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**Royal Commission: Issues Paper No 6
Answers to Questions**

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1. What are the advantages and disadvantages of a redress scheme 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?

Child sexual abuse is a crime that disrupts normal developmental process of an individual's psycho-social growth. One fundamental aspect of psycho-social growth concerns one's development of personal boundaries. The formation of these boundaries is grossly disrupted as a result of child sexual abuse, with major adverse consequences on the victim's capacity to effectively negotiate his or her social world and to form healthy interpersonal relationships. The "invisible" psychological injuries of child sexual abuse carry considerable implications for the victim, as they often include:

- Attenuated capacity to reach maturity in emotional and social development;
- Serious mental health issues which emerge in adulthood in a form of Chronic and Complex Post Traumatic Stress Disorders, Anxiety Disorders and Depressive Disorders;
- Addictions to tension reduction vices (e.g., drugs, alcohol, gambling);
- Impaired capacity to learn, develop skills and gain and/or maintain employment;
- Loss of sense of belonging;
- Permanent damage to individual's coherent sense of self; and
- Inability to form and maintain trusting relationships.

This is why a Redress Scheme is critical for victims of child sexual abuse. Unlike their non-abused counterparts, children who had experienced sexual abuse, rarely develop functional coping capacities that are necessary for dealing with vagaries and challenges of life. The chances of recovery from trauma is much higher among adults who had an unremarkable childhood than among those who had suffered inter-personal trauma such as child sexual abuse, particularly if the adult perpetrator carried the authority and power of a high moral standing in the victim's community.

Adult victims of child sexual abuse perpetrated by clergy, in many cases carry much more pervasive debilitating and complex array of personal impairments, than those who suffered trauma during their adulthood, as a result of crime or a road accident. Claims for damages made in current Civil Litigation systems often relate to adults who already had established

a lifestyle, that is marked by presence of family-of-creation, accomplishment of education, experience of employment, and therefore experience of financial self-reliance and productivity. Adult victims of child sexual abuse, in majority of cases do not have such lifestyle markers. Their compensation is not about what they have had and lost, but rather their redress is about unrecoverable losses; losses of normal life opportunities that they had never been able to experience, as a result of the chronic impacts of their abuse: psychological and social injury.

- **The advantages** of a Redress Scheme are clear: Qualitative improvement in the victim's experience of daily living, in his or her outlook for the future, on the par with the lifestyle afforded by the majority of people in our society.
- **The disadvantages** of Redress Scheme relate only to circumstances in which the Redress Scheme would offer a restitution that would be based on biased judgements and inadequate assessments of the nature and the extent of the victim's psychological and social injury.
- The scheme should offer a path that is: less stressful, more streamlined, predictable, with support mechanisms in place, time efficient, and more advantageous to a victim; than pursuing Civil Litigation, which offers no support, often involves a protracted process, is unpredictable, and chances of a failure at Common Law are considerable. Reason being, the perpetrator of alleged crime often is no longer alive.
- The Redress Scheme's structure should include an Expert Review Panel that will formally decide whether or not to endorse the assessed degree of impairment. Such a clinical panel should include medical practitioners (e.g. doctors and psychiatrists), expert psychologists, and social workers.
- The Redress Scheme needs to consist of Tribunal members who are cognizant of the significance of the debilitating effects of psychological and social injury on the victim's quality of life. Within the traditional Civil Litigation system the key imperative is to assign appropriate level of compensation in relation to the evident measurable physical injuries and their physical health consequences. Only secondarily, psychological and social impairments are given consideration. In relation to the adult victims of child sexual abuse perpetrated by adults in institutional settings, the key imperative in assigning an appropriate level of compensation lies in the recognition of the primacy of psychological and social impairments which in turn carry pervasive and far reaching negative consequences on the victim's life across his or her adulthood.
- The victim should have an option of either lodging an application to the Redress Scheme or pursuing Civil Litigation. One path should exclude the other.

