

Royal Commission into Institutional Responses to Child Sexual Abuse
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By email: solicitor@childabuseroyalcommission.gov.au

27 May 2014

To Whom It May Concern,

Submission to the Royal Commission Issues Paper 6: Redress Schemes

The Australian Psychological Society (APS) welcomes the opportunity to respond to Issues Paper 6 that addresses the effectiveness of redress schemes or processes established by governments or institutions to offer compensation and/or services to those who suffer child sexual abuse in institutional contexts.

As indicated in a submission to Issues Paper 5 on civil litigation, the APS strongly supports the development of processes that minimise the likelihood of re-traumatisation for the victim/survivor as a result of undergoing a civil litigation or redress process. Furthermore, it is the perception of justice and procedural fairness in the process that is of utmost importance in the resolution of ongoing effects of trauma.

Given the legal nature of Issues Paper 6, some of the specific terms of reference are beyond the scope and expertise of the APS. Therefore, in this letter the APS focuses on the psychological aspects of redress likely to be relevant to the actions that could be taken by institutions and governments to address or alleviate the impact of child sexual abuse in institutional contexts.

In general, the APS supports the rights of victims/survivors of institutional child abuse to seek redress. While research into the role of redress remains limited, there is some evidence that the redress process can assist survivors to recover. Furthermore, one of the potential values of a redress process is that it is a concrete proof that such abuse is illegal, unacceptable and abhorrent to the State. The victim/survivor needs to know that is not their fault, but that of the institution/individual, who took advantage of their superior power to do harm to those they had a responsibility to protect. This may be a valuable part of a recovery.

Despite the potential value of redress programs, the APS is concerned that such programs may also have the potential to re-traumatise individuals who may have to relive their painful stories in order to prove that abuse occurred. Research supporting this concern is documented in the APS's previous submission to Issues Paper 5, where it was emphasised that systems of redress must ensure that their processes and procedures do not inadvertently expose complainants to further harm.

One potential way in which to minimise harm for victims/survivors is to employ the rule of plausibility, rather than proof. Essentially, this means that victims/survivors do not feel that they are being put on trial themselves. The rule of plausibility is exercised within the Defence Abuse Response Taskforce (DART). Importantly, DART is not required to be satisfied on the criminal burden of 'beyond reasonable doubt', nor the civil burden of the 'balance of probabilities', that a person experienced abuse (DART, 2013). Rather, the assessment of plausibility is based on all the available information and has an "appearance of reasonableness" (DART, 2013, p.5). Applying the rule of plausibility 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 DART about their positive experiences of the redress process provides anecdotal evidence to support the value of such an approach.

The Law Commission of Canada (2000) undertook a comprehensive review of State responses to institutional abuse and identified some key principles required to underpin the process by which victims/survivors seek redress. These principles included ensuring that victims/survivors are able to make informed choices about courses of redress, that they have access to counselling and support, and that the process should not cause further harm. The review also highlighted the need for those managing the process to have access to ongoing training and that continual efforts need to be made to improve redress programs (Matthews, 2004).

It is likely that victims/survivors are looking for a number of outcomes: understanding and compassion, acceptance of responsibility, and some means of restitution, compensation, and action to ensure that such abuse does not happen to others are the key elements (Cashmore & Shackel, 2013). This closely mirrors the third recommendation in the *Bringing Them Home Report* (Human Rights and Equal Opportunity Commission, 1997), which identified five components that should form part of reparations: acknowledgment and apology; guarantees against repetition; measures of restitution; measures of rehabilitation; and monetary compensation.

Berry Street [Family Services] in Melbourne has implemented its own organisational policy and procedures in response to claimants. They highlight the importance to victims/survivors, and its key role in their healing process, of having the opportunity to express their experiences of maltreatment and its impact directly to the agency involved. This complements evidence about the negative psychological impact of self-silencing (Jack & Astbury, 2014).

Clearly relevant for all matters relating to redress is the consideration of how victims may be empowered beyond the helplessness that was part of their traumatic experience. This may be facilitated by having the option to seek redress or compensation through a formal scheme, as well as having the ability to pursue civil litigation, and having access to

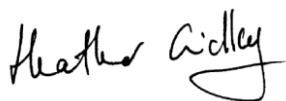
support during the process which includes counselling as well as legal advice. Above all, consideration is required to ensuring that victims/survivors feel they have been treated fairly. This includes ensuring that schemes are well publicised, accessible over a reasonable period of time, have a reasonable allocation of funds given the volume of claimants, and that the respective agencies provide adequate assistance with lodgement of their claims.

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

The APS has made a commitment to support the work of the Commission, and as such we would be happy to provide further comment about the matters raised in this letter. In particular, the APS can provide the Royal Commission with further expertise on the matter of re-traumatisation of victims of sexual abuse, such as unanticipated triggers for traumatic memories, vigorous cross-examination, remote witness facilities, taped evidence, support people, and debriefing, as well as the kinds of redress that might be considered appropriate in particular contexts.

For further information please contact me on 03 8662 3300.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Heather Gridley', with a stylized, cursive script.

Ms Heather Gridley FAPS
Manager, Public Interest
Australian Psychological Society

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.

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