

Association of Children's Welfare  
Agencies (ACWA)

Response to Royal Commission into  
Institutional Child Sexual Abuse –  
Redress and Civil Litigation Consultation  
Paper

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This submission has been prepared by the Association of Children's Welfare Agencies (ACWA), a peak body that represents the voice of non-government community service organisations delivering services to vulnerable children, young people and their families.

ACWA thanks the Royal Commission into Institutional Child Sexual Abuse (the Commission) for this opportunity to respond to issues raised in regard to redress and civil litigation. ACWA is committed to working with the Commission and other agencies to ensure child safe practices in the child protection and out-of-home care sector and secure the commitment of our member agencies toward this end.

ACWA is responding to this consultation paper using a 3-lens approach to achieve:

- Application of learning achieved through insights provided by adult survivors of child sexual abuse;
- Support for non-government agencies in working with past and current clients;
- Strengthening systems through policy and practice to prevent future abuse.

It is imperative to recognise the systems resistant nature of organisations and individuals in responding to abuse and the need for embedded and enduring systems change. A level of independence is needed within the system and strong expertise to respond to survivors of abuse through redress or civil litigation.

This submission aims to address issues that are pertinent to ACWA's expertise in its role as a peak body and will focus on:

1. The principles for providing redress;
2. Direct personal responses to survivors;
3. Redress processes;
4. Civil litigation and institutional duty of care.

ACWA appreciates that our individual member agencies may provide separate submissions and that there are multiple views in the sector in regard to some of the issues raised. In responding to this paper, ACWA has had particular regard to the information presented and responded to at a Past Providers Forum on redress held at ACWA on 24<sup>th</sup> November 2014, our knowledge of the sector gained through the provision of training to agencies, and ACWA's previous submissions to the Commission in response to Issues Paper 4 'Preventing Sexual Abuse of Children in Out of Home Care' and Issues Paper 7 'Statutory Victims of Crime Compensation Schemes'.

ACWA is committed to working with organisational members to assist in facilitating the aims of a fair and widely accepted redress process. ACWA would also welcome the opportunity to provide further information in regard to this submission or other relevant matters if required.

## 1. General Principles for Providing Redress

ACWA believes an agreed redress process will help to clarify and progress the resolution of past abuse and provide a strong incentive for ensuring future abuse does not occur. We are supportive of the general principles outlined in the discussion paper as well as the criteria for a redress scheme of justice, practicality and affordability.

Providing an equitable response for survivors of abuse needs to inform the decisions relating to the structure of a redress scheme and also issues around access to existing and future services. There are services that have been established, like those referred to in Appendix L of the consultation paper. ACWA agrees that a redress process should strengthen rather than replace existing services available in the community that demonstrate the requisite expertise and suitability for this role. With this approach, access to services needs careful consideration, especially in rural and remote communities. ACWA welcomes the Commission's proposal to use funding to fill service gaps for specific locations or client groups. Through strengthening the support services available in the communities, a redress process would be better placed to meet the long term needs of survivors.

The principle of 'no wrong door' is also important in supporting survivors of abuse to seek redress through support services and a personal response from an institution. This response outlines the training needs to be addressed to assist the practice relating to this principle and a number of ways in which adult survivors can be empowered to inform the service system as one way of ensuring that the response of institutions and services can be informed by the needs of survivors.

## 2. Direct Personal Response

It is argued in this submission that the default position taken by those accused of sexual assault and also of organisations in which such assaults have taken place, is one of denial, minimisation and defensiveness. Developing a position of openness and responsibility may be experienced as counterintuitive by managers and board members unless a higher value is placed on child safety – than on the value placed on defending the reputation of the organisation. This is a strong and reoccurring pattern of denial at a social, organisational and personal level and is illustrated in the historical record of many cultures and over hundreds of years (Herman, 1992). This must be factored into any redress process and strongly suggests the need for an independent expert to facilitate victim/agency contact.

Victims of sexual abuse are frequently chosen because an existing vulnerability, which is likely to be exacerbated by the abuse. Being believed is one of the elements associated with healing and more positive outcomes for victims. Any redress scheme must ensure that a victim is not subject to yet further trauma resulting from partial admissions of responsibility, or un genuine formulaic apologies.

