

Royal Commission into Institutional Responses to Child Sexual Abuse
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By email: solicitor@childabuseroyalcommission.gov.au

30 June 2014

To Whom It May Concern,

Submission to the Royal Commission Issues Paper 7: Statutory Victims of Crime Compensation Schemes

The Australian Psychological Society (APS) welcomes the opportunity to respond to Issues Paper 7 that addresses the effectiveness of statutory victims of crime compensation schemes in delivering redress for those who suffer institutional child sexual abuse.

As indicated in our submissions to Issues Paper 5 on civil litigation and Issues Paper 6 on redress schemes, the APS strongly supports the development of processes that minimise the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a process of redress. Importantly, it is the perception of justice and procedural fairness in any such process that is paramount in the resolution of ongoing effects of trauma. Please note that the critical messages in this submission are consistent with the APS's two previous submissions. There is currently insufficient evidence to discern any significantly distinct differences in the psychological impacts as a result of the redress process – whether it be via civil litigation, institutional, or statutory compensation schemes. We therefore refer you to our previous submissions, the content of which will be summarised below.

An initial consideration is the applicability of any statutory victims of crime compensation schemes to deliver redress for those who suffer institutional child sexual abuse. Crimes compensation schemes set up to address people, who were adult victims at the time of any alleged crime, may not be applicable to a

scheme for institutional child sexual abuse victims. A statutory scheme of redress for those who suffer institutional child sexual abuse may need to consider that victims may still be children when seeking redress or adults sometimes years after the abuse seeking redress. It is unlikely in this scenario that an adult on behalf of a child or a child resorting to such schemes to get compensation, and the focus on the loss of earnings as a result of a crime is rather inappropriate in terms of children also. It is paramount that the psychological impacts are considered for both children and adults in any statutory scheme of redress for institutional child sexual abuse victims, and that appropriate financial compensation is considered, whether as part of the current legislation or with appropriate amendments.

Given the largely legal nature of Issues Paper 7, some of the specific terms of reference are beyond the scope and expertise of the APS. In this letter the APS focuses on the psychological aspects of statutory compensation schemes likely to be relevant to the actions that could be taken by institutions and governments to address or alleviate the impact on victims/survivors of child sexual abuse in institutional contexts.

In general, the APS supports the rights of victims/survivors of institutional child abuse to seek redress via statutory victims of crime compensation schemes. While research into the role of these schemes remains limited, there is some evidence that such a process can assist survivors to recover. Furthermore, one of the potential values of a compensation process is that it is an acknowledgement that child abuse is illegal, unacceptable and abhorrent to the State. The victim/survivor needs to know that is not their fault, but that of the institution/individual who took advantage of their superior power to do harm to those they had a responsibility to protect. This may be a valuable part of a recovery.

Despite the potential value of statutory redress schemes, the APS is concerned that there is potential to re-traumatise individuals who may have to relive their painful stories in order to prove that abuse occurred. Research supporting this concern is documented in the APS's previous submission to Issues Paper 5, where it was emphasised that systems of redress must ensure that their processes and procedures do not inadvertently expose complainants to further harm.

One potential way in which to minimise harm for victims/survivors is to employ the rule of plausibility, rather than proof (see submission to Issues Paper 6 for more detail). In essence though, the assessment of plausibility is based on all

the available information and has an 'appearance of reasonableness' that the abuse occurred and is not reliant on criminal or civil standards of proof to show that the abuse occurred. Essentially, this means that victims/survivors do not feel that they are being put on trial themselves. Applying the rule of plausibility has a number of psychological advantages: avoidance of the re-traumatisation of the victim/survivor; no need for a victim/survivor to provide evidence (or for an alleged perpetrator to contest it unless charged separately with a criminal offence); negates the need to 'prove' that injury/damage occurred, which should not be the primary concern (the primary concern is that the abuse occurred); and places the judgement on the event (institutional abuse) rather than the victim (and their personal level of vulnerability or resilience). Furthermore, applying the rule of plausibility assuages associated issues that commonly arise in claims of child abuse, which include: the often long time lapses between an abuse event and its disclosure, as well as between disclosure and resolution; the difficulty determining a causal link between the experience of abuse and any possible long term impact of abuse; as well as the absence of a physical or psychological injury at the time of reporting (if indeed it was reported at all).

The Law Commission of Canada (2000) undertook a comprehensive review of State responses to institutional abuse and identified some key principles required to underpin the process by which victims/survivors seek redress. These principles included ensuring that victims/survivors are able to make informed choices about courses of redress, that they have access to counselling and support, and that the process should not cause further harm. The review also highlighted the need for those managing the process to have access to ongoing training and that continual efforts need to be made to improve redress programs (Matthews, 2004).

