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Royal Commission into Institutional Responses to Child Sexual Abuse
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10 March 2015

To Whom It May Concern,

Response to the Royal Commission Consultation Paper: Redress and Civil Litigation

The Australian Psychological Society (APS) welcomes the opportunity to respond to this consultation paper about redress and civil litigation.

We refer you to our letter dated 2 March 2015 and reiterate our comments generally and in particular, our position regarding the two suggested overarching principles that APS believes should underpin any system of redress or civil litigation. In this regard, the APS supports the rights of victims/survivors of institutional child abuse to seek redress and pursue civil litigation. Recovery and rehabilitation are possible, but systems and processes need to recognise that healing takes time.

In this submission, the APS focuses on the psychological aspects of redress and civil litigation and in particular, where it relates specifically:

- to Chapter 5 - Counselling and Psychological Care **(Attachment 1)**
- to other areas of the paper relevant to psychological health and wellbeing **(Attachment 2).**

The response to Chapter 5 incorporates feedback about the principles for counselling and psychological care, existing services and service gaps, for provision of such care through redress schemes, and the relative

effectiveness and efficiency of the options for service provision and funding in meeting survivors' needs.

We confirm that the APS endorses the three elements identified as constituting an appropriate redress scheme: a direct personal response, counselling and psychological care, and monetary payments. The APS would also welcome the opportunity to comment on the Royal Commission's work arising out of the separate project to investigate the adequacy of our present support services in meeting survivors' needs. The APS understands the report will consider whether recommendations should be made to increase or alter existing support services.

In raising the psychological issues relevant to the process of redress, the APS commends the Commission's attempts to define systems and processes that minimise their impact on victims/survivors and protect them from additional harm. The APS looks forward to future involvement with the Royal Commission with regard to the development and refinement of an effective system for counselling and psychological care that is "just, practical and affordable" (The Hon Justice McClellan, 2015).

For further information please contact the APS on 03 8662 3300.

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.

ATTACHMENT 1:

APS RESPONSE TO CHAPTER 5:

COUNSELLING AND PSYCHOLOGICAL CARE

Introduction

The APS commends the Royal Commission for their broad consultation on the effects on psychological wellbeing of child sexual abuse in institutional contexts, and for the respect shown to survivors in this section of the Consultation Paper.

The APS wishes to acknowledge and support some of the key points made in Chapter 5 in relation to the psychological and mental health needs of survivors, including:

- Many (though not all) survivors will experience psychological issues and mental ill health as a result of their experience.
- Not all survivors will require counselling and psychological care, and those who might benefit from it may choose not to access it. It is not possible to predict who will require access to care or when it might be needed.
- Survivors can experience a range of psychological symptoms over time that may or may not reach a clinically diagnostic threshold; for example, symptoms may include issues related to attachment, trust and guilt that impact on survivors' relationships and their ability to engage with society, as well as significant mental illnesses such as anxiety, depression and complex post-traumatic stress disorder (PTSD). Some survivors will have issues with misuse of substances. Active treatment is still warranted where survivors do not meet diagnosis for conditions such as PTSD or major depression but are nevertheless disabled or distressed by symptoms.
- The need for counselling and psychological care will fluctuate across a survivor's lifespan, with periods of no or low need as well as periods of high need, the latter often but not always triggered by a range of events including key life transitions and life events.
- Survivors will vary in when they are ready to participate in counselling.
- The need for counselling and psychological care amongst survivors may, in some cases, be related to other traumatogenic aspects of institutional care; however, it is not possible to untangle the causal pathways.
- The psychological impact of child sexual abuse can increase over time, particularly if left unaddressed and if there is a proliferation of negative coping strategies such as substance misuse.
- Psychological care for adult and child survivors should be delivered by clinicians experienced in delivering evidence-based, trauma-informed services to clients with a history of complex trauma. This is important to avoid inadvertently fostering further lack of trust in the 'system' and potentially re-traumatising survivors.
- Given the need for survivors to feel in control of the counselling process, it is important to provide them with a choice of service delivery model and evidence-based treatment.

In summary, the APS strongly supports the argument made by the Royal Commission that there is sufficient evidence to warrant the provision of counselling and psychological care to survivors as part of redress as a way of ensuring justice for victims.

Comments on proposed principles for counselling and psychological care

The APS notes the seven principles for counselling and psychological care provided in the Consultation Paper. The APS endorses all seven principles and provides the following additional feedback.