Working with victims of adult and child sexual abuse is an area that requires a high level of expertise most often achieved by post graduate training and supervision as

well as a knowledge of any cultural issues that may be relevant. It is imperative to identify this area of expertise to ensure a standard in response and support to victims. In NSW there are services which have been operating, which have an established professional knowledge base. These services are currently funded by the NSW Health through Sexual Assault Services (SAS) an attached to large hospitals, as well as the Child and Adolescent Sexual Assault Counselling (CASAC) services that exist in the community across NSW funded by the Department of Family and Community Services. Allied mental health services provided through General Practitioner referral and subsidised by Medicare can also provide appropriate access to Social Workers, Counselors and Psychologists for example, who have the appropriate training and experience to undertake the work.<sup>1</sup> It is asserted that these established services are well placed to facilitate the approach by the victim to the agency responsible for the redress.

The consultation paper proposes three elements of redress: a personal response by the institution to the survivor; guaranteed funding when needed for counselling and psychological care; and a money sum which is paid in recognition of the wrong done to the individual.

In terms of the direct personal response by the institution, ACWA acknowledges the need for training and articulated policy and practice within agencies to meet the needs of survivors. The senior member of staff meeting directly with the survivor will require training in the nature and impact of child sexual abuse, the needs of survivors, being responsive to need, cultural awareness and holding empathic, respectful conversations. These senior representatives need to be certified and have a social work background (or similar) and have completed additional training. CCWT, ACWA's training arm, provides courses in a range of formats to the child and family welfare sector. These are areas in which support could be provided by CCWT to the sector in NSW.

However, we also stress that before this approach can be effective in responding sensitively and respectfully to survivors, there needs to be recognition that it is likely that there will be vestiges of minimisation and denial of responsibility at an organisational level embedded in the organisational culture. This is similar to the concept of seeking an apology from the perpetrator – a practice that was largely discarded due to the unpredictable outcomes that victims had in these scenarios during the 1980's.

ACWA is concerned that victims may have an expectation that this will be a healing and meaningful interaction and while it has this potential, there is also a high risk that the interaction with organisations will not be helpful and may even be traumatic unless carefully managed. ACWA is concerned about the possible experience of re-traumatisation if the victim approaches the organization that is not equipped to provide an appropriate response.

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<sup>1</sup> For example, Access to Allied Psychological Services (ATAPS) mental health professionals include psychologists, social workers, mental health nurses, occupational therapists and Aboriginal and Torres Strait Islander health workers with specific mental health qualifications. For further information: <http://www.health.gov.au/internet/main/publishing.nsf/Content/mental-boimhc-ataps>

ACWA proposes the following measures to support survivors who choose to interact with the institution:

1. Firstly, an independent third party (for example a sexual assault counsellor part of SAS or CASAC services) to make contact with the organisation and assess the readiness organisation to speak with their client; to support their client at the meeting and either to witness or facilitate these proceedings. This would provide the necessary steps to ensure that the survivor is treated respectfully and that the organisation is recognised as having responded appropriately to the survivor. A specialist counsellor who knows the victim would be in an appropriate position to take on this role.
2. Secondly, there is also a role for victims to become empowered and to provide advice and training to organisations. This element of training would assist in challenging the minimisation of responsibility that will inevitably return after agencies feel that they have 'fixed' their systems.

In addition to the minimum response set out by the Consultation Paper, institutions would need to develop a clear policy outlining what they are willing and able to provide in a direct personal response while remaining flexible to individual needs. The consultation paper cites a number of services already provided by some institutions, including family tracing services and memorials. It is important to note that these areas of support provided by the institution would have further implications for the practice of staff involved in this type of service provision, especially if it is provided directly by the institution itself.

Another key aspect of the personal response is providing reassurance that preventative measures are in place within the agency. This is an area that requires reflection and self-assessment from within institutions. This process will already have been instigated for some institutions through the work of the Commission.

As a peak body for child welfare agencies ACWA is undertaking a number of measures to enhance it's agencies managment of risk: New courses are being run by ACWA's training arm, CCWT, in *Handling Serious Child Protection Allegations*; ACWA Members have been encouraged to ensure a greater involvement of Board Members in the organisations governance issues; collaboarative work with the Office of the Children's Guardian on the Carers Register has been occurring.

While ACWA anticipates that these initiatives will provide propulsion toward achieving safer organisations for children and young people, cultural change will, require an ongoing processes at a number of levels. Change needs to occur at the level of direct practice, organisaional and sector level. One way to support this work would be for organisations to have a care leaver who had been the victim of sexual abuse to provide insight into staff training and policy development or/and in a consultancy position to assist organisations to maintain a child safe focus.