2. What features are important for making redress scheme effective for claimants and institutions? What features make redress scheme less effective or more difficult for claimants and institutions?

To ensure that the restitution offered by the Redress Scheme represents justice, the Redress Scheme needs to involve effective processes by which:

i. The nature and the extent of a victim’s psychological and social injury is expertly assessed and defined.

In this regard, the assessment of the victim’s psychological and social injury will need to be evidence based. For example, the research traumatological literature indicates that the severity of psycho-social impairment among adult victims of childhood sexual abuse is relative to following historical circumstantial factors:

- The age of the child (e.g. the younger the victim the more severe the impairment);
- The age differential between the victim and the perpetrator (the greater the age difference the more severe the impairment e.g. child victim and adult perpetrator);
- The power differential between the victim and the perpetrator (the greater the power differential the more severe the impairment e.g. child victim and the adult perpetrator with high moral standing and authority);
- The frequency and the length of time over which the abuse occurred (the more frequent incidents and over a longer period of time, the more severe the impairment);
- The nature of child sexual abuse (e.g., acts of sexual harassment; molestation; penetrations; sexual violating acts accompanied by mental coercion and physical violence)
- The emotional and protective availability of primary carers;
- The nature of the relationship between the victim and the perpetrator;
- Whether the victim has been threatened with retribution by the perpetrator (e.g. threats of violent acts against the victim, including threats of homicide);
- Whether the victim’s experience of abuse was validated at the point of disclosure (e.g. children whose disclosure is not believed are more impaired than those who are believed and their disclosure is followed up with responsible action by their primary carers);
- Whether the child victim was emotionally supported and explicitly absolved of guilt and responsibility for the abuse, after his/her disclosure (e.g. Children victims of child sexual abuse and who are not able to disclose their experiences of abuse to their parents, because of fear of being blamed and further punished; or do not receive appropriate emotional support from their parents in response to the

abuse disclosure, are likely to suffer significant and lasting psychological adverse effects, primarily because they do not feel absolved of responsibility for what happened to them. In such circumstances, which are not uncommon among the population of childhood sexual abuse victims, individuals tend to integrate their deep sense of shame into their core belief system, which reverberates throughout their lives and leads them to adopt dysfunctional coping methods); and

- Whether the child victim had access to counselling and support after the disclosure of the abuse (e.g. the more immediate support and counselling the better the prospects of recovery).

Apart from carefully gathered client history as suggested above, an expert assessor ought to make use of valid and reliable psychometric tests and appropriate clinical interview schedules to establish the extent and severity of psychological and social impairment resulting from presenting history of childhood sexual abuse.

ii. The link between a victim’s injury and the incident(s) of childhood sexual abuse is expertly assessed and established.

Psychological research literature indicates that parents’ failure to respond sensitively to their child’s emotional world is likely to be attributed to the parents’ own unresolved emotional issues. Children brought up in a family characterised by conflict and emotional stress, develop sensitivity to their parents’ emotional needs at the expense of their own sense of self. Whilst it can be said that in any society there is a high prevalence of children, who are raised in emotionally insecure or unstable family-of-origin environments, it is unlikely that the majority of such children will go on to develop serious psychological and social impairments. Most likely outcome for such children is that they develop more resilient adaptive capacities, which in turn facilitate their psycho-social growth. Having said that, child experiences of close yet emotionally insecure primary relationships are likely to predispose children to become vulnerable to abusive and exploitative relationships outside their immediate family environment (e.g., Maeder, 1990; Miller, 1981; Rocusin et al., 1981). A significant body of research shows that child sexual abuse occurs more frequently among children who come from conflictual family-of-origin backgrounds, where relationships between parents are less cohesive, violent, or marked by emotional stress and disengagement (e.g., Finkelhor & Baron, 1986; Beitchman et al., 1991; Finkelhor et al., 1990; Peters, 1988; Bifulco, 1991).

