

ANGLICAN DIOCESE OF MELBOURNE

SUBMISSIONS

A COMPLAINTS AND REDRESS SCHEME FOR INSTITUTIONS AND SURVIVORS

1. The Anglican Diocese of Melbourne supports the establishment in Victoria, and possibly beyond, of a Complaints and Redress Scheme for Institutions and Survivors (CARSIS) along the lines set out in the accompanying proposal. These submissions are intended to focus on some particular issues and to explain the Diocese's position. We recognise that there should be an active role for survivors in designing and overseeing any scheme and that this proposal is intended to aid that process, not pre-empt it.
2. An issue of central importance is the scope of any scheme put in place. There is a general recognition that this is an opportunity for government and institutions to take moral, political and legal responsibility for the harms suffered by victims of child sexual abuse. That involves more than simply coming along after the event and giving financial, medical or other assistance or compensation to victims. It must equally involve-
 - where possible, institutions calling perpetrators to account;
 - putting in place systems of fitness for duty to prevent such persons occupying positions of trust; and
 - encouraging a change in culture in institutions to promote reporting of child sexual abuse.
3. If the scheme is confined to the question of compensation, it would fail to deal with the key issue for the majority of survivors who gave evidence before the Victorian Parliamentary Enquiry – that the institution failed to act to bring the perpetrator to account and avoid further harm to others.
4. A survivor should be at liberty to pursue their complaint and tell their story through the pathway of their choice, whether it be the criminal justice system and VOCAT, the civil justice system, the institution's internal process or the proposed scheme. The new mandatory reporting provisions in the *Crimes Act* 1958, s327 seek to ensure that relevant matters are brought to the attention of the Police.

5. With these general observations in mind, we propose that the scheme would deal with both complaints and claims for redress, in each case confined to child sexual abuse in government and private institutions. A redress scheme that is confined only to claims for redress (financial or otherwise) to the victim will still require some limited investigation and determination as to what happened and who did what. It must still begin with a complaint of abuse. If the only outcome is that an institution makes an apology and pays a sum of money, that leaves unanswered, for survivors and the general community, what the institution is doing, both in the specific case and more generally, to prevent further abuse either by that offender or others in the institution. This has been the main focus of survivors' testimonies in the Victorian Parliamentary Enquiry and in the Royal Commission.
6. By giving the scheme scope to include all complaints of child sexual abuse in member institutions, the scheme and its members can take meaningful and effective responsibility for the incidence of that abuse. In turn this may rebuild the trust and confidence that survivors and the community generally have lost in institutions, particularly the Churches. The scheme is not about government imposing regulation on institutions but about empowering institutions to respond constructively to give survivors choice, redress harm and earn the trust and confidence of the community.
7. The scheme should offer a holistic approach, reflecting best possible practice. There is no one solution to the prevalence of child sexual abuse, no one remedial step to be taken. The issue calls for a range of responses, all of which should find recognition in any scheme adopted. The scheme should deliver not only outcomes on the quantum of financial assistance or compensation payable but also outcomes concerning the position of the abuser and the response of the institution, both in the particular case and more generally. It should allow survivors to tell their story in a way that will inform the learning and understanding of institutions in how best to prevent or reduce the incidence of child sexual abuse.
8. We therefore propose that under the scheme, the adjudicatory bodies would have jurisdiction to make findings and determinations preliminary to the assessment of redress by way of financial assistance or compensation. These would be findings and determinations on the balance of probabilities,

to which the institution would be bound to give effect, as to –

- (a) whether the worker in the institution should be stood down temporarily from duties pending determination of the complaint;
- (b) whether the worker in the service of the institution did commit child sexual abuse;
- (c) whether there is a relevant nexus between the abuse and the Institution;
- (d) whether as a result of the abuse, a person or class of persons has suffered assessable loss or harm; and
- (e) whether the worker is fit to remain in his or her role office or position either absolutely or subject to conditions.

