

**Response to
Consultation Paper: Redress and civil litigation**

For the
Royal Commission into Institutional Responses to Child Sexual Abuse

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Prepared by

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with
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“I hope that I speak for all victims when I ask the Royal Commission to help our Justice system become the armour that protects the lives of our children’s future. To be the salve that eases the incredible pain that past, present and future generations may need to endure from having experienced these uninvited torturous acts.”

John Saunders, March, 2015

INTRODUCTION

This paper has been prepared as a response to the proposed compensation for victims of institutional child sexual abuse. The aim of this response is to highlight several problems with the redress proposal. It also sets out to provide information and suggestions about how the issue of appropriate compensation might be tackled.

Due to time restrictions it is not possible here to address the positive aspects of the report, but I would like to acknowledge that I agree with a number of points and congratulate the Royal Commission on proposing a trust fund, and for understanding that victims need access to therapy throughout their lifetimes.

Before addressing the issues, I would like it noted that I found it frustrating that victims of institutional child sexual abuse that the Royal Commission only allowed five weeks to prepare a response to the 300 page 'Redress and Civil Litigation' document. We victims receive no funding, and no research or legal aid to help us prepare our responses. There would be thousands of victims that would not even attempt to respond to this paper, as its sheer size would overwhelm many abuse victims who struggle with anxiety disorders, and poor literacy and comprehension skills. An abridged version containing the actual compensation proposal (Chapter 6) would have been more appropriate.

TERMINOLOGIES and TRANSPERANCY

Before I commence with my observations I would like to address the issue of terminology. The United Nations deems child sexual abuse to be **torture**. This is a very important point when we are discussing compensation for abuse victims. Australia needs to stop hiding behind euphemistic terms that serve to diminish the true nature of the abuse. Rape is rape, not 'molestation'. Not 'interfering'. Not just 'inappropriate touching' or 'behaviour'. The forced anal, vaginal or oral penetration of a child can be considered nothing less than torture. The United Nations recognizes this inarguable truth, and so our government and legal system should as well.

"We believe that sexual abuse of children, as committed by many Catholic clerics worldwide, falls under the prohibition of torture or under cruel, inhuman or degrading treatment or punishment".

Child Rights International Network (CRIN), 2014

ISSUE 1: Redress Scheme versus Common Law Damages Unincorporated versus Incorporated

The redress proposal states that this scheme is designed to "make redress available to many survivors who would not be able to bring common law claims" (152). It also states that civil litigation remains possible for those who wish to seek it. As an abuse victim of institution abuse I find these two statements to be problematic. The Catholic Church and a number of other institutions are unincorporated and hold no legal identity so they

cannot be sued. Therefore victims *cannot* embark on civil litigation against the church, because under Australian law the church does not actually exist as an entity. As the Royal Commissions statistics show in section 3.5 'Private Sessions Data' of the redress scheme, the overwhelming majority of abuse cases were committed by faith-based organisations. Therefore, victims of child sexual abuse committed by religious institutions that are not legally recognised are unable to hold the perpetrators accountable because our governing laws do not *demand* accountability. So, the victims only redress with unincorporated institutions is via deeply flawed and emotionally scarring programs such as the "Towards Healing" scheme, which was another way in which the Catholic Church intimidated myself and countless other victims into silence through bullying and standover tactics.

I know the issue of institutions being unincorporated, most notably the Catholic Church, is not new to the Royal Commission, however, it does need to be examined more closely. One of the greatest institutional perpetrators of child sexual abuse has been the Catholic Church. They have been responsible for unfathomable atrocities against children, often leading to benefit-dependence, poverty, criminal activity, mental illness, drug and alcohol addiction, depression, compulsive gambling, intimacy issues, anxiety and suicide. These outcomes of child sexual abuse are not a maybe – every single victim of child sexual abuse suffers in one way or another for the rest of their lives, no matter the degree of the abuse they suffered. So, if the Catholic Church are the main perpetrators and have the greatest history of covering up these atrocities, then should they not be held accountable? Shouldn't the Catholic Church, and other unincorporated institutions be forced, by Australian law, to become incorporated and therefore financially, morally and criminally accountable? Why is there such a glaring loophole in our legal system that allows the churches to make billions of dollars in profit via donations, investments and land deals and not pay tax and yet cannot be sued for *raping, molesting* and *torturing* children? Can you tell me if the Royal Commission is going to make a recommendation for these laws to change? Or is the Royal Commission's redress scheme based on the understanding that the unincorporated status will not be challenged or changed?

The redress scheme does not address the root problem that continues to white-ant any attempts at meaningful and appropriate compensation. It does not hold the perpetrators accountable.

The Royal Commission states "Although the primary responsibility for the sexual abuse of an individual lies with the abuser and the institution of which they were part, we cannot avoid the conclusion that the problems faced by many people who have been abused *are the responsibility of our entire society*" (27). While this may be the case, is this being used to dilute the culpability of the abusive institutions premeditated systemized cover-up?