No fixed limits on service provided to a survivor and *Suitable ongoing assessment and review*

The Consultation Report stated that there was varied feedback from stakeholders on the appropriate number of sessions for survivors and lack of clarity in the empirical data on ideal or average session numbers. This most likely reflects that there is no simple or robust answer to the question of how many sessions should survivors be able to access in the redress scheme. Survivors present for counselling and psychological care at various points in their journey and in their readiness to undertake intensive therapy, hence there is no benchmark for length of treatment. Experienced psychologists suggest that there will be times where long-term treatment is required and other times when therapy is more short-term (e.g., up to 20 sessions) and contained around a particular trigger or issue. On this basis the APS supports the principle of 'no fixed limits on services provided to a survivor'.

However, it will also be important to ensure that counselling and treatment services are regularly reviewed to ensure that goals are being met and progress is being made. The objectives for counselling and treatment services must be clear to the service provider and the survivor. Most importantly, *unlimited and unfocused treatment is potentially harmful to the client,* and of course, also represents poor use of limited resources. As indicated in the Consultation Paper, there will need to be suitable ongoing assessment and review of counselling and psychological care provided as part of redress. The APS suggests blocks of counselling sessions (e.g., 10 sessions) for which goals are jointly established and progress against these goals regularly reviewed in a way that is acceptable to survivors. It is acknowledged that at the beginning of some sets of care, the objectives of treatment may be as simple as establishing an effective therapeutic alliance, with more symptom-specific goals developed over time. It is recommended that the review process include a mix of joint practitioner-client review and occasional external review. The process surrounding the independent review should be developed with input from survivors so that it avoids jeopardising the therapeutic relationship or re-traumatisation; it is nevertheless a vital quality control strategy and an important protection for survivors.

It is also important that the service models are able to be sufficiently flexible to facilitate frequent appointment reminders and accommodate the potentially high non-attendance rates that may be apparent in some survivors. Some survivors may have multiple life problems and require considerable support in order to effectively engage with services.

Psychological care should be provided by practitioners with the right capabilities to work with complex trauma clients

The APS strongly supports this principle because of the very real potential for survivors to be re-traumatised by well-meaning health professionals who have limited knowledge and expertise in working with clients who have experienced complex trauma. Even therapists who have worked with clients who have experienced trauma may not be used to the unique contextual issues of child sexual assault experienced in an institutional

setting. It is important to note that having "the right capabilities to work with complex trauma clients" means that practitioners must have the appropriate knowledge, skills, and experience to work effectively and safely with this cohort.

It is therefore vital that the practitioners who provide services as part of redress are competent in the delivery of trauma-focused work. As a minimum, health professionals working with survivors in any redress scheme should be experienced in comprehensive assessment, case formulation and working with traumatised populations and meet the following criteria:

- Five years post-registration
- Demonstrated knowledge, experience and competency in working with clients with complex trauma with an evidenced-based approach
- Familiarity with the Adults Surviving Child Abuse Practice Guidelines (Kezelman & Stavropoulos, 2012) and the Australian Guidelines for the Treatment of Acute Stress Disorder and Posttraumatic Stress Disorder (Australian Centre for Posttraumatic Mental Health, 2013).

It must be noted that working with child survivors requires unique skills and competencies. Many practitioners experienced with working with adults may not wish to work with child survivors nor have the requisite knowledge and competencies. This must be considered when developing an appropriate workforce.

Given the nature of working with people who have experienced significant trauma, it is important to note that service providers need regular access to peer consultation and appropriate ongoing professional development. This may be an area that could be supported by recommendations made by the Royal Commission.

The APS agrees with the need to provide survivors with choice regarding counselling and psychological services and thus supports the proposal to develop an accreditation process that could assist survivors to access competently delivered counselling and psychological care. The APS would be pleased to work with other professional associations and specialist services to develop a competency-based accreditation process and maintain a database of appropriately qualified health professionals. The APS currently operates a 'Find a Psychologist' service and holds lists of providers for particular government programs. The APS also has the capacity and experience to deliver national online training, practice certificates and webinars that might support an accreditation process.

