

ROYAL COMMISSION INTO INSTITUTIONAL
RESPONSES TO CHILD SEXUAL ABUSE

Public Hearing - Case Study 25
(Day 132)

Level 17, Governor Macquarie Tower
Farrer Place, Sydney

On Friday, 27 March 2015 at 10am

Before

The Chair:

Commissioners:

Justice Peter McClellan AM

Justice Jennifer Ann Coate

Mr Robert Atkinson AO APM

Mr Robert Fitzgerald AM

Professor Helen Milroy

Mr Andrew Murray

Counsel Assisting:

Ms Gail Furness SC

1 MS FURNESS: The first two witnesses this morning are from
2 the Law Council, Mr Duncan McConnel, who is president of
3 the Law Council of Australia, and Mr Simon Henderson, who
4 is senior policy lawyer, human rights, with the Law Council
5 of Australia. Can I invite you to speak to your
6 submission?
7

8 MR McCONNEL: Thank you, counsel assisting, thank you
9 your Honours and Commissioners.
10

11 The Law Council is very pleased to have the
12 opportunity to appear today at these important hearings.
13 The Law Council represents over 60,000 Australian lawyers
14 through the constituent bodies of every State and
15 Territory - that is, the Law Societies and the
16 Bar Associations. The Law Council provided a submission to
17 the Royal Commission's consultation paper on redress and
18 civil litigation, which has drawn upon feedback from the
19 Law Institute of Victoria, the New South Wales Law Society,
20 a member of the Law Council's Access to Justice Committee,
21 and the Law Council's Expert Reference Group on the Royal
22 Commission into Institutional Responses to Child Sexual
23 Abuse.
24

25 The Law Council supports the following positions:
26 firstly, the development of a national redress scheme which
27 provides a consistent procedure to facilitate redress for
28 survivors, including apologies or restorative mechanisms,
29 access to counselling and compensation. We support that
30 the redress scheme should be complementary to and not
31 replace existing rights of survivors to pursue claims at
32 common law.
33

34 The redress scheme should be part of a broader
35 response to survivors of institutional sexual abuse and
36 should incorporate reforms to civil litigation, including
37 but not limited to, limitation periods, vicarious liability
38 and identification of defendants.
39

40 We also support further consideration being given to
41 the report of the national inquiry into the separation of
42 Aboriginal and Torres Strait Islander children from their
43 families, the Bringing Them Home report, and relevant
44 recommendations for this Commission. I would be pleased to
45 expand on any of those matters further in response to
46 questions from the Commissioners.
47

1 The Law Council has only had a limited opportunity to
2 consider the submissions of other government and
3 non-government organisations, but we do wish to address
4 some specific submissions made by the Commonwealth.
5 Firstly, the Commonwealth submission that institutions in
6 which child sexual abuse occurred should bear
7 responsibility for providing redress to survivors of that
8 abuse.

9
10 Our response is that the Law Council doesn't believe
11 that that is a practicable approach in all cases. Many
12 institutions have since closed or operate in a different
13 form now and lack the capacity or the ability to provide
14 redress. Potentially large numbers of survivors would miss
15 out on redress if institutions were to bear sole
16 responsibility.

17
18 The Commonwealth has submitted that a complication for
19 the national scheme would be identifying the source of
20 legislative power to operate such a scheme. Our response
21 is that while we acknowledge that there is no obvious head
22 of power, it is possible for States and Territories to
23 refer powers to the Commonwealth and, in this instance, it
24 appears that the New South Wales Government has indicated
25 a willingness to embark on discussions towards that end.
26 Other States and Territories have either not adopted
27 a position or have not provided a submission on that point.

28
29 We consider that the Commonwealth should engage in
30 consultation with the States and Territories and work
31 towards a national redress scheme.

32
33 Thirdly, the Commonwealth's submission that it should
34 not have the role of funder of last resort. The
35 Law Council response is that the Commonwealth should be
36 a funder of last resort to ensure that survivors of abuse
37 in institutional settings can obtain redress, regardless of
38 whether the institution continues to exist or is solvent or
39 impecunious. The Law Council is concerned that many
40 survivors would miss out on redress if the Commonwealth was
41 not in that position of funder of last resort.

42
43 To that end, we note that the Commonwealth has
44 demonstrated the ability to develop and support a redress
45 scheme, which is done through the Defence Abuse Response
46 Taskforce. The Law Council considers that that provides an
47 holistic model that incorporates reparation payments,

1 restorative justice and counselling service to assist
2 defence force victims of abuse and that the
3 Royal Commission could give consideration to the
4 application of that scheme towards a wider national redress
5 scheme.
6

7 Furthermore, the Law Council submits that the degree
8 of national interest and the commonality that has been
9 demonstrated between cases of sexual abuse occurring and an
10 institutional setting warrants consideration of a national
11 Commonwealth response.
12

13 The Law Council is willing to assist the
14 Royal Commission, including by answering questions this
15 morning or providing any further written submissions that
16 the Commission may invite. Thank you.
17

18 MS FURNESS: Thank you.
19

20 THE CHAIR: Thank you, gentlemen. You have addressed the
21 whole range of issues that our paper identifies and
22 thank you for that. There are just a couple I would like
23 to explore a little more.
24

25 As far as a redress scheme is concerned, one of the
26 issues that emerges for survivors particularly is the
27 degree of formality attached to the decision-making
28 process. As you would know, sometimes the spectre of
29 lawyers becoming involved is something which proves
30 a difficult hurdle. Have you given any thought to how the
31 decision as to whether or not you are entitled to redress
32 should be made and in what sort of forum it should be?
33

34 MR McCONNEL: We have identified that a redress scheme
35 such as we are recommending would be different to the
36 traditional remedies available through a court. I think
37 implicit in that is the idea that it would be through some
38 form of tribunal that is an alternative to the court
39 system.
40

41 THE CHAIR: Are you familiar with the victims of crime
42 processes in the various States?
43

44 MR McCONNEL: Yes.
45

46 THE CHAIR: Is that how you see a redress scheme working
47 or not?

1
2 MR McCONNEL: My own view is that the victims of crime
3 schemes probably don't go far enough, and I think that the
4 main reason for that has been the viability of those
5 schemes in States and Territories. When they were first
6 implemented, those schemes, although they were capped, were
7 reasonably generous, but they weren't able to sustain that
8 and so the available forms of compensation have been wound
9 back to, in some instances, in fact, no monetary
10 compensation at all and only the provision of services.

11
12 THE CHAIR: What about the model of those bodies as the
13 decision-maker? In other words, their processes. Do you
14 see those as appropriate to implement or adapt for
15 a redress scheme?

16
17 MR McCONNEL: I think there is a link between what is made
18 available as redress and the model for determination. If
19 you are going to have a scheme that provides for monetary
20 compensation and it's of an amount which is a reasonable
21 alternative to pursuing common law remedies, then I think
22 you are getting closer to needing a more hearing-style
23 approach to investigating and determining individual cases;
24 so I see the two as linked.

25
26 THE CHAIR: The suggestion is that if there is a redress
27 scheme, the maximum for an individual should be, say,
28 \$150,000 or \$200,000. Would you see \$200,000 as requiring
29 a decision-making model that gets closer to an adversarial
30 process?

31
32 MR McCONNEL: Yes.

33
34 THE CHAIR: Where do you identify the cut-off?

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36 MR McCONNEL: It is a pretty subjective analysis, but
37 I think that if you are talking about amounts over and
38 above around about the \$25,000 to \$40,000 mark as monetary
39 compensation, then I would think there needs to be some
40 degree of either adversarial process or hearing process,
41 such as you will get in the administrative appeals
42 tribunals or the civil and administrative tribunals at
43 State level.

44
45 THE CHAIR: The other issue I wanted to explore with you
46 is the question of common law duty. As I understand it,
47 you are suggesting there should be no statute of

1 limitations applicable to offences of this nature when
2 someone brings a civil claim; is that generally correct?

3
4 MR McCONNEL: I don't think we go quite that far. I think
5 our position is that we recognise that these cases are in a
6 special category and I think we have suggested that there
7 be consideration given to a different approach to
8 limitation periods in this special category of cases.
9 I don't know that we go so far as to suggest no limitation
10 period at all.

11
12 THE CHAIR: What do you think we should do?

13
14 MR McCONNEL: I think that there ought certainly be
15 a relaxation of limitation periods and that relaxation may
16 require certain threshold features. Off the top of my head
17 I don't know that I can pull up a specific example, but
18 there might be cases, for example, where if the institution
19 no longer exists at all, they might not be able to get past
20 that primary threshold.

21
22 THE CHAIR: We heard yesterday from the Insurance Council
23 and there is a concern expressed through the
24 Insurance Council that if we change any of the rules to
25 make it easier for people to sue in relation to claims that
26 would be met by an existing insurance policy, we may be
27 disturbing the financial balance for insurance companies
28 and what they hold against a risk that they have accepted.
29 Do you think we should be concerned in relation,
30 for example, to the statute of limitations about the impact
31 that might have on insurers?

32
33 MR McCONNEL: I think it's a factor to consider, but
34 I wouldn't regard it as a barrier. That risk, if you like,
35 exists for insurers at all times as a result of
36 developments in the common law. The types of classes of
37 circumstance that will justify a grant of an extension of
38 time or, for example, circumstances where the courts
39 identify that a duty of care can be found in the case of an
40 institution, whereas up to that point there had been no
41 principle to that effect - so that risk is already
42 operative and to some extent would be factored in to the
43 financial modelling of the insurers.

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45 THE CHAIR: Your point is well made when one considers the
46 liability at common law of public authorities for negligent
47 acts, which of course didn't exist until 50 years ago.

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MR McCONNEL: Yes.

THE CHAIR: In your submission, you also identify the problem with an unincorporated association. I think you recognise that, if I might call it, major institutions should have or should accept an obligation that there be some entity that can be sued. What do we do about the cricket club and the swimming club and all those thousands of organisations that provide for children but don't have the asset backing or financial structure of the larger institutions?

MR McCONNEL: I think that's where this alternative redress scheme becomes all important and that's why we've said it should supplement the common law and not replace it. The common law will provide an effective remedy for some cases, but in other cases where a defendant no longer exists or they are impecunious, then the alternative scheme might be all that is available.

The thought did occur to me that if the Commonwealth-style scheme is too difficult, the concept of a nominal defendant which might be capable of being established at each State and Territory level that has a statutory right of indemnity against the actual perpetrator, the institution that was responsible, might mean that potential plaintiffs can bring their claim against a nominal defendant, recover their compensation by that means and leave the real battle in terms of the identification of the proper defendant or defining the scope of the duty, et cetera, to the nominal defendant to essentially recover as a putative plaintiff.

THE CHAIR: Did you think about whether there should be, in relation to any organised sporting body, an obligation to carry insurance against this risk? In other words, if you are part of the swimming association or the cricket association, any of the multiplicity of sporting bodies that provide for children, there should be an obligation to carry insurance?

MR McCONNEL: I think, philosophically, the difficulty I have with that concept is that it's not the type of risk that you would wish to insure for. There's an element of recognition and even contemplating that behaviour, whereas that seems to me inconsistent with the approach that should

1 be being taken to it, which is that it's absolutely
2 intolerable. I don't know if that is a naive response.
3
4 THE CHAIR: It is not an accident, is what you are saying.
5
6 MR McCONNEL: Yes.
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8 THE CHAIR: But it is a risk, though, isn't it?
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10 MR McCONNEL: It is a risk, but I'm not sure that the
11 insurance model is the appropriate response to that.
12
13 THE CHAIR: Insurers, when they step into any field, of
14 course, do, by reason of the control they have through the
15 premium, expect and often extract greater rigour from the
16 organisation that is insured. Would that be of benefit, do
17 you think?
18
19 MR McCONNEL: It has also been increasingly a function of
20 government to impose those sorts of rigours and I would
21 have thought that given the behaviour that we're talking
22 about, the more appropriate model for introducing those
23 sorts of requirements would be through statute.
24
25 THE CHAIR: That takes you, of course, into the whole
26 debate about government regulation.
27
28 MR McCONNEL: Yes.
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30 THE CHAIR: Which is a hot-button issue at the moment, as
31 you know. Ms Furness?
32
33 MS FURNESS: I note the time, your Honour.
34
35 THE CHAIR: We have run out of time, have we?
36
37 COMMISSIONER MURRAY: I have a question, please.
38 Mr McConnel, I note that you support the option of reform
39 identified by us that institutions could have an express
40 duty to take reasonable care to prevent sexual abuse of
41 children in their care. In Corporations Law, it was found
42 that a general duty such as that was inadequate and
43 specific onus and obligations were placed on directors in
44 their individual capacity to exercise care in their
45 functions. Is it your view that there is any class of
46 institution in which that equivalent extension should be
47 applied to individuals, or do you think the reasonable duty

1 of care should just apply generally to the institution?
2

3 MR McCONNEL: I think I would like the opportunity to give
4 that question some consideration and perhaps file a short
5 submission of a few paragraphs that deals with that
6 question, because it is complex, and I think there is an
7 element that I'm interested in exploring, which is,
8 particularly in organisations where they exist because of
9 the concept of trust or faith, that that in itself ought be
10 incorporated into the content of the duty. I think before
11 I answer that, I would probably prefer to just give some
12 further consideration to that and articulate a response to
13 that.
14

15 COMMISSIONER MURRAY: I would appreciate it if you could.
16

17 MR McCONNEL: Thank you.
18

19 THE CHAIR: Thank you, gentlemen for your contribution and
20 a most thoughtful submission.
21

22 MR McCONNEL: Thank you very much.
23

24 MR HENDERSON: Thank you.
25

26 MS FURNESS: Thank you, your Honour. The next witnesses
27 are from Care Leavers Australia Network - CLAN. Ms Sheedy,
28 you are the chief executive officer of CLAN?
29

30 MS SHEEDY: I am.
31

32 MS FURNESS: Ms Cuskelly, you are the president?
33

34 MS CUSKELLY: That's correct.
35

36 MS FURNESS: I invite you to speak to your submission.
37

38 MS SHEEDY: Thank you. Good morning, everyone. There is
39 more than one way to harm a child. Sexual usage is not the
40 only form of child abuse. Abuse also occurs when a child
41 is physically, mentally and emotionally mistreated.
42

43 Abuse occurs when a child is poorly fed, poorly
44 educated, enslaved, imprisoned, beaten and starved of
45 comfort, care and love.
46

47 Abuse occurs when a child is taken from their family

1 and placed in an orphanage, a children's home, in foster
2 care or a mental institution, sometimes for a few years,
3 but mostly for their entire childhood.

4
5 Abuse occurs when that child is regarded as cheap
6 labour and is forced to work unpaid on farms, in commercial
7 laundries and as cleaners.

8
9 Abuse occurs when you call the child by a number, not
10 a name, or you change their name, like Denise, who the nuns
11 renamed Annette. She used to wonder, "Who the heck is
12 Annette?"

13
14 Abuse occurs when a child is not told he or she has
15 parents or when parents are denied access to their child.

16
17 Abuse occurs when records are deliberately withheld or
18 destroyed to prevent people finding out the truth who they
19 are.

20
21 Abuse occurs when a child is denied culture, identity
22 and basic human rights.

23
24 This is the abuse experienced by many thousands of
25 Australian children who grew up in Australia's child
26 welfare system last century. These are the children who
27 did not have a safe and happy childhood.

28
29 The Care Leavers of Australasia Network represents
30 people who as children lived in Australia's orphanages,
31 children's homes, foster care and mental institutions
32 throughout last century. It is hard for most people today
33 to comprehend, but around half a million children in
34 Australia share our experience. That's the entire
35 population of Tasmania.

36
37 We want redress for all care leavers who suffered
38 abuse while in the child welfare system. For care leavers,
39 this is not just about sexual abuse. The lives of
40 care leavers have been greatly diminished by the pain and
41 suffering they experienced as children growing up in
42 institutions, the loss of their childhoods, in many
43 instances, was complete.

44
45 We were children who grew up believing we were
46 second-class citizens, that we were worthless and fit for
47 nothing and as adults we continued to believe this.

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After years of neglect inside institutions, we were released as young adults, desperately unprepared for the world, with barely any education, life skills, let alone parenting skills.

For some of us adulthood has been plagued by drug abuse, mental illness, broken relationships, poverty and homelessness. For others, adulthood brought us the normality of work and family but no escape from haunting memories of deprivation and cruelty.

A small minority of our members were, indeed, orphans, but many others later discovered they had families. Some families were poor, dysfunctional, single-parent or experiencing a family crisis, but others were placed into care as a result of the war. None of that excuses what happened to them as children.

We know of families who attempted to reclaim their children but authorities deliberately blocked those attempts at reunion. Many people struggled on alone attempting to track down their families. Some are still searching for their parents, brothers and sisters and their personal history. Care leavers believe the time has come for the perpetrators and the enablers of this abuse to pay for their crimes.

Care leavers are entitled to redress for the loss of their childhoods, the loss of their families and the misery they have continued to endure throughout their lives. It is our view that the care leavers' experience is so unique it requires its own redress scheme. This scheme should recognise all forms of abuse and neglect while in care, not just sexual abuse.

We propose the establishment of a national independent redress scheme to enable fair and equitable access to redress for all Australian care leavers. Past providers and governments that operated orphanages, children's homes and other institutions should contribute to this national scheme, but they should have no say in how the redress is managed.

The Federal Government has experience managing national redress through the Department of Defence and we do not want to see the State government manage this scheme.