It is likely that victims/survivors are looking for a number of outcomes: understanding and compassion, acceptance of responsibility, and some means of restitution, compensation, and action to ensure that such abuse does not happen to others are the key elements (Cashmore & Shackel, 2013). This closely mirrors the third recommendation in the *Bringing Them Home Report* (Human Rights and Equal Opportunity Commission, 1997), which identified five components that should form part of reparations: acknowledgment and apology; guarantees against repetition; measures of restitution; measures of rehabilitation; and monetary compensation.

Clearly relevant for all matters relating to redress is the consideration of how victims may be empowered beyond the helplessness that was part of their

traumatic experience. This may be facilitated by having the option to seek redress or compensation through a formal scheme, as well as having the ability to pursue civil litigation, and having access to support during the process, which includes counselling as well as legal advice. Above all, consideration is required to ensuring that victims/survivors feel they have been treated fairly. This includes ensuring that schemes are well publicised, accessible over a reasonable period of time, have a reasonable allocation of funds given the volume of claimants, and that the respective agencies provide adequate assistance with lodgement of their claims.

In the case of a compensation scheme, its effectiveness will be in the detail of how it operates and how it is funded. While the APS appreciates that such schemes may be important for the recovery process, this should not be to the detriment of strategies and interventions that serve to prevent the occurrence of abuse in the first place. There is a potential danger that setting up costly statutory compensation schemes may allow organisations and institutions, such as churches, to consider that the scheme absolves them of any further responsibility. Rather, a key aspect of a compensation scheme should be the knowledge that in disclosing their abuse, victims/survivors have assisted in a process to prevent the abuse of others in the future.

The possibility must be acknowledged that, even with access to a form of redress or compensation scheme, many people may choose not to proceed for fear that disclosing their abuse will risk their ongoing psychological and physical safety. For example, victims may be justifiably mistrustful of the systems put in place to deal with redress. All of their past experiences tell them that systems and people in authority cannot be trusted and if they speak out about what was done to them they will be re abused, re traumatised etc. Assurances to victims/complainants regarding issues such as confidentiality and whether or how their material will be protected both hard copies and electronic databases is of paramount importance, especially given there may be alleged abusers, some with quite a high profiles, who would have vested interests in hacking a database or in some other way finding out about a complainant's redress application, to attempt to influence a complainant to withdraw their allegations.

For this reason, it is important that compensation schemes are able to provide ongoing protection from psychological and physical harm. Moreover, a statutory compensation scheme could potentially mean that the investigation is taken out of the victim/survivor's hands. This may render victim/survivors even more

helpless, when a key goal of recovery efforts should be to maximise their sense of control and empowerment.

Given the potential for re-traumatisation, and an increased sense of isolation and anxiety as a result of the process of redress, the APS is ultimately concerned about the provision of adequate emotional and instrumental support for the individual (either as a child or adult seeking redress under a compensation scheme) through the process. This may mean that compensation schemes could address the particular needs of individual victims/survivors and might include them having access to a support group, counselling, and other relevant supports, with an emphasis on making the redress process safe for the individual by actually inviting their comment on what would make them feel safe. Consciously seeking of the victim's consent at every step is paramount.

In raising the psychological issues relevant to the process of statutory victims of crime compensation schemes, the APS supports the Commission's attempts to define systems and processes that minimise their impact on victim/survivors and protect them from additional harm.

The APS has made a commitment to support the work of the Commission, and as such we would be happy to provide further comment about the matters raised in this letter. In particular, the APS can provide the Royal Commission with further expertise on the matter of re-traumatisation of victims of sexual abuse, such as unanticipated triggers for traumatic memories, the likely impact of vigorous cross-examination, remote witness facilities, taped evidence, support people, and debriefing, as well as the kinds of redress that might be considered appropriate in particular contexts.

For further information please contact me on 03 8662 3327.

Yours sincerely,



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About the Australian Psychological Society

The APS is the premier professional association for psychologists in Australia, representing more than 21,000 members. Psychology is a discipline that systematically addresses the many facets of human experience and functioning at individual, family and societal levels. Psychology covers many highly specialised areas, but all psychologists share foundational training in human development and the constructs of healthy functioning. A key goal of the APS is to actively contribute psychological knowledge for the promotion and enhancement of community wellbeing.

This submission has been developed through the cross-collaboration of two teams at the APS: Psychology in the Public Interest and Professional Practice.

- Psychology in the Public Interest is the section of the APS dedicated to the application and communication of psychological knowledge to enhance community wellbeing and promote equitable and just treatment of all segments of society.
- The Professional Practice team develops guidelines and standards for practitioners, provides support to APS members, and liaises with community groups and other professional organisations whose work may impact upon the psychology profession.

References

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