In assessing the link between the victim’s injury and the history of childhood sexual abuse, the assessing expert needs to consider all the significant events in the victim’s history, in order to reach an objective, valid and reliable conclusion regarding the degree to which the victim’s existing psychological and social impairment is attributable to the past experience(s) of child sexual abuse.

iii. The impact of the identified injury on the victim’s quality of life is expertly assessed and defined in relation to major life domains.

The incidents of abuse inflicted on a child by an adult who commands a position of authority, are likely to be interpreted by the child as “justifiable acts of punishment” (Pistone-Webb & Leehan, 1996). Self-blame is a common reaction among children

abused by adults. Literature focusing on childhood abuse also indicates that a child's assumption of responsibility for traumatic experiences enables the child to replace feelings of powerlessness and vulnerability with an illusion of potential control (Briere, 1995). A child is likely to form a belief that he/she is abused because of his/her "badness". Thus, a sense of being "bad" is integrated into the child's self-belief system serving as a protection or a means of exercising some degree of control over his/her threatening social environment. The long term psychological impact of self-blame is manifested in deeply seated "shame" and "self-unworthiness", which in turn manifest among adolescent and adult survivors of childhood abuse, in their social isolation, self-destructive and/or anti-social behaviours, substance abuse, and self-sabotage. A traumatized child's sense of "powerlessness" and "self-unworthiness" is likely to expand over time and become his/her self-image in adulthood, resulting in episodes of depression, which often entail acts of self-harming, suicidal ideations, and addictive behaviours, aimed to achieve a relief from painful emotional states or to achieve drug-induced self-numbing.

The research literature and past recorded treatment cases point to a common set of identified trauma-related psycho-social impairments which include:

- History of alcoholism and illicit drug dependency (i.e. long standing addiction to alcohol and cannabis);
- Low self-esteem, guilt and a chronic sense of shame;
- Despair and hopelessness;
- History of suicidal ideation and suicidal attempts;
- Self sabotage;
- Avoidance of emotional attachments;
- Difficulty in setting and maintaining life goals;
- Ambivalence and difficulty in making decisions;
- Intrusive thoughts associated with upsetting memories and defensive avoidance;
- Mistrust towards figures of authority;
- Poor capacity to regulate emotions (in particular anger)
- Difficulties with inter-personal trust in the context of close relationships;
- Frequent episodes of isolation and social withdrawal;
- Psychosomatic problems (headaches, sleep difficulties, digestive difficulties, chest pains, joint pains);
- History of sexual difficulties (sexual addictions or sexual avoidance);
- Hyper-arousal;
- Chronic distress;
- Impaired self-awareness;
- Dissociative tendencies.

Literature shows that the experiences listed above frequently pervade the lives of adult survivors of child sexual abuse, manifesting themselves in the victims' inability to make effective decisions and life goals (e.g. Pistone-Webb & Leehan, 1996).

The expert assessor needs to evaluate carefully as to whether the identified social, psychological, and emotional impacts of childhood sexual abuse experience(s), seriously impede the victim's ability to:

- Enjoy long-term fulfilling and trusting relationships;
- Enjoy long-term friendships;
- Maintain full-time employment;
- Gain financial independence; and
- Pursue one's personal interests and recreational needs.

iv. The Redress Scheme needs to involve appropriate judiciary process by which:

- Evidentiary circumstantial data is presented to the Redress Scheme Tribunal as the basis for judicial deliberation of the submitted redress application by the legal representatives of the applicant (the victim).
- My colleague Dr Keon-Cohen stated in his submission that "*Legal hurdles encountered in civil actions for damages at common law can be legislated away and avoided, while building in appropriate safeguards for offending institutions; e.g., need for formal pleadings; controlling use of lawyers; reforming/abolishing limitation of action periods; problems of vicarious liability; problems of incorporated accessible defendant against whom liability can be imposed; normal costs rules (e.g. "follow the event" save in court's ultimate discretion) can be adjusted or removed entirely; need to "prove" liability on an established tort basis (e.g. negligence, breach of statutory duty)*". I concur with his view (Dr Keon-Cohen, Issue Paper 6, Section 1 (a), May 2014).