9. We advocate in the proposal (paragraph 9) four key eligibility requirements for an institution to be a member of the scheme. They reflect the holistic approach of the scheme and are matters for each institution voluntarily to accept. We briefly address these. The first two need little explanation. Incorporated status ensures the existence of an accountable legal entity. Liability insurance seeks to ensure that funds will be available to meet claims.
10. The third eligibility requirement is to have in place in the institution (whether under existing legislation or not) a system of periodic clearance for ministry or service in the institution. The register of complaints maintained under the proposed scheme would provide an invaluable source of information across different institutions from which to judge whether such clearance should be given and whether likewise a working with children clearance should be given.
11. The fourth eligibility requirement is for each member institution to have in place rules for mandatory reporting to the Scheme Office and the institution by prescribed persons in the service of the institution. This is intended to encourage a change in the culture of institutions to heighten awareness of child sexual abuse and the responsibility to do something about it. It also promotes the effectiveness of the scheme.
12. The proposed scheme contemplates caps on financial assistance that would be offered under the scheme but no cap on financial compensation that would be awarded on an adjudication of the legal rights of the claimant. It contemplates that the Scheme Assessment Board fix the amount of

financial assistance subject to a stipulated cap but would certify if in its assessment the person's loss or harm was substantially in excess of that cap. The claimant would then be at liberty to claim compensation under an expedited process involving referral to mediation and then either Scheme arbitration or a specialised court or tribunal list.

13. In our view, the imposition of a cap at the first assessment stage can be justified on the basis that although the claimant may be receiving an amount less than their actual loss or harm, to obtain that award of financial assistance from the institution, they have a lower threshold to meet. They have only to establish –
 - (a) that an adjudicating body of the Scheme has determined in a complaint or matter that the worker in the service of the institution did commit child sexual abuse;
 - (b) that there is a relevant nexus between the alleged abuse and the institution; and
 - (c) that as a result of the abuse, the person has suffered assessable loss or harm.

14. In general principle, we do not however see it as fair or in good conscience either to delay payment of that financial assistance or to require as a condition of payment of that financial assistance that the claimant relinquish their common law rights in connection with the abuse perpetrated on them. A claimant may be vulnerable and in need of financial assistance. For an institution to insist that the claimant relinquishes their common law rights in return for that payment risks in our view the valid criticism that the institution is abusing its greater power and advantage in those circumstances for its own benefit to the detriment of the claimant. If the claimant is found by an independent adjudicatory body to have suffered loss or harm substantially in excess of the cap, why should not the claimant, if it is so advised, have the opportunity to pursue any legal entitlement he or she may have to recover compensation from the institution? In stating the above, we would expect an insurer of an institution to be prepared to contribute to grants of financial assistance paid by the institution by way of redress.

15. The proposed scheme therefore preserves that opportunity for the claimant, albeit within strict time frames and pursuant to an expedited process intended to facilitate a timely adjudication of the claim for compensation.

That process is also intended to preclude so far as possible technical legal defences that do not go to the merits of the matter.

16. In that expedited process, it is essential that the institution produce on summons or direction all records relevant to the matters which the claimant may have to prove to establish liability on the part of the Institution.

22 August 2014

Ken Spackman
Registrar and General Manager

Attached:

Proposal for a Complaints and Redress Scheme for Institutions and Survivors

ANGLICAN DIOCESE OF MELBOURNE

SUMMARY OF PROPOSAL FOR

A COMPLAINTS AND REDRESS SCHEME

FOR INSTITUTIONS AND SURVIVORS

The Anglican Diocese of Melbourne has proposed the establishment in Victoria, and possibly beyond, of a Complaints and Redress Scheme for Institutions and Survivors (CARSIS) along the lines set out in its detailed proposal.

It is a voluntary scheme for institutions and survivors to deal with complaints of child sexual abuse and provide redress to persons affected. That redress may take the form of action against the offender, an apology or other statement, financial assistance or the provision of medical or other services to a survivor. The level of lump sum financial assistance would be capped but payment would not be conditional on the person relinquishing their legal rights. Determinations under the scheme would be binding on a member institution and persons in their service alleged to have committed child sexual abuse.

If a survivor's loss is found under the Scheme to be substantially in excess of any capped payment under the Scheme, they may elect to have their common law rights determined under an expedited process under the Scheme involving either a Scheme arbitrator or a specialist court or tribunal list. Equally survivors would be free to pursue their common law rights in the courts.

The scheme is intended to offer an alternative pathway to survivors of child sexual abuse seeking to have their complaints heard and dealt with. It would complement but not replace any existing disciplinary regime of an institution. It would offer a therapeutic and pastoral approach to the handling of complaints. It would encourage survivors to tell their story.

The Scheme would involve establishing a company limited by guarantee, backed by legislation of the Victorian Parliament to act as operator of the Scheme within a legal framework similar to that of the Financial Ombudsman Service. It would put in place a process which is intended to be fair, independent and transparent.