1 They were our legal guardians when we were children and
2 turned a blind eye to decades of abuse and cruelty
3 occurring in the institutions they licensed.
4

5 We believe each organisation's contribution should be
6 proportional to the number of institutions they operated
7 and the number of children in their care and payment into
8 the scheme should be publicly acknowledged. Foster carers
9 found to have perpetrated abuse should also be made to
10 contribute.
11

12 The national independent redress scheme should be
13 simple, straightforward and easy to access, allowing for
14 care leavers whose education was limited by the
15 circumstances of their childhood. The redress scheme
16 should be open-ended so people can seek assistance in their
17 own time. We know from past experience that some people
18 find it difficult to come forward and ask for help.
19 Therefore, patience is required.
20

21 A special help should also be available for people
22 living in rural communities who don't have easy access to
23 resources. Counselling support as part of redress should
24 be separate from the Medicare system and there should be no
25 limits on counselling and psychological services for care
26 leavers and their families.
27

28 We know that the trauma has passed on through the
29 generations. We ask that only adequately trained
30 professionals undertake counselling, people that understand
31 the grief, the loss and the trauma of care leavers.
32

33 The national independent redress scheme should allow
34 for financial redress but also priority access to services
35 such as legal, medical, dental and housing. There should
36 be financial assistance to help care leavers find their
37 parents and siblings or the graves of their parents and
38 siblings.
39

40 A care leaver card would ensure that care leavers
41 aren't forced to continually tell their story of abuse and
42 neglect each time they seek assistance. We see this
43 working in a similar way as DVA cards assist veterans.
44

45 Redress should be available to help pay for funerals
46 as well as entitlements, even if the applicant dies before
47 their application is fully processed. It is our strong

1 belief that governments, churches and charities should not
2 be excused from their moral and ethical obligation to
3 provide redress to care leavers.
4

5 Importantly, there should be major improvements to the
6 way records are provided to care leavers. We still have
7 churches, charities and State government organisations that
8 hold our family information but deny care leavers access to
9 their own personal histories. We have encountered many,
10 many instances of organisations deliberately withholding or
11 obstructing the release of personal information. For
12 people in their 70s, 80s and 90s, desperate to trace family
13 members they never knew, this particular cruelty should not
14 be allowed to continue.
15

16 It is quite disgraceful that we have no national
17 record of the number of children who died while in the
18 child welfare system or, just as tragically, those who
19 committed suicide after being released from that system.
20

21 Given the terms of reference of this Royal Commission
22 refers to related matters, we call on the Royal Commission
23 to inquire into the deaths of children who died while in
24 the child welfare systems of this country.
25

26 CLAN has been advocating over many years for formal
27 apologies from every religious organisation, all charities,
28 State governments and the police in all States. We would
29 like to see this apology issued from a single national
30 platform, such as Parliament House in Canberra. Each
31 organisation should say sorry to those children who were
32 abused in their orphanages and children's homes, but the
33 apology should also be to the nation because these
34 organisations collectively failed in their duty of care to
35 these children.
36

37 So often they knew what was going on and did nothing.
38 The police actually caught children who ran away from
39 orphanages, refused to believe their stories of abuse and
40 returned them straight back to the homes from which they
41 were trying to escape, no questions asked.
42

43 MS FURNESS: Ms Sheedy, I just remind you of the time;
44 it's just past 11 minutes.
45

46 MS SHEEDY: One more minute. As Geelong's Father Kevin
47 Dillon says of these organisations, "They should be on

1 their knees begging you for forgiveness." Most
2 care leavers have told us they feel redress should be based
3 on what happened to them rather than the impact of the
4 abuse. All of those who went through the care system are
5 scarred in one way or another. Some of these scars may be
6 visible and some may not. It doesn't mean they are not
7 there.

8
9 We have asked care leavers what they think is a fair
10 amount of redress. While our survey is ongoing from almost
11 370 responses received so far, the most nominated amount
12 was between \$100,000 and \$250,000. Notably, 11 per cent
13 said no amount would ever be enough and 36 per cent
14 couldn't nominate any amount of compensation, as though the
15 question itself was too overwhelming. One of our members
16 has said to us, "It took away my future, my self-respect,
17 my ambition. I thought I could only be a cleaning lady or
18 a prostitute. So I did do that. I'm unable to bond, even
19 with my own children." Or this heartbreaking story of
20 childhood torture: "I've not got one cent for being raped,
21 bashed, whipped, tortured, made to eat my own vomit, drink
22 my own urine. That's only half of it. I suffered 14 years
23 of hell."

24
25 Whatever the amount decided, redress payments should
26 be available in instalments if that is what people choose
27 and we also believe that those who have received
28 compensation in the past should also be entitled to apply
29 for redress under the new scheme. Most importantly, the
30 redress scheme needs to be established as a matter of
31 urgency. Care leavers have waited long enough. Time is
32 running out for many.

33
34 MS FURNESS: Thank you, Ms Sheedy. Time is running out,
35 I'm sorry to say, but thank you very much.

36
37 THE CHAIR: Ms Sheedy, there are just a couple of things.

38
39 MS SHEEDY: Can you call me Leonie?

40
41 THE CHAIR: There are a couple of things the Commissioners
42 would like to take up with you. As you know, the
43 Commissioners have expressed their view about the
44 desirability of a national scheme, but I'm sure you
45 appreciate, or both of you appreciate, that if the
46 Commonwealth Government says no, then the national scheme
47 can't happen. Furthermore, if there is to be a national

1 scheme, you could see a process of negotiation that would
2 take some time and, as we understand it, and as you have
3 just emphasised, there's an urgent need for many survivors
4 to have an effective response as early as possible.

5
6 What are your thoughts on what might be done, assuming
7 the Commonwealth won't at least initially be a party to
8 a national scheme? Where should the Commissioners look to
9 make recommendations to provide for the need which you have
10 identified as an urgent need for survivors?

11
12 MS CUSKELLY: CLAN don't have a fall-back position for the
13 Federal and State Governments. We are very firm that the
14 Federal Government should and can take leadership in this
15 matter, that they need to call the States together, take
16 leadership. They do have the capacity, if they have the
17 commitment, to coordinate a national scheme. It is complex
18 and we do recognise that, but then the childhoods of all
19 these people and the lives that they lead are quite
20 complex, and we expect that the Federal Government, in the
21 end, will just have to consider and take these
22 responsibilities seriously. CLAN are not prepared to
23 advocate for an alternative.

24
25 THE CHAIR: The second issue is the records one.
26 Ms Sheedy and I and I'm sure the other Commissioners have
27 discussed this on a number of occasions. What do you see
28 as the recommendation which the Commissioners might make in
29 relation to the records issue? How should we approach it?
30 Is the problem that the records are difficult to find or is
31 the problem that there is a reluctance to release them?
32 Where is the sticking point that you think we should
33 address?

34
35 MS SHEEDY: I think all the churches and charities need to
36 hand over their records to a central repository and it will
37 require a lot of funding to do this, but, you know, a lot
38 of these religious organisations are going to die out.
39 Religion is on the way out and so whose property are they
40 when these religious organisations cease to be?
41 Governments and a lot of churches and charities when they
42 release records are redacting a lot of people's personal
43 information. It is just so wrong. I got a man's
44 State ward file, one page, yesterday. This man was in care
45 in New South Wales 1906 and DoCS had whited out all the
46 foster carers' addresses but left the name in there and the
47 suburb, and I was able to go and type in the first name and

1 the suburb, Leichhardt, and came up with [REDACTED]. This
2 is the stupidity that DoCS are doing of a record over 100
3 years old. The redaction is really causing a lot of
4 problems. Am I answering the question? I'm going
5 wandering, I feel.

6
7 THE CHAIR: I was going to bring you back on the curve, if
8 you like, to ask you whether the problems that you have
9 seen are common across all of the States and all of the
10 institutions or are there particular difficulties in
11 particular areas?

12
13 MS SHEEDY: Western Australia. When you apply for your
14 State ward file in Western Australia, you have to stipulate
15 what you are seeking. You don't go and make an application
16 and say, "I want my State ward file", you have to say,
17 "I want to know the reasons why I went into care. I want
18 to know did I get any illnesses." They will only release
19 what you request. That's the only State that does that.
20 They need to be brought into the 21st century. In
21 Queensland there are a lot of hoops that you have to jump
22 through, but people are waiting an awful lot of time in
23 South Australia and New South Wales.

24
25 THE CHAIR: When you make your applications, are you
26 making FOI applications or are they just requests made in
27 the ordinary course?

28
29 MS SHEEDY: In New South Wales you are making an
30 application to the care leavers access to records. It is
31 a separate form from FOI, as far as I am aware.

32
33 THE CHAIR: Is that true across all the States?

34
35 MS SHEEDY: Some of them have specialised units, but in
36 Western Australia it's different. I can't remember what it
37 is called, but you have to request what you are after. You
38 don't have to do that in any other State in this country.
39 We need nationally consistent rules that govern access to
40 our State ward files.

41
42 THE CHAIR: We are running out of time today, but this is
43 an issue which the Commissioners will talk to you about
44 further in due course. Ms Furness?

45
46 MS FURNESS: Your Honour, we indeed have run out of time.
47

1 THE CHAIR: Thank you both for coming and for your
2 submission, but also for the great work that you have done
3 to help the Commission in many ways. We are very grateful.
4

5 MS SHEEDY: Thank you.
6

7 MS FURNESS: Thank you, your Honour. The next witness is
8 from CREATE Foundation. Ms Hudson, you are the national
9 policy and advocacy manager for CREATE?
10

11 MS HUDSON: Yes, I am.
12

13 MS FURNESS: Perhaps you can tell us a little bit about
14 CREATE.
15

16 MS HUDSON: CREATE Foundation is a peak consumer body
17 representing voices of all children and young people in
18 out-of-home care.
19

20 MS FURNESS: I invite you to speak to your submission.
21

22 MS HUDSON: Thank you very much for agreeing for us to be
23 here today and considering our submission.
24

25 CREATE's submission is to create a better life for
26 children and young people in care, including those who are
27 or have been the subject of care and protection orders.
28 We achieve this by connecting children and young people to
29 each other, to empower them to change the system. We are
30 about advocacy. We have a strong research and evidence
31 base and we have done this in consultation with children
32 and young people in out-of-home care.
33

34 Our 2013 report card benchmarked Australia's child
35 protection system, the current system, against the national
36 child protection standards. This was all of the States and
37 Territories in Australia, except for WA, who declined to
38 let us interview children.
39

40 From there, we had over 1,000 children and young
41 people express their views and opinions on their life in
42 care. Encouragingly, over 80 per cent said they were
43 either quite happy or very happy with their placement,
44 which is wonderful, but 17 per cent weren't. However,
45 throughout our questions there were areas that are very
46 pertinent to this hearing and why we made our submission.
47 We found that over 50 per cent of children didn't know how

1 to make a complaint and, in fact, in some areas that was
2 even higher: only 36 per cent in New South Wales knew it.

3
4 Residential care users expressed that they weren't
5 heard or listened to, and from this we also saw that there
6 was a stark difference between when a policy was written
7 and the implementation and what they experienced, and it is
8 for these reasons that we made our submission.

9
10 Within our ambit, we would like to draw attention to
11 that there are over 43,000 children and young people in
12 care in Australia who voices need to be included as part of
13 this process. It is not an historical issue, it is
14 a contemporary issue. Our submission addressed most of the
15 areas in the consultation paper and we would like to just
16 speak to a couple of key points for this.

17
18 The majority of children and young people in Australia
19 now live in home-based care and we would like to point out
20 that while it is home-based, it is still funded or provided
21 by government institutions and, therefore, still
22 institutional care by nature.

23
24 The most important point we would like to draw your
25 attention to is that child sexual abuse, and, in fact,
26 agreeing with our compatriots, CLAN, all abuse is
27 a contemporary issue.

28
29 As your recent hearings with the States and
30 non-government providers in the last two weeks have shown,
31 this abuse is still happening. This abuse hasn't been
32 fully disclosed and there are still cases that will come
33 out.

34
35 We would like to also draw your attention to the
36 recent cases that have drawn inquiries in South Australia
37 and Victoria into the abuses in residential care.

38
39 Past, present and future claims need to be accounted
40 for when you are modelling your redress scheme. It is not
41 a case for the past. There are cases that will come out,
42 which brings us to our next point. Claims should not be
43 time limited. As the Royal Commission's interim report
44 showed, the average time it has taken to make a disclosure
45 is 22 years, which means, using this timeline, we could
46 conceivably have a young person in care now who comes
47 forward seeking redress in over 20 years time. This

1 scheme, the modelling, financially, needs to allow and
2 account for this and also be nimble and flexible enough to
3 be indexed to match future and current needs.
4

5 In that, and because of the information I presented
6 earlier, this scheme needs to be child friendly and
7 independent of the institutions that have perpetrated this
8 abuse.
9

10 Children and young people need to be able to know that
11 they are comfortable to bring forth claims, to seek redress
12 for the abuse that they have suffered. They have already
13 been brought into care as a result of neglect and abuse and
14 they don't need to suffer further abuse in seeking redress
15 for doing this. Independent mechanisms are necessary to
16 assist them to do so. The reasons they gave us for not
17 doing complaints is that they were worried about
18 repercussions. They are young, their power base is very
19 low. These are the people who provide them with care.
20

21 Within this, we would also like to reinforce the
22 importance of child friendly communication within the
23 strategies of advertising the scheme and drafting the
24 scheme, and being made to feel comfortable within it. From
25 there, we would also like to say that civil litigation is
26 not child friendly. We recommend that steps are taken to
27 reduce reliance upon this to achieve redress and
28 compensation.
29

30 Survivors speak to the traumatic experience of seeking
31 compensation through extended, lengthy processes, battling
32 powerful institutions. Young people are further at
33 a disadvantage with less education, fewer resources and
34 a lower capacity to cope with these complex processes.
35

36 And agreeing with our CLAN members, improved data and
37 records to be kept and support to be provided when you
38 access them, and the redaction is just such a huge, huge
39 issue that people find. If people want to make a claim,
40 they are to be provided records and when they are provided
41 them, support to sit down and read through them. It is
42 traumatic, it's not something you want to read on your own
43 and it's not something you should read on your own.
44

45 Additionally, we recommend the resourcing for
46 State Ombudsman offices to conduct a more critical
47 collection and analysis of the data. It shouldn't sit with

1 the institutions where it is held; it should be held in an
2 independent area and it should also be interrogated and an
3 oversight of claims made and the actions taken to address
4 and rectify.

5
6 In summation, we recommend that a nationally
7 consistent redress scheme is required. This is to ensure
8 equitable processes for all survivors of abuse in care,
9 regardless of the State or institution in which it
10 occurred. You shouldn't be further abused because you live
11 in Tasmania rather than Queensland, rather than New South
12 Wales.

13
14 For this redress scheme we recommend the following:
15 that it's not time limited; it recognises a wide range of
16 evidence; people are supported to lodge an application
17 through financial, legal, technical and emotional support
18 to lodge and access documentation; that it is national and
19 independent from the institutions in which the abuse
20 occurred. We encourage governments to take on the role as
21 funders of last resort. We recommend the establishment of
22 an independent authority with powers to investigate
23 complaints, make redress decisions and compel institutions
24 to comply with orders for information and other requests as
25 deemed necessary.

26
27 This can be achieved either by setting up a new
28 authority or perhaps, more economically, through employing
29 existing structures like the States' Ombudsman offices,
30 provided they were adequately resourced to undertake these
31 additional responsibilities.

32
33 CREATE thanks you for the time and the opportunity to
34 appear and to include the voices of children who are
35 currently in care.

36
37 MS FURNESS: Thank you.

38
39 THE CHAIR: There are a couple of issues that we would
40 like to take up. I think your position, as I understand
41 it, is that there should be a national approach to this,
42 a national scheme; is that right?

43
44 MS HUDSON: Yes, it is.

45
46 THE CHAIR: But you know of the Commonwealth Government's
47 present position in relation to that?

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MS HUDSON: Yes, we do.

THE CHAIR: What can you suggest as the alternative? How should we approach it, if the Commonwealth continues to say no?

MS HUDSON: We do have a national framework for child protection and we do have national standards. We do have a national Children's Commissioner. There is a national system already existing, so this should naturally sit within that framework. I can't see why there should be a difference, and obviously, this is drawing upon resources, but there is already a commitment by COAG to addressing many of these areas, so it should sit within the framework.

THE CHAIR: But let's assume the Commonwealth continues to say no?

MS HUDSON: From our point of view, and agreeing with the others, there are States who are responsible. If the Commonwealth says no, we would still wish to see that. As you would have heard over the last couple of weeks, the States are inconsistent with their policies and procedures and how they apply them. The outcomes for children in care should be consistent and they should be a good life, but unfortunately, it's not. To have a system that is framed from its outset to delivering inconsistency would seem at odds with what we're trying to achieve.

THE CHAIR: Can I then ask you about a second issue. The redress scheme, in whatever form, contemplates a monetary payment - you know we've identified three fundamental elements, one of which is a monetary payment. As I understand it, CREATE would agree that there should be a form of monetary payment, but I'm sure you understand, and CREATE does, that that is not common law damages; is that right?

MS HUDSON: Yes, although we did put within our submission that we were reluctant to say amounts, because we're talking about children who are currently in care, and, therefore, doing a future prediction is very difficult.

THE CHAIR: I don't want to ask you about amounts, but what I want to ask you is this: in framing the amount and

1 thinking about what the amount of money might be, you need
2 to think about its purpose - why are you providing money.
3 Can you help me to understand, from CREATE's point of view,
4 what would be seen to be the purpose of a redress money
5 payment?
6

7 MS HUDSON: We have found through our research that young
8 people exiting care have had very poor educational outcomes
9 for some young people. Some people - actually, a high
10 percentage of people - have been in homelessness and have
11 experienced a reliance upon welfare. An investment in
12 their life to help them assist to transition to a better
13 life, to access good educational outcomes or employment
14 outcomes, would be a wonderful use for this money, but also
15 to address their additional psychological harms that have
16 happened as a result of the abuse in care.
17

18 THE CHAIR: Do you see the latter being addressed through
19 a money payment or through provision of --
20

21 MS HUDSON: No, we agree with what was in the paper, where
22 it had access to psychological care, and we would say for
23 the life and as needed, because it can be episodic.
24

25 COMMISSIONER FITZGERALD: May I ask a couple of questions?
26 CREATE has been around for some time, but I just want to
27 deal with contemporary out-of-home care at the moment or
28 children who have recently left out-of-home care who have
29 been abused. What is your current experience in relation
30 to the ability of children who have recently left
31 out-of-home care and who were abused, in terms of finding
32 any redress from government institutions or other
33 institutions in the last few years? Has there been any
34 noticeable change in the way in which those institutions
35 respond to claims by children that have recently left
36 out-of-home care?
37

38 MS HUDSON: We don't have a lot of data on people who are
39 currently pursuing the government for claims, although
40 I can draw upon experiences of where young people have said
41 it is very difficult to access their records, or their
42 claims were not taken very seriously at that point in time;
43 so the processes to be able to seek these claims are
44 further hampered that way.
45

46 With our cohort, due to their age, we have a lot of
47 people who are not going through that process yet.

1 Unfortunately, I don't have a big amount of data to draw
2 upon; they are more anecdotal from key people who have
3 disclosed to us.

4
5 COMMISSIONER FITZGERALD: You have raised the issue, as
6 have CLAN and other organisations, about access to records.
7 Has there been any change in the way in which institutions
8 are providing records for children that have been recently
9 in care, as distinct from those who were regarded as
10 historically in care?

11
12 MS HUDSON: I am unaware of that happening. I am afraid
13 I don't know of the system prior, but I can say that we
14 have anecdotally someone who was trying to access the name
15 of his father, his natural father, and was denied because
16 it wasn't about himself but someone else, and so therefore
17 he was denied that name, and that's a recent case.

18
19 MS FURNESS: There has been evidence given over the last
20 few days about gaps in the provision of counselling to
21 survivors of child sexual abuse. In relation to children,
22 are there any service gaps in relation to counselling or
23 other matters that you would like to draw to the
24 Commission's attention?

25
26 MS HUDSON: Obviously, when you are doing psychological
27 counselling with young people, you should be trained to
28 deal with that. It is not the same area. It uses the same
29 principles but there are different languages and different
30 processes in which to take people through that journey and,
31 in fact, to engage and disclose that out of them. So
32 therefore, you would need a lot of well-trained specialist
33 providers or, in fact, maybe a better education of
34 counsellors out there to be able to do this, but it's not
35 a one-size-fits-all; it is a specialist area and we would
36 like to see more of that provided.

37
38 MS FURNESS: Are there any of those specialists that
39 operate in each State at the moment?

40
41 MS HUDSON: I would assume there are, but I can't give you
42 definite numbers, I'm sorry.

43
44 MS FURNESS: Thank you. Thank you, your Honour.

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46 THE CHAIR: Thank you for your submission and your
47 assistance to the Commission.

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MS HUDSON: Thank you.

