

Response to the Royal Commission  
Into Institutional Responses to Child Sexual Abuse  
**Issues Paper 6 – Redress Schemes**  
By  
Lutheran Church of Australia

**Background:**

The Lutheran Church of Australia has a presence in all states and territories. The church is divided into five ‘districts’: Western Australia, South Australia/Northern Territory, Victoria/Tasmania, New South Wales/Australian Capital Territory and Queensland. There is a Bishop of the Church and a Bishop in each District.

**Introduction**

The Lutheran Church has provided out of home care for children in the past in institutions and in foster care. Currently, there is a foster care program that is run by Lutheran Community Care in South Australia. The Lutheran Church has programs for children and young people in most congregations.

Camps are run for young people on a regular basis.

As we contemplate the notion of redress schemes as one way of acknowledging and rectifying some of the pain and distress caused by sexual abuse in institutions, we recognise the many people who have been affected by abuse in situations where redress and compensation schemes do not exist or where there are no formal structures in place to facilitate the path to healing.

We also acknowledge that sexual abuse – indeed all forms of abuse – can cause lifelong hurt. The offer or provision of redress is a tangible expression that people have been hurt. Redress is provided so that those who have been hurt may have that hurt acknowledged and receive some recompense for that as well as having access to care and actions that may provide some healing.

The path to healing differs for each person, and each person has the right to determine whether or not they accept what is offered from the institution.

An underlying principle of this response is that the needs of victims must be paramount at all times.

It will also be important that the design of any redress scheme recognises that it will be material not to just past events, but those that are yet to occur in our society.

**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?**

Redress schemes offer means other than money to remedy or compensate victims of abuse. It is important that those who have experienced abuse have some control over what happens once they have told their story. Many would like an assurance that others do not have to go through

what they have experienced. For others there is healing in receiving an apology from the institution that was responsible for the abuse. It can also assist people to be able to tell their story to those in authority in the institution.

The payment of money without other responses being available reduces the notion of redress to a financial transaction devoid of engagement at an emotional and spiritual level. It takes away the acknowledgement of the loss of trust and the abuse of power that can result from a person experiencing abuse. For a person to experience healing, they need to address the hurts that have occurred and this should involve the responsible body in whatever way is appropriate for the person involved.

Redress schemes offer a process for recognising and addressing the hurts that those who have suffered child sexual abuse in institutions have experienced. They provide a variety of options for claimants who have experienced abuse in institutions.

As a process, a redress scheme is not necessarily seen by claimants as providing justice. In our society there are redress schemes for claiming damages in time of natural disasters of fire or flood – complete the forms and mechanisms of redress are enacted. A risk of redress schemes is that the emphasis is on the process, not the claimant.

By its very nature, a redress scheme operates within a non-evidentiary environment. It is only through the civil litigation process that a claimant is able to submit evidence for examination by a jury and for the redress to be specific to their circumstances. Litigation is the means by which an individual voice may be heard and a claimant “has their day in court”.

A redress scheme will inherently involve compromise.

## **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?**

It is important that redress schemes acknowledge the culture of the institution that needs to make amends. For example, a redress scheme that is for the benefit of people who have been abused within a church institution needs the capacity for the church to be able to make available appropriate rites, not to vindicate the actions of those who have broken trust or misused power, but as an option to be used should that be meaningful and beneficial to the claimant. They allow for choices and options other than monetary compensation to be available, and they also allow for representatives of institutions to hear from those who have been hurt, and to apologise on behalf of the institution to those who have been wronged.

Redress schemes may mean that claimants have to return to an institution/place where they have been seriously hurt. This can be traumatic for them.

For institutions, one of the difficulties is being seen as responsible for actions that are anathema to what the institution stands for. If abusive behavior is systemic, it takes a very brave person to speak out about it, and it poses a risk for the claimant. Such behavior poses a risk to institutions as if they lose their good name, they may be unable to function into the future. One could question whether this is a good outcome or not a good outcome!

The challenge for institutions is that their behaviour and actions into the future reflect what is being said and enacted as part of the restitution. One only has to look at the apology that was offered to indigenous Australians and the promises that were made at that time which have not been fulfilled to see how the value of that apology has diminished over time.

Any redress scheme cannot be mandatory. A Claimant must always have the option to bring a civil action against the institution. Likewise, the institution may, if it deems appropriate, bring a civil action against the Claimant. It is important that no scheme contracts away a person's rights under the law.

**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?**

There are a number of forms of redress that can be offered including:

- An apology from the institutional leader
- Offer of counselling, which is provided by someone independent of the institution
- Offer of spiritual care/pastoral care, which is provided by someone independent of the institution
- Mediation between the claimant and the perpetrator
- Monetary compensation
- If a significant number of people were victims of the behaviour, a group response could be offered. This would need to be mediated through a neutral party.
- The opportunity for a rite of reconciliation between those who have been abused and the institution.

Group redress needs to be managed by a skilled professional so that the trauma is not compounded. Those who have experienced group abuse will have experienced great losses, and may have difficulty trusting institutions. This needs to be managed sensitively and the anger and sadness addressed and resolved if at all possible. Sometimes being part of a group can validate what an individual has experienced and assist with the process of transcending the sadness and hurt and vindicating the emotions that may have ruled that person's life.

The telling of the story and validation of that story of someone who has been abused is part of the healing process.

