

Submission to the Royal Commission on Redress Churches of Christ in Australia



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General Summary

As an officer of Churches of Christ in Australia, I present some reflections and comments on the issue of redress schemes for victims of institutional abuse.

Any abuse that occurs within churches is a profound betrayal of everything the Christian church stands for, and the needs of victims for redress and healing are an important priority.

I believe establishing national guidelines for redress should be supported as an issue of justice and procedural fairness. Victims may feel further aggrieved should financial redress differ significantly depending on State or Territory variances, and on the policies of particular institutions processing victim's situations.

However, Churches of Christ entertains significant reservations about establishing a new national administrative body that could involve extra costs and charges imposed on churches or church institutions in a 'one-size-fits all' policy framework.

The Australian community is now aware that within several church denominations (and other organisations) a significant number of families and individuals have complained of varying degrees of abuse, and also complained about the handling and management of such complaints. Therefore, it is legitimate that the community engage in discussion about fair compensation. However, if all churches are mandated to contribute to a national body, without a proper, efficient scheme to equitably and proportionately manage resources and processes, then important and scarce resources (both financial and human) will be diminished, thereby reducing the capacity of churches to resource proactive ministry and community services.

Churches of Christ desires that redress be part of a restorative relationship with any victims of abuse and the church. I have reservations about this moral responsibility being 'outsourced' to an external body that may not understand the contextual nuances of the institution concerned. I believe that flexible redress schemes are an appropriate contextual response to encourage individual institutions to manage their cases against national guidelines.

I do greatly appreciate the willingness of the Royal Commission to receive feedback on these complex issues and on undertaking this very important work. I would be happy to comment further on these positions if necessary.

Responses to the Royal Commission questions on 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?

An advantage of a redress scheme is that it is less adversarial in nature than a litigation scheme, and may be less costly to run. A redress scheme may also provide proactive learning environments for collaboration and best practice for institutional church sector responses.

A disadvantage would be the potential for opportunistic false claims if such scheme did not assess claims with rigour.

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?

Effective redress schemes would need clear policies and procedures, communication mechanisms, confidentiality and security with documentation and be well understood by both victims and institutions.

There are a number of potential difficulties around redress systems. A national redress scheme has been under discussion. This raises several questions including:

- a) Who should bear the administrative costs for a national redress body if one were developed, government, institutions, or both?
- b) Might the cost of administration drain resources away from compensation for victims?
- c) How can administrative costs fairly reflect the different exposure (and actual abuse that has occurred) within different kinds of organisations?
- d) Would a national scheme make charges against the annual turnover of the institution or levels of previous claims of exposure?

One important factor for victims is equity, and there may be merit in an independent national body that looks after rulings. However, I suggest that national guidelines for redress would achieve the same outcome more simply. If there were an independent national body, compensation should be directed straight back to the organisation in question and their own insurance policies should pay for redress awarded. Paying for insurance, and setting up a separate redress fund, seems an unnecessary duplication. The current insurance underwriters for Churches of Christ have high-level expertise and seem to deal with all claims quickly, efficiently and

sympathetically. Hence there is no strong need for a new independent national redress body from the perspective of Churches of Christ.

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?

Churches of Christ have not managed residential institutions with known abuse. As we have not dealt directly with this issue it is difficult to comment from experience. Nevertheless, from a philosophical and legal perspective, the concept of compensation being awarded to a particular individual, without appropriate and reliable evidence of that particular individual having been abused, is troubling.

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?

Governments, churches, and other charitable and community organisations have all been exposed to risk around childhood sexual abuse, and an 'all in' approach (or guidelines at least) would help ensure equity around redress for victims.

It is probably worth noting that many denominations in Australia are declining in membership, while the growth of the Australian population, rising GST income and 'bracket creep' mean governments should (in theory) have an improving capacity to fund at least the administrative component of such a scheme. If the likely administration costs (not including the funding of compensation) of a large bureaucratically administered scheme were imposed on churches, this would reduce their capacity to resource other ministry and mission capacities. This might also exceed the cost of individual liability insurance cover that would otherwise compensate victims. As such, I believe administrative costs would be best borne by the government that legislates to create such a body.

It is preferable that compensation/redress should be paid by the organisation that has been negligent in its duty of care to children or by its insurers. This provides a strong financial incentive for organisations to exercise 'best practice' (although one would hope a moral imperative was reason enough).

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?

Churches of Christ 'outsource' decision-making on redress to an expert panel set up by our insurance underwriters (ANSVAR), and have found that they are sympathetic

and highly professional in their approach to victims. I am aware that they have significant experience in such matters through other underwritten denominations.

Churches of Christ would wish to maintain pastoral relationships with victims, and believe that this is important in their quest for reconciliation and healing.

I submit that an independent audit of such processes is the least onerous way of ensuring good practice in the implementation of redress schemes. Guidelines for these audits might be developed by the Royal Commission or through consultation.