MS FURNESS: The next speaker is from the Australian Lawyers Alliance. Mr Morrison, you are a barrister and a member of the Australian Lawyers Alliance?

MR MORRISON: I am senior counsel of the New South Wales Bar, Queen's Counsel in Tasmania and Western Australia. I am a spokesperson for the Australian Lawyers Alliance and I have appeared over the years in a number of the major cases, such as Lepore, Ellis - on the losing end - Rundle and others against a variety of government and non-government institutions.

MS FURNESS: I invite you to speak to your submission.

MR MORRISON: We thank the Royal Commission for the opportunity to address it. The Australian Lawyers Alliance comprises over 1,500 mainly personal injury lawyers Australia wide, with very considerable experience in these matters.

We support a national uniform accessible and just redress scheme and we support one which would be primarily administrative at first instance, though with legal rights of review. We would wish to keep it simple and cheap and straightforward and there are some aspects of the Irish schemes which have appealed to us and we refer to those in our paper.

The initial Commonwealth response is disappointing, particularly given that the Commonwealth itself will be unable to avoid responsibility pre-independence in respect of the Australian Capital Territory and most particularly the Northern Territory for institutional abuse in a number of significant cases.

Can I pass on from there to the issues which affect civil liability which we say should also apply because any redress scheme is not going to provide anything approaching full common law compensation. We would suggest a model that provides much more significant compensation than any of the schemes that the States have provided or proposed, but there will still be many cases, such as the Ellis case, where a person loses their family, loses their career,

1 where no statutory scheme is likely to be anything like
2 adequate compensation.

3
4 First of all, in respect of limitation periods, the
5 Victorian model seems to us to offer a way forward and it's
6 very pleasing and helpful that the New South Wales
7 Government, in its discussion paper, looked at that as its
8 option A and appeared to look on it with some favour. The
9 complete lifting of the limitation bar across Australia
10 would offer a very significant way forward, given the
11 appallingly complex range of limitation issues and the
12 differences between States which are quite extraordinary.
13 There is no way they can be defended in terms of justice or
14 fairness.

15
16 Vicarious liability needs to be addressed. The
17 Commissioners will be aware of the various Supreme Court of
18 Canada decisions in Bazley and in Jacobi, the House of
19 Lords decision in Lister, and what was most recently said
20 by Lord Phillips, speaking for the Supreme Court in
21 England, the successor to the House of Lords, in Catholic
22 Child Welfare Society v Various Claimants and the Institute
23 of the Brothers of the Christian Schools & Ors.

24
25 The close connection test, which was espoused there,
26 seems to us to offer a way forward and it is not very
27 different from what was said in the High Court in Lepore by
28 Chief Justice Gleeson. The problem in that case is that
29 there was what was described in the Supreme Court in
30 England as a bewildering variety of analysis. That would
31 be the understatement. The majority of four gave four
32 different reasons for leaving Mr Lepore's claim alive and
33 remitting it to the Court of Appeal to re-determine, but
34 the close connection test, at least as espoused in Lister
35 or as espoused in the various claimants' case, would seem
36 to us to be the way forward.

37
38 It is not strict liability. If, for example,
39 a teacher outside school hours, not on a school excursion
40 and off school premises abuses a child, it is very hard to
41 see how the education authority could be found responsible
42 and the close connection test wouldn't require it. That
43 was the difference between Bazley, where the claim
44 succeeded, and Jacobi, where it didn't.

45
46 On the other hand, where you have the elements of
47 power, intimacy and vulnerability combined, as

1 Chief Justice Gleeson pointed to, then it may be proper,
2 notwithstanding that criminality is not part of the indicia
3 of employment, to impose vicarious liability.
4

5 We note that in the Law Council of Australia's
6 submission, they said that vicarious liability should only
7 apply where there was some fault on the part of the
8 institution. Well, if there's fault on the part of the
9 institution you don't need vicarious liability; there's
10 direct liability. With great with respect to the
11 Law Council of Australia, they just got that wrong.
12

13 Vicarious liability offers the way forward and it
14 should not be beyond our power to express it, in perhaps
15 the words used by the House of Lords in Lister or by
16 Lord Phillips in the various claimants case, in such a way
17 that it offers flexibility and does not impose excessive
18 liability on small and diverse organisations which don't
19 really have effective control. We're talking then about
20 local children's sporting clubs and the like.
21

22 Retrospectivity is important and the question was
23 raised earlier about doesn't this mean insurance companies
24 will have to pick up things for which they didn't receive
25 premiums. Well, one didn't hear them complain when the
26 Civil Liability Acts were brought in throughout Australia
27 and retrospectively removed liability. They took their
28 premiums in respect of lifesaving clubs throughout
29 New South Wales, for which ordinarily there is no liability
30 since 2002. In fact, some of them are still charging
31 premiums and being paid them, notwithstanding that there
32 can be no liability for anything short of criminal conduct.
33

34 They are the swings and roundabouts of insurance, but
35 they shouldn't be all one way.
36

37 The last matter that I want to very briefly address is
38 the question of the institution having a legal entity.
39 Again, the question was raised earlier about unincorporated
40 organisations. In the ordinary way, an unincorporated
41 organisation can be sued. There is at common law a method
42 of doing so. The problem in Ellis was a most unusual one -
43 the organisation was too diverse to be able to say who at
44 any relevant time was its membership. The case didn't fail
45 on vicarious liability because they put that question to
46 one side; it failed on the fact that there was no legal
47 entity. That is not a problem which affects almost all

1 other organisations. It is a particularity of the
2 structure of the Roman Catholic Church. When it was
3 incorporated in New South Wales in 1936, it adopted
4 a particular structure where its trustees hold the money
5 and the church remains unincorporated. The trustees,
6 whilst they hold all the property of the parochial schools,
7 the 18 per cent of children in Australia who go to Catholic
8 schools, they are not responsible if any claim is made in
9 those schools in negligence, let alone of sexual abuse,
10 unless the bishop in the particular diocese is prepared to
11 accept responsibility. Many bishops do. It was the
12 practice until Ellis to do so. It remains the practice in
13 England and Wales and they accept there that the trustees
14 are their secular arm.

15
16 The Bishop of Newcastle and Maitland accepts that that
17 is proper and has paid out in excess of \$20 million in
18 regard to the very large number of claims in that area.
19 The Sydney Archdiocese, however, for reasons of which the
20 Royal Commission is well aware, has adopted a very
21 different and more aggressive view. What the view of the
22 new Archbishop is we don't know. The solution to that
23 particular problem requires legislation in each State and
24 Territory. There is legislation which has been introduced
25 to the Upper House but which has not progressed, which
26 would deal with the problem, and the Royal Commission might
27 like to have a look at that fairly straightforward
28 legislation which might be a guide or a model for States
29 and Territories throughout Australia.

30
31 The only other thing I think we perhaps ought to just
32 consider is the desirability of a national scheme. Despite
33 the disappointing initial Commonwealth response, and even
34 if it were to be maintained, it would be open to the
35 Royal Commission to make national recommendations which the
36 States and Territories could themselves adopt. Because the
37 present diversity of responses is appalling when one goes
38 from the limitation regimes in Western Australia and
39 Queensland, which offer almost no relief, to
40 South Australia, which is significantly more liberal, to
41 New South Wales, where it is somewhere in between but
42 extraordinarily complex. It is a nightmare for litigants.
43 It is not healthy for the legal system and it is an
44 enormous waste of resources which ought to be devoted to
45 compensating those who have most seriously suffered.

46
47 MS FURNESS: Mr Morrison, I just remind you of the time.

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MR MORRISON: I thank the Royal Commission for the opportunity to put those matters forward, but they were the principal things I wished to address.

MS FURNESS: Thank you.

THE CHAIR: Mr Morrison, firstly, if we or if the governments of the States remove the statute of limitations at all in relation to a class of person that includes those who are victims of sexual abuse in an institutional context, based on your experience, do you think there would be a significant increase in the number of proceedings that are brought?

MR MORRISON: There would certainly be an increase. To what extent it would be significant? Generally speaking, if there were an appropriate and substantial redress scheme, my personal suspicion, based on dealing with dozens and dozens of victims over the years, is that many of them would prefer the simpler redress scheme route and that it would be a minority. It would be the worst cases which went down the route of common law damages. So there would be an increase, but I don't think it would get out of control.

THE CHAIR: The complement for that question is that as we have heard from a number of people, they haven't brought a common law claim because they are told they will lose at the limitation gate, and of course in Western Australia, it's an absolute bar, but if you take the limitation period away and don't change retrospectively any elements of duty, would the difficulty of proving a breach of duty under the Lepore framework become a very significant impediment in any event?

MR MORRISON: It may be an impediment. The High Court ultimately did not decide the limits of vicarious liability in Lepore. In fact, the Chief Justice expressly said that he limited his comments to the particular circumstances, which was a teacher in a government school. He wasn't dealing with the wide range of things, although he discussed the Canadian and the House of Lords decisions in some detail.

The common law in Australia hasn't had a case since 2003 to further develop along the lines that the law has

1 developed in Canada and in England and Wales.
2

3 My suspicion - my hope - would be that the overseas
4 developments would be followed in the High Court, but
5 I would be rather hoping that the Royal Commission would
6 anticipate that development because it would not be
7 inconsistent with what was said by the majority in Lepore;
8 rather, it would be a simple extension of the approach that
9 the Chief Justice was discussing and, to put that test into
10 words, I think, would not be beyond the capacity of careful
11 legal drafting.
12

13 THE CHAIR: Would you see it being appropriate, as the
14 common law would, to make that change retrospective or only
15 prospective?
16

17 MR MORRISON: Retrospective in these quite unusual
18 circumstances, but let's bear in mind, retrospectivity has
19 been used, for example, by the New South Wales Government
20 in respect of rights to victims compensation, in respect of
21 rights to workers compensation, in respect of rights under
22 the Civil Liability Act. Section 3B, which retained common
23 law rights under the New South Wales Act, was amended
24 retrospectively whilst I was arguing a case for a plaintiff
25 who suffered an intentional injury and whose common law
26 rights were taken away and he was left with the statutory
27 rights while the case was actually proceeding in court.
28

29 Retrospectivity is not unknown to government and it
30 shouldn't all be in one direction. When justice requires
31 it, as it obviously does, we would say, in this case, it an
32 extraordinary but appropriate measure in these
33 circumstances.
34

35 THE CHAIR: If you were not to change the vicarious
36 liability arrangements but, as the discussion paper
37 suggests, you might reverse the onus, so the institution
38 has to discharge the obligation to prove that it exercised
39 reasonable care, would that have a significant impact upon
40 the outcomes of common law litigation?
41

42 MR MORRISON: I suspect it wouldn't. The reality is that
43 very few claims fail on the onus. The most recent one
44 which failed was the case against Prince Alfred College in
45 South Australia, Justice Vanstone's very recent decision.
46

47 THE CHAIR: That is on appeal, I think, isn't it?

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MR MORRISON: I would assume it is because her Honour had a view of the close connection test which doesn't appear to accord with Chief Justice Gleeson's words, on the face of it.

THE CHAIR: I think her Honour, in fact, went to the New South Wales Court of Appeal for assistance in that case.

MR MORRISON: Yes.

THE CHAIR: But just looking at the general framework, as you have experienced it, if the onus is reversed, I suppose the question is would it prove difficult for institutions to discharge the obligation of proving that they exercised reasonable care?

MR MORRISON: In some quite old cases that might be so, but even in Rundle, for example, which was a case from the early 1960s, there was evidence around. The Salvation Army, in that case, chose not to adduce any direct evidence because on an extension of time application you could put on information and belief evidence and, therefore, protect or hide your witnesses. They could have been forced to put on that evidence but the result would have been the same. The extension of time was granted in New South Wales under South Australian law, because the South Australian limitation law was then easily the most liberal throughout Australia.

My suspicion is it might make some difference but not an enormous difference, because it doesn't, on the face of it, appear that too many cases fail on the evidentiary hurdle. The Brisbane South issue is far more significant. The assumption - not an assumption which appears to apply in respect of criminal prosecution - but the assumption that Brisbane South makes that witnesses' memories will have gone or that records will have disappeared inevitably over time, that's a far more serious problem to overcome. Unless Brisbane South is overturned, then it seems, on the face of it, that it will still be very difficult for litigants, but I'm not sure the reversal of onus does more than put the litigant through the same stressful series of cross-examination and submissions that occurred in the Ellis case.

1 THE CHAIR: Let's assume that you remove the statute of
2 limitations and reverse the onus - what happens then?

3
4 MR MORRISON: That might assist more. There would still,
5 however, be the uncertainty in respect of vicarious
6 liability and what the outcome was going to be in
7 Australia, given the diversity of views expressed in
8 Lepore. We have uncertainty in that regard and there is
9 clearly some inconsistency on non-delegable duty from the
10 approach taken in the Supreme Court in England in *Woodland*
11 *v Essex County Council (No.1)* and some inconsistency, on
12 the face of it, between *Kondis*, which wasn't overruled in
13 Lepore, and the decision in Lepore that you can have
14 a delegable non-delegable duty, at least by six out of the
15 seven judges, something with which I have some problems
16 reconciling intellectually.

17
18 THE CHAIR: The other issue I wanted to have you expand
19 upon, you have put your finger on an issue that is
20 a problem, which is if you seek to create a vehicle that
21 can be sued for the churches, say - some entity - it may
22 not be appropriate to seek to do the same thing for the
23 sporting club or the swimming club or whatever. What do
24 you see as the line of distinction? Where do you draw the
25 line between institutions which should be required to
26 provide a vehicle in whatever form that can be sued, as
27 against those that need not?

28
29 MR MORRISON: Again, any significant organisation which is
30 providing care or services for children should have an
31 identifiable institution which is capable of being sued.
32 Whether that institution should be liable might be a very
33 different matter, because the close connection test is
34 unlikely to make the children's soccer club, even though it
35 has an identified membership, and a representative order
36 could be obtained against it, liable for the abuse of
37 a volunteer soccer coach, by way of example. To some
38 extent, the close connection test really gets us around
39 that problem.

40
41 The problem of insurance is more difficult and that's
42 one which was addressed a little earlier. I am not sure
43 that we have any very straightforward answer to that, other
44 than that it certainly would be desirable to have a regime
45 where insurance was available and we would be aware from
46 the roundtable that it would not be beyond the means of
47 insurers to provide some form of insurance which included

1 criminal conduct, but the cost of it is something as to
2 which we can't speak and something that the
3 Royal Commission should take some further advice on, we
4 would respectfully say.

5
6 THE CHAIR: Yes.

7
8 COMMISSIONER FITZGERALD: Could I just ask one question.
9 I want to take you to eligibility and standard of proof.
10 In your submission you have landed on what is called the
11 reasonable likelihood test, which is higher than
12 plausibility and lower than balance of probabilities. You
13 are particularly critical I think of the Catholic Church in
14 putting forward the balance of probabilities test. Could
15 you just articulate for us a little bit further why your
16 alliance has come to the view that the reasonable
17 likelihood test may be the appropriate measure for
18 eligibility?

19
20 MR MORRISON: What we were trying to do, in going for that
21 lower measure, was to recognise that a redress scheme does
22 not offer anything like full compensation, and the rigours
23 which are required at common law to establish the balance
24 of probabilities and to do so after application of the
25 various hurdles, particularly limitation, the Brisbane
26 South hurdles, seemed to us to suggest that reasonable
27 likelihood, recommended as it was by the Senate committee,
28 was an appropriate test on which to go forward, because
29 there will be plenty of cases where there is very limited
30 information available, as we heard earlier - records have
31 gone missing - but, on the face of it, the evidence is
32 reasonably compelling that the abuse occurred.

33
34 After all, that was sufficient in many of the cases
35 under Towards Healing for the Catholic Church itself to
36 accept responsibility. It applied something like that test
37 itself, at least after the trauma of the Ellis case, in any
38 event. We would suggest that was a reasonable way forward
39 for the redress scheme. Common law liability, however,
40 should retain the traditional balance of probabilities
41 test.

42
43 COMMISSIONER MURRAY: I have a single question which
44 I addressed earlier with the Law Council and I would like
45 the Lawyers Alliance opinion on it. I understand your
46 alliance supports the view that institutions could have an
47 express duty to take reasonable care to prevent sexual

1 abuse of children in their care. That general duty of
2 reasonable care was long established in Corporations Law
3 and was found to be inadequate. What they added was duties
4 which were to be observed by directors in their individual
5 capacity. I am interested in whether you think there are
6 any classes of institutions as to which a duty in an
7 individual capacity should apply?
8

9 MR MORRISON: I am not quite sure what's meant by
10 "individual capacity", but if what we're talking about is
11 the classes of institutions which fall within the close
12 connection test and, therefore, give rise to vicarious
13 liability, many organisations which care for children in
14 circumstances where they are empowered, the child is
15 disempowered, there is a high degree of intimacy and
16 control and the child is particularly vulnerable, they are
17 circumstances in which a court would be likely to readily
18 find, one would suspect, that the close connection test is
19 made out and, therefore, there should be vicarious
20 liability whether the institution was negligent in its
21 supervision of the abuser or not.
22

23 That would be a situation which might, on the present
24 law, be made out, but certainly would be accepted to be the
25 state of the law in England and Wales and in Canada.
26

27 COMMISSIONER MURRAY: I may have been unclear.
28 Corporations Law says to directors that if they fail to
29 carry out their duties responsibly as individuals, they are
30 liable as individuals, and I have wondered if, in certain
31 types of institutions, whether extending express duty to
32 take reasonable care should be supplemented by such an
33 obligation.
34

35 MR MORRISON: The problem about that proposition, applied
36 to the diversity of institutions we're dealing with, is
37 that some of those institutions are very complex in their
38 organisation, and if we take, just for example, the
39 Catholic Church - and I only take it as an example - the
40 Royal Commission heard evidence, while Cardinal Pell was in
41 the witness box, that Catholic Church Insurance would not
42 necessarily accept responsibility for a bishop whose
43 failure of supervision of a priest, of an abusive priest,
44 had led to the abuse going on. The problem is the
45 particular organisation or the structure of the particular
46 organisation might not make it amenable to the same sort of
47 test as Corporations Law.

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We would suggest the simpler approach is vicarious liability on the organisation which, after all, has the assets, or should have the assets, and would have the assets if the various Catholic Church Acts were amended throughout Australia. That seems to us to be a more appropriate approach, particularly given that there will be some institutions and churches in particular which may be wholly unincorporated, which, nonetheless, have very substantial assets.

The law still permits a remedy pursuant to a representative order if there are suitable assets there to be pursued.

COMMISSIONER MURRAY: Thank you.

MS FURNESS: I note the time, your Honour.

THE CHAIR: Thank you, Mr Morrison, and again, thank you for your contributions and the Alliance throughout our deliberations and thank you for your time today. We will take the morning adjournment.

SHORT ADJOURNMENT

MS FURNESS: Your Honour, the next speaker is from the National Stolen Generations Alliance, Mr John Dommett, who is the chief executive officer of Connecting Home Limited.

Can I invite you to speak to your submission, understanding that you have provided us with, effectively, a replacement submission?

MR DOMMETT: Yes, that's correct.

MS FURNESS: And the replacement submission is on the website.

MR DOMMETT: First of all, I would like to acknowledge the traditional custodians of the land that we are gathered on, their elders, past and present.