Services for family members if necessary for survivors' treatment

The APS acknowledges that in order to make best use of limited resources, priority for counselling and psychological care under redress should go to the survivors. Access to psychological care is currently available through Medicare and could provide some services for families and caregivers. However, to access these services the client is required to have a mental health diagnosis as assessed by a medical practitioner (usually a general practitioner). Many family members would benefit from psychological care even though they do not have a diagnosed mental illness; for example, counselling could assist family members experiencing difficult relationships with the survivor and help them cope with challenging behaviours such as substance misuse. The provision of such therapy has the potential to be of significant benefit to the survivor. The Royal Commission could consider recommending that the requirement for a mental health diagnosis in order to access psychological services under the Medical Benefits Scheme be removed for direct family members and caregivers of survivors.

The APS strongly supports the need for non-offending parents/caregivers of child survivors to be able to access counselling and psychological care as part of the redress scheme. Best practice in the delivery of care to child survivors includes not only working with the child but also with the parents or caregivers. Again, we note that the skills required to work effectively with child survivors (and their parents/caregivers) are different to those employed in working with adult survivors.

Comments on options for service delivery

The APS supports the concerns raised in the Consultation Paper that access to and delivery of appropriate counselling and psychological care for survivors is not currently adequate and needs to be improved as part of redress. The Society also supports the approach recommended by the Royal Commission, that is, to extend existing specialist services and address service gaps in order to provide survivors with access to effective psychological care as part of redress. It does not appear to be an appropriate use of limited resources to commence a new and completely stand-alone scheme that requires an extensive bureaucracy and does not intersect with existing services. It is also unlikely that a completely stand-alone scheme could provide adequate service to people in rural and remote Australia or to people from different cultural backgrounds.

The starting point: Existing services

The feedback from APS members who work in specialist sexual assault services (both in the government and non-government sectors) is that demand greatly exceeds supply and waiting lists can be long, particularly for adult survivors. The Consultation Report indicates that psychological care can also be accessed in the community through the Medicare (Better Access initiative) and the Access to Psychological Services (ATAPS) program but lists a number of clear limitations with these options that render them problematic for use by many survivors. It should be noted that the current National Review of Mental Health Programs and Services may also include these programs.

The option of using redress funds to support an expanded Medicare (and/or ATAPS) service for survivors has merit because of the existing infrastructure and hence efficiency gains. However, the following adjustments would need to be made in order to make the service appropriate to survivors:

- Entry through eligibility for redress rather than by referral by a medical practitioner on the grounds of having a mental health diagnosis
- Removal of 10 x sessions per calendar year limit to be replaced by a requirement of regular goal-setting and review (both by clinician and independent reviewer)
- Removal of ability of provider to claim a gap fee. This is required in order to provide survivors with access to appropriate redress services at no cost. The Consultation Paper suggests that a new item number be introduced at a higher payment rate for services provided to survivors, as long as no gap fee is claimed. This item should be based on demonstrated competencies in working with complex trauma.
- A specific item number for group psycho-education (with no gap fee) is also warranted given the evidence of the effectiveness of this modality for survivors. Trauma education, self-care and safety strategies can be effectively provided in group settings.
- Existing government and non-government organisations that provide specialist services must be able to extend their capacity by being able to claim the appropriate Medicare rebates.

While the expansion of Medicare has merit, the Commission may wish to consider other options that come with existing infrastructure. The Consultation Paper identified the 'Balimed' scheme, the Victorian Bushfire Psychological Counselling Voucher Program and the Department of Veterans' Affairs treatment card scheme as examples of stand-alone schemes. This type of approach would construct a new service based on existing infrastructure and funded by pooling of redress payments and government funding – ultimately, in much the same way as an expansion of Medicare would be funded. Another option is to consider a tender process as was established by the Defence Abuse Taskforce to deliver the Defence Abuse Reparation Scheme - www.defenceabusetaskforce.gov.au As a result of that process, a national organisation experienced in the delivery of psychological services was engaged to provide trauma-informed services to military personnel. While these options appear to restrict survivor choice and fail to build on existing services, this may be necessary in order to bypass the barriers to the use of Medicare. These potential disadvantages could be minimised by ensuring such services worked with existing specialist services. For example, practitioners working under the new service could be located in specialist services as well as in independent practice.

The APS views the option of a trust fund to improve access to Better Access and ATAPS as a less favourable option because it does not enable the key principle of unlimited sessions to be met nor remove the requirement for a mental health diagnosis to be in place in order to obtain services. These are two important principles of psychological care that need to be supported. The Consultation Paper does suggest that a trust fund could address gaps in expertise and geographical and cultural barriers to access but this will bring no substantive gain to survivors if they can only access 10 sessions per year via a medical practitioner referral, and then only if they have a diagnosable mental illness. One of the most frequently encountered counselling needs of survivors is relationship issues; in the absence of a diagnosis, this would mean many survivors would be unable to seek appropriate psychological care under this model. While the trust fund may be used to 'top up' or find alternate sources of counselling and psychological care, this is likely to create a significant and costly administrative burden because of the high numbers of survivors who would be seeking top ups after 10 sessions. The limited resources might better be spent on service delivery to survivors.