If abuse was widespread through an institution, payment should only be made where there is a reasonable probability that a person was abused. Those who attended or lived in such an institution may have been aware of the abuse or had siblings who were abused, but they may not have been abused themselves. Those in such a situation may well be entitled to counselling and/or spiritual care, but it could be argued that they are not entitled to monetary compensation.

The experience of the Lutheran Church in Australia to date is that the monetary settlements of claims has been based on the nature of the injury and causation – the impact of the abuse on the claimant's life and future on-going requirements. This would require any claim for monetary compensation to be supported by medical and other evidence so that impact can be duly assessed. It also means that there is often quite a long time-frame between when the injury occurred and the impact thereof is known and can be quantified.

**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?**

A national scheme would ensure that there is consistency and fairness in dealing with these matters. It would ensure that trained professionals are available to undertake the process, and it could be easier for people who have been abused to approach a neutral authority.

The scheme should cover all institutions – government, churches, sporting clubs, scouts and guides – any institution where children have been or could have been sexually abused. It should not be limited to residential institutions.

The funding of such a scheme is a contentious issue. It could be based on the occurrence of abuse within the institution. Guidelines and legislation are required to ensure that it is set up in a fair and equitable manner.

Care needs to be taken in the design of any redress scheme that there is some equity between those claiming against an institution and those who experience abuse outside of the institutional framework. There is the risk that discrimination is built into the scheme creating a different set of rights for individuals based on the source of the abuse.

**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?**

We are aware that the fact that our Safe Place Policy (the complaint process for those who have experienced sexual abuse and harassment within the church) is run from within the church's Professional Standards Office. One of the challenges for those who activate the Policy is they can feel concerned that whoever investigates their claim will be known to them or even one of their relatives. This is the case in other smaller churches.

An independent body could provide more of an assurance that a complaint will be dealt with in a confidential way and that procedural fairness will not be waylaid by filial piety. It may give more people confidence to speak out about abuse that they have suffered in the past.

External oversight could provide further evidence to those who have suffered abuse that an institution is sincere in its efforts to provide redress.

An option that could be considered is for the external oversight to include an appeals mechanism that a claimant could access if he/she is not satisfied with the manner in which their claim is being addressed by the institution.

Another possible function for an external oversight body is to receive the settlement agreements between the institution and the claimant to ensure minimum guidelines have been complied with (refer to comments under Question 8).

There are issues that would need to be resolved about how such an external oversight body with these responsibilities would operate, including how and by whom it would be funded and resourced.

At all times though, any Claimant must be informed of their legal rights and to seek the advice they require so that they make the decisions that are right for their circumstances and needs.

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

Institutions should have no choice but to participate in redress schemes. The establishment of such a scheme may be beyond the area of expertise of some institutions – particularly those that are run largely by volunteers. Hence the notion of a national scheme has some merit.

However, care needs to be taken that the rights of the institution to seek redress through litigation must always be available to them when circumstances demand. There may be instances where there are vexatious litigants.

Consideration needs to be given to addressing matters from institutions that no longer exist. An independent scheme could address these and a government safety net may be required if the parent body no longer exists.

**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?**

Seeking redress should be optional for claimants. Claimants have been subjected to abuse of power. To force them to seek redress could appear to them to be a further abuse of power. It is important that claimants can choose what is best for them in the process.

Claimants should have the option to pursue either civil litigation or the redress process – not both.

**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?**

Payment amounts need to be standardised. We note the Irish institutional redress scheme (info available at: <http://www.rirb.ie/default.asp>), which shows that it is possible to establish such guidelines. We note that the Irish scheme is specifically for those who have experienced abuse within a residential system. We are aware that abuse can occur in other than residential settings – eg youth camps, Sunday School outings, non-boarding schools – and would suggest that any redress scheme should take this into account.

If an institution has ceased to operate, a government funded safety net may need to provide for redress.

**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?**

Standardised payments provide an equitable option. Such standardised options may need to take into account the degree of abuse which has occurred. We suggest that victims be involved in developing the standard payments.

If the needs and rights of victims are viewed as paramount, affordability for institutions should not be taken into account. Of course, this could lead to the demise of an institution if they do not have adequate resources. This is one reason that options other than cash payments need to be offered to victims.

**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?**

All available information needs to be explored to verify the likelihood of the abuse occurring, which satisfies a test of “on balance of the evidence” rather than the stronger “beyond all reasonable doubt”. This includes providing proof that the person was in fact in the institution when the alleged abuse occurred, and also verifying that the alleged perpetrator was in fact part of the institution at the time. Institutions should be required to provide such proof. Robust

record keeping systems are needed, but are not always in place. Where records are sketchy, every effort should be made to verify what the claimant is saying.

**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?**

Counselling and legal advice should be available to ensure that claimants maximise their chance for a fair outcome for their complaint.

**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?**

We believe that previous compensation should be taken into account in any new scheme.

**Conclusion**

Thank you for the opportunity to contribute to this discussion.

Should you require further information from us, please contact the Executive Officer, Peter Schirmer by email on [peter.schirmer@lca.org.au](mailto:peter.schirmer@lca.org.au) or by phone on 0409 156 346

Submitted on behalf of the Lutheran Church of Australia

A handwritten signature in black ink, appearing to read 'P Schirmer', with a long horizontal flourish extending to the right.

Peter Schirmer  
Executive Officer of the Church