The submission that we have put in is a combination submission from the National Stolen Generations Alliance, which is a peak body of all the agencies that support Stolen Generations across Australia. Connecting Home is

1 a member agency, as is the Bringing Them Home Western
2 Australian partner in the submission.

3
4 A lot of our submission is based on the experiences of
5 Connecting Home in the way that we deliver services and so
6 a lot of the data and stuff has come from Connecting Home
7 and the way we support.

8
9 I think one of the main points is that Aboriginal
10 people are disproportionately represented amongst this
11 group, so within the Commission's own report, more than
12 18 per cent or 29 per cent, up to 29 per cent of victims of
13 sexual abuse were Aboriginal children held in care, and if
14 you consider that the Aboriginal people make up 3 per cent
15 of the population, that's a disproportionate
16 representation.

17
18 The NSGA believes that redress needs to be a multiple
19 strategy. It needs to be augmented by a very flexible and
20 holistic support model, such as the Connecting Home type
21 model which we will talk about later.

22
23 It is really important, we think, not to homogenise
24 any of the groups. Everything needs to be individualised.
25 You can't say that because a person is a survivor of the
26 Stolen Generations, everyone within that group has the same
27 needs, the same as you can't say all children who were
28 sexually abused in institutions have the same needs.
29 Things need to be individualised and looked at in terms of
30 a person's current circumstances.

31
32 We believe that there needs to be a genuine apology
33 which goes along with any settlement of any claim, and it
34 needs to be personally provided.

35
36 Where we have supported survivors through the common
37 law system to get a pay out, one of the most enduring parts
38 for them is the personal apology that they receive from the
39 representative of the organisation or the government, and
40 I think that that heartfelt apology is an important part of
41 a person's journey of healing.

42
43 It assists people to provide closure and it also
44 allows people who have been victimised for a lot of their
45 life to actually get a sense of being believed. One of the
46 biggest issues that we find is that people just don't feel
47 that they have ever been believed by anyone.

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We believe that there needs to be a recognition of the transgenerational impact of the trauma that people who were sexually abused as children have brought into their families and their children and their grandchildren and their great-grandchildren. It's a very sad fact of affairs that there are more Aboriginal children in care today than there were at any point in history of the Stolen Generations, so the transgenerational trauma that has come through that community has been life-defining and is going to be life-defining for future generations if it is not addressed.

We believe that Connecting Home is also an organisation that has commenced the first indigenous veterans centre, which assists people who were veterans of the defence forces, who were indigenous, to access support services and counselling services and pension services through the Department of Veterans Affairs. That was a major gap area. What we have learnt from that is that the model of the Vietnam Veterans, in particular, the Vietnam Veterans Counselling Service, has been particularly effective in dealing with the whole person and their family members. Under that system, the entire family is entitled to counselling and we think that is a really important aspect to it, that people don't live in isolation, people live with families, and the family needs to heal for the survivor to heal as well.

Often the survivor carries immense guilt around the issues that the family is facing because of their history and so there needs to be a focus on a family counselling system.

A couple of years ago Connecting Home received some funding to trial a pilot into funding some headstones. What mainstream Australia don't realise is that most of the people who are buried who were part of the Stolen Generations were buried within pauper graves. When a person goes back to visit their loved one - and they may never have met their family, particularly their parents - what they see, if they are lucky, is a numbered disk, not a name, nothing. Often it is a stick in the ground or a numbered disk. That dehumanises and it really reinforces with the person their lot in life. We started a pilot where we had some headstones installed on some graves where we knew family members were.

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The feedback we have had is that that has had a remarkable affect on people's healing. For the first time in their entire lives, they have a place to belong. They can go to their parents at Fathers Day, at Mothers Day at Christmas, and that gives them a great sense of healing. It's not an expensive exercise, but it's an exercise. If you think of mainstream Australia, anyone who has buried a loved one always wants to have a headstone there. That has not been done for this group. We would see that a fund should be established and it could be augmented through philanthropic means.

The issue of lump sum versus instalment payments is quite an interesting one to Connecting Home. We have supported quite a few survivors to go through the common law process to get very modest, I must say, unbelievably modest, payouts. What we have experienced from that is that if people are not prepared well enough in advance to receive the funds and know how to manage those funds, very quickly those funds disappear and are spent in areas which are not life-changing. Often, people will donate the money back to gambling establishments. We have had one person who has re-ignited a gambling addiction which she was well and truly over before she received the funds.

We believe that there needs to be included in the matrix of how much people should receive also a matrix of assessment around people's capacity to manage those funds, and the possible implementation of an augmented system around Centrelink payments, where a person would have a sanctioned amount of money which would be added on to their fortnightly benefit equal to the amount of the pay out, but that those funds need to be put into a pool which cannot be manipulated by future governments and reduced in terms of funding cuts. Those payments need to be recognised as a compensation.

That doesn't apply to every person and that is where we come back to our point that not every person should be treated as a homogenous group. We feel that there need to be some individualised approaches.

We also feel that at any point that a person is receiving a payment, that at the decision-making point, they should go back to the support agency that is assisting them, or to any supports that they have in place, and just

1 make sure that they are comfortable with the amount and
2 with the payment system.

3
4 What we have seen is where people have received
5 payment and they have managed to mismanage those funds,
6 that it re-traumatizes people at an incredible rate. We
7 have found people to become suicidal. They feel extremely
8 guilty for the fact that they have wasted the funds and it
9 actually has set them back rather than taken them forward.
10 Careful consideration, we think, needs to be given to the
11 mechanism if monetary payments are going to be made.

12
13 We feel that, of course, support in terms of
14 decision-making, but also financial counselling, should be
15 provided free and not part of the package. People,
16 particularly who have been impoverished in Australia, may
17 not know how to manage funds, so they should be given that
18 support.

19
20 MS FURNESS: Can I just tell you, you have passed the
21 10 minutes.

22
23 MR DOMMETT: No worries. Just to sum up, I think that the
24 Connecting Home model, which is a very holistic model,
25 works with a person across all areas of support. There are
26 no pillars of funding which we go through. We support
27 a person regardless of what area they want. We will
28 support a person in a housing need. We will support people
29 to discover who they are. We will support people in
30 dealing with child protection for their own children. We
31 will support people in dealing with any court cases that
32 they may have.

33
34 We also support people to discover their
35 Aboriginality. I think a model where people don't have to
36 prove anything, that can follow them in whatever support
37 need they have, is an essential part of reparation.

38
39 MS FURNESS: Thank you, Mr Dommett.

40
41 THE CHAIR: Mr Dommett, it is that last point that I want
42 to take up with you. I understand the dilemma, but when
43 you say people shouldn't have any onus of proof, how does
44 that play out when the person is seeking redress, including
45 money sum and counselling and so on, from a particular
46 institution? When you say remove the onus of proof, which
47 your submission says, what are we talking about in your

1 concept?

2

3 MR DOMMETT: Okay. What we're talking about is the onus
4 of proof of being able to prove sexual abuse occurred. We
5 believe that there is enough evidence of institutional
6 abuse, internationally as well as within Australia, and you
7 can go back to any of the Commissions, royal commissions
8 into disability services, aged care services, indigenous
9 services, institutional care across the sector - there is
10 a lot of evidence that in, let's say, a particular
11 institution people were abused. We say that the act of
12 actually having to prove that can, in some cases, be more
13 traumatising than getting the compensation. We would say
14 that if you can prove you were there then there would be an
15 assumption that certainly some form of abuse occurred.

16

17 THE CHAIR: So anyone who was in a particular institution,
18 you would say, is entitled to receive redress money?

19

20 MR DOMMETT: Yes.

21

22 THE CHAIR: Do you understand that that may not be readily
23 accepted by some institutions or governments?

24

25 MR DOMMETT: I certainly do understand that. That doesn't
26 mean that is not our view, though.

27

28 THE CHAIR: Sure.

29

30 MR DOMMETT: We feel that some of the processes that are
31 put in place discourage people from being able to make
32 a claim. The burden of proof in terms of access to files
33 is incredibly complex. For instance, we're aware in
34 Victoria there is one institution whose files sit within
35 a government department's archive system which remain
36 unopened, but there is an argument between the two
37 organisations as to who owns them, so no-one's going to
38 open the boxes.

39

40 We have people who were in those institutions who are
41 seeking their files and no-one has record of them; we
42 believe they could well be in those boxes.

43

44 THE CHAIR: Which departments are those that are having
45 trouble?

46

47 MR DOMMETT: What was the Department of Human Services in

1 Victoria and a large non-government organisation that ran
2 an institution. We have made that point. We have allowed
3 the Royal Commission to know that point in the past.
4

5 THE CHAIR: Some institutions and governments would say if
6 your suggestion, "No need to prove abuse", was adopted,
7 that the return would be or the complement would be a lower
8 maximum payment.
9

10 MR DOMMETT: That would be correct.
11

12 THE CHAIR: How do you respond to that suggestion?
13

14 MR DOMMETT: We would say that, using your matrix, the
15 first burden would be that a person was there; then the
16 second level of proof might be that someone can prove that
17 they were sexually abused, through their files, so they
18 would then be entitled to a greater share.
19

20 We also believe that part of redress is not just about
21 monetary compensation. Redress is really about looking at
22 a systemic approach to resolving some of the issues that
23 have been created and therefore some of the other measures
24 in our report should be part of the redress. So if that
25 results in smaller sums of cash being handed across, but
26 people having a more holistic service provision, an
27 enhanced lifestyle in terms of support, a better support
28 option, then we would say that that is actually a better
29 option anyway.
30

31 MS FURNESS: We have been told, Mr Dommett, that if the
32 onus of proof is on the applicant or claimant and that it's
33 a lower standard such as plausible rather than a higher onus of
34 reasonable likelihood or balance of probabilities, the
35 survivor will feel not as believed by the institution the
36 lower the standard. Do you understand what I mean by that?
37

38 MR DOMMETT: I understand what you mean by that. I would
39 disagree with that. I think the belief isn't necessarily
40 at that level. I tend to think that the belief is if
41 a person was at the institution and as a result of being
42 able to prove that they were there - which is a lower
43 burden - that provided the support services are put in
44 place and that there is some compensation, particularly in
45 terms of an apology, then I think the belief would be just
46 as great. I think the difficulty between the belief and
47 the fact of proof is that proving that you were sexually

1 abused can be incredibly difficult but, more than that, it
2 can be incredibly traumatising. So, yes, you may be
3 believed eventually, but it may have cost you unbelievable
4 costs in terms of your own personal esteem and any sense of
5 worth that you have managed to build up over your time of
6 not being institutionalised; so I think it's a cost
7 benefit.

8
9 MS FURNESS: So the fact that they receive a payment,
10 after having been satisfied that they were at an
11 institution, will be sufficient to feel they have been
12 believed, in your experience?

13
14 MR DOMMETT: With the supports in place. I guess the
15 experience that we have had is that simply writing a cheque
16 and giving it to someone is a short-term fix. It doesn't,
17 in itself, resolve many of the issues people have. People
18 need to be able to have a seamless support network that
19 will actually work with them to repair the damage that has
20 been done over years.

21
22 MS FURNESS: You also said that the capacity to manage
23 funds should be assessed in relation to claimants. How do
24 you suggest that the scheme would go about assessing that?

25
26 MR DOMMETT: We would see that there would be a session
27 with a financial counsellor prior to money being exchanged
28 or settlement being reached, and that the financial
29 counsellor would be able to develop a tool that would allow
30 people to understand how people managed their funds in the
31 past.

32
33 If people have been able to manage their funds then
34 there is no question that they should be provided. It is
35 an option rather than a mandatory option. I think people
36 need to be given the option to have an incremental payment
37 rather than it's one solution for everyone. From our
38 experience of where that has happened, it hasn't had the
39 desired effect.

40
41 MS FURNESS: When you say it is an option, is it an option
42 for the person seeking the payment to decide whether, one,
43 they will see a financial counsellor, and then, secondly,
44 whether they get an instalment or a lump sum?

45
46 MR DOMMETT: We would see that the requirement to have
47 a session with a financial counsellor would be a mandatory

1 requirement; it would just simply part of the process that
2 people would go through. The end decision is theirs, but
3 the options need to be explored fully with people. We
4 would see that the support agency that has been able to
5 bring a person to that point would be one of the parties
6 involved in that.

7
8 MS FURNESS: Thank you. Thank you, your Honour.

9
10 THE CHAIR: Thank you, Mr Dommett. Thank you for your
11 contribution. It is greatly appreciated and thank you for
12 your time today.

13
14 MR DOMMETT: Okay, thank you.

15
16 MS FURNESS: Your Honour, the next people to speak to
17 their submissions are from Scouts Australia. Mr Bates, you
18 are the national chief commissioner?

19
20 MR BATES: Yes.

21
22 MS FURNESS: Mr Thomas, you are the national chief
23 executive of Scouts Australia.

24
25 MR THOMAS: Yes.

26
27 MS FURNESS: Can I invite you to speak to your submission?

28
29 MR BATES: Good afternoon. I thank the Royal Commission
30 for this opportunity to contribute to your inquiry into
31 a potential national redress scheme for victims of child
32 sexual abuse within institutions.

33
34 Scouts Australia supports a national redress scheme
35 and will participate in a program that may provide relief
36 and healing to survivors of child sexual abuse with minimal
37 bureaucratic process and stress.

38
39 We are a not-for-profit organisation which is
40 culturally diverse and involves families in all aspects of
41 our programs. Most volunteers are the mums and dads of our
42 of 66,000 members. Today, more than 30 per cent of Scouts
43 are girls or young women. We are part of nearly every
44 Australian community. The safety and welfare of the youth
45 in our care is of paramount concern and we have a zero
46 tolerance policy on child abuse and for decades have had
47 a practice of reporting any allegations of child abuse to

1 police.

2
3 We have failed in the past. We are truly sorry. We
4 recognise that no matter how vigilant we are as an
5 association or how strong our policies are, that there is
6 a risk that an individual may take advantage of an
7 unplanned situation.

8
9 It is a heartbreaking reality that we have to be
10 constantly vigilant. We have put in place rigorous
11 processes and also encouraged a culture of reporting that
12 allows us to identify and eliminate inappropriate conduct
13 immediately and completely.

14
15 A fair redress system will support reporting and this
16 is essential to minimising abuse in any corner of
17 Australian life. While working to stamp out any
18 opportunity for abuse, Scouts has for decades also sought
19 to ensure that if youth members were abused by the criminal
20 activity of any leader, there was adequate insurance cover.
21 This was and is intended to provide compensation to the
22 youth members within the legal framework with which Scouts
23 operates.

24
25 We were interested in the discussion on Wednesday from
26 some victim groups that redress and compensation should be
27 directly taken from perpetrators. There remains the fact
28 that sexual abuse of children is the criminal activity of
29 the perpetrator. These criminals devastate the victims.
30 These criminals also shatter the work of thousands of
31 people in organisations like ours who devote so much of
32 their lives and make an enormous contribution to the
33 education and development of young Australians.

34
35 We hope that the Commission can consider ways that
36 perpetrators also contribute to any redress scheme that is
37 established. In our submission, we urge that any redress
38 scheme should treat all survivors of abuse equally
39 regardless.

40
41 Any organisation, whether they are a government
42 organisation or a community group, has a clear obligation
43 to protect children. Community organisations, such as
44 Scouts, do not have large cashflows. We operate on the
45 basis that annual fees, miscellaneous income and donations
46 cover annual activity expenses. Scouts believe a redress
47 scheme should be mindful of the level at which financial

1 payments are set to ensure that they are affordable and
2 able to be sustained.

3
4 It is important that the impact of retrospectivity be
5 considered completely. This is especially important with
6 regard to the fair and reasonable impact on the ability of
7 an organisation to remain viable and to contribute to the
8 future needs of the community.

9
10 It is tough for many families whose children take part
11 in Scout programs to pay even minimal fees or activity
12 costs. If insurance or redress scheme costs for historic
13 claims escalate, then this will adversely affect
14 communities least able to pay today.

15
16 Money should not be the sum total of any redress
17 scheme and other compensation measures, including
18 counselling and support, a proper personal response, such
19 as an apology, can also greatly assist in the healing
20 process. Crucially, the scheme needs to be equitable for
21 all survivors.

22
23 Scouts would like to talk about a number of ideas
24 proposed within the discussion paper which go to the
25 fundamental nature of a redress scheme and retrospective
26 liability.

27
28 If retrospective liability is to be imposed, the whole
29 of community may need to collectively contribute in an
30 equitable manner. If volunteer organisations are to be
31 made liable for new levels of compensation for historic
32 cases, it could be at a very significant cost to the
33 community today. Volunteer organisations may close down or
34 curtail the programs they are offer. The blunt question is
35 should the provision of such retrospective compensation be
36 at the expense of program delivery to future generations?
37 It is a delicate calculation to discuss.

38
39 Monetary reparation. We are not in a position to
40 express a view about the appropriate level of payment under
41 a redress scheme, as the hurt suffered is simply not
42 capable of being converted into a monetary amount.

43
44 Previous payments achieved through litigation,
45 settlement or other redress schemes should be deducted from
46 payments under a national redress scheme. If retrospective
47 liability is imposed for historic cases on organisations,

1 it will impact today's members. The costs will not be paid
2 by the members or leadership in place at the time of the
3 abuse.

4
5 Non-monetary redress. We support the view that
6 survivors of child sexual abuse in an organisational
7 context should have the opportunity to meet with a senior
8 representative of the organisation, in our case, the Chief
9 Commissioner or the Chairman. Survivors should be given
10 a genuine, oral and written apology. They should be given
11 an opportunity to engage with those representatives, to
12 tell their story. They need to hear that they are
13 believed. They should also hear the steps the organisation
14 is taking to protect children.

15
16 The advice of survivors can help to improve policies
17 and processes to protect future generations. We also
18 understand that at times a survivor may prefer to remain
19 anonymous or refrain from direct contact. In cases such as
20 these, Scouts has, in the past, reached out to a survivor
21 through a third party, such as the police, or an approved
22 victim support program. This is a process which could be
23 formalised in cases where survivors do not wish direct
24 contact but would benefit from receiving an acknowledgment
25 and apology in written form. We strongly support the
26 provision of ongoing counselling and feel that this should
27 be coordinated as part of a holistic program to address the
28 needs of the survivor.

29
30 We believe it is crucial to have an accredited
31 external support service rather than an attempt to employ
32 staff within the organisation. Ensuring that all survivors
33 have an equal level of access to counselling is essential.
34 We believe that could be coordinated through Medicare.