In addition to increasing the capacity of existing services, the APS strongly supports the proposal of the Royal Commission to improve what they describe as "gaps in expertise" (p.121). The following gaps are identified and recommendations offered:

- Finding a practitioner with the appropriate competencies is difficult. This could be improved by implementing the accreditation process described above and developing a well-marketed and easily accessible database of accredited practitioners.
- The ability of mainstream services such as mental health, drug and alcohol, general practice and emergency departments to identify and appropriately respond to the needs of survivors should be improved. As indicated in the Consultation Paper, survivors frequently come into contact with these services. This is an important window of opportunity to provide a safe, trauma-informed service and to connect survivors with more specialised care. The provision of high quality training to staff working in these services must be a component of the redress response. The Australian Government Department of Health recently funded the APS to develop and deliver a similar program to support health

professionals working in mainstream health services who may encounter or deliver services to people who have been affected by Forced Adoption policies and practices in Australia.

- It is clear that becoming a parent can be a challenging time for both male and female survivors. Thus, health practitioners involved in the care of parents during the perinatal period should also receive training in identifying and responding to the needs of survivors. This will include a range of clinicians including general practitioners, obstetricians, midwives and early childhood nurses.
- Survivors find it difficult to navigate the complex health and support service landscape. This is a serious concern, but funding a case management approach with limited funding would reduce the pool of money available to support treatment. It may be more efficient to support the expansion of the professional support line provided by Adults Surviving Child Abuse (ASCA) to include information about a broader range of supports.

Conclusion

The APS acknowledges the challenging task confronting the Royal Commission in establishing a high quality, accessible and effective mechanism for survivors to access the counselling and psychological care they need and expect as part of redress at a time when Australia is experiencing a difficult economic climate. It is vital that whatever model/s of service delivery are chosen, that they do not result in funding being shifted from the already underfunded and overburdened mental health, drug and alcohol, and specialist sexual assault services. Survivors (both children and adults) are entitled to redress and access to counselling and psychological care as a result of their experiences during childhood. If funding by institutions is insufficient to meet these needs, then the Australian Government needs to supplement the redress scheme. *It is not acceptable that money be redirected from existing services to meet this need.* The APS strongly requests that this principle inform the Commission's recommendations in order to avoid inadvertently reducing access to already scarce resources.

Many survivors who present for counselling and psychological care have complex and long standing psychological issues. They are also vulnerable as a result of attachment and abandonment issues. This must be taken into consideration in determining a preferred model/s of service provision. The services must be able to support the development of a therapeutic relationship and the delivery of what might be long-term evidence-based treatment. They must not make things worse for survivors by building hope and trust but then not actually being able to deliver this because of constraints on the service.

References

Australian Centre for Posttraumatic Mental Health (2013). *Australian Guidelines for the Treatment of Acute Stress Disorder and Posttraumatic Stress Disorder.* Melbourne: ACPMH.

Kezelman, C.A. & Stavropoulos, P.A. (2012). *'The Last Frontier': Practice Guidelines for Treatment of Complex Trauma and Trauma Informed Care and Service Delivery.* Adults Surviving Child Abuse (ASCA).

Attachment 2. APS response to relevant sections of Consultation Paper (excluding Chapter 5)

This document presents the APS response to other sections of the Consultation Paper (excluding Chapter 5) deemed relevant to the expertise of APS members. This response contains mostly general comments or support for a suggested approach, particularly where there are psychological impacts and considerations for victims of institutional child sexual abuse.

Overall, the APS commends the Commission on a comprehensive paper which addresses all the important issues in relation to a complex topic, whilst being highly respectful of victims/survivors.

The APS response below corresponds to the section headings as they appear in the Consultation Paper. The APS has not responded to every section, just those where aspects of redress and civil litigation systems and processes may need to be considered from the perspective of the possibility of any real or potential psychological impact on victims/survivors.