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

Institutional responsibility, learning, best practice and continuous improvement are all values espoused by Churches of Christ. Victims need access to redress that is timely, appropriate and well managed. For Churches of Christ however, the concern is that despite having a very low 'risk profile' we fear that a compulsory scheme would impose a disproportionate cost burden upon our denomination. Therefore, in our view, although there should be national standards, there should also be flexibility to meet those standards via properly structured insurance arrangements in which premiums reflect risk profile.

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 submit that claimants should have to nominate in advance, a choice between a redress scheme and civil action - and then stick to that choice to avoid 'forum shopping' and 'double dipping'.

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?

Fairness among victims is obviously a balance. Ideally if an organisation has been negligent, there should be a way to appropriately compensate victims. It is submitted that for existing organisations the way to avoid unfair disparity of outcome (because of the size of the organisation) is to have adequate insurance, as Churches of Christ does.

Where there is no clear successor institution (without 'run off' liability insurance) existing 'victims of crime' bodies may be the only means of compensation, because it would not seem otherwise possible to get compensation from a body that no longer exists at the start of a redress scheme.

However, it is submitted that as with professional indemnity insurance policies for individuals, insurance products could include 'run off' cover for institutions or organisations that cease to exist.

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?

A potential advantage is that people could be more inclined to pursue redress than litigation. This would involve less cost for individuals and institutions, in comparison with civil litigation.

It would be unjust for victims if institutions with less resources and assets ended up paying less compensation than well-resourced ones. As already submitted (at 8 above) each institution should meet its obligations against levels of exposure through appropriate insurance. This provides a strong financial incentive for institutions to follow best practice in their duty of care of children, and administrators will be motivated to instruct local churches/clubs accordingly and provide duty of care resources – and effect adequate liability insurance.

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?

Within a redress scheme it could be helpful to involve expert panels that are both independent and cognizant or aware of institution's culture. In the case of Churches of Christ, our insurance underwriters, ANSVAR, have some of this expertise. We also use other professionals (i.e. psychologists and human resource specialists) to provide advice and assistance.

It is submitted that the appropriate standard of proof for a redress scheme should be 'on the balance of probabilities', rather than 'beyond reasonable doubt' - subject to the proviso below, concerning 'comfortable' or 'reasonable' satisfaction,.

The evidentiary problem associated with sexual abuse cases is acknowledged and lamented even though the criminal justice system deals with that routinely. Nevertheless, just as there should be fairness of outcome among victims, there should also be fairness in the balance between claimant and organisation. It is submitted that given the seriousness and gravity of the allegations involved in sexual abuse cases, together with the seriousness and gravity of the consequences to an organisation of a compensation claim, procedural fairness demands caution. It is therefore further submitted that notwithstanding the evidentiary problem, such caution requires 'Reasonable Satisfaction' that the alleged abuse occurred, and, if so,

that it was perpetrated by someone for whose actions the organisation should be held accountable, by application of the Briginshaw principle - as interpreted in the 1992 High Court case of *Neat Holdings P/L v Karrajan Holdings P/L* (1992) HCA 66; and as reflected in sections 140 and 142 of the NSW and Victorian Evidence Acts.

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?

Access to counselling is critical, both immediate and long-term if the case so warrants. An area of difficulty is knowing the extent to which counselling is required because of an experience of childhood abuse, as opposed to being required for other issues such as dysfunctional parenting, workplace bullying, etc. that appear to have no connection to sexual abuse. To be sustainable, there would need to be reasonable limits upon counselling services.

Given our submission (at 7 above) that potential claimants should be required to make a binding choice as between a redress scheme and civil litigation, there should be provision of one consultation with a suitably qualified lawyer to explain options and then complete a certificate signed by the potential claimant and such lawyer confirming the fact of the independent advice and the choice made.

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. Also, given our submissions (at 7 and 11 above) if civil litigation was previously attempted, access to the redress scheme should not be permitted as well.

Contextual Organisational Structure

Churches of Christ in Australia has, as an organisation, been asked for such feedback. That request has been passed onto the author as Federal Co-ordinator.

Some explanatory comments about Churches of Christ in Australia, and my role, should provide context to the responses in this document.

Churches of Christ in Australia is a voluntary affiliation of State 'Conferences' or 'Councils' of Churches of Christ – each of which (separately and independently) is, in turn, an affiliation of individual and largely autonomous local Church congregations. The structure of Churches of Christ has always been deliberately 'decentralised'. The emphasis has always been upon the autonomy of local church congregations.

Churches of Christ is, therefore, not a centrally controlled organisation. There is (for the most part) no central ownership of Church property nor central determination of the appointment of Clergy.

An imperfect yet possibly helpful analogy might be a suburban junior basketball association in which there is no central ownership of individual club's property or control over appointment of a club's office bearers. Although there are philosophical expectations, rules, policies and procedures of the association to which each club is expected to adhere (including the requirement to take out or contribute to adequate liability insurance) and a disciplinary process for breaches; ultimately the only enforceable internal sanction available to the association is to disaffiliate a club that does not comply.

Thus it is with Churches of Christ – a voluntary affiliation of autonomous local Church congregations.