35
36 Ex gratia. We would like to touch on the idea posed
37 by the Commission in the discussion paper that the redress
38 may be an ex gratia payment rather than a monetary payment
39 that is fully compensatory. We are led to understand that
40 an ex gratia payment is by definition voluntary and not
41 payable as a result of legal liability. Any recommended
42 redress scheme will need to come to grips with whether it
43 is voluntary and truly results in ex gratia payments or
44 whether it will impose retrospective legal liability on
45 organisations. While we would support a voluntary scheme
46 in which recommendations are made by an administrative
47 body, this may lead to uncertainty. The role of the court

1 system in deciding if criminal conduct did occur and
2 whether an organisation breached a duty of care should also
3 be respected.
4

5 In regard to the standard of proof required,
6 Scouts Australia supports a non-confrontational scheme that
7 involves the independent assessment of the survivor's
8 circumstances after the appropriate validation of the facts
9 with the relevant organisation. This is a delicate and
10 complex issue for the Commission to explore.
11

12 Should the Commission favour retrospective liability
13 for historic cases, on a no-fault or limited-fault basis,
14 a preferable scheme would be for the Commonwealth or State
15 to pay survivors out of the public purse so that all
16 survivors will be treated equally, regardless of the
17 circumstances in which they were abused.
18

19 Limitation. We understand that the Commission may
20 recommend to extend limitation periods for common law
21 claims. Where organisations were insured for such claims,
22 the extension of the limitation periods should not
23 prejudice the organisation's right to be indemnified under
24 its insurance policies.
25

26 In conclusion, Scouts Australia is committed to
27 ensuring that survivors of child sexual abuse are supported
28 by a redress scheme by which they are treated fairly and
29 equitably and which is sustainable. Scouts Australia
30 recognises that this is a journey that for many has already
31 been fraught with emotional, psychological and economic
32 hardship. We are committed to working with the Commission
33 to achieve systemic change that embraces those who have
34 been impacted and supports them in their healing.
35

36 Thank you again for the opportunity to speak on behalf
37 of Scouts Australia. I would be pleased to answer your
38 questions.
39

40 THE CHAIR: Thank you. Can we just understand a couple of
41 things. Firstly, the legal structure of Scouts. You are,
42 in fact, a representative body, if you like, for many
43 similar voluntary bodies around the country. How are you
44 legally constructed? If someone sues the Scouts, who do
45 they sue?
46

47 MR THOMAS: Currently, Scouts Australia is a federated

1 model. Each State is incorporated in its own rights under
2 an Act of Parliament or under the Associations Act. They
3 have their own boards of governance and their own State
4 Chief Commissioner and State Chairman.

5
6 We come together federally to deal with topics that
7 are of significant importance, such as the
8 Royal Commission, and decisions are made on how to approach
9 these significant issues at a federal or nationalised
10 level.

11
12 THE CHAIR: So if someone's suing the Scouts, they would
13 be suing the corporation in the particular State; is that
14 how it works?

15
16 MR THOMAS: That would be the normal expectation.

17
18 THE CHAIR: I assume, from what you have said, that there
19 are no accumulated assets of any significance of the
20 Scouts; it's run from, as it were, year to year?

21
22 MR BATES: That's right. We rely on the membership, we
23 rely on the donations and we rely on grants that we can
24 get. It is really cost neutral - the money comes in, we
25 deliver the program, and that's --

26
27 THE CHAIR: We have heard of some of the churches which
28 have significant assets and investments, but that is not
29 true of the Scouts?

30
31 MR BATES: We have camping grounds, I guess that property,
32 and in some instances it's in prime locations, but a lot of
33 the property is encumbered. It is peppercorn rental
34 because it is owned by the councils because we are part of
35 a community and so the community says, "Look, here is
36 property that you can use on our behalf."

37
38 THE CHAIR: Then what about insurance? How does an
39 organisation like yours then - can you, first of all,
40 insure against the risk that might be realised if one of
41 your personnel abuses a child?

42
43 MR BATES: Yes, I think this comes back to our point about
44 the whole of community, where we see the community
45 organisations being covered by some sort of a Commonwealth
46 approach, because our concerns are that - there are
47 probably three points with the insurance. Our current

1 insurance might look at us and say, "We're not there at
2 all. We can't cover that historic case. We can't cover
3 that retrospective liability", and that would put us at
4 great risk at continuing to deliver any program.

5
6 The second point is that the insurance company might
7 say, "Yes, we support the redress, but we have a caveat on
8 it", and that would constrain our future programs that we
9 can deliver.

10
11 The third point would be that the current insurance
12 company would support the redress but not support any civil
13 claims. We look to you for some sort of framework that
14 delivers a redress scheme, being mindful of that delicate
15 situation of the insurance situation.

16
17 Our greatest concern is that the survivors see
18 a system that is fair and equitable and also that a redress
19 scheme delivers on whatever they need.

20
21 THE CHAIR: It's probably my fault, I'm not quite sure
22 I understand. Have you carried previously insurance which
23 extends to what I think is called molestation of a child?
24 Has the Scouts movement carried --

25
26 MR BATES: To my understanding, yes, we have.

27
28 THE CHAIR: Does that go back some time - decades?

29
30 MR BATES: Decades, yes, but some of those companies no
31 longer exist.

32
33 THE CHAIR: That's a problem across the community in many
34 areas, yes, I know. That policy would respond to a claim
35 in negligence by the Scouting movement, I assume, so if
36 there was a failure to properly manage the risk which
37 materialised, the policy would respond; is that right?

38
39 MR THOMAS: That is correct, sir.

40
41 THE CHAIR: Would it be in that context that the policy
42 might respond to a claim for redress - that is, it secures
43 and finalises a claim which might materialise as a common
44 law claim; would that be right?

45
46 MR THOMAS: That is correct sir.

47

1 THE CHAIR: Is it right to think that that policy has
2 responded to date to some claims?
3
4 MR BATES: Did you say to date?
5
6 THE CHAIR: To date. So far there have been some claims
7 that have been met by the insurance under that policy?
8
9 MR BATES: Correct, yes.
10
11 THE CHAIR: I take it that the premium that you are
12 charged, obviously, is affordable; the Scouting movement
13 can afford to carry that insurance?
14
15 MR BATES: It is being impacted, yes, but we are hanging
16 in there.
17
18 THE CHAIR: And just as a general proposition, is the
19 molestation extension - if you know - an expensive
20 extension in your policy?
21
22 MR BATES: I don't know. We may need to seek some further
23 clarification for you on that.
24
25 THE CHAIR: I think we would appreciate that, because you
26 will be representative of many similar types of
27 organisations.
28
29 MR BATES: Yes.
30
31 THE CHAIR: Is there any suggestion going forward that
32 your insurance won't be able to sustain a molestation
33 extension?
34
35 MR BATES: I would come back to you on that one as well,
36 please.
37
38 THE CHAIR: Yes. We all appreciate your concerns about
39 your financial structure and what that means, but that's
40 one of the reasons, of course, we have insurance in our
41 community, to ensure that organisations don't fail because
42 a risk materialises.
43
44 MR BATES: Yes.
45
46 THE CHAIR: Do you think it would be reasonable for
47 a redress scheme, however it is framed, to accept that an

1 organisation like yours, and many others like yours, should
2 look to its insurance arrangements to meet its liabilities?
3
4 MR BATES: Yes, I think that would be fair to say, that we
5 would look to our insurance first, and that we see that
6 this whole of community might be there to support where
7 there are some gaps in that.
8
9 THE CHAIR: Yes.
10
11 MS FURNESS: Thank you. You referred earlier to the fact
12 that 30 per cent of your members are girls.
13
14 MR BATES: Yes.
15
16 THE CHAIR: Do you have any association with the
17 Girl Guides movement?
18
19 MR BATES: They are two separate movements. I think they
20 were started by a husband-and-wife team, but the Guides
21 operate quite separately from the Scouts. Two vastly
22 different - although we are a brother and sister
23 organisation; does that make sense?
24
25 MS FURNESS: Yes, thank you. Thank you, your Honour.
26
27 COMMISSIONER FITZGERALD: May I clarify one issue. In
28 your submission you have raised - and in your oral
29 presentation - this issue about whether a payment is
30 ex gratia and therefore voluntary by nature or whether it
31 is a legal liability. As I understand it, with the Scouts,
32 you place heavy reliance on the insurance company providing
33 an assessment of the claims that come to your organisation,
34 as distinct from an internal investigation process; would
35 that be correct?
36
37 MR BATES: Yes.
38
39 COMMISSIONER FITZGERALD: You have indicated that you
40 support a national redress scheme or a redress scheme of
41 some nature. Is the Scout movement happy with the notion
42 that the assessment of the claim putting aside civil,
43 common law claims, would be, under that arrangement,
44 determined by an independent scheme or an independent
45 assessor?
46
47 MR BATES: Yes. We see that as an administrative process,

1 separate to everything. That would be something that we
2 would support.

3
4 COMMISSIONER FITZGERALD: In your discussions with your
5 insurers to date, you indicated that there may be some
6 caveats placed on this, but could you tell me whether or
7 not there has been any particular caveat or concern that
8 has been raised with you in relation to that matter?
9

10 MR BATES: No, we haven't had anything put in, yet. They
11 are just the three aspects that we are grappling with at
12 the moment - how would our current insurers view this
13 process with regards to the redress, whatever that might
14 be. They are the scenarios that we see that could impact
15 us.
16

17 COMMISSIONER FITZGERALD: But apart from the impact on
18 your current and future service operations, is it correct
19 to say you see no significant impediment to the Scouts
20 Australia movement being part of a redress scheme where the
21 assessment of the claim is dealt with independently --
22

23 MR BATES: Correct.
24

25 COMMISSIONER FITZGERALD: -- and that determination of the
26 amount is also made independently?
27

28 MR BATES: Yes.
29

30 COMMISSIONER FITZGERALD: Thank you.
31

32 MS FURNESS: Thank you, your Honour.
33

34 THE CHAIR: Thank you, gentlemen. Again, like so many
35 others, we are grateful for the contribution that your
36 movement has made to the consideration of these issues and
37 the time that you have given to it. Thank you indeed.
38

39 MR BATES: Thank you for today.
40

41 MS FURNESS: Your Honour, the next organisation is
42 Berry Street.
43

44 Mr Pocock, you are the director of public policy and
45 practice development for Berry Street?
46

47 MR POCOCK: That's right.

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MS FURNESS: Perhaps you could just explain what Berry Street is?

MR POCOCK: Berry Street is a large independent child and family welfare service. By "independent" I mean non-secular, so not attached to any particular church or church organisation, and legally incorporated in the State of Victoria.

MS FURNESS: Thank you. I invite you to speak to your submission.

MR POCOCK: Thank you. I wanted to start by acknowledging the traditional owners of country and paying my respects to their elders past and present, but also to their children, because ultimately that's what we are here to think about today, is children. I also want to pay respect to and acknowledge organisations including the Alliance for Forgotten Australians, CLAN and the other survivor groups, because if it wasn't for the advocacy of those survivor groups, there would be no Royal Commission and none of us would have the opportunity to be here today to talk about these matters.

In the remarks I want to make before taking some questions, I wanted to talk about the scope of the redress scheme, the purpose of payments, the role of the Commonwealth, the question of plausibility and deeds of release. It is a lot for 10 minutes, but we will see how we go.

In terms of the scope of the redress scheme, Berry Street has been reflecting quite regularly on the work of the Royal Commission and what we have learnt along the way. I think something that we have learnt along the way is that we are in quite a different position now than we were some years ago when the Royal Commission was commenced.

At the time the Commission was commenced, I think it's true to say that there was a predominant focus on the abuse of children and young people within church-based institutional contexts. That seemed to be what galvanised the community, and indeed governments, to create a royal commission.

1 Something that has, I suppose, surprised and
2 disappointed Berry Street is that when we look at what is
3 being revealed through the private sessions, over
4 40 per cent of the sexual abuse that people have come
5 forward to talk about has taken place in the out-of-home
6 care context, and as CLAN so eloquently outlined this
7 morning, the forms of abuse that people have experienced in
8 out-of-home care go beyond and extend beyond sexual abuse.
9 So I think the Royal Commission is in a different space now
10 than it was when it commenced.

11
12 Our view is that the Royal Commission has to recommend
13 a national redress scheme which has within it the capacity
14 to deal with the out-of-home care system and historical
15 abuse - and by "historical" I mean anything that happened
16 up until the time the Commission commenced. And it has to
17 enable all forms of abuse to be assessed, because this
18 would actually be true to the very principles that the
19 Commission has outlined for redress. The Commission itself
20 has outlined that our approach to redress has to be
21 survivor led. Well, if it is survivor led, the largest
22 survivor group have told us what it is that is needed.

23
24 Secondly, the Commission has said that there has to be
25 no wrong door. If we don't have a national redress scheme
26 that incorporates out-of-home care and, specifically for
27 out-of-home care deals with all forms of abuse, then the
28 reality will be that for those survivors, there will not be
29 no wrong door - there will be at least two doors if they
30 wish to seek redress.

31
32 An agency like Berry Street, as an institution, would
33 be left in the situation where someone from our past, who
34 we have cared for, or perhaps not cared for, who comes and
35 talks to us about being sexually assaulted and physically
36 beaten - that person could talk to us about the physical
37 assault, and would have to go to a national redress scheme
38 to talk about the sexual assault. So they would have two
39 separate pathways, and as an institution we would have to
40 manage some of our own process around the physical abuse
41 and participate in a national redress scheme around the
42 sexual abuse. So it wouldn't meet the test of no wrong
43 door. It would also mean that agencies like Berry Street
44 would, in all likelihood, have to maintain some redress
45 element within the agency which would fail the test of
46 being independent.

1 In terms of the role of the Commonwealth - and I know
2 there has been discussion about this during this hearing -
3 I just want to quote the Honourable Tony Abbott, Prime
4 Minister, who on September 22, 2014 said:

5
6 Protecting our people is the first duty of
7 government.

8
9 Now, I take it that when the Prime Minister said this he
10 was including his government in that, and that he wasn't
11 specifically and only referring to State and Territory
12 governments.

13
14 Berry Street would contend - and we would agree - that
15 if protecting our people is the first duty of government,
16 that includes children and young people. And, secondly, if
17 that's our first duty, then surely our second duty is to
18 provide a just and full response to all those that we have
19 failed to protect.

20
21 So our view is it needs to be a national scheme. The
22 Commonwealth Government needs to be on the hook and
23 supporting the scheme, and the most important thing that
24 the Royal Commission can do at this point in time is stay
25 the course and keep advocating and recommending a national
26 scheme.

27
28 In terms of the purpose of payments - and following
29 the transcripts and the conversation both through this
30 hearing and through other processes - it seems to us that
31 there is a lot of confusion about the purpose of payments
32 for a national redress scheme and that we need to get that
33 right in the first instance, because everything else flows
34 from that.

35
36 Our view is even at the upper end of payments outlined
37 in the discussion paper, those payments, even at the upper
38 end do not constitute compensation. We need, in our view,
39 to stop thinking about those payments as compensation,
40 because real compensation for having suffered the sexual
41 abuse that Commissioners would have heard about through
42 private sessions is not an average payment of \$65,000 or
43 \$85,000 - that's not compensation. The payments in the
44 redress scheme, in our view, are payments that should be
45 there to acknowledge the harm that has been caused and
46 provide some measurable expression from institutions that
47 they do truly regret what has happened.

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So if we accept that the payments are an acknowledgment and that they are not full and proper compensation, I think where it takes you is that the test, the level of evidence, has to be plausibility and nothing beyond plausibility.

To quote someone else, I am reminded through my colleague Caroline Carroll, from the Alliance for Forgotten Australians, who has often spoken to me about the various apologies that have been made in this area, and in particular, the apology made by Malcolm Turnbull, who in making his national apology in parliament turned to the public gallery, he turned to Forgotten Australians, and he said:

We believe you.

He didn't say, "We will believe you when you find your records which have gone missing"; he didn't say, "We will believe you based on some forensic examination of the evidence". He looked at people and said, "We believe you."

Now, my understanding of the private sessions that the Commission has had, I suppose, the great privilege and challenge of working through, is that many thousands of people have come to you and talked to you about the sexual abuse that they have experienced, and my understanding is that you believe them. My understanding is that of those many thousands of people, you believe them. So why do you believe them? I think you believe them because it's plausible, because you have sat with people and listened to them and what they have had to tell you is plausible. So if we need to look for evidence of what the evidence test should be, we need look no further than this Royal Commission and the work that it has already done.

So if we accept, as we should, that the test is plausibility, we then go to the issue of deed of release, and if we accept, as we should, that paying people \$60,000 or \$70,000 on average is not compensation for having been sexually abused, then it flows from that that there should be no deed of release. Why should victims and survivors of sexual abuse have to sacrifice their right to pursue civil litigation against perpetrators and institutions in order to receive a payment which is not compensation? Why, again, should survivors and victims of these crimes have to

1 sacrifice their rights? They shouldn't.

2
3 I have noted some of the discussion about deeds of
4 release, and some of the propositions that have been put
5 forward as to why there should be a deed of release - in
6 particular, that from Professor Patrick Parkinson in
7 relation to the need to have the Insurance Council on the
8 hook in this area; secondly, that we don't want people
9 exploited by lawyers - and I think all of us would agree
10 with that --

11
12 MS FURNESS: Just at that particular point, can I remind
13 you of the time?

14
15 MR POCOCK: Yes. And, thirdly, that there might be some
16 psychological benefit in terms of settlement and finality.

17
18 There is no evidence that providing people with
19 a payment and getting them to sign a deed of release
20 provides the victims with any finality. It might provide
21 the institution with some finality, but there is no
22 evidence that it ever provides the survivor with any form
23 of closure or finality.

24
25 On the point of exploitation by lawyers --

26
27 MS FURNESS: I need to ask you to wind up, Mr Pocock, if
28 you wouldn't mind.

29
30 MR POCOCK: I'm happy to leave it there.

31
32 MS FURNESS: I am happy if you have some final words you
33 wish to say to the Commissioners.

34
35 MR POCOCK: No. I'm the sort of person that needs to be
36 wound up occasionally. I'm very happy to take questions.

37
38 THE CHAIR: There are a couple of questions, so you will
39 probably stray. Firstly, as far as Berry Street is
40 concerned, you have been providing facilities for some
41 time. Now, like I just asked the Scouts, your financial
42 structure, I assume, is fairly lean; is that right?