Chapter 2. Structural issues

2.3 The complexity of the task

- **Focusing on our Terms of Reference (p.48)**

The APS notes that the Commission's Terms of Reference also require it to consider what should be done to address or alleviate the impact of 'child sexual abuse *and related matters* in institutional contexts' (emphasis added). The APS therefore recommends that the proposed redress system also take into account the related effects (in addition to psychological impact) on victims/survivors, such as physical harm and harm as a result of exploitation, deprivation and neglect. This may include significant and associated medical expenses. In order to meet all of the relevant needs of victims/survivors, it will be imperative that these related matters are able to be addressed within any provision of counselling and psychological care for survivors of institutional child sexual abuse.

2.4 Elements of redress (p.50)

The APS agrees with the three elements identified as constituting an appropriate redress: a direct personal response, counselling and psychological care, and monetary payments. The first two elements are discussed in further detail in the relevant sections below. While monetary payments are important, it is beyond the expertise of the APS to comment on the amount and structure of their implementation.

2.5 General principles for providing redress (p.52)

The APS supports the need for general principles to guide the provision of all elements of redress, and endorses those stated.

However, two additional and overarching principles have been identified which the APS strongly believes should underpin any redress (or civil litigation) process or system:

1. Minimising the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a redress process
2. The perception of justice and procedural fairness in the resolution of ongoing effects of trauma.

These sentiments have also been raised in the APS submissions in response to Issues Paper 5 on civil litigation and Issues Paper 6 on redress schemes.

2.8 Children (p.61)

The Consultation Paper states that there are unlikely to be many applications to a redress scheme made by or on behalf of those who are still children. The current or potential numbers may be small, but the increasing publicity, acceptance and encouragement of disclosure of institutional abuse may result in ever increasing numbers of inquiries about redress. Regardless, the APS suggests that more detail is required in relation to how to adequately support children (and/or their guardians) through a redress process.

The APS agrees that "a child's counselling and psychological care needs are likely to be different from those of an adult survivor" (p.62) and that children could be supported through a redress scheme. However, on account of their different needs, a redress scheme for children is likely to look significantly different. At a minimum, some accredited counsellors or interviewers with specific training and experience working with children need to be available.

The 2013 Victorian Parliamentary inquiry[1] into child abuse by religious and other non-government organisations, in relation to the experience of the victims noted the following:

> *Children are in an extraordinarily vulnerable position with respect to physical and sexual assault. They rely heavily upon those into whose care they are placed to protect them from risks of which they may be totally unaware or only dimly aware. Children can be easily intimidated by those in positions of power over them. An abuser may use fear or manipulation*

[1] The Betrayal of Trust Inquiry into the Handling of Child Abuse by Religious and Other Non-Government Organisations, Adopted by the Family and Community Development Committee, November 2013, Part A Introduction and Process at http://www.parliament.vic.gov.au/fcdc/article/1788

to discourage a child from reporting abuse, or may convince a child that the child is personally responsible for the abuse they have suffered. Children are likely to feel confused and shamed by sexual conduct that they may not understand but that they sense is very wrong.

In light of this, the APS recommends an approach for any system of redress or civil litigation to support children based on the following principles:

- A child focussed approach with children's best interests at heart, in line with the CROC.[2] This states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The best interests of the child are assessed from the child's perspective, not that of the parents or the state.
- A framework that will increase access for children subject to sexual abuse to appropriately trained mental health professionals.
- A system of redress that supports parents and guardians to navigate what is available for the child.
- Interventions with children should be evidenced-based.
- Processes involving child victims should avoid re-traumatisation.
- Children and their families should be given government assisted access to legal advice about options open to the child for redress and/or civil litigation.
- The child's voice and opinions should be given due regard given their age, maturity and development.
- The redress system should support a process where there is no need to identify, prosecute or establish the guilt of the offender, as per the recommendation of the Victorian inquiry.[3]
- Any redress system should build on victim support services already in place.
- A system that supports consideration of the fact that the long term impact of sexual abuse on a child victim/survivor may not be known for many years and hence any system of redress should be flexible enough to accommodate a child's needs into the future. Hence, counselling and psychological care to be available across the lifespan and not subject to fixed closing dates for a redress process or inflexible limitation periods for civil litigation. Children may initially disclose sexual abuse and years later disclose more about that abuse.

