601 5886 or at Bernie.Geary@ccyp.vic.gov.au.

Yours sincerely

Bernie Geary OAM

Principal Commissioner