3. What forms of redress should be offered through a redress scheme? 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?

(i) Forms of redress

The nature of the abuse, the nature of the abuse impacts, and how victims cope and manage the consequences of the abuse vary significantly among the victims. As such the Redress Scheme ought to focus primarily on the individual applicant (i.e. the victim). The Redress Scheme should provide an individual victim with:

- A financial restitution;
- An experience of restorative justice (i.e. an applicant having an opportunity to present his/her story, to the perpetrator);
- An experience of genuinely expressed apology; and

- A well formulated General Support Plan for delivery of specific social support services of which the aim would be:
 - (i) To meet specific health needs that have arisen as a result of the psychological and social impairment (e.g. on-going medical, psychiatric, and remedial health services); and
 - (ii) To facilitate practical and self-manageable improvements in the victim's quality of life.

The Redress Scheme must not simply aim at financial compensation, as many of the victims are likely to lack the ability to manage their financial affairs. The restitution should encompass a clear plan (i.e. General Support Plan) of improving a victim's quality of life and restoring the victim's hope for the future. The victim should gain opportunities to purchase and access services in the community and to enjoy a lifestyle that:

- Is commensurate with the individual's expressed needs and interests; and
- Offers similar opportunities as those experienced by an average citizen of Australian society.

(ii) Should group benefits be available?

Yes, by only as an alternative remedy.

(iii) What should be the balance between individual and group redress?

The nature of abuse often will vary amongst victims who may have been abused in an institution. People will also vary significantly in how they respond to the abuse and how they cope and manage the consequences of their abuse. As such the Redress Scheme ought to focus primarily on the individual applicant.

4. What are the advantages and disadvantages of establishing a national redress scheme tribunal 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?

(i) Advantages

The main advantage of a national Redress Scheme is that such a scheme would be based on common principles and procedures. All applicants would be treated equally and in accordance to the same procedural rules. Victims of childhood sexual abuse often feel misunderstood and profoundly sensitive about their unique story of victimization. Established consistency in provision and delivery of justice would enhance the healing process.

(ii) Disadvantages

Establishment of a national Redress Scheme will require State laws that currently differ across the nation, to be accommodated in a national Redress Scheme. This potentially

would make the provision and delivery of justice to be a complex and cumbersome task, which could weaken the utility of the redress scheme.

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

Yes. The Redress Scheme should have jurisdiction over government institutions where children in care of these institutions were subjected to childhood sexual abuse.

(iv) How and by whom should such a scheme be funded?

The Redress Scheme Tribunal should be funded by all institutions that the Royal Commission will identify throughout its proceedings. An analysis of the prevalence of abuse committed in each institution needs to be established. For example, if 75% of abuse cases have been registered by victims of the Catholic Clergy, that 75% of funding should come from the Roman Catholic Church (e.g. from seizure of assets equivalent to “Proceeds of Crime” legislation; individual “worst offending” institutions, such as Roman Catholic Church ought be required to fund Tribunal’s establishment and/or compensation award costs [Dr Keon-Cohen, Issues Paper 6, Section 4 (d), May 2014]).

5. If institutions have established internal redress scheme, 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?

(i) Redress Scheme Tribunal’s decision making to be independent of any institution’s internal redress scheme?

All of the decision making of the Redress Scheme Tribunal should be independent of the institution implicated in the offending.

(ii) Should Redress Scheme Tribunal be subject to an external oversight?

Yes. My colleague, Dr Keon-Cohen, stated in his submission that: *“There should be an option for an “administrative appeal” on questions of law only. Questions of fact should not be appealable, but all should be resolved, on the requirements of proof as laid down, by the Redress Scheme (see for example VOCAT appeal procedures)”*. I concur with his view (Dr Keon-Cohen, Issue Paper 6, Section 5 (b), May 2014).