[2] Best interests of the child Article 3(1) of the United Nations Convention on the Rights of the Child (CROC) require that State Parties apply the principle of the best interests of the child. Australia ratified it in 1990 but it has not been incorporated into Australian law. However, as indicated by Unicef having ratified the Convention, Australia's government has committed to make sure every child in Australia has every right under each of 54 Articles in the Convention. http://www.unicef.org.au/Discover/What-we-do/Convention-on-the-Rights-of-the-Child

[3] Betrayal of Trust Inquiry, page 554

- There must be a minimum training requirement for counsellors/psychologists to act as service providers; this must be focussed on competencies and experience working with children and clients with complex trauma histories, not just on qualifications.
- All personnel involved in any interim redress process need to be adequately trained in dealing with children and in assisting children who have experienced complex trauma and whose experience of abuse have been marked by disempowerment and betrayal of trust.

Chapter 4. Direct personal response

4.2 Principles for an effective direct personal response (p.81)

The APS agrees with the principles identified for an effective direct personal response. In particular, the APS emphasises the importance of adequate training for institutional representatives who are involved in delivering a direct personal response to survivors. Such training would be designed to minimise the risk of re-traumatising the victim/survivor.

Chapter 7. Redress scheme process

7.2 Key redress scheme processes

- **Duration of a redress scheme (p.165)**

Disclosure is best conceptualised as a process that can take place over an extended period of time rather than a single event. In accordance with the evidence concerning the significant period of time it often takes for victims/survivors to disclose abuse, the APS strongly agrees that a redress scheme should not be subject to fixed closing dates.

- **Publicising and promoting the availability of the scheme (p.166)**

The APS wholeheartedly endorses the need for a comprehensive communication strategy to ensure that the people who can benefit from the scheme know about it – particularly those who are typically considered more 'difficult to reach'.

- **Application process (p.167)**

The APS understands that the Commissioners "do not presently have firm views about any issue in the consultation paper" and that it is not yet known who and how the application process will be administered. Therefore, it is timely for the APS to raise its serious concerns about this integral part of the process.

The APS agrees that it is imperative for the application process to be as simple and flexible as possible to minimise the risk of re-traumatisation. The APS reiterates the need for the application process to avoid unnecessary bureaucracy, and to employ a rule of plausibility with regards to deeming

eligibility. It is exactly this point in the process (application, assessment of eligibility, and entry into the scheme) which has the greatest potential and risk of re-traumatisation, which must be minimised at all costs. For this reason, consideration could be given to a stand-alone agency to oversee eligibility for the scheme.

- **Standard of proof (p.170)**

As stated in our submission to Issues Paper 6 (Redress Schemes), the APS supports the *rule of plausibility* because it 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);
- 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 individual 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 APS understands that a large volume of correspondence from complainants to the Defence Abuse Response Taskforce about their positive experiences of the redress process, which exercises the rule of plausibility, provides anecdotal evidence to support the value of such an approach.

The APS reiterates to the Commission the importance of avoiding re-traumatisation of the victim/survivor, as well as the perception of procedural fairness, in considering issues concerning standards of proof.

- **Deeds of release (p.173)**

The APS agrees that if a deed of release is required, it is essential to ensure that an applicant is fully informed about the implications of accepting or not accepting an offer of redress and that consent is valid. If monetary payments via a redress scheme and civil litigation are mutually exclusive, then it would be important to ensure that funds provided through the common law are sufficient to support counselling and psychological care across a life-time. As stated elsewhere, having flexibility in the choice of provider is also important. There should be careful consideration given to the appropriateness of children (or their parents/guardians) being required to sign a deed of release, given the inherent

difficulties in predicting the future needs for support and psychological care and counselling for child victims.

Chapter 9. Interim arrangements

9.2 Additional principles (p.191)

The APS reiterates the need for two overarching principles to underpin any redress or civil litigation process or system:

1. Minimising the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a civil litigation or redress process
2. The perception of justice and procedural fairness in the resolution of ongoing effects of trauma.

In particular, personnel involved in the redress or civil litigation process must be adequately trained in assisting people who have experienced complex trauma. Further, any interim system should also adopt the principles in respect of children, suggested by the APS in 2.8 above.

In relation to counselling and psychological care, the APS supports the suggestion that institutions undertake to meet survivors' needs, and that need is assessed independently of the institution. However, the APS acknowledges that this may be challenging to implement.

Chapter 10. Civil litigation

10.2 Limitation periods (p.197)

As with the APS response to redress, the APS strongly agrees that civil litigation should not be subject to limitation periods. It is important for any limitation periods to take into account the recognised delay in reporting of child sexual abuse by survivors and that disclosure is best conceptualised as a process that can take place over an extended period of time rather than a single event. It is therefore critical that flexibility be incorporated into limitation periods and that processes be developed that minimise the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a process of civil litigation. 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.