Reparation, it is argued, is one way of affirming and reinforcing society's fundamental values (Shelton 1999, in REDRESS 2001). According to the 2001 REDRESS report

'Any action a state is required to take in reparation for human rights violations is likely, according to Shelton (1999), to have effects beyond the individual plaintiff. "Remedies for public wrongs must be seen...as serving not only private redress but public policy" (p.52).' (REDRESS 2001: 22)

It is crucial that the Catholic Church and other currently unincorporated institutions are forced to pay for their crimes. The Australian people want to know that the state does not support child rape, and furthermore that it will severely punish the perpetrators and those who cover it up. The Catholic Church, clearly values its wealth above all else, including the wellbeing of children or the teachings of the bible. History has taught us that the church and other institutions do not care about the welfare of abuse victims. They knowingly cover up systemic abuse, and are havens for pedophiles, and our lax implementation of laws allow them to continue to do this. Public condemnation and social moralising do not have any effect on how the Catholic Church and other institutions respond to child sexual abuse. They just don't seem to care.

So, we need to hit them where it hurts – the hip pocket. If the Catholic Church had to pay \$1 million per past, present and future victim and realistic insurance premiums, they would very quickly stop covering up abuse cases, and I am certain they would more readily hand over perpetrators to the police. While our laws *allow* these institutions to avoid civil litigation and to get away with child abuse, they will continue to do so. Any compensation scheme constructed under these laws is placatory and will not do anything to curb or discourage future abuses.

ISSUE 2: Affordability of Redress Scheme

The change from unincorporated to incorporated status would resolve the issue of appropriate compensation being unaffordable to the redress scheme, as discussed on page 152. The Catholic Church (and other incorporated institutions) would be responsible for compensating their own victims. In addition, the millions of dollars in revenue available to the government through taxing churches could be redirected to paying the compensation for institutions that have closed down or are genuinely poor.

The cost of the government annually paying for 'victims of crime' payments and therapy, Medicare, disability pensions, unemployment benefits, addiction rehabilitation, and mental health resources are extremely draining on the public coffers. Would it not make more sense financially to make the perpetrators pay for all expenses that result from the abuse? An appropriate financial settlement, as witnessed in the USA, of approximately \$1million per victim, to be paid by the church, would relieve the financial drain on government / public funds. This long term solution seems far more practical and sustainable than tokenistic payments paid from public taxes via a redress scheme created under current, church-protecting laws.

ISSUE 3: Past and Future Economic Loss

The Royal Commission claims that the redress scheme is not "...intended to provide 'compensation' for past or future economic loss" (p151). Why not? Why is it not applicable to calculate the lifetime of financial insecurity and high unemployment endured by victims of child sexual abuse? Why is it only appropriate in the eyes of the Royal Commission to pay the equivalent of one year's wage to each victim? Can you please clarify this and answer these questions? van Boven's 1993 report on the right to restitution, compensation, and rehabilitation for victims of gross violations of human rights and fundamental freedoms for the United Nations states the following:

“As regards mental pain and anguish, the following was stated: ‘Compensation will be provided for pecuniary losses (*including losses of income and medical expenses*) resulting from mental pain and anguish.’
(van Boven 1993: 42)

If loss of income was deemed appropriate by the United Nations, surely it should be considered in cases of child sexual abuse/ torture? Given that Australia was a founding member of the UN in 1945, one would hope that we would embrace the ideologies and practices endorsed by the UN.

The way I and other victims see it is that from the time an adult in a position of power forced degrading and soul destroying sexual and torturous acts upon us when we could barely tie our shoelaces, we were irreparably damaged. A result of that damage is the inability to meet our full earning potential that other healthy adults enjoy. Therefore, the majority of victims require the assistance of government welfare to live off. So, abuse victims most definitely feel that they should receive payments commensurate with a living allowance over their lifetime, not just a one-off payment that barely makes a dent in our lives. We have to pay for ongoing therapy, medications, private rehabilitation centres, and a myriad of other costs that have not been considered in this report. An abused society is an expensive society, and the abused keep getting punished for being victims. It's a vicious and yet *avoidable* cycle.

The Royal Commission also asserts that it could not afford to assess the 65,000+ cases individually, as would happen if the cases were being dealt with under common law. I do not find the excuse of there being too many claimants to assess individually to be a satisfactory argument. Why should the victims suffer (again) because the institutions never took action when they were first made aware of the perpetrators acts? A 1994 survey of 453 paedophiles, revealed they were collectively responsible for the molestation of over 67,000 children. That's an average of **148** children per individual paedophile. (Abel, 1994 in Braveheart 2012: 3). If the Catholic Church and others didn't premeditate the cover up of thousands of abuse / torture crimes, and didn't place the wealth and reputation of the institution over a child's life, then those statistics would be dramatically lower. Each paedophile should have been reported to police, however sadly this was not the case, and now you are asking victims have to pay the price because you believe that there are too many to process individually? This perspective is skewed, and should be reconsidered by the Royal Commission.

I now draw your attention to Australian War Veterans, whose cases receive individual assessment. At first glance it may not seem a comparable, however, as explained below, child sexual abuse victims and war veterans are not that dissimilar owing to the nature of their trauma.