### 3. Redress Processes: Structural Issues and Financial Considerations

This section of the response looks at a number of individual options put forward in the consultation paper under chapters 2 to 9.

#### *3.1 Possible structures for redress (Chapter 2)*

The importance of consistency and equity in the redress experienced by victims needs to be considered if institutional schemes are proposed as the preferred method of redress. The consultation paper raises the structural issues posed by institutions that are no longer in existence and the range of redress schemes currently in place. ACWA is concerned that a redress scheme that rests entirely on individual institutions and agencies to coordinate may not ensure consistency and equal treatment. This arrangement could lead to confusion, delays and possible inequities for those seeking redress and unwieldy for the agencies involved.

ACWA supports the principles underpinning the independence of the redress process from the institutions involved, and if necessary, an independent entity to coordinate this either as an interim measure or in the event that a unified national system implemented by government is not supported.

The high levels of trauma suffered by survivors makes it incumbent on all involved to be responsive to the individual's needs wherever possible and ensure the safety of survivors accessing a redress scheme rather than unnecessarily re-traumatising them. In line with this is an independent entity that would also assist in coordinating redress if more than one institution is involved and again contribute to limiting the potential trauma for survivors.

#### *3.2 Counselling and psychological care (Chapter 5)*

It is crucial that measures are implemented to ensure that professionals are appropriately trained, experienced and clinically supervised. This is not work for new graduates and identified professionals should have a strong understanding of the dynamics of abuse, the systems in which it was able to occur, as well as its impact on child and adult development. Multidisciplinary teams are ideal environments for high quality work and are often characterised by membership of social workers, psychologists and health professionals.

It is also important to consider the findings of the recent report released by the Commission, *Scoping Review: Evaluations of out-of-home care practice elements that aim to prevent child sexual abuse* (2014), particularly in regard to child-child sexual abuse and the implications this has for any future redress schemes as well as policy and practice in regard to the identification, placement and ongoing treatment and therapeutic care of children and young people, especially those exhibiting sexually 'acting-out' behaviours.

Child perpetrators pose a risk to other children and require specialist knowledge and management. The issue of child-child sexual abuse requires that, regardless of the

form of redress scheme and the support services attached to this, consideration should be given to the provision of specialist counselling in the case of child-child sexual abuse, especially if the scheme will include current and future cases.

Effective intervention and treatment of young offenders and survivors is crucial as a preventative measure in regard to the continuation of child sexual abuse in out-of-home and residential care for children and young people. It will also ensure that the impacts of such abuse are minimised as far as possible (Staiger, 2005).

In addition, it is imperative to ensure there are pathways for family members of survivors of child sexual abuse as it is highly likely that these issues can create intergenerational trauma and dysfunction (Cwik, M. S. 1996 & Remer, R, 1995).

### *3.3 Payment by instalments (Chapter 6)*

ACWA is aware that some care leavers receiving compensation through Victims of Crime have found it difficult to manage large sums of money: the option of payment by instalments could assist in addressing this issue. It may also be worthwhile to consider the provision of complimentary financial counselling as part of the range of support services offered to those receiving redress payments.

Financial counselling could be offered through existing services and would contribute to survivor's sense of agency. Financial counselling could explore the possibilities of a full redress payment toward making significant purchases such as a deposit on a home. This would assist to provide a substantial long-term benefit to the person receiving the redress payment. Financial counselling could also assist with ongoing life skills beyond the immediate concern regarding redress payments.

Alternatively, a funding arrangement such as the NDIS model, where case management including financial management assistance would identify with the client their primary needs and where financial compensation could best assist them in meeting their needs, may be beneficial. This would potentially protect vulnerable people from being exploited by others when they receive a compensation payment, whether this is in a lump sum or in instalments.

### *3.4 Approaches to funding redress (Chapter 8)*

ACWA agrees with the proposition that government's have a duty and accountability beyond that of their obligation to provide redress for incidents that occurred in government-run institutions, on the basis of governmental social, regulatory and guardianship responsibilities.

While a state based national system may more directly target the governments with such responsibilities, it is important to consider the many variables across the country for redress to achieve the aim of promoting healing and recovery for survivors.

In terms of fee for service arrangements, ACWA would urge consideration of ensuring such fees are fairly administered and within the means of the institutions involved. If the fees are beyond the means of institutions additional funding must be available through 'funders of last resort' contributions to avoid some survivors being denied fair and equitable redress.