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2 March 2015

To Whom It May Concern,

Submission to the Royal Commission Consultation Paper: Redress and Civil Litigation

The Australian Psychological Society (APS) welcomes the opportunity to respond to this consultation paper about redress and civil litigation. We note that you have granted the APS an extension on the full submission until 9 March 2015 but requested our key points ahead of this.

We thank you for the opportunity to attend the private roundtable session on 10 November 2014 to discuss redress and civil litigation. We found this session invaluable to assist our thinking and development of the framework for the underlying principles and the concept of what a future system for counselling and psychological care might look like for this group of people.

In brief, the APS commends the Commission on a comprehensive paper which addresses all the important issues in relation to a complex topic, whilst being highly respectful of victims/survivors. While the APS supports the majority of the principles in the consultation paper, it is noted that the document lacks fine detail about the actual redress processes. It must be noted that the potential effectiveness of the proposed structures and processes for victims/survivors will depend on this fine detail. In the full APS submission more detailed

recommendations will be provided to the Commission on how the counselling/psychological care component of the redress program might be organised. It is hope that the Commission's final report will outline how this aspect of redress should operate. In the remainder of this brief response to the Commission, the APS provides some key points as requested ahead of the fuller APS submission.

The APS supports the rights of victims/survivors of institutional child abuse to seek redress and pursue civil litigation. Two overarching principles have been identified which the APS strongly believes should underpin any redress or civil litigation processes or system:

1. Minimising the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a civil litigation or redress process
2. The perception of justice and procedural fairness in the resolution of ongoing effects of trauma.

These sentiments have also been raised in the APS submissions in response to Issues Paper 5 on civil litigation and Issues Paper 6 on redress schemes.

Apart from the overarching principles mentioned above, some of the key points that the full APS submission will address are as follows:

- The APS agrees that counselling and psychological care needs to be available across the lifespan and not subject to fixed closing dates for a redress process or inflexible limitation periods for civil litigation
- The APS supports the *rule of plausibility* underpinning the process whereby there is no need to prove that abuse occurred, just that it was conceivable and that once accepted as eligible to be part of the scheme there is no further need to disclose details
- A framework that will increase community access to appropriately trained mental health professionals is one important way of addressing the impacts of child sexual abuse in institutional contexts. The APS agrees that this must involve a flexible process (e.g., choice of service and service provider, no fixed limit on the number of sessions as long as goals are being met
- There must be a minimum training requirement for counsellors/ psychologists to act as service providers; this must be focused on competencies and experience with working with clients with complex trauma histories, not just on qualifications. Service providers must be

familiar with the Adults Surviving Child Abuse Practice Guidelines (Kezelman & Stavropoulos, 2012). Moreover, all personnel involved in any interim redress process need to be adequately trained in assisting people who have experienced complex trauma and whose experiences of abuse have been marked by disempowerment and betrayal of trust.

- More detail is required about how a redress system would meet the needs of children seeking redress and how parents/guardians might be supported to assist children within such a system.

The APS notes that the Commission's Terms of Reference also require it to consider what should be done to address or alleviate the impact of 'child sexual abuse *and related matters* in institutional contexts' (emphasis added). The APS therefore recommends that the proposed redress system also take into account the related effects (in addition to psychological impact) on victims/survivors, such as physical harm and harm as a result of exploitation, deprivation and neglect. In order to meet all of the relevant needs of victims/survivors, this will be imperative.

The APS agrees with the three elements identified as constituting an appropriate redress: a direct personal response, counselling and psychological care, and monetary payments. One option is the establishment of a new stand-alone service (with minimal bureaucracy and maximum confidentiality), which supplements existing services to meet the more complex needs of this population and provides the clients with more choice, but other options might also be viable. In its more detailed submission, the APS will focus on the psychological aspects of redress and civil litigation and in particular, where it relates specifically to Chapter 5 (Counselling and Psychological Care), and will also provide a more detailed response to other areas of the paper relevant to psychological health and wellbeing. The response to Chapter 5 will incorporate detailed feedback about the principles for counselling and psychological care, existing services and service gaps, and for provision of counselling and psychological care through redress schemes.

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

For further information please contact the APS on 03 8662 3300.

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.