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

(i) Any institution should be provided with the opportunity to have input to the Redress Scheme Tribunal’s devising.

(ii) The Redress Scheme’s powers should extend over all “institutions” as defined in the Redress Scheme’s governing legislation. An institution ought to be given an option not to participate in a claim. However, that institution would still be subject to the Redress Scheme’s determination and compensation orders. (Dr Keon-Cohen, Issue Paper 6, Section 6, May 2014)

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?

(i) Should seeking redress or compensation through a Redress Scheme Tribunal be optional for claimants?

Yes.

(ii) Should claimants retain the ability to pursue civil litigation if they wish?

The Redress Scheme should offer a path that is: less stressful, more streamlined, predictable, with support mechanisms in place, time efficient, and more advantageous to a victim; than pursuing civil litigation, which often involves a protracted process, is unpredictable and chances of a failure at Common Law are considerable. Reason being, the perpetrator of alleged crime often is no longer alive. The victim should have an option of either lodging an application to the Redress Scheme Tribunal or pursuing civil litigation. One path should exclude the other.

8. How should fairness be determined in redress scheme 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?

(i) Fairness in Redress Scheme Tribunal when some institutions have more assets than others.

Fairness in Redress Scheme Tribunal should only be related to the degree of psychological and social impairment of the victim and the consequent impact on the quality of life. The Redress Scheme ought to draw “fair compensation” from its *Consolidated Fund*. Each financial year “prevalence” data and “levels of personal injury” data will need to be analyzed in order to determine annual total cost of compensable injuries. Further analysis (e.g. descriptive statistics) will establish respective costs incurred by each “offending” institution. The Redress Scheme can then seek the established amount of dollars from each respective institution. The data can be used to project the future costs (e.g. through use of statistical regression methods), which the implicated institutions will need to contribute to the *Consolidated Fund* for the coming financial year. Towards this goal, all institutions providing services for children ought to be required to contribute to a state or national insurance scheme, to cover the future costs that may arise from notification/application lodged by a victim to the Redress Scheme Tribunal.

(ii) Fairness & Consistence between survivors?

- Victim’s awards should be representative of the seriousness of the offence, and the level of psychological and social impairment that is directly attributed to that offence. This obviously will lead to different awards; similar offences and impacts should be the subject of consistent awards across the state and nation.

- Some individuals may suffer serious life consequences as a result of a single incident of childhood sexual abuse, and there are those who may suffer less serious life consequences as a result of multiple incidents of sexual abuse perpetrated against them during their childhood. Individuals vary in their psychological make-up and their inherent coping capacities and resilience levels. Although there is a pattern which indicates that more serious acts of sexual violation (e.g., penetration, coercion and violence) result in more profound psychological and social impairments, the level of personal injury and its impact on the victim's quality of life, is dependent on many factors which can be innate, ecological and sociological in nature. Ultimately, it is the level of personal injury that ought to be considered rather than the severity or nature of the criminal sexual act committed against the victim during his or her childhood.
- An effective Redress Scheme should employ a well defined sliding scale of personal damages that refers strictly firstly to: psychological and social impairment, and secondarily to physical impairment, which has resulted due to psychological impairment caused by the childhood sexual abuse in the first place. The proposed sliding scale ought to be based on circumstantial factors outlined above in Section 2 (i).
- The complexity of psychological and social impairment that adult victims suffer as a result of child sexual abuse, demands expert assessment and analysis. As such, the assessment ought to be undertaken by a minimum of three experts (e.g. psychiatrist, psychologist, social worker), who should meet independently with the victim. To minimise distress for the applicant (i.e. the victim) these assessments will need to be appropriately timed and spaced between involvement of each consulting expert.

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?