43
44 MR POCOCK: No. Berry Street has significant financial
45 assets that it has accumulated since 1877. So no,
46 I wouldn't describe our financial structure as "lean".
47

1 THE CHAIR: Well, then, insofar as any claim against your
2 organisation is concerned, do you carry insurance?
3

4 MR POCOCK: We do. In Victoria, the Victorian Managed
5 Insurance Authority, or the VMIA as it is referred to in
6 the sector, provides insurance coverage for community
7 service organisations, as it does for State government
8 departments and State government authorities, and that
9 insurance policy was and is applicable to community sector
10 organisations with effect from 1989. So prior to 1989 we
11 don't have insurance coverage for allegations that may
12 relate to pre 1989.
13

14 THE CHAIR: But you do post 1989?
15

16 MR POCOCK: That's correct.
17

18 THE CHAIR: And does that cover respond only to negligence
19 by your organisation as opposed to the wrongful act of an
20 individual within the organisation?
21

22 MR POCOCK: My understanding of that insurance policy and
23 how it works - and, indeed, the claims that have come
24 forward to Berry Street in relation to matters that took
25 place post 1989 - typically, those claims have come to us
26 from people that have suffered some harm during their time
27 with Berry Street, with legal representation. We are
28 obliged to notify our insurers, the VMIA. We provide them
29 with some material on whether we think what is being
30 presented is plausible, and using a model litigant
31 approach, they would then meet with the legal
32 representatives and/or the claimants and settle the matter
33 usually fairly quickly.
34

35 THE CHAIR: So is it true that, in general, the insurer
36 has responded and there has been a money settlement when
37 claims have been brought forward?
38

39 MR POCOCK: That's correct.
40

41 THE CHAIR: Have you had any discussions with the insurer
42 about the consequences if there is a redress scheme that
43 Berry Street is required to contribute to?
44

45 MR POCOCK: No, we haven't. That is the short answer.
46 But because the VMIA provides coverage for all State
47 government departments and agencies such as the Department

1 of Human Services, those sort of conversations really need
2 to be at a sector level rather than advanced by individual
3 agencies such as Berry Street.
4

5 THE CHAIR: Do you know if they have occurred at a sector
6 level?
7

8 MR POCOCK: Certainly they haven't occurred within the
9 out-of-home care sector. I don't know whether they have
10 occurred more broadly between the community services
11 sector, the State government and the VMIA.
12

13 THE CHAIR: You know of the Commonwealth's attitude to
14 participating in a Commonwealth scheme. If the
15 Commonwealth sustains that attitude and refuses to
16 participate, what would be your preferred model?
17

18 MR POCOCK: Our preferred model then would have to be
19 consistent State and Territory schemes which agencies like
20 Berry Street were, by legislation, compelled to participate
21 in and to contribute to financially based on the number of
22 claims that relate to Berry Street.
23

24 THE CHAIR: So you see a role for State governments in, as
25 it were, ensuring that appropriate arrangements are made?
26

27 MR POCOCK: Yes, we do.
28

29 THE CHAIR: Yes.
30

31 MS FURNESS: You have said that there should be no deed of
32 release?
33

34 MR POCOCK: That's right.
35

36 MS FURNESS: What if the scheme provided for legal advice
37 to be given to claimants before they accepted a payment
38 under the scheme? In those circumstances, do you believe
39 that there should still be no deed of release?
40

41 MR POCOCK: We do. And again we go back to the point of
42 what is the payment for? If the payment is an
43 acknowledgment of some harm and if the process of the
44 redress scheme is based on plausibility, then what would
45 the legal advice be about?
46

47 MS FURNESS: The legal advice might be about the potential

1 for success in a civil litigation claim.

2
3 MR POCOCK: Yes, it might, but I'm not sure how that
4 relates to the issue of a deed of release. I mean, we
5 would say that providing that sort of legal advice would be
6 a useful thing to make available to anyone who goes through
7 the redress process, as would providing anyone who goes
8 through the redress process with, if they want it, access
9 to some financial counselling and support as well.

10
11 MS FURNESS: If a claimant was advised that they had very
12 good prospects of success in civil litigation, and there
13 was a deed of release associated with the scheme, that
14 would then permit the claimant to make a decision as to
15 whether they wished to pursue civil litigation or wished to
16 accept what was being offered under the redress scheme?
17

18 MR POCOCK: It would, but the premise behind your question
19 is still that people would have to forgo a payment which is
20 not a compensation payment in order to pursue compensation.
21 Berry Street's view is that they are two separate matters.
22

23 MS FURNESS: If a person chose to pursue civil litigation
24 in circumstances where there was no deed of release and had
25 received a payment under the redress scheme, would you
26 expect the payment under the redress scheme to be taken
27 into account in determining the compensation?
28

29 MR POCOCK: We would. We think that would be a reasonable
30 aspect of any compensation that was awarded.
31

32 MS FURNESS: Thank you. In addition, if I can ask you
33 about the out-of-home care data you refer to in your
34 submission, you suggest that the Commission should provide
35 some breakdown. Tell us about that?
36

37 MR POCOCK: Berry Street believes it would be useful to us
38 and other out-of-home care agencies to have a clearer
39 picture of the allegations and the material that has been
40 presented through private sessions, to have a better idea
41 of what decades they relate to, so we can, I suppose,
42 assess that data against some of the significant
43 legislative and practice changes that have occurred in the
44 sector over time, to help us to understand better what has
45 been changing in the sector over time.
46

47 MS FURNESS: Thank you.

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COMMISSIONER MURRAY: I have a single question. Mr Pocock, records are often absolutely vital in any pursuit of common law damages.

MR POCOCK: Absolutely.

COMMISSIONER MURRAY: But they are also often very important in redress considerations or other matters where claims need to be made concerning a person in care. Is your experience of contemporary standards of record keeping and access for out-of-home care residents a poor one? What is your view of the current status of records access?

MR POCOCK: I think there are two aspects to the question. I think that contemporary practice in relation to how we prepare and release historical records needs significant improvement. There certainly isn't a common view across out-of-home care agencies on issues like what information, if any, should be redacted from a person's historical record that you hold prior to you releasing it to them. Some agencies take the view that they should redact significant amounts of information from that record, such as the names of other persons in the record; other agencies take the view that you should release all of the information to the care leaver requesting it, so that they have the benefit of full knowledge of their time in care. So there is very variable practice, I think, in the sector in relation to that.

The second part of your question, it seems to me, is about our contemporary record-keeping practices. My comment on that would be I think there is much greater technical information in those records - things like critical incident reports that were the subject of some discussion in the previous out-of-home care public hearing, but I think what is probably lacking from a lot of the current records is some of the story of the child. We often look at contemporary records and what you will see on a contemporary record is 30 or 40 or 50 or 60 incident reports, but you won't see much of the story of the child's life.

We had a care leaver who came back to us recently and received their record and they were quite distressed because their sense of the record was - I think their comment was - "I didn't know I was under surveillance". So

1 much of the day-to-day incidents are recorded, often for
2 risk-management purpose, that what you end up with is
3 a record that has a surveillance feel to it rather than
4 a record that speaks to who this child was and is and what
5 the organisation's relationship with them was.
6

7 So in answer to your question, I think there's
8 significant work to do on both fronts.
9

10 MS FURNESS: Thank you, your Honour. Can I just indicate
11 that at 2 o'clock we are hearing from South Australia via
12 a video-link.
13

14 THE CHAIR: Thank you, Mr Pocock. We greatly appreciate
15 your contribution to our work so far and look forward to it
16 continuing.
17

18 MR POCOCK: Thank you.
19

20 THE CHAIR: Thank you. We will take lunch.
21

22 LUNCHEON ADJOURNMENT
23

24 MS FURNESS: Thank you, your Honour. We have Mr Evans,
25 who is the Crown Solicitor from South Australia, on link.
26 Can you hear me, Mr Evans?
27

28 MR EVANS: Yes, I can.
29

30 MS FURNESS: Thank you. Perhaps if I can ask you to speak
31 to the submission that the government has provided to us,
32 Mr Evans.
33

34 MR EVANS: Yes. Thank you. First of all, I'd just like
35 to thank the Commission for accommodating South Australia
36 and allowing us to make submissions by way of video link.
37 That is appreciated.
38

39 First of all, could I just recount some of the
40 background to enable a clearer understanding of South
41 Australia's position as it has been stated or set out in
42 the written submissions that have been put in.
43

44 South Australia is unique in some respects in relation
45 to redress schemes and to understand our position or the
46 State's position in relation to the various issues which
47 have been raised through the issues papers, 5, 6 and 7 and

1 the roundtable process and the consultation paper on
2 redress and civil litigation, if the Commission understands
3 the background of South Australia's position, that will be
4 of assistance.

5
6 South Australia is the only state that currently has a
7 redress scheme in place for victims of abuse suffered in
8 State care. That scheme had its genesis, as the Commission
9 would be aware, following recommendations made by a
10 commission of inquiry which was conducted in South
11 Australia from 2004 through to 2008. That inquiry was
12 conducted by former Supreme Court judge, Justice Mullighan
13 the terms of reference for that inquiry, which are set out
14 the legislation which established that inquiry included,
15 but weren't limited to, an inquiry into any allegations of
16 sexual abuse of a person who was at the time of the abuse a
17 child in State care or a child on the APY lands.

18
19 The Commission would be aware that the APY lands are
20 sometimes referred to the Pitjantjara lands, Aboriginal
21 lands in the far north-west of South Australia.

22
23 The second relevant term of inquiry, for the purpose
24 of understanding the background, is that they were to
25 inquire into any measures that should be implemented to
26 provide assistance and support for victims of sexual abuse.

27
28 That took place from 2004 to 2008. That involved in
29 excess of 800 separate hearings and it included
30 Justice Mullighan and the inquiry speaking to over 500
31 individual victims and transcript was obtained in relation
32 to the majority of those individual victims through that
33 process.

34
35 At that time, there was considerable publicity given
36 to the commission of inquiry and there was considerable
37 encouragement to any victims to come forward and to
38 participate in that inquiry, and there was support given to
39 them. The inquiry itself was set up in such a way that it
40 would be informal in the sense that it was, to quote a
41 phrase, user-friendly to the greatest extent possible, to
42 enable Justice Mullighan to sit down and seriously engage
43 with the individual victims as part of the inquiry.

44
45 Of course there were also expert witnesses called as
46 part of that inquiry and a number of recommendations came
47 out of that inquiry and a report was published in 2008.

1 Relevantly, in accordance with recommendation 40 at that
2 time, a taskforce was set up by the South Australian
3 Government to consider redress schemes in South Australia,
4 to consider other redress schemes which were then
5 available, and to look at progressing that matter in our
6 State in 2008-2009 following on from that inquiry.
7

8 Also as part of that, there was a formal
9 acknowledgment and apology by the then Premier of South
10 Australia in State parliament and also by the current
11 Premier, in his position then as a Minister in State
12 Parliament, acknowledging abuse and apologising for it on
13 behalf of the government.
14

15 A memorial was established in Peace Park in
16 North Adelaide and at the end of 2009, it was announced
17 that there would be a redress scheme, guidelines for which
18 were finalised in January 2010, and that scheme then opened
19 in 2010 and, as the Commission would be aware, that scheme
20 is still open and there's no suggestion that the scheme
21 would be closed.
22

23 At about the same time and as part of this review in
24 South Australia, the South Australian Government gave a
25 commitment and stated publicly that common law claims, if
26 they were to be pursued, arising from sexual abuse would be
27 litigated, from the government's perspective,
28 compassionately, in a compassionate way, and of course the
29 South Australian Government, the agencies and entities, are
30 subject to the model litigant obligations, a copy of which
31 have been attached to the submissions that have been put
32 forward.
33

34 The redress scheme and the guidelines which set out
35 that redress scheme, whilst there is a money component to
36 the redress scheme, there is also counselling and provision
37 of support to victims as part of that.
38

39 Just dealing with the money part of the redress
40 scheme, it was expressed to be by government at the time,
41 and in the guidelines, an alternative to common law action.
42

43 The guidelines which are well publicised and published
44 on the internet, including the application forms, make it
45 clear that support will be given to an applicant in filling
46 out the application, and there's provision for support by
47 the Commissioner for Victims' rights and also post-care

1 support services through Relationships SA, and the monetary
2 component of that scheme would be an ex gratia payment
3 which would be determined by the Attorney-General in the
4 exercise of an absolute discretion, and that ex gratia
5 payment had a maximum allowable of \$50,000. It was
6 consistent with and formed part of, in effect, the victims
7 of crime scheme, but this was an ex gratia scheme with
8 separate guidelines dealing just with State care victims.
9

10 It is important to know - I know burden of proof has
11 been discussed - that the reference in the guidelines was
12 "reasonably satisfied", but one needs to be aware that this
13 is a paper process. There are no lawyers involved, in the
14 sense of there is no evidence being given or
15 cross-examination of witnesses. Materials are put together
16 and the State assists the victim in getting the documents
17 out of State records, et cetera, to enable all of the
18 material to be collated.
19

20 South Australia also, as part of that, accepted that
21 any redress needed to have some psychological care and
22 counselling provided, and that is separate and independent
23 to any monetary claim under the redress scheme, and that is
24 provided through an independent, non-faith-based service
25 which is currently Relationships South Australia, which
26 received some funding from the State government to provide
27 a range of support and workforce development services.
28

29 Importantly - and this is specifically targeted to
30 adult - who are now adults, who were in State care, with a
31 broad definition of "State care" - it included the ability
32 and some funding for brokerage services. By "brokerage
33 services", I mean services whereby the post-care service
34 would identify specific professional or medical assistance
35 that may be needed by an individual and introduce or locate
36 the appropriate professional to deal with those problems.
37

38 MS FURNESS: Mr Evans, can I just indicate you're very
39 rapidly coming to your 10 minutes.
40

41 MR EVANS: Yes. Thank you. I will be quick.
42

43 I just wanted to go through that background to set the
44 scene for the written submissions which have been provided.
45 I don't intend to go through the written submissions, but
46 it is in that context where you have the redress scheme,
47 you have the history which I've very briefly outlined that

1 leads to the South Australian position being, first of all,
2 that whilst the government would clearly consider any
3 recommendations made, would actively consider any
4 recommendations made, in the nature of the scheme and the
5 way in which this area has been dealt with in South
6 Australia, at the moment there would not be the support, as
7 expressed, for common law changes in relation to this area,
8 and whilst the government would consider and work through
9 any recommendations, it doesn't support a movement away,
10 from South Australia's perspective, from the State-based
11 scheme that is currently in place.
12

13 MS FURNESS: Thank you, Mr Evans.
14

15 THE CHAIR: Mr Evans, there are a number of issues I'd
16 just like to touch upon with you. First of all, those
17 listening should understand that when you talk about
18 redress, you're talking about a scheme that provides,
19 I think, for those who were within the care of the State;
20 is that right?
21

22 MR EVANS: That's correct. It was a broad definition.
23

24 THE CHAIR: We're not talking about a general redress
25 scheme.
26

27 MR EVANS: No, not a redress scheme which covers
28 non-government institutions, but it does cover those
29 victims - or survivors, I think they're referred to as -
30 who perhaps were under the care of the minister but were,
31 in fact, placed in private institutions. So there's some
32 cross-over.
33

34 THE CHAIR: Yes. I think the average payment so far under
35 that scheme for each person has been about \$14,000; is that
36 right?
37

38 MR EVANS: About \$14,500, that's correct.
39

40 THE CHAIR: You probably know that virtually every
41 institution that's involved in our discussions supports the
42 need for a redress scheme that's more effective than what
43 has been provided by some institutions in the past. Do you
44 understand that?
45

46 MR EVANS: Yes, I do.
47

1 THE CHAIR: And that many of those institutions, leaving
2 aside what the survivors are asking for, are accepting that
3 a range of payments are appropriate way beyond what your
4 scheme has provided to date. Do you understand that?

5
6 MR EVANS: I understand there has been a wide variation in
7 relation to what is seen as appropriate by way of monetary
8 component of redress schemes, but, as I also understand it,
9 the monetary component is but one part and is, in part, to
10 be determined by things such as other services which are
11 provided as part of the redress, including counselling
12 services, including onus of proof and including the way in
13 which the scheme may be capable of being accessed, but yes,
14 I do understand that.

15
16 THE CHAIR: I don't think you've quite got that right.
17 Many of the institutions are saying to us that there need
18 to be the three components identified in the discussion
19 paper, but they are separate, and the money sum would be
20 separate from any underwriting, so to speak, of the
21 counselling services. Did you understand that?

22
23 MR EVANS: That is a view that is taken, I accept that.

24
25 THE CHAIR: The difficulty then is this, isn't it: if the
26 institutions are agreed that something more generous than
27 what South Australia has been providing for those within
28 State care is appropriate, and if taken up and South
29 Australia stands aside from that, you would be in a
30 position where the government would be clearly seen to be
31 offering less than the private institutions are prepared to
32 provide.

33
34 MR EVANS: One would need to see what recommendations were
35 made in relation to such a scheme, your Honour. The
36 position in South Australia, although the average payment
37 at the moment is some \$14,500 in relation to the redress
38 scheme, the maximum payable is \$50,000. Your Honour would
39 be aware from the written submissions that have been put in
40 that there's an indication that, firstly, it is seen as
41 being consistent with the amounts which are payable under
42 the victims of crime legislative scheme in South Australia.
43 There's currently consideration being given to increasing
44 the victims of crime payments from \$50,000 to \$100,000 as
45 the maximum - and I accept that that is at the maximum, not
46 as an average payment, and I accept that at the maximum,
47 that means that that would be in the most severe end of

1 injury - but that is something which will be, as a question
2 of policy, looked at as to whether that would apply to any
3 redress scheme as well, your Honour.
4

5 In those circumstances, those sorts of dollars are not
6 inconsistent, as I understand, with a range which the
7 Commission has dealt with in its consultation paper.
8 I accept that in our submissions we don't accept that an
9 average should be in the order of \$65,000, but that's
10 something that we're looking at, your Honour, and we'll
11 take into account any recommendations which are made. But
12 we just put it on the record that this is how the scheme
13 has been working here and, by and large, it has worked
14 well, from feedback. Of course, there will always be room
15 for improvement; there will always be some areas where it
16 hasn't worked as well as one would have liked and there
17 will be delays and some things like that. But something
18 that needs to be understood, though, is because this has
19 been done in this way, if all of a sudden there's a major
20 shift and a whole lot of people have been through the
21 redress process here and have moved on, perhaps, and have
22 accepted or have at least in some way come to be able to
23 deal with their position in a better way because they've
24 participated in this redress process and the whole process
25 provided, there would be a concern if that got opened up
26 again.
27

28 So there's a lot of considerations, your Honour, and
29 they'll all be taken into account.
30

31 THE CHAIR: Yes, I understand. Mr Evans, there's only
32 time for one more issue, but it is a significant issue. In
33 relation to the question of duty of care and the common law
34 liability, your written submission says we should leave it
35 to the courts to do it incrementally if the common law
36 creeps towards a change.
37

38 There is one very big consideration in that. When, as
39 has happened in England, the common law has moved, it
40 operates retrospectively, doesn't it?
41

42 MR EVANS: The common law as stated, yes.
43

44 THE CHAIR: Yes. So that the opportunity to make change
45 through a statutory process after proper consideration of
46 an issue by a body such as ours or a Law Reform Commission,
47 or whatever, enables government, if it decides to make

1 change, to do that by statutory force but operating only in
2 relation to prospective liability or issues.

3
4 Is that not a significant reason to think about
5 whether or not the current regime is appropriate - the fact
6 that you can do it prospectively without upsetting
7 financial arrangements for the past?

8
9 MR EVANS: That would certainly be a consideration, your
10 Honour, and that would be something that would be taken
11 into account in considering any recommendations, but at
12 this instant, it is the position that the common law and
13 the development of the common law is something which,
14 unless there's good reason, shouldn't be changed in this
15 regard just in relation to different classes, as it were.

16
17 THE CHAIR: What has happened in England, of course, is
18 they've moved it, depending upon the relationship between
19 the child and the institution, and it is not hard to see,
20 as a matter of policy, that that provides an avenue for
21 defining a class reasonably, for whom the common law or the
22 law itself should respond differently to the rest of the
23 population, is it?

24
25 MR EVANS: Yes, I agree with that, and Lepore and the High
26 Court would say as much as well in relation to that.

27
28 THE CHAIR: Some have difficulty working out what that's
29 actually saying, which is another reason why statutory
30 change might bring the debate to a proper conclusion.
31 That's all we unfortunately have time for, Mr Evans.
32 Unless Ms Furness has anything that she needs to ask you?

33
34 MS FURNESS: The only thing that I can ask you quickly,
35 Mr Evans, is the increase from \$50,000 to \$100,000 - has
36 that taken place yet?