### *3.5 Interim arrangements (Chapter 9)*

ACWA acknowledges the length of time that a national scheme could take to establish. In this case ACWA supports the proposal for the Commission to provide interim guidelines for those agencies seeking to expedite redress and/or compensation payments.

In liaising with individual organisations it is important for principles to be established around the claimant's rights, as some organisations have previously required an agreement from the claimant about confidentiality prior to payment of compensation.

## 4. Civil litigation and institutional duty of care

This section of the response will look at the options put forward in Chapter 10 of the consultation paper.

### *4.1 Limitations periods*

ACWA generally supports reforming the statute of limitation periods in order to provide retrospectively as many survivors take many years before they feel ready to disclose their abuse. In addition there have been many barriers to making disclosure or seeking redress in the past. It would be counterproductive to insist that current limitations should apply to those that have come forward and give evidence to the Commission.

Maintaining current limitations could greatly undermine the trust of those survivors who have come forward and in effect re-traumatise these individuals. It would also be unfair to divide responsibility between institutions based on when the abuse occurred before or after an arbitrary date that has little significance to survivor's experience of that abuse.

### *4.2 Duty of institutions*

It is important to consider both the moral and legal responsibilities of institutions where abuse has taken place. As well as a duty to uphold the law, agencies working with children, young and their families have a moral responsibility to prevent abuse of children in their care.

ACWA notes with interest the options for reform in the consultation paper in regard to the duty of an institution to prove that it took reasonable precautions to prevent abuse. Where institutions have failed to demonstrate prioritisation of children and young people's welfare, the consequences of this should be a financial impost. The principle of proportionality could be used to guide decisions relating to quantum of the financial impost. Where agencies have knowingly taken steps to obfuscate children's attempts to make their abuse known, minimise their own responsibility, hidden systemic abuse of children, or repeatedly allowed children in their care to be

sexually abused by not removing serial perpetrators, there will inevitably be greater damage done and to a great number of children. So too should the impost be greater.

Institutions that have failed to prioritise children's welfare and safety could be required to show cause to both the public and their funding bodies as to why they should be entrusted with providing services to children and young people in the future. The onus is on these institutions to clearly demonstrate how they will restructure their governance, and practices so as to prevent future abuse as well as demonstrating a commitment to their moral responsibility to those who were abused whilst in their care.

#### *4.3 Principles for handling civil litigation in relation to child sexual abuse claims*

ACWA commends the introduction of the *NSW Guiding Principles for Government Agencies Responding to Civil Claims for Child Sexual Abuse* last year and is supportive of the development and introduction of similar but specifically relevant and appropriate guidelines for non-government institutions and agencies.

Principles for handling civil litigation in relation to child sexual abuse claims need to respond to the needs of institutions to fulfil their mission in keeping children safe, carry out promptly the required investigations, prioritise the need to keep children safe over the financial interests of the organisation. Also, ACWA supports the position that agencies should not employ the principle used in *Catholic Church V's Ellis, Trustees of the Roman Catholic Church for the Archdiocese of Sydney v Ellis* that an unincorporated body cannot be sued.

### Recommendations

- An independent third party is identified to witness and facilitate contact between survivors and institutions in relation to any direct personal response, if it is wanted by the survivor.
- Specific roles be created for survivors of child sexual abuse to provide advice and training to organisations to assist in the development of policies and practices that respond to the individual needs of survivors.
- Self-assessment within institutions and the sector more widely, is prioritised as a mechanism for reflection on policy and practice, to assist in minimising the risk of future abuse.
- Financial counselling or NDIS funding model be offered as an option to those who receive financial redress, provided through existing services.
- Professionals providing counseling and psychological support for survivors are appropriately trained, experienced and clinically supervised.
- Counselling services be expanded to include service delivery to family members of child sexual abuse survivors.
- Ongoing treatment, counselling and support in the case of child-child sexual abuse also be made a priority area of focus to prevent and manage future abuse.
- Those institutions that have failed to demonstrate prioritisation of children and young people's welfare, take on a proportional financial burden that reflects the greater harm caused to victims and to the greater number of victims impacted.

- Common principles for handling civil litigation in relation to child sexual abuse claims should be developed and adopted by government and non-government institutions.

## References

ACWA Submission to Issues Paper 4 'Preventing Sexual Abuse of Children in Out of Home Care'.

ACWA Submission to Issues Paper 7 'Statutory Victims of Crime Compensation Schemes'.

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