



AASW

**Australian Association
of Social Workers**

*Submission to the Royal
Commission into Institutional
Responses to Child Sexual Abuse
Response to Issues Paper 6: Redress Schemes*

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Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 7500 social workers throughout Australia.

We set the benchmark for professional education and practice in social work and have a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians.

The social work profession

Social work is the profession committed to the pursuit of social justice, the enhancement of the quality of life, and the development of the full potential of each individual, group and community in society.

Principles of social justice, human rights, collective responsibility and respect for diversities are central to the profession of social work and are underpinned by theories of social work, social sciences, humanities and indigenous knowledge.

Social workers work with individuals, families, groups and communities. Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and how they impact on a client's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as system or structural issues) that may impact on wellbeing such as inequality, injustice and discrimination.

Our submission

The Australian Association of Social Workers makes this submission to Royal Commission into Institutional Child Sexual Abuse in response to Issues Paper 6: Redress Schemes.

The AASW welcomes the opportunity to comment on this important issue.

The social work profession is underpinned by values of respect for persons, social justice and professional integrity. Accordingly, this submission focuses on how redress schemes:

- Uphold and attend to the rights and dignity of victim / survivors and others impacted by institutional abuse
- Reflect a fair process that achieves justice
- Is ethical, accountable and of a high quality

Responses

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?

1.1 Advantages

- 1.1.1 Institutional redress schemes are important for those who may be unable to access civil litigation processes due to the statute of limitations for bringing a civil case.
- 1.1.2 Some claimants may feel more comfortable with a redress process rather than a civil litigation process; the latter may be more confronting and the capacity for re-traumatisation may be greater.
- 1.1.3 The burden of proof may be lesser in the institutional context, which in some cases may mean that redress schemes may provide more opportunity for healing.
- 1.1.4 Redress schemes may be more equitable when compared with civil litigation insofar as claimants may not have access to adequate legal support in the civil system.

1.2 Disadvantages

1.2.1 Inconsistency

While it is reasonable to expect that redress schemes may differ insofar as they reflect the specific context and nature of the Institution in which they occur, the AASW believes that redress schemes of this kind have the capacity to be inconsistent in a more fundamental manner, which may impact the experience and outcomes for claimants. Specifically, the AASW is aware that Institutions will differ in terms of their resources and may be limited financially, geographically or in terms of staffing and support capacity. This may result in inconsistencies in:

- The support that an Institution is able to provide to claimants. Support is critical insofar as ensuring the process minimises re-traumatisation and is managed to best practice standards and with efficiency.
- The redress options that an Institution may provide. For example, some Institutions may have significant capacity to fund counselling or provide ex gratia payments, while others may have little or no capacity.

1.2.2 Possibility for less transparency and contribution to the public interest

The AASW believes private, institutionally-based redress schemes are more challenging in terms of ensuring they operate according to principles of natural justice. As previously submitted to the Commission, we believe this is demonstrated through redress schemes such as Towards Healing¹. Specifically, it may be more difficult to guarantee claimants that conflicts of interest will be appropriately managed; bias is acknowledged and addressed; and, that any claim is dealt with in a fair manner. The AASW has previously outlined the principles of natural justice and how these might be implemented in a former submission to the Royal Commission².

Further, the AASW believes that opportunities to contribute to the public interest are limited where redress schemes are not open to public scrutiny.

¹ Australian Association of Social Workers 2013a, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues Paper 2: Towards Healing, <http://www.aasw.asn.au/social-policy-advocacy/date/2013>

² Ibid

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?

2.1 Features that make redress schemes more effective

A recent report by the Australian Institute of Family Studies³ on sexual assault victim/survivor-focused justice provides a useful overview of policies and practices that may better support victim/survivors pursuing redress. Though the report focuses on the criminal justice system, some of the themes of the report are relevant to redress processes more generally. The AASW draws the Commission's attention to the following factors that have been identified by victim / survivors of sexual assault as effective in responding to their abuse:

2.1.1 Guiding principles

Natural justice

The AASW believes that redress schemes should be guided by principles of natural justice. This means observing the rule against bias and the right to a fair hearing. The rule against bias requires due attention to any conflict of interest and ensuring that those involved in the redress process are impartial. The right to a fair hearing means providing meaningful opportunities for all individuals to 'have their say', have their evidence heard and considered and the right to appeal. Further, natural justice involves an obligation to manage the confidentiality of information shared during the redress process. Finally, the principles of natural justice support the need for an appeals process.

Justice for victim/survivors

Bluett-Boyd and Fileborn⁴ outline literature on the needs of victims/survivors seeking redress. We believe these suggest some fundamental principle for redress processes. These include:

- Validation; the need to be believed and taken seriously
- Voice; the need to share their experience and the impact this has had on them
- Control; the need for some level of control over the redress process
- Information; the need for information that allows potential claimants to fully understand and prepare for the redress process. The AASW suggests this should include: all possible outcomes; all available options; timelines; and, support offered.
- Safety; the need for potential and actual harms of the redress process itself to be identified and processes and practices in place to prevent and respond to harm in a timely and appropriate manner.