An academic psychological study found that the Post-Traumatic Stress Disorder (PTSD) symptoms experienced by child sexual abuse victims “...closely paralleled those of the veterans”. More revealing still was that the sexual abuse victims suffered *more* chronic symptoms than Vietnam veterans also suffering from PTSD. The child sexual abuse victims “...were far younger than the veterans at the time of their trauma, they were alone rather than in a group, and they were abused by caretakers. Their abuse typically

lasted longer and it was more likely to have been repressed. Therapy began much later in life for the survivors, and it generally required more time for recovery.” (Cameron 1994: 125, 130).

With these facts in mind, we can begin to compare payments received by Catholic Church abuse victims, and Australian war veterans receiving a Disability Pension such as the TPI for their Post-Traumatic Stress Disorder. TPI recipients currently get \$1,293.20 a fortnight from the time of their diagnosis and benefit approval through to retirement age, when they receive a pension instead. If a soldier is 25 years old when he is seriously injured (mentally or physically) then he would receive a **minimum of \$1,349,454** by the time he reaches retirement age – **22 times more** than what the Catholic Church is paying, or what the Royal Commission is suggesting, for a child sexual abuse victim. It is important to note here that this does not take into that the PTSD for a sexual abuse sufferer occurs approximately 15 years *prior* to a war veterans PTSD.

I strongly assert that institutional child sexual abuse victims should receive a fortnightly payment, to be assessed by an independent / government body, and paid for by the offending institution, for their lifetime. Why should the majority of the financial burden continue to be borne by the citizens of Australia any longer?

ISSUE 4: Comparative Case Studies Used for the Redress Assessment

Before addressing the issue of the case studies used by the Royal Commission to calculate their suggested payments, I would like to again point out the amounts proposed seem to be based on the assumption that the Catholic Church and other religious institutions will not be incorporated and therefore will be paying nominal amounts compared to what they would be liable for if they were incorporated. If incorporated, they would be liable for far greater and more realistic amounts as befits ‘duty of care’ cases under common law. Is this correct? If they did become incorporated then I assume there would be no need to even make comparisons to previous State-based award schemes as they would not be relevant and this conversation would be very different.

If, however, the redress scheme continues to operate under the currently flawed system, as discussed above, then I would like to raise some concerns about the case studies used in the redress proposal. The examples taken from Australia should not be used to set the bar for future payments. They are grossly under what should be considered appropriate or respectful. In fact, they just go to prove just how much sexual abuse and torture is tolerated in Australia by our government and legal system.

The Irish example is put forward as undesirable because of the legalism involved for the victims, even though it provided larger sums of money. The problem I see with using the Australian and Irish models, and pitting them against one another, is that the report makes no room for other alternatives. It also suggests that the Irish amounts are more than adequate, which they are not. It seems Australian victims are being given one of two choices by the Royal Commission, and they aren’t aware that our government can actually offer a third, way more appropriate solution – the incorporation of religious

institutions. I would also like to point out that Australia is the 4th most expensive country in the world to live in, while Ireland is ranked 11th. Surely the redress scheme needs to take into account the cost of living when calculating the payments?

What message does it send to our community when a David Jones employee can receive an \$800,000 payout for sexual harassment, and a victim of institutional child rape is deemed deserving of \$10k-\$200,000 by the Royal Commission?

A more useful and realistic comparison is the United States where the Catholic Church and other institutions have been forced to make just compensation payments. In Boston the Catholic Church were forced to sell off land to the value of \$107.4 million to pay for the child abuse cases (Paulson 2004). In Los Angeles the Catholic Church paid \$60 millionUSD to 45 victims, making each settlement over \$1m per person. These types of payments were made throughout the USA, and the church continued to sell off some of its vast assets to cover the costs. Now *that* is appropriate compensation. In addition, the payments resulted in a reduction of abuse cases being reported, suggesting that the financial burden, and the criminal proceedings against individuals, acted as a very real deterrent against widespread abuse.

It is worth noting here that the USA sits at 24 position of cost of living according to the Price Level Index. That's 20 positions under Australia, and yet their average compensation payment is \$900,000 more per victim than in Australia.

CONCLUSION

The victims of child sexual abuse deserve to be appropriately compensated. The assessment of just compensation should begin with the recognition of harms done and not from the perspective of the competing interests of the very institutions and people who perpetrated these crimes.

Child sexual abuse is torture and should be treated as such, without exception. People are so fearful of opening their eyes to the enormity of the child sexual abuse epidemic in Australia, and they will do anything to make it more palatable and less confronting. That does not help. Use of terms such as torture and rape are honest and need to be used in the media. The Australian government and lawmakers must lead Australia in its support of victims.

Only once we have ascertained what victims of this heinous crime deserve only then can we look at how to ensure we can meet this financial demand. This process should not be undertaken by putting the interests of other parties first.

These acts have gravely affected our country's wellbeing and civility for too long. As a nation we need to heal: let us never forget the truth.

"True forgiveness cannot be granted until the perpetrator has sought and earned it through confession, repentance and restitution."

Judith Lewis Herman

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Judith Lewis Herman 1997 'Trauma & Recovery'

"States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child."

Article 39, UN Convention on the Rights of the Child, 1989