The Scheme would not be about government imposing regulation on institutions but about empowering institutions to respond constructively through membership of the Scheme to give survivors choice, to redress harm and to earn the trust and confidence of the community.

25 August 2014

ANGLICAN DIOCESE OF MELBOURNE

PROPOSAL FOR

A COMPLAINTS AND REDRESS SCHEME FOR INSTITUTIONS AND SURVIVORS

A. *Introduction*

1. The Anglican Diocese of Melbourne supports the establishment of a Complaints and Redress Scheme for Institutions and Survivors (CARISIS) along the lines set out in this proposal. It proposes that a company limited by guarantee be established under the *Corporations Act 2001* and accredited under special legislation of the Victorian Parliament. The company would operate the scheme.

B. *Summary of the Scheme*

2. The scheme would deal with both complaints and claims for redress, in each case confined to child sexual abuse by a worker in government and private institutions. A worker would include a volunteer. Whether the scheme should be extended to criminal abuse of any kind can be a matter of discussion with stakeholders. It would through its administrative officers and bodies offer a therapeutic and pastoral approach to the handling of complaints and through its adjudicatory bodies, make binding findings and determinations on the balance of probabilities by a process that was both transparent and that accorded appropriate procedural fairness. A claim for redress could be made by the person abused, whom we call in this proposal 'the survivor'. Whether an affected family member of that person should also be entitled to claim redress should be a matter for further discussion among all the stakeholders.
3. The scheme would complement, not replace, any internal disciplinary regime put in place by an institution. A person should be at liberty to pursue their complaint through the pathway of their choice, whether it be the criminal justice system, the civil justice system, the institution's internal process or the proposed scheme. For this reason, there would need to be arrangements for co-operative sharing of information between the scheme and any internal scheme of an institution. The new mandatory reporting provisions in the *Crimes Act 1958*, s327 seek to ensure that relevant

matters are brought to the attention of the Police.

4. The scheme would deliver not only outcomes on the quantum of financial assistance that an institution would pay to the claimant and any compensation for which the Institution was held liable, but also outcomes concerning the position of the abuser and the response of the institution, both in the particular case and more generally.
5. In particular, the adjudicatory bodies would make findings and determinations on the balance of probabilities, to which the institution would be bound to give effect, as to—
 - (a) whether the worker in the institution should be stood down temporarily from duties pending determination of the complaint, if this has not already happened under the internal process of the institution;
 - (b) whether the worker in the service of the institution did commit child sexual abuse;
 - (c) whether there is a relevant nexus between the abuse and the institution;
 - (d) whether as a result of the abuse, a person or class of persons has suffered assessable loss or harm, assessable in the sense of being amenable to the redress scheme;
 - (e) whether the worker is fit to remain in his or her role office or position either absolutely or subject to conditions;
 - (f) if the claimant so elected and the adjudicatory body certified that the claimant had suffered loss substantially in excess of the capped amount, whether the claimant is entitled to receive an award of damages according to law, over and above the capped amount, pursuant to an expedited process.

C. *The constituent documents of the scheme*

6. The scheme would operate under the following constituent instruments—
 - (a) An Act of the Victorian Parliament authorising the establishment of the scheme and dealing with the matters referred to below in paragraph 7;
 - (b) The constitution of the Scheme operator, Complaints and Redress Scheme for Institutions and Survivors Limited (CARIS Ltd);
 - (c) Terms of Reference either for all member institutions or for different

classes of member institutions.

D. Special legislation of Parliament

7. The Act of Parliament would authorise the establishment of the scheme and prescribe various matters including the following –
- (a) It would specify the objects of the Scheme operator and require it to adopt prescribed Terms of Reference which would set out in detail the process to be followed under the scheme;
 - (b) It would prescribe the kind of matters to be dealt with in the Terms of Reference;
 - (c) It would confer on the adjudicating bodies of the Scheme including Scheme Arbitrators and its officers rights powers and privileges that included as appropriate those conferred on a Board when appointed by the Governor in Council: see ss 14 (power to summons), 15 (to administer an oath), 16 and 21A (privileges and immunities) of the *Evidence (Miscellaneous Provisions) Act 1958*; it would give the adjudicating bodies power to make determinations and directions that bind a worker;
 - (d) It would contain provisions for the storage and disclosure of information to institutions as appropriate and for sharing of information with the complaint resolution offices of those institutions;
 - (e) It would provide for the incentives of membership of the scheme; and
 - (f) it would provide that the provision by an institution of financial or other assistance or of an apology or acknowledgment of regret or the like under the scheme was not to constitute an admission of liability which could be relied on in subsequent proceedings against the institution.