37
38 MR EVANS: No, it hasn't and that's currently being
39 considered as a matter of policy. Can I just make it
40 clear --

41
42 MS FURNESS: Just before you do, can I just ask my
43 question, which is: is it proposed, if it increases to
44 \$100,000, to go back to those whose claim was made when the
45 limit was \$50,000 and revisit those claims?

46
47 MR EVANS: I don't understand that it is, but that would

1 be a question of policy. I don't have specific
2 instructions on that.

3
4 But I do want to make it clear that that \$50,000 to
5 \$100,000 is being considered in relation to the Victims of
6 Crimes Act. It is not specifically being considered in
7 relation to the ex gratia payment under the redress scheme,
8 but it may be opened.

9
10 MS FURNESS: So when you say it is not specifically being
11 covered to the redress scheme, is it the case it will or
12 won't cover the redress scheme?

13
14 MR EVANS: That will be a question of policy and that
15 will, in part, be informed by, perhaps, recommendations
16 which are made by this Commission.

17
18 MS FURNESS: Thank you. Thank you Mr Evans.

19
20 THE CHAIR: Mr Evans, thank you for your contribution on
21 behalf of the State of South Australia and for your
22 participation in our deliberations so far. Thank you for
23 your time today.

24
25 MS FURNESS: Thank you.

26
27 MR EVANS: Thank you.

28
29 MS FURNESS: Your Honour, the next person to speak is from
30 the Aboriginal Legal Service of Western Australia. Perhaps
31 if you could identify yourself for the Royal Commission.

32
33 MR RAZI: My name is Sarouche Razi. I'm the senior
34 solicitor in the civil and human rights unit at the ALS of
35 WA.

36
37 MS FURNESS: Thank you. I invite to you speak to your
38 submission, Mr Razi.

39
40 MR RAZI: Your Honours and Commissioners, I would like to
41 raise the key issues of significance from the ALS's
42 perspective, which I understand the national organisation
43 of ALSs is aligned with.

44
45 As a result of a number of historical injustices,
46 including the continuing impact of colonisation and
47 specific practices such as the forced removal of children,

1 Aboriginal children were and continue to be
2 disproportionately placed in care.

3
4 In 2008, the Western Australian Government commenced a
5 scheme to provide redress to victims of abuse while they
6 were in State care. Significant is 5,917 applications were
7 submitted to Redress WA. Of those, 1,861 were made by the
8 Aboriginal Legal Service. That means that the ALS
9 submitted just under a third of Redress WA applications,
10 and so we are well placed to speak about the experience of
11 a redress scheme in Australia.

12
13 We submit that, by and large, Redress WA was not a
14 successful scheme. The whole purpose of considering a
15 redress scheme is to provide a remedy for victims. In real
16 terms, that means to provide an opportunity for people to
17 heal. We are now a few years away from the closure of
18 Redress WA and the experience did not, in a substantive
19 way, redress the wrongs suffered by members of the
20 community who suffered abuse while they were children in
21 State care.

22
23 The maximum payments offered in the redress scheme
24 changed from \$80,000 to \$45,000. While no amount of money
25 is going to be enough for the trauma that children
26 experienced, the perception of many applicants was that
27 halving the amount was like halving the acknowledgment of
28 the trauma. This is a failure not only from a human rights
29 and social justice perspective, but it is an economic
30 failure too. Any new redress scheme should consider how it
31 would not repeat the mistakes of Redress WA.

32
33 That being said, we strongly support a national
34 redress scheme, the details of which are found in our
35 submission, but significant to note are the following: our
36 submission favours the reasonable likelihood standard of
37 proof which is described by the Commission as higher than
38 plausibility but lower than the balance of probabilities.

39
40 The reason why we consider this is the best standard
41 is that it balances evidentiary burdens on victims with the
42 need for accountability. If the standard is as high as the
43 common law standard, the evidentiary hurdles mean that
44 victims don't come forward. On the other hand, if the
45 standard is too low then this also is not in the interests
46 of the victim because it becomes difficult for the scheme
47 to acknowledge, for want of a better expression, the truth

1 of the abuse.

2
3 From our experience with Redress WA, validation is the
4 key aspect of any remedy and if the standard is too low
5 then the scheme would be at pains to offer substantive
6 validation of the wrong.

7
8 We submit that other forms of violence should be
9 included any redress scheme. While it is not directly in
10 the Commission's terms of reference to consider physical
11 abuse, it is relevant to the Commission as a related
12 matter. We believe that it is impossible to discuss a
13 culturally appropriate and community sensitive redress
14 scheme without recognising the need of any scheme to
15 include physical abuse, emotional abuse and psychological
16 abuse.

17
18 Amongst other reasons, of which there are many, there
19 are victims of sexual abuse who would feel more comfort
20 coming forward as victims relating only to the physical
21 aspects of their abuse, and while the system shouldn't be
22 enabling obfuscation, it is important for the scheme to
23 reach out to as many people as possible who were abused as
24 children whilst in institutional care. Redress WA, for
25 that matter, considered types of abuse outside of sexual
26 abuse.

27
28 It is our submission also that requiring applicants to
29 sign a deed of release is not in the interests of
30 administration of justice. Victims' experiences in
31 relation to past abuses reflect the problems with such
32 deeds. For example, some victims of thalidomide felt
33 compelled at the time to accept early offers of
34 compensation that were exceptionally low and signed such
35 deeds and now, as we're probably all witnessing in the
36 news, are continuing to try and alter the obligations that
37 they had under those deeds.

38
39 In addition, following from Redress WA, in WA we had
40 the stolen wages scheme relating to moneys held in trust
41 accounts for work done by Aboriginal people between 1905
42 and 1972, and the maximum ceiling for claims under stolen
43 wages was \$2,500. If you look at it from the perspective
44 of many people who suffered trauma and went through the
45 application process of Redress, then also did the same
46 under stolen wages, the whole system or the whole process
47 in WA was almost like a repeated slap in the face.

1
2 Our submission is that the more appropriate approach
3 would be to seek a waiver from the victim that later awards
4 would be offset by any payment under redress.
5

6 We submit that the scheme should be culturally
7 sensitive and sensitive to the special needs of Aboriginal
8 people in Australia. This includes making appropriate
9 arrangements with respect to language, gender, age and
10 remoteness.
11

12 We submit that the scheme should appropriately fund
13 service providers. I can speak on this point anecdotally
14 based on conversations with colleagues who worked on
15 Redress WA. The redress scheme itself had a substantial
16 emotional impact on all of the lawyers who prepared
17 applications. One of my former colleagues discussed it
18 with me in these terms:
19

20 A client would come in for a meeting in the
21 morning. I would go down and see them.
22 They would come and tell an experience of
23 abuse that they hadn't told a soul in 15,
24 20, 25 years and detailing serious cases of
25 abuse. The client would break down. If
26 there were no issues I would be able to
27 redact the statement and have the client
28 return for a second interview at a later
29 date. However, many times the client
30 wanted the matters finalised and to never
31 have to speak of their abuse again.
32

33 In those instances I'd go up to my office
34 and prepare the statement, and I'd break
35 down as the extent of the client's trauma
36 started to dawn upon me.
37

38 When the statement was done, I'd go back
39 down and read it over to the client, who
40 would break down again and would then sign
41 it or make amendments.
42

43 At its height, there were about six lawyers often
44 taking three or four statements daily, and some of those
45 statements would span up to about 20 pages. The lawyers
46 taking those statements were essentially acting as both
47 lawyer and social worker and all staff who worked on the

1 scheme were quite traumatised.

2
3 In conclusion, the Federal Government's submission is
4 that a national scheme would be too complex to administer.
5 Our submission disagrees with this position. Regardless of
6 how a redress scheme is operated it will be complex, but
7 the Federal Government is the only body that can administer
8 it in a reasonable and culturally appropriate way. In
9 fact, the Federal Government can draw directly from State
10 government experiences on the challenges and, in that way,
11 it is in an advantageous position.
12

13 It is our submission that the Federal Government is
14 the body best placed to administer a scheme that would
15 administer justice where past schemes have failed. My
16 thanks to your Honours and Commissioners.
17

18 THE CHAIR: Mr Razi, could we just talk a little bit about
19 the amount of money that might be offered by a redress
20 scheme. We all appreciate the impact which the reduction
21 in the Western Australian offer must have had on those who
22 might have been eligible. But apart from the reduction,
23 was the original amount of money seen as a reasonable
24 approach or not?
25

26 MR RAZI: My understanding from consultation through a lot
27 of the statements and in general just speaking about
28 colleagues who worked on Redress was I think there was so
29 little anticipation at the time that something like this
30 would happen, and it was just considered to be part of this
31 human rights kind of rally that was taking place on many
32 different levels, and so I'd say that victims would say
33 that that money wasn't enough, but I'd also say that the
34 greater offence wasn't about the amount of money; the
35 greater offence was at the implementation, and so when it
36 was halved that was seen to be the greater offence.
37

38 THE CHAIR: If it hadn't been halved, would the eligible
39 people have been reasonably happy with the maximum that had
40 been originally provided?
41

42 MR RAZI: Your Honour, my view is that the acknowledgment
43 process itself was also flawed and there needs to be great
44 cultural and community perceptions around the ways in which
45 the trauma is acknowledged.
46

47 I myself work primarily in racial discrimination

1 matters in the Human Rights Commission, and quite a lot of
2 times when clients are making such complaints, they're not
3 actually after a compensation amount, they're after
4 acknowledgment, and what ends up happening is quite often
5 the corporations come forward with their legal counsel and
6 are so cautious about making such an acknowledgment. So my
7 view is that that amount would have been more appropriate,
8 but taken together with an appropriate acknowledgment and
9 apology from the State government, and I don't think that
10 occurred.

11
12 THE CHAIR: Yes, thank you.

13
14 MS FURNESS: Mr Razi, we appreciate that your legal
15 service works in remote communities as well as metropolitan
16 communities. What would you say has to be done to make a
17 scheme accessible to those who do live in remote
18 communities?

19
20 MR RAZI: I have colleagues, two of whom made submissions
21 yesterday, and they're fully aware of the challenges in
22 remote areas, and they have communicated to me that on a
23 relatively frequent basis people are still coming forward
24 for Redress payments.

25
26 So one of the issues is that not enough people
27 obtained Redress - and we are all conducting research in
28 terms of how many people missed out. I work up in the East
29 Kimberley every two months, and we run a civil outreach
30 there. From my experience in the East Kimberley, I would
31 suggest avenues such as using local language interpreters,
32 and particularly the radio is a really effective forum,
33 generally because they have good radio stations up north in
34 the Kimberley, and it is something that people tune in to.
35 So I would just look at consulting with the key
36 organisations, including health and legal organisations, as
37 to how they are in touch with their communities.

38
39 Kimberley Community Legal Services, for example, is on
40 a rolling outreach as part of their work, and so they would
41 be well placed to consult with, to say how they best get
42 the word out - radio and language-appropriate programs and
43 the like.

44
45 MS FURNESS: It could be that the organisations you've
46 spoken about, including your own, could be the vehicle for
47 information to be provided to those remote communities?

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MR RAZI: Yes, in part, though.

MS FURNESS: A vehicle?

MR RAZI: A vehicle, yes. A view of a lot of members in the community is that, for example, ALSs and community legal centres themselves are quite stretched, and people may or may not have their own gripes. So I would consider it to be a vehicle, and a pretty important one, because we all have links and connections with all the service providers.

MS FURNESS: You've spoken about the stress and trauma on the solicitors who were taking the statements from people for the Redress WA scheme. Would it be a more effective way of doing it if counsellors took those statements?

MR RAZI: I think one of the advantages of having lawyers take the statements is that they can understand the evidentiary requirements in taking such statements, and I think it would be prudent to have lawyers take those statements, but perhaps - I mean, partly it is just a question of funding. Ideally, there would have been more lawyers taking those statements but, in addition to that, what would have been appropriate is for the lawyers to receive counselling, so funding placed for counselling for people actually taking those kinds of statements, and also cultural and sensitivity training specific to issues of sexual abuse or, if the scheme is broader, to abuse in general, because, say, ALS lawyers generally have some degree of cultural awareness, but that doesn't mean they might have awareness of the issues of sexual abuse.

MS FURNESS: One of your colleagues spoke of the need for there to be financial counselling so that a person could opt for an instalment process or receiving a lump sum. What's your view of that?

MR RAZI: We would agree with that position. Financial counsellors play a very important role in the remote communities that I work with and they tend to have a pulse on the community. Generally, in these matters, there's always a trouble in terms of balancing out whether people have the wherewithal to administer their funds correctly, and, on the other hand, when you place moneys into public trust and the like, it ends up being a top-down approach,

1 and for Aboriginal people, there is a history of repetition
2 of top-down approaches.

3
4 Financial counsellors tend to know what's going on
5 with those families and those communities. They're
6 normally employed from within the communities. I think it
7 would be an ideal position for there to be specific funding
8 for financial counsellors.

9
10 MS FURNESS: Thank you. Thank you, your Honour.

11
12 THE CHAIR: Thank you, Mr Razi, and thank you for your
13 submission.

14
15 MS FURNESS: Your Honour, the next institution who will
16 speak to their submission is the Australian Eastern
17 Territory of the Salvation Army.

18
19 MR CONDON: Commissioner Condon, you're the Territorial
20 Commander for the Australian Eastern Territory?

21
22 MR CONDON: Correct, thank you.

23
24 MS FURNESS: And Lieutenant Reid, you're the secretary for
25 personnel for that Territory?

26
27 MS REID: That's right.

28
29 MS FURNESS: But I understand your submission is from the
30 Salvation Army as a whole?

31
32 MR CONDON: Correct.

33
34 MS FURNESS: I invite you to speak to your submission.

35
36 MR CONDON: Good afternoon and thank you again for the
37 opportunity to be here and to represent the Salvation Army
38 today. My colleague, Lieutenant Colonel Chris Reid is a
39 new member of the Cabinet of the Salvation Army, appointed
40 in January 2015.

41
42 The Salvation Army throughout Australia thanks the
43 Royal Commission for the opportunity to participate in the
44 redress consultation process and, in particular, for the
45 invitation to appear today and to speak to our response to
46 the consultation paper.

1 The Salvation Army acknowledges the important work of
2 the Royal Commission over the past two years and, in
3 particular, the courageous individuals who have come
4 forward to give evidence in private and in public hearing
5 sessions.
6

7 The Salvation Army has listened to the survivors, the
8 advocacy groups and the Royal Commission speak about how
9 institutions have failed survivors. As a result of this,
10 we have undertaken major structural reforms to ensure that
11 the Salvation Army provides a fair and equitable response
12 to all survivors.
13

14 Locally, since case study number 5 and case study
15 number 10 we have done the following: we've continued to
16 execute a deeply detailed review into our child protection
17 policies and procedures in order to bolster the protection
18 of all vulnerable people in our care.
19

20 We have increased the training provided to child
21 protection staff and all officers to ensure they are
22 equipped with best practice child protection policies.
23

24 We are ensuring all child protection policies have
25 been made retrospective so that any person involved in any
26 form of abuse will never be allowed to work for the
27 Salvation Army.
28

29 We have restructured and renamed the Professional
30 Standards Office, now known as the Centre for Restoration,
31 to ensure all allegations of abuse brought to the attention
32 of the Salvation Army are investigated in a timely,
33 professional, objective and independent manner by external
34 investigators and are free from any perceived conflicts of
35 interest.
36

37 We are working with relevant law enforcement
38 authorities and independent experts to ensure complaint
39 handling policies are best practice and that independently
40 external investigations are carried out in a timely manner.
41

42 We have thoroughly reviewed record-keeping practices
43 to ensure appropriate archiving of records are in place.
44 We have reviewed all details in relation to personnel, both
45 officers' and employees' files, and disciplinary
46 procedures.
47

1 We are re-examining and auditing every past claim to
2 ensure financial redress was provided and reviewing and
3 auditing all cases of abuse ever brought to the attention
4 of the Salvation Army to ensure due process was followed.
5

6 We are undertaking decisive disciplinary action
7 against all former personnel who have been involved in
8 abuse, dismissing them from service and reporting their
9 behaviour to police investigators.
10

11 We are expanding the geographical reach of the Centre
12 for Restoration to ensure national coverage is achieved,
13 with a new position created and based in Queensland
14 supporting survivors in that State.
15

16 We have convened a roundtable of independent experts
17 to examine the question of why child abuse occurred. Our
18 international headquarters has issued new regulations that
19 state that no officer ever found to have committed criminal
20 sexual activities can be accepted or reinstated into
21 officership.
22

23 Furthermore, the worldwide leader of the Salvation
24 Army, General Andre Cox, has appointed me as the chair of
25 the newly created National Professional Standards Council.
26 I'm happy to provide a copy of the terms of reference to
27 the Royal Commission, but I would like to highlight a
28 couple of points in relation to the newly created National
29 Professional Standards Council.
30

31 Firstly in relation to membership of that council, the
32 council has appropriate Salvation Army personnel as
33 members, as well as external, independent experts including
34 a lawyer and a psychologist.
35

36 To quote from the functions of the National
37 Professional Standards Council, point 6:
38

39 We work to harmonise the response of both
40 Territories to survivors of abuse, ensuring
41 that just compensation and adequate
42 pastoral care is provided, seeking
43 reconciliation where appropriate.
44

45 And number 10:
46

47 Part of the role of the National

1 Professional Standards Council is to
2 monitor the work of the Royal Commission
3 with a view to identifying lessons to be
4 learned which can be incorporated in
5 national policies and procedures and which
6 may have wider application to the Salvation
7 Army internationally.

8
9 Turning to some specific matters arising from the
10 consultation paper and hearing over the past two days,
11 I want to say the Salvation Army is deeply disturbed,
12 disappointed and distressed at the Commonwealth
13 Government's response in not committing to a national
14 redress scheme. We believe that the Commonwealth should be
15 involved and lead the way in a national response to
16 redress.

17
18 We do not want the survivors to be put in the middle
19 of any political process, and they should not be expected
20 to wait until the political wheels turn.

21
22 In the absence of the Commonwealth, we would be open
23 to explore a cooperative redress scheme with other
24 faith-based organisations, institutions, in conjunction
25 with the State and Territory governments as we are able.

26
27 The Salvation Army is concerned that there should be
28 no delay in working towards appropriate redress schemes.
29 In the absence of any other scheme, we want to ensure that
30 survivors can participate in our restorative justice
31 process which builds on the ongoing knowledge we are
32 learning from the Royal Commission hearings from all the
33 institutions and its redress consultation process and
34 important feedback we are learning from survivors.

35
36 We do feel that our present way of providing redress
37 to survivors is working well and that it allows survivors
38 to have options of how they engage with us and ensures that
39 we treat them with dignity and respect as well as fully and
40 absolutely acknowledging the harm they have suffered in the
41 past and the effect it has had on their lives and the lives
42 of their family.

43
44 The Eastern Territory of the Salvation Army does this
45 without prejudice to survivors being able to come back to
46 us in the future for further redress if it ultimately turns
47 out that a subsequent formal redress structure is put in

1 place by governments which suggests that higher payments
2 should be made.