(i) Advantages and disadvantages of the Tribunal calculating compensation on the same principles as Common Law civil damages:

- **Advantages:** Victims are likely to obtain higher financial restitution; Consistency with a well-established regime of what injuries are worth in the eyes of juries. This will require education and awareness raising that psychological and social impairment injuries can reduce a victim's quality of life to the same or greater degree as physical injuries.
- **Disadvantages:** The only disadvantage is:
 - If the severity of personal injury and its impact on the quality of life, is not fully appreciated or understood by the jury.
 - If the severity of personal injury and its impact on the quality of life, is inadequately or improperly assessed.

The assessment of impairment needs to be undertaken not just by medically trained doctors and psychiatrists (who uphold the traditional medical model in their perspective on the issue of wellbeing), but also by expert psychologists and social workers, who view wellbeing from the psycho-social perspective.

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

No. Every institution ought to have policies in place to ensure that child abuse is prevented or stopped immediately. See Section 8 (i) 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?

(a) What level of verification or proof should be required under a redress scheme to establish that a claimant has been sexually abused?

- Formal requirements of proof should be avoided.
- Circumstantial evidence should be sought (e.g. when the victim attended the institution; who were the people that were managing, teaching, or performing specific duties during that time; where the abuse took place (in what environment and surrounding circumstances)).
- The applicant's evidence ought to be corroborated with the available evidence from the institution implicated in the abuse (e.g. enrollment, attendance records).
- The applicant's legal representative and the legal representative for the institution in question, ought to meet in the mediation setting, where issues related to the victim's application are to be discussed, agreed or disagreed. The *Presiding Mediator* ought to be a representative of the Redress Scheme. At the end of the mediation process the *Presiding Mediator* will make a formal determination on a civil "balance of probabilities" standard, as to whether the victim's matter is to be rejected or accepted for further deliberation by the Redress Scheme Tribunal.

(b) How should Institutions be involved in verifying or contesting claims for compensation?

- As stated above the applicant should be required to state in what institutional context the abuse occurred; what was the year when abuse occurred; how old was the victim and over what period of time it occurred; who were the individuals in positions of authority during that time (e.g., people that were managing the institution, teaching, or performing specific duties within the institution during that time).
- The applicant's evidence ought to be corroborated with the available evidence from the institution implicated in the abuse.

- The institution ought to have the right to contest the claim on the basis of insufficient availability or lack of evidence.
- All institutions implicated in the notification of the victim's claim for compensation ought to be involved in verifying or contesting the claim in the context of the Redress Scheme's mediation process, mediated by the *Presiding Mediator* appointed by the Redress Scheme Tribunal.

11. What sort of support should be available for claimants when participating in a redress scheme? Should counselling and legal advice be provided by the redress scheme? If so, should there be any limits on such services?

(a) What sort of support should be available for claimants when participating in a redress scheme?

The processes put in place by the current Royal Commission, assisting victims to give evidence, are good examples of support that should be made available to application of the future Redress Scheme. Currently established Victims Assistance Counselling Programs within regional Community Health Services, could take on a role of supporting and referring potential applicants to lawyers, psychiatrists, psychologists, and social workers, who are expert practitioners working with adults affected by child sexual abuse and other forms of interpersonal trauma.

(b) Should Redress Scheme Tribunal provide Counselling and Legal Advice?

Yes. The costs associated with counseling, expert assessment of the psychological and social impairment, and legal advice as well as representation at the mediation and the Redress Scheme Tribunal hearing ought to be free of cost for the victim.

(c) Should there be any limits on such services?

Yes. The counselling service may need to be provided over an extensive period of time, however the progress of counseling and other allied health services offered, should be periodically evaluated. Also implementation of the General Support Plan encompassing a range of services offered should be subject to an annual review.

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?

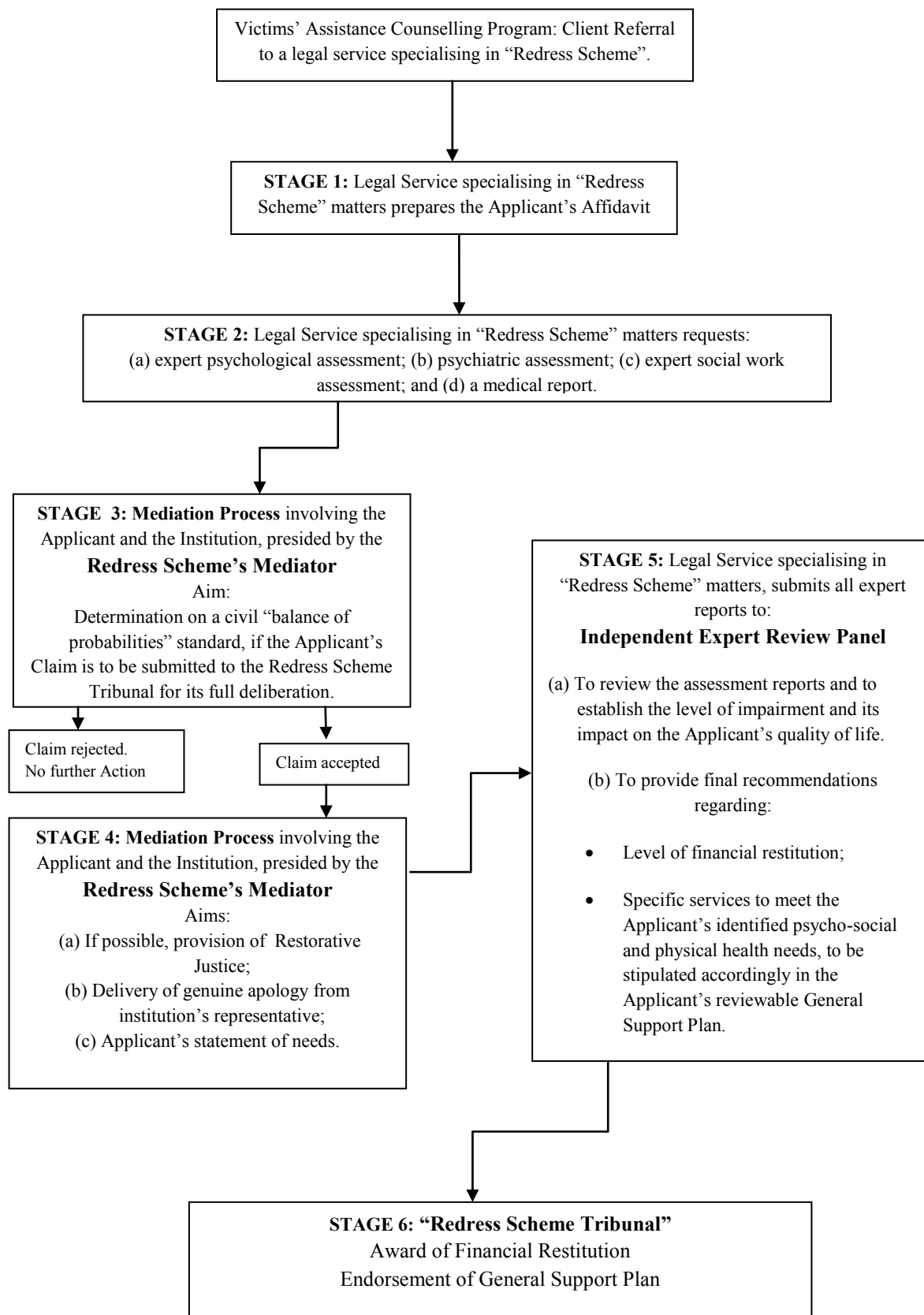
Yes, as long as the financial compensation that was awarded was in relation to the sexual abuse in question.



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