Compare for example the provisions of Part XV (ss212 – 224) of the *Financial Services and Markets Act 2000* (UK) establishing the Financial Services Compensation Scheme.

E. The constitution of the scheme operator

8. The constitution of the Scheme operator would cover the usual governance matters as well as the following –
- (a) It would prescribe the functions of the scheme operator being to administer the scheme and advise institutions on ways to prevent

and reduce the incidence of child sexual abuse;

- (b) It would stipulate four key eligibility requirements of membership, as stated in the following paragraph;
- (c) It would require the board of the scheme operator to comprise representatives nominated by both institutions and survivors and an independent chair;
- (d) It would constitute the Office of the Complaints and Redress Scheme for Institutions and Survivors (the CARSIS Office) and its office holders including-
 - (i) The Scheme Director;
 - (ii) The Scheme Committee with power to delegate; and
 - (iii) The Scheme Ombudsman.
- (e) It would constitute the boards and arbitrators to have functions under the Scheme; qualified persons could be appointed to those positions from standing panels.
- (f) It would bind a member institution to make financial contributions to the administrative running costs of the scheme constituted by a base subscription (related to the size of the institution) and a further subscription proportionate to the complaints and claims relating to that institution;
- (g) It would bind member institutions to the findings and determinations of any Scheme adjudicating body and to pay any award of financial assistance or compensation (as the case may be) or costs and to comply with the directions of that adjudicating body under the Terms of Reference.

Compare the constitution of the Financial Ombudsman Service Limited, a company limited by guarantee.

Eligibility for membership

- 9. The key eligibility requirements of institutional membership would be –
 - (a) to have incorporated status;
 - (b) to take out and maintain liability insurance against claims in respect of child abuse;
 - (c) to have in place in the institution a system under which prescribed office holders in the institution (including for example, clergy and lay ministers) would be required periodically to apply to the institution for a clearance certificate to the effect that they are fit for their role office or position either absolutely or subject to conditions; and

- (d) to have in place rules for mandatory reporting as stated below and binding on prescribed office holders in the institution. These would be over and above any statutory duty to disclose information.

An accredited survivors' group would also be eligible to a member of the company.

Mandatory reporting to the Scheme Director and the institution

10. The rules of the institution would have to provide in effect that if a prescribed person in the service of the institution believes on reasonable grounds that a person has suffered harm or is at risk of harm as a result of child sexual abuse by a person in the service of the institution and has no reason to believe that the Scheme Director is aware of those facts, the first mentioned person must as soon as possible report the matter to the Scheme Director and the institution. The rules would not affect the application of any applicable Church canon law relating to confessions. Prescribed persons would include in the case of religious organisations, clergy, lay ministers and lay leaders.

F. Prescribed terms of reference

11. There would be prescribed Terms of Reference setting out the process for the handling of both complaints and claims for compensation. The process would recognise a demarcation of functions intended to ensure its integrity and independence – reception of the complaint, investigation, analysis of the complaint, adjudication, review and assessment.
12. The process would have the complaint directed to the Scheme Committee or its delegate and adjudication by the Scheme Board and review, if necessary, by the Scheme Review Board. With the assistance of the Scheme Director, the Scheme Committee or its delegate would evaluate the complaint. If the respondent worker was still in service in the institution, and the Scheme Committee was satisfied there was a prima facie case of child abuse, it would refer the matter to the Scheme Board. If the worker was deceased or no longer in the service of an institution, it could refer the matter direct to the Scheme Assessment Board. Details of the process are set out below.

G. The process

13. The formal process under the scheme could by way of illustration involve

the following steps.

The complaint

- (a) Any person may lodge a complaint of child sexual abuse against a worker who is or was in the service of the institution to the Scheme Committee; that worker may be deceased;

Summary disposition

- (b) The Scheme Committee may deal summarily with the complaint in certain prescribed circumstances, for example, if it was frivolous or vexatious;

Investigation

- (c) The Scheme Committee would by its delegate investigate the complaint and undertake a 'triage' function in dealing with the complaint;

Standing down

- (d) The Scheme Board would be authorised to direct the institution that the worker be stood down pending the determination of the complaint if satisfied that there is an unacceptable risk of harm to any person if the respondent remains in his or her present office or position of responsibility pending the outcome of the complaint; in urgent cases, the Scheme Committee could make that direction;