2.1.2 Definitional and procedural clarity

Information on redress policies, procedures, roles and responsibilities should be published and made publicly available in language that is clear, concise and accessible. Key terms should be clearly defined and an avenue made available for answering administrative questions.

³ Bluett-Boyd, N & Fileborn, B 2014, Victim/ Survivor-focused justice responses and reforms to criminal justice practice: Implementation, current practice and future directions, accessed May 2014, <http://www.aifs.gov.au/institute/pubs/resreport27/index.html>

⁴ Ibid

2.1.3 Attendance to the needs of the specific claimant

Justice and redress expectations and needs may vary among claimants⁵, therefore the AASW recommends that redress schemes are more effective where they are able to identify and account for the stated needs of the victim in determining the best process and possible outcomes.

2.1.4 Skilled, qualified and experienced staff handling complaints

As previously submitted to the Commission⁶, the AASW suggests that it is critically important for personnel engaged in redress schemes to be skilled and professional. They should be 'chosen for that function and be fully trained in the work of the agency and in exemplary complaint handling practices'⁷.

Literature on best practice in complaints management suggests that complaints staff need to be warm, analytical, unbiased, astute, firm, resilient and decisive. In addition the Commonwealth Ombudsman⁸ recognises that complaints on 'specific topics... such as sexual harassment ...require specialist skills that many complaints handlers do not have'. The AASW believes the specialist knowledge required for personnel engaged in a redress process includes:

- Knowledge and awareness of contemporary definitions of all forms of abuse
- Knowledge and understanding of the traumatic impacts of sexual, physical and emotional abuse
- Capacity to identify signs of trauma
- Knowledge and understanding of strategies to avoid re-traumatisation
- Awareness of support structures and expertise appropriate to adequately supporting victims of sexual abuse through the redress process and in dealing with the impacts of disclosure

The AASW recommends regular supervision and mentoring of individuals engaged to implement redress schemes. The AASW suggests that depending on the nature of the role undertaken a range of supervision approaches may be appropriate. This might include, for example, clinical as well as administrative supervision.

2.1.5 Independent support for claimants

Claimants should have access to independent support, such as independent counselling and advocacy.

2.1.6 Timeliness

Effective redress schemes should identify and observe reasonable timelines.

2.1.7 Processes for prioritising claims

The AASW recommends that claims are addressed in the order they are received unless there are extenuating circumstances, such as serious illness of the claimant or respondent. The AASW recommends that there is a clear and transparent policy and procedure in place for prioritising and responding to applications under a redress scheme.

⁵ Bluett-Boyd, N & Fileborn, B 2014, p. 19

⁶ Australian Association of Social Workers 2013a, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse in response to Issues Paper 2: Towards Healing, <http://www.aasw.asn.au/social-policy-advocacy/date/2013>

⁷ Commonwealth Ombudsman 2009, *Better Practice Guide to Complaint Handling*, Accessed 29 August 2013 from <http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf>

⁸ Ibid, p. 18

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?

3.1 Forms of redress that should be offered

The following points list some of the possible options for redress. The AASW believes it is important that redress schemes acknowledge that claimants may want very different things from a redress process; for some an apology may mean everything and for others, it may mean very little. We believe therefore the redress schemes should provide a range of options; provide claimants with adequate time, information and support to determine what they might want to get from the redress process; and be willing to be flexible to meet the changing needs of claimants over time.

This requires that institutions have an adequate understanding of the nature of trauma and healing as discussed in 2.1.4 above.

The following recommendations are based on AASW member feedback and the findings of a recent Australian research report on victim / survivor justice⁹.

3.1.1 Official acknowledgement of wrongdoing and harm

A formal verbal and written apology, which is accompanied by acknowledgement of the applicants' complaint and experience, may be valuable for some claimants. The acknowledgment of suffering and consequences of the abuse may assist validating the claimants' experience. Further, AASW members advise that these can be used to share with close others to assist them in understanding the experience and impacts on the victim.

3.1.2 Perpetrators identified and made accountable for their actions

3.1.3 Support to address impacts on mental health and wellbeing

This will most obviously include counselling but may also include ex gratia payments to assist in covering costs associated with accessing independent professional / medical supports and supplies such as medication or reimbursement for travel expenses.

3.1.4 Community and societal responses to sexual abuse

This might include, for example, supporting or promoting education on the harm of sexual abuse and the provision of resources and support for victims; public recognition of sexual abuse as a serious issue and the establishment of prevention mechanisms. The AASW has previously provided a detailed submission to the Commission on the topic of creating child safe institutions¹⁰.