3
4 As to the review of the matrix, we are waiting on the
5 findings from case study 10 and also the final report on
6 redress from the Royal Commission. We believe these
7 important pieces of guidance from the Royal Commission will
8 significantly impact the way that the National Professional
9 Standards Council develops practice and procedures for the
10 future of a uniform Salvation Army response throughout
11 Australia.

12
13 The Salvation Army awaits this further guidance from
14 the Royal Commission in the form of its final report on
15 redress so that the best possible practices may be
16 established to assure a dignified and fair result for all
17 survivors to repair and restore their lives following the
18 hurt and damage caused by past criminal behaviours.

19
20 I would now like to pass to my colleague, Lieutenant
21 Colonel Chris Reid, being the relevant cabinet member in
22 charge of the response to survivor redress.

23
24 MS FURNESS: Might I just indicate, Lieutenant Colonel,
25 you have one minute left.

26
27 THE CHAIR: I think maybe a little more. The Commissioner
28 has covered a number of the questions we had, so I think a
29 little more.

30
31 MS REID: Thank you, your Honour. Your Honour and
32 Commissioners, I would like to speak about the direct
33 response and personal engagement that we have with
34 survivors.

35
36 The Salvation Army acknowledges the importance of
37 every survivor's dignity in bringing forward their
38 experiences of hurt and suffering from past criminal
39 actions committed upon them. We are committed to the
40 journey of restorative justice in the survivor's life.

41
42 We embrace a restorative justice approach wherever the
43 survivor is willing to take that. The Salvation Army sees
44 its restorative justice practice as a journey for survivors
45 in which the senior leaders of the Salvation Army want to
46 be actively involved. We listen to what the survivor's
47 needs are and we want to know how to appropriately meet

1 those needs.

2
3 It is about working this out in a sensitive and
4 respectful way as to what they need, and not us telling
5 them what we think they should need. It is about us being
6 able to recognise the pain that exists for survivors and
7 for them to feel safe in sharing that pain and knowing that
8 they are going to be believed. We want to walk this
9 journey together with them to wholeness.

10
11 Of course, an important part of the restorative
12 approach is acknowledgment and apology. We recognise that
13 apologies need to be individualised. The apology which a
14 senior leader wants to give must be very individualised for
15 it to be meaningful. It is based on the nature of each
16 particular survivor's personal experience.

17
18 Wherever a survivor is willing, we wish to meet with
19 him or her. We would want to meet with them in their place
20 of choosing, and we always want to be sensitive to how we
21 dress - that is, should we be uniformed, should we not. We
22 want to listen to their experience and understand what they
23 want us to hear.

24
25 We've learnt from survivors' both good and bad
26 experiences in the past. We take the lead from survivors
27 as to whether they would like a restorative conference,
28 including verbal and written apologies, the timing in which
29 these should be delivered and from whom within the
30 Salvation Army the apology should be given. We work with
31 survivors or their advocates or representatives on the form
32 and content. We want this to be collaborative and we want
33 it to be meaningful.

34
35 I can confirm that since the commencement of my
36 appointment as the secretary for personnel, including as
37 chair of the Personal Injuries Complaints Committee -
38 that's the body that presides over claims of this nature -
39 I've personally observed a number of instances where claims
40 have been considered and offers have been made and accepted
41 by survivors, including a series of cases which were the
42 subject of reconsideration - that is, a top-up - in
43 accordance with the Salvation Army's commitment to do so
44 for cases that it now assesses as not meeting the present
45 redress standards. Thank you.

46
47 THE CHAIR: That leaves in my mind only a couple of issues

1 that haven't been addressed. First is the deed of release
2 question. I'm not sure I understand from the written
3 submission where the Army actually is in relation to
4 whether or not there should be a release in return for a
5 payment under a redress scheme. What is the position?
6

7 MR CONDON: Since case studies 5 and 10 we have reviewed
8 the deed of release, and that will now allow people in the
9 future to come back, particularly as we want to give
10 careful consideration to the Royal Commission's findings in
11 relation to redress and how best we can assist the
12 survivors.
13

14 But we also, at the same time - and I know we've
15 stated this in in our submission - do believe in some form
16 of deed of release. I know from firsthand experience as
17 I've met with survivors the closure that can bring for them
18 in terms of being able to move on, having found through the
19 restorative justice process and signing some form of
20 release a sense of healing and help to move on.
21

22 THE CHAIR: There are two issues, really - one is a deed
23 which is has the consequence that if there was a successful
24 common law claim the redress payment would be offset, and
25 another form of deed which excludes any subsequent common
26 law claim at all. Where does the Army sit in relation to
27 those alternatives? It is not apparent to me from the
28 submission where you do sit.
29

30 MR CONDON: I can understand that, but I would feel that,
31 in terms of that, we were waiting just to see what
32 eventually would come down and how we would respond to
33 that.
34

35 THE CHAIR: It would help us if we knew what your sense of
36 the right thing to do might be.
37

38 MR CONDON: Do you have a comment?
39

40 MS REID: Certainly, I would like to be able to have a
41 little bit more consultation around this and would be happy
42 to give a written submission to the Commission.
43

44 THE CHAIR: We would appreciate that. It is a very
45 important question for many people.
46

47 MS REID: Yes, it is a bigger issue than I think I can

1 tackle just in a simple statement. I would like to have a
2 bit more time.

3
4 THE CHAIR: Secondly, I think we can all understand the
5 hesitation about giving over money to a State-run body and
6 not having any control over its efficiency if you're paying
7 for the process.

8
9 If one contemplated some form of statutory
10 corporation, and assuming one stepped through all the
11 hurdles, in which institutions played a part in its
12 management, would that overcome that hesitation?

13
14 MR CONDON: Yes. As previously stated - and not today;
15 I remember back to one of the hearings where we talked
16 about how important it is - if the survivor chooses to
17 engage with us, how important we have found the restorative
18 justice process in terms of bringing healing and closure
19 for the individual. I just restate that in terms of any
20 commitment to such a body and to such a process.

21
22 THE CHAIR: Yes, but reading the written submission, and
23 I can understand it, there is a hesitation about giving
24 over, as it were, money and having no input into its
25 management. I think any scheme that's contemplated
26 certainly doesn't contemplate excluding the personal
27 relationship between the Army and a survivor, but
28 contemplates separating the decision-making process as to
29 entitlement to redress from the institution itself.

30
31 MR CONDON: Which has some positives for certain
32 individuals.

33
34 THE CHAIR: A lot of people. Indeed, the Catholic Church
35 is saying, as far as they are concerned, it must be
36 separated because of the difficulties that they've
37 experienced.

38
39 But, leaving that to one side, what one can overcome,
40 would there be any problem if there was some form of
41 corporation where institutions are able to share in the
42 governance of the moneys together with other institutions
43 and or governments.

44
45 MR CONDON: No, we would be committed to that, to working
46 with that.

1 THE CHAIR: Yes, thank you.
2
3 MS FURNESS: At page 10 at paragraph 47 of your submission
4 you refer to the Salvation Army's view that a redress
5 scheme should not attempt or purport to make any findings
6 that any alleged abuser was involved in any abuse. What's
7 the basis for that view?
8
9 MS REID: Sorry, could I have that reference again?
10
11 MS FURNESS: Certainly, it is paragraph 47 on page 10. It
12 is the second-last sentence. It is up on the screen, if
13 that helps.
14
15 MS REID: No, that's fine.
16
17 MS FURNESS: What is the basis for that view?
18
19 MR CONDON: Paragraph 47, the last?
20
21 MS FURNESS: Paragraph 47, page 10, the second-last
22 sentence:
23
24 The Salvation Army's view is that a redress
25 scheme should not attempt or purport to
26 make any findings that any alleged abuser
27 was involved in any abuse.
28
29 What's the basis for that?
30
31 MR CONDON: In terms of our approach to how matters are
32 investigated, as I indicated in the opening, we have now
33 outsourced to external investigators all reported cases of
34 abuse, so there is no conflict of interest. That would be
35 my response.
36
37 MS FURNESS: So why shouldn't a redress scheme make any
38 findings? Are you saying because it is made by a body
39 except sit from the redress scheme and separate from the
40 Salvation Army?
41
42 MR CONDON: At this point in time yes. That could change
43 in light of what Justice McClellan just said about how the
44 process might work.
45
46 MS FURNESS: So the way in which you make a decision
47 whether to discipline a Salvation Army person as a result

1 of an allegation is separate from the Army at this stage?
2
3 MR CONDON: No.
4
5 MS REID: No.
6
7 MS FURNESS: It is kept within the Army?
8
9 MR CONDON: Correct.
10
11 MS FURNESS: So if an allegation is made to the Army, the
12 Army investigates it?
13
14 MR CONDON: No, sorry if I've confused things. An
15 external investigator does the investigation.
16
17 MS FURNESS: And makes a recommendation as to whether
18 disciplinary action should be taken?
19
20 MR CONDON: Yes.
21
22 MS FURNESS: Thank you. One other matter, if I can.
23 Turning to paragraph 51, which is on page 11, you express
24 some concern that a survivor should be able to approach the
25 institution through an intermediary. Do you see that in
26 the first sentence?
27
28 MR CONDON: Yes.
29
30 MS FURNESS: You then say that the Army's experience of
31 direct engagement is beneficial and then the Army's
32 experience of engagement through an intermediary hasn't
33 been ideal. In coming to that view, have you sought the
34 views of survivors and what their experience is of use of
35 an intermediary.
36
37 MR CONDON: Absolutely, extensively is my response to
38 that. And for me personally even. As I think it is stated
39 in the submission and stated in our comments today, it is
40 very individualistic in what works for the individual
41 survivor in terms of process, apology, payment, ongoing
42 counselling, ongoing engagement with the Salvation Army's
43 wide range of service that may help survivors.
44
45 MS FURNESS: Can I just bring you back to this which is
46 about whether they should approach through an intermediary.
47 As I understand your submission, you're concerned, and your

1 experience is that that doesn't help. Have survivors told
2 you that?

3
4 MR CONDON: Yes, some have, yes.

5
6 MS FURNESS: Some have told you that it doesn't help?

7
8 MR CONDON: Yes.

9
10 MS FURNESS: But you wouldn't preclude them from using
11 one, would you?

12
13 MR CONDON: No, not at all.

14
15 MS FURNESS: Because it would ultimately be their choice?

16
17 MR CONDON: If it works from them, absolutely support
18 that.

19
20 COMMISSIONER MURRAY: I have a question. Commissioner, at
21 paragraph 113 you address the issue of proper defendant
22 which relates to claims at common law. Let me quote you:

23
24 The Salvation Army has acknowledged it
25 would always make one of its statutory
26 property trusts available as the defendant
27 in any relevant claim.

28
29 Have you had any advice so far as to which of your trusts
30 you should use in particular States and any advice as to
31 the level of assets that would need to be available in
32 those property trusts to satisfy a proper defendant
33 circumstance?

34
35 MR CONDON: No, at this point of time I haven't.

36
37 THE CHAIR: I made the assumption, Commissioner, that what
38 you were saying was that the vehicle to fund any claim that
39 succeeds would be provided by the Army?

40
41 MR CONDON: Correct, that's correct.

42
43 THE CHAIR: The moneys would be made available.

44
45 MR CONDON: That's correct, yes.

46
47 MS FURNESS: Thank you, your Honour, nothing further.

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THE CHAIR: Thank you both. Again, thank you for your help to us in the deliberations in relation to these significant issues.

MR CONDON: Thank you very much.

MS REID: Thank you.

MS FURNESS: Your Honour, the next organisation is Open Place.

Mr Gardiner, you're the manager of Open Place?

MR GARDINER: I am.

MS FURNESS: Open Place is a Victorian support service for Forgotten Australians?

MR GARDINER: That's right, it is, yes.

MS FURNESS: I invite you to speak to your submission, Mr Gardiner.

MR GARDINER: Thank you. It is a great privilege to be here to speak on behalf of and for Forgotten Australians. I'm not a Forgotten Australian and I acknowledge those Forgotten Australians, those former child migrants and the Stolen Gen who are here today or who may be watching this session.

Thank you for the opportunity to talk to the Open Place submission. Our submission is brief. It is based on our observations and experiences at Open Place and advices from many of our Forgotten Australian service users.

Briefly, Open Place is the Victorian support service for Forgotten Australians. We're funded in part by the Department of Health and Human Services, relatively generously, from Victoria, and the Department of Social Services for our Find and Connect and our Royal Commission support teams.

Our program provides a drop-in centre in inner Melbourne. This is a safe and welcoming environment Forgotten Australians can and do just come, share a meal,

1 talk, whatever.
2

3 We have a records program. This is assists Forgotten
4 Australians to gain access to their childhood care records
5 and provides, on request, some assistance with supported
6 release. It provides assistance with family reunions.
7

8 We have a counselling program. We have a small
9 in-house counselling team and we broker and outsource much
10 counselling to external providers spread across Victoria
11 and other parts of Australia.
12

13 In the light of the conversation yesterday, the joint
14 presentation between ASCA and three other agencies, I'd be
15 happy to discuss more about treatment approaches.
16

17 We have a small support program. Essentially, this is
18 a casework service which links our service users to
19 mainstream and specialist medical, health, social and
20 homelessness programs. We have a limited amount of
21 brokerage that assists with access to services,
22 particularly for those older and more vulnerable Forgotten
23 Australians.
24

25 We have a Royal Commission support team that assists
26 and enables Forgotten Australians, at their request, to
27 engage, to participate in the Royal Commission.
28

29 Very importantly, and perhaps most importantly, we
30 facilitate 12 social and support groups across metropolitan
31 Melbourne and regional and rural Victoria. These groups
32 are fundamental to our service. Not only do they provide
33 robust advice to Open Place about how we're doing our work,
34 but they provide a venue for constructive and congenial
35 social support activities.
36

37 I want to describe briefly some of the assumptions
38 behind our work. These assumptions are important not just
39 because they directly affect what we do, but more
40 importantly, how we do it.
41

42 We receive about 40 requests from new service users,
43 people who are new to our service, every month. The
44 question we begin with is: "How can we help?" We do not
45 diagnose or make assessments that lead to treatment plans.
46 We do not undertake episodes of care, we do not close; we
47 remain available to all those who are registered with us.

1 We listen, we respect, we acknowledge, we are tolerant and
2 we are kind and we seek to engender optimism and hope. We
3 know we are not the experts.
4

5 We are guided in this approach by our Forgotten
6 Australians, who have been involved in this work for much
7 longer than us, the professionals. In fact, Forgotten
8 Australians have been involved in this work for a lifetime.
9

10 Briefly, there are two issues in the Open Place
11 submission that I wish to speak to, but I should actually
12 say that we take it as a given - we know it is a complex
13 given - that a monetary payment must be part of a
14 reasonable redress scheme. We also take it as a given that
15 a sincere apology to individual Forgotten Australians on
16 request from an institution is also part of this process.
17

18 We see the elements of redress that were outlined in
19 the consultation paper - an apology, a monetary payment and
20 continuing support - as being interrelated. None on their
21 own are sufficient.
22

23 The two issues that I want to speak to are eligibility
24 for the scheme and how to provide sustained and priority
25 access to essential social, medical and specialist support
26 services.
27

28 Many much better equipped than me have talked with the
29 Royal Commission about the devastating impacts of
30 institutional out-of-home care. Caroline, Leonie and
31 others, our prominent and courageous advocates, talk about
32 the lifelong impacts of this type of childhood care:
33 distrust, shame, guilt, disconnection with family and
34 troubled adult relationships.
35

36 Hundreds of thousands of children placed in the care
37 of charitable church-based agencies under the legally
38 ordained guardianship of a State, who are now adults,
39 continue to suffer.
40

41 This is an incomprehensible social policy outcome
42 perpetrated by the States and well respected and credible
43 institutions.
44

45 All Forgotten Australians, regardless of the type of
46 abuse the institutional care system inflicted upon them,
47 deserve to be part of a national redress scheme.

1
2 The second issue is the development of policies and
3 systems integral to a redress scheme that can ameliorate
4 some of these consequences of care and sustain and support
5 Forgotten Australians through their aging adult years. We
6 believe that Forgotten Australians need priority access to
7 medical care, dental care and aged care. Just a number of
8 the things that they need. Something along the lines of a
9 Veteran's Gold Card fits this requirement.

10
11 Related to the second issue is the continuing and
12 perhaps expanding role for support services. There are
13 potentially various approaches to the notion of support.
14 Some may be described as "treatment services",
15 concentrating on a curative framework which begins with a
16 question, "What is wrong with you?" We do not believe that
17 pathologising those who have experienced childhood
18 institutional abuse is useful. We prefer the question,
19 "What has happened to you?", and, following this question,
20 "How do we help you respond to what has happened to you?"
21

22 Open Place has been doing this work for five years.
23 Others, including many Forgotten Australians, have been
24 involved for much longer. I think what we have learnt is
25 this: Some will benefit from a clinical therapeutic
26 counselling arrangement; many will not. A support rather
27 than a treatment approach needs to recognise the variety of
28 social and psychological needs that may be represented.
29

30 Wayne Chamley, on Wednesday, described many of the
31 lives of older Forgotten Australians as "blighted but not
32 obliterated". I think that's a terribly devastating
33 picture of the life of many of our aging Forgotten
34 Australians. This is the group that we work with and we
35 support.
36

37 Fundamental to the notion of support as we see it is
38 that the survivor who uses this support must have a say in
39 how it is provided. It must not be imposed from above by
40 well-meaning professional bodies.
41

42 I'm happy to describe our work in more detail and our
43 approach in greater detail as well, particularly in
44 relation to our counselling programs, but perhaps I should
45 stop there for questions.
46

47 MS FURNESS: Thank you very much.

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THE CHAIR: I have only one issue that I want to raise with you. In your written submission you speak of the level of proof and accept the plausibility test. I'm not sure whether you've been able to listen to or understand what some others have said about this issue in the course of the last few days, but in your submission you say that the Forgotten Australians that you've spoken with want to be listened to and believed.

Some have said to us that if you adopt a standard of proof that's as low as plausibility might be understood to be, rather than balance of probabilities or some other standard, people might feel that that doesn't meet the need to have been believed. What do you say in response to those people?

MR GARDINER: I would probably want to refer to the transcript from Mr Pocock's presentation this morning. I think the notion of, "We believe you, we listened to you, we acknowledge you, we believe you" - he talked with the Commissioners about the private sessions, where people leave those private sessions without proof but knowing that they have been believed.

We believe plausibility is the right approach, particularly given that we think a redress monetary payment is not about compensation, it is about recognising a wrong and making a reasonable payment for that wrong.

THE CHAIR: Yes. Thank you.

COMMISSIONER FITZGERALD: Mr Gardiner, just a couple of questions, if I can. One is specifically in relation to aged care. A number of organisations previous to this and in this inquiry have talked about those needs. I was wondering if you could articulate why the community at large - governments and/or redress schemes - should be concerned about meeting that particular need for this particular group of clients? Some would say that the general aged care arrangements, in fact, pick up people both of low income and disadvantaged circumstances and others in the community. What's the case for specifically dealing with this issue? I don't doubt the validity of it, I'm asking you to articulate why it is such an issue.

MR GARDINER: It is a continually powerful issue because

1 we have an aging population. We are all aging, but this is
2 a particularly vulnerable aging population.

3
4 Much of our aged care is provided by institutions that
5 once provided child care - many still do provide child
6 care