Reference of the complaint to the Scheme Board

- (e) If after investigation the Scheme Committee has formed the opinion that the conduct the subject of the complaint if established would call into question whether the worker had committed the abuse and the worker was still in the service of the institution, the Scheme Committee would refer the complaint to the Scheme Board; That board could be constituted by a single member or a three member board, depending on the case;

Reference of the complaint direct to the Scheme Assessment Board

- (f) Alternatively, if the worker was deceased or no longer in the service of the institution, the Scheme Committee could refer the matter direct to the Scheme Assessment Board;

The Scheme Board makes directions

- (g) On receipt of the reference, the Scheme Board would be at liberty to make directions in the matter and direct that relevant parties such as the institution itself be joined in the proceeding; the Scheme Director or their delegate would in effect prosecute the matter on behalf of the Scheme Committee; that burden would not fall on the complainant;

Findings and determination of the Scheme Board

- (h) The Scheme Board must enquire into the matter and makes findings and determine -
- (i) whether the worker in the service of the institution did commit child sexual abuse;
 - (ii) whether there is a relevant nexus between the abuse and the Institution;
 - (iii) whether as a result of the abuse, a person or class of persons has suffered assessable loss or harm in the sense used above; and
 - (iv) if the worker was still in the service of the institution, whether the worker is fit to remain in his or her role office or position either absolutely or subject to conditions;

Remedies open to the Scheme Board

- (i) If it does so determine, the Scheme Board may make findings to that effect and direct –
- (i) that the institution take action in relation to the worker and his or her role office or position, whether that action be removal from office or counselling or close supervision or other steps;
 - (ii) that the survivor be at liberty to apply for an award from the Scheme Assessment Board that the responsible institution pay the survivor an amount of financial assistance (which it is expected would be a capped amount);
- and may recommend that the Institution offer an apology or acknowledgement. The certificate of the Scheme Board as to its findings would stand as conclusive evidence in proceedings before the Scheme Assessment Board and before a Scheme Arbitrator or specialist court or tribunal referred to below.

Review by the Scheme Review Board

- (j) The respondent worker or the Scheme Committee could seek a

review of the decision of the Scheme Board by the Scheme Review Board;

Binding on the Institution

- (k) The institution would be bound to give effect to the determinations and directions of the Scheme Board or on review, the Scheme Review Board. We have considered the alternative position, as to steps to be taken, that the Board make only recommendations which the institution is obliged to consider and make public a written response with reasons. This doubtless can be a matter for further discussion among stakeholders. Whilst this alternative is less intrusive for the institution, it tends to make for a scheme that is less effective than otherwise;

The Scheme Assessment Board

- (l) The Scheme Assessment Board would determine what financial assistance and other assistance should be given the claimant under the scheme. That board could be constituted by a single member or a three member board, depending on the case;

Expedited mediation and arbitration

- (m) At the election of the claimant, a claim to compensation in satisfaction of the claimant's legal entitlements could proceed to mediation and arbitration under the expedited process explained further below. If the claimant did not choose this pathway, he or she could still elect to institute proceedings in the courts.

H. Redress available to the claimant

14. The CARSIS Office would offer redress, both on an interim basis and, through the Scheme Boards on final determination, that could include the following -
- (a) the tender by an institution of an apology from the institution, and if available, from the abuser, for what has happened;
 - (b) the payment of appropriate financial assistance, that makes provision for the following elements:
 - (i) interim payments to meet immediate needs while the claim is being assessed (subject to some initial acceptance criteria)
 - (ii) past out-of-pocket medical expenses

- (iii) past and future loss of earnings, and
- (iv) expenses incurred in making a successful application
- (c) provision of, and payment for, counselling and other health-related support on an ongoing and as-needed basis, including while the claim is being assessed; and
- (d) other more ad-hoc forms of financial and in-kind assistance required by claimants from time to time.

I. Procedural fairness and transparency

15. The process prescribed by the Terms of Reference and its protocols would be attended with features that would ensure procedural fairness and transparency and promote confidence in its process-
- (a) If a complaint is summarily dismissed, the Scheme Committee must give the complainant and the respondent notice of the outcome together with reasons;
 - (b) The complainant and the respondent would be given a copy of any reference to the Scheme Board;
 - (c) Any decision of the Scheme Board or Scheme Review Board would be made public and with reasons;
 - (d) The Institution would be bound to release to the public a statement disclosing the action taken giving effect to the direction about a worker and his or her role office or position.