3.2 Group benefits

3.2.1 The AASW believes that group benefits should be made available to all individuals in a specific institutional context when it becomes apparent that abuse was widespread.

3.3 Balance between individual and group redress

3.3.1 The AASW believes that matters should become group matters when it becomes apparent that more than one individual has made a claim of abuse about the same institutional context or setting.

⁹ Bluett-Boyd, N & Fileborn, B 2014

¹⁰ Australian Association of Social Workers 2013b, Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse Response to Issues Paper 3: Child Safe Organisations, <http://www.aasw.asn.au/social-policy-advocacy/date/2013>

Further, the AASW believes the institution has an obligation to be proactive and find other potential victims of the abuse. Clearly, it must not be assumed that other victims of abuse will want to participate in a redress process, but the AASW recommends that relevant individuals are informed that abuse has been reported, and that there is support and redress processes available to those who may have similarly suffered. The AASW recommends that in this instance, the institution, rather the claimants, take the initiative to establish the matter as a group matter and assign group benefits accordingly.

3.4 Other considerations

3.4.1 Redress in the absence of records

The AASW is aware that some applications for redress may be made to institutions that no longer hold or have access to records that could be used to verify or evidence an individual's claim. The AASW recommends that in this instance that it is assumed the claimant is telling the truth, and the individual be appropriately supported through a meaningful redress process.

3.4.2 Redress in the absence of the Institution

The AASW understands that there may be instances where the institution responsible for the abuse no longer exists. The AASW recommends that where State or Territory governments had oversight of the institution at the time of the abuse, that a redress process is offered through the relevant government department.

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?

4.1 Advantages of a national redress scheme

The AASW believes a national redress scheme could be beneficial in terms of providing consistency in terms of:

- the redress process,
- options for redress and support, and
- possible outcomes, such as parity in ex gratia payments.

Further the AASW believes an independent national body will provide an excellent opportunity to:

- manage conflicts of interest that can arise in institutional redress schemes
- provide a national picture of the incidence and responses to institutional child sexual abuse
- serve an important public interest in terms of raising awareness about incidences of abuse as well as holding institutions to account for their role in any abuse.

4.2 Disadvantages of a national redress scheme

The AASW believes the major barriers to a national redress scheme include securing adequate and ongoing funding and resources.

4.3 Government involvement in a national scheme

The AASW believes that government should have oversight of the administration of a national redress scheme but that any national scheme should have legislated independent power in terms of decision-making in relation to claims and cases similar to some Commissions and Ombudsman.

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?**

The AASW believes that the Institution should have responsibility for administering the process; that is:

- establishing the policies and procedures;
- training and ensuring relevant staff have the knowledge and skill necessary;
- facilitating correspondence with and between involved parties;
- providing the context and resources for meetings or hearings to take place; and
- ensuring that persons involved in the process have the necessary skill and knowledge to undertake their role.

However, the AASW believes that investigations of abuse and decision-making with regard to findings and the redress offered should be made independently. This might include, for example, decision making by a panel of independent experts engaged by the Institution.

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

Mandatory

The AASW recommends that in the absence of an independent body, such as a national redress scheme, all institutions should have redress schemes.

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?**

Redress schemes should be optional

The AASW believes participating in a redress scheme should absolutely be optional for claimants. Claimants should have control over when and if they pursue a redress option. Further, if a potential claimant declines an invitation to participate in a redress process, such as a specific group action, this should never preclude them from pursuing redress at a later stage. This flexibility recognises that people who have experienced such significant trauma need to maintain control of their healing journey and that the decision to pursue or take any action must remain with them.

- 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?**

No response.

- 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?**

No response.

- 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?**

10.1 Burden of proof

The AASW recommends that the balance of probability apply to matters addressed through redress schemes.

The AASW believes that redress schemes should operate on the premise that victims of abuse do not lie. In the case of absent or destroyed records, or where the respondent is no longer alive, the AASW recommends that the claim is taken to be true. The burden of proof in this instance might include establishing that the claimant was in or involved in the institution at the time; that the respondent was there at that time; and, then assessed on the basis of their report on the matter.

10.2 Verifying or contesting claims for compensation

Institutions can assist in verifying or contesting claims by:

- providing access to all relevant records. This may include, for example, case files and human resource records. Institutions should also assist with contacting respondents.
- Providing resources to support the investigative process. This might include funding for an independent investigator to conduct interviews or undertake a review of relevant records.


- 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?**

No response.

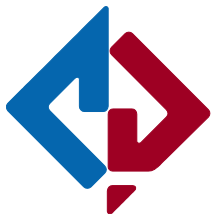
12. If a claimant has already received some financial compensation for the abuse through one or more existing schemes or other processes, should the financial compensation already received be taken into account in any new scheme?

No response.

Submitted for and on behalf of the Australian Association of Social Workers Ltd



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