By way of disclaimer, although the role of the author is described as Federal Co-ordinator of Churches of Christ in Australia, my position does not carry any actual or ostensible authority or power to make comments that bind any part of the organisation or individual congregation.

Further, to the extent that my comments may not constitute complete answers to all of the specific questions, anything more fulsome or specific would require more time for the process of consideration by each State Conference/Council and its relevant constituent Committees.

That said, after various discussions and enquiries, I have made comments that I believe to be transparent, open, helpful and consistent with the ethos of Churches of Christ in Australia.

Affiliation and Governance

Notwithstanding the aforementioned limitations, Churches of Christ as an organisation has historically enjoyed a respectful, committed and co-operative relationship with individual congregations. Local congregations are strongly committed to affiliation and are therefore willing to respect and comply with the governance models and requirements of the State Conferences/Councils.

These governance models and requirements include the obligation to have policies and procedures within the local congregation to ensure that churches are 'safe places' for everyone – including children.

They are also obliged to maintain adequate liability insurance.

There are complaints receipt and handling policies and procedures at the local congregation level - overseen by and supplemented at the State level by specialist Committees concerned with Professional Standards within (broadly defined) Ministry roles.

These policies and procedures not only aim to facilitate a 'user friendly' complaints process, but also aim to ensure that any allegation of criminal conduct is reported to and investigated by police.

Failure of a congregation to co-operate and comply with the determinations of the State Councils pursuant to these processes could lead to disaffiliation.

Guarded Optimism/Maintenance of Vigilance

Churches of Christ in Australia, tends not to be significantly involved in managing the types of facilities/services or operating in the fields where the problems of sexual abuse seem to pose a higher risk. (However Churches of Christ Care in Queensland have a larger presence than the national Churches of Christ average in the 'child protection and related services' field).

Indeed, regarding the subject matter of this Royal Commission, after my enquiries, I understand that throughout Australia there has been an extremely small number of instances (less than three) of sexual misconduct within Churches of Christ resulting in prosecution – and none involving ordained clergy. This is in the context of a church movement that has over 60, 000 adherents.

Of course, it would be naïve to assume that all instances of sexual abuse are always reported. Nevertheless, it is submitted that the extremely low incidence of such issues within Churches of Christ in Australia can, at least in part, be attributed to the existence of and adherence to appropriate policies and procedures. This observation is certainly not meant to imply either 'self-satisfaction' or 'complacency'. It is recognised that continued (and increased) vigilance is essential to future continued success. It is accepted that all systems can be improved, and Churches of Christ in Australia looks forward to seeing how the recommendations of this Royal Commission could assist to improve its safeguards, practices and procedures.

Concluding (summary) comments

Any additional financial and legal obligations upon church bodies should factor in and make allowances for the different governance structures of the 'free church' traditions (churches such as Churches of Christ, Baptist, Pentecostal, Brethren Churches etc.) as distinct from the governance structures of mainline institutional churches (Roman Catholic, Uniting, Anglican, Lutheran churches etc.). 'Free church' traditions empower the local church congregation to oversee its activities and risk profile as opposed to a centralised (denominational) control structure.

The state and regional office functions of Churches of Christ operate quite differently from centralist denominations. While state offices operate state-wide ministries, the local churches oversee their functions, employment, ministries and properties. Nevertheless, the state conferences/councils of Churches of Christ have all developed robust guidelines for affiliated local churches to help ensure that these local churches are safe places for children.

Some use the Child-Safe system in its entirety while others use guidelines that have been strongly modelled upon Child-Safe.

Churches of Christ in Australia does desire redress to be part of a restorative relationship with victims of abuse and the church. However, because very few claims of child sexual abuse have been raised within Churches of Christ, we have serious reservations about the concept of a new external redress body. Principally, that concern is that such a scheme would inequitably and disproportionately impose administrative costs and 'compensation funding levies/costs' upon church bodies in which the incidence of child sexual abuse has been extremely rare or even non-existent.

Specifically, we submit that if there is to be a national redress scheme, then although compensation would be an important objective, nevertheless, there are several principles that should underpin any such national scheme:

1. Although there could be national guidelines for compensation (including requirements for adequate liability insurance) there should not be a national funding pool – funded by levies on organisations.
2. If there is to be a national redress scheme, a potential claimant should have to make a binding choice as between compensation via the scheme and civil litigation (see numbered paragraphs & & 11 above) and tender a certificate signed by himself/herself plus a suitably qualified lawyer confirming independent advice and the binding 'election'.
3. Under any national redress scheme, compensation should be funded by the insurance policies of the individual organisations - so that premium reflects risk and prior claims or lack of same.
4. Prior to any compensation award under any national redress scheme (ideally funded by insurance policies) the decision making body should be required to be 'comfortably'/'reasonably' satisfied of two facts (according to the Briginshaw principle outlined in numbered paragraph 10 above):
 - a) That the alleged abuse actually occurred, and
 - b) That the perpetrator is a person for whose actions, the particular organisation ought to be held vicariously liable.

Thank you for your consideration, and for undertaking this important work to help keep children safe, and to address the needs of victims.

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