In each case the reasons or statement would have to be anonymised to protect the identity of the survivor, unless that person consented otherwise.

16. If a person can establish the key eligibility requirements for an award of financial assistance as set out below, that person may apply to Scheme Assessment Board for an award that the responsible Institution pay financial assistance to that person.
17. The key eligibility requirements for the grant of financial assistance by the institution would be –
- (a) that the worker or volunteer in the service of the institution did commit child sexual abuse;
 - (b) that there is a relevant nexus between the alleged abuse and the institution; and
 - (c) that as a result of the abuse, the person has suffered assessable

loss or harm, assessable in the sense of being amenable to the redress scheme.

The precise formulation of the relevant nexus would benefit from further consideration by stakeholders¹. The adjudicating body under the scheme would certify to the above effect if it so found. A person would be in the service of an institution whether they are acting as an employee, independent contractor, agent or otherwise for the benefit of the institution.

J. *The functions of the Scheme Assessment Board*

18. The Scheme Assessment Board, either relying on the certificate of the adjudicating body or, on a referral direct from the Scheme Committee, being satisfied that the key eligibility requirements for financial assistance are met, would have to determine –
 - (a) the amount assessed as appropriate for an award of financial assistance under the scheme, being the sum not greater than the cap from time to time prescribed under the Terms of Reference (the award of financial assistance);
 - (b) whether the actual loss or harm suffered by the claimant is likely to be substantially above the amount of that cap, in which case it must certify to that effect (the certificate of substantial loss).
 - (c) whether there should be further provision of, and payment for, counselling and other health-related support on an ongoing and as-needed basis; (the Scheme Director would be authorised to provide interim assistance in this regard on an as needed basis); and
 - (d) other more ad-hoc forms of financial and in-kind assistance required by claimants from time to time.

19. The Scheme Assessment Board would take into account, as has been suggested by the Truth Justice and Healing Council in its submission to the Royal Commission –
 - (a) past out-of-pocket medical expenses;
 - (b) loss of earnings, past and future;
 - (c) cost of counselling services;
 - (d) recognition or acknowledgement of the effects of child sexual abuse
 - (e) non-economic loss (for example, pain and suffering), and

¹ Compare the Defence Abuse Reparation Guidelines, para 3.1.4.

- (f) expenses incurred in making the application, where the application is successful.

20. The applicant would have 30 days from the date of that award of financial assistance in which to accept the award, in which case the amount is payable by the institution within a further 14 days from acceptance.

21. There should be no condition of that payment that the applicant for an award relinquish his or her rights to damages under the common law.

K. *Claimant may elect to seek compensation under the expedited process*

22. If the Scheme Assessment Board has certified as stated above, the applicant may elect by notice in writing to the Scheme Ombudsman within the period of 60 days from the date of the award of financial assistance to claim compensation under an expedited compensation adjudication process under the scheme, in satisfaction of their common law rights if any.

23. Upon election by the applicant, the Scheme Ombudsman would have to refer the claim –

- (a) for mediation by a mediator agreed by the parties from a panel of approved mediators or in default, appointed by the Scheme Ombudsman to be concluded within 3 months from the referral; and
- (b) for adjudication to either a Scheme Arbitrator appointed by the Scheme Ombudsman or to a specialised VCAT or Court list for a hearing to commence within 6 months from the referral.

A person would be required to give credit for the amount of any financial assistance already received from the institution and for other assistance under VOCAT, Medicare or private health insurance.

24. The adjudication of the claim for compensation would constitute a final determination of the rights and entitlements of the claimant and that person would be precluded from bringing any subsequent proceedings in connection with the abuse.

25. Specific 'model litigant' guidelines binding both the claimant and the institution would govern that expedited process, including -

- (a) the institution would agree not to take limitation of actions defences;
- (b) the institution would agree not to dispute that the Institution is responsible for loss or harm to the same extent if any as if it were the

- person or entity with whose authority the worker acted; and
- (c) there would be a cap on the legal fees recoverable under the process, to avoid excessive spending on legal costs.

The precise formulation of the guidelines contemplated in paragraphs (a) and (b) would require careful analysis of any legislative reform being contemplated in the area of limitation of actions and vicarious liability. The list is not intended to be exhaustive as the operation of the *Wrongs Act 1958* in relation to the claim needs careful consideration.

26. The Institution would have to pay the costs of the arbitrator or specialist tribunal in the first instance, subject to an exercise of discretion as to who finally should bear the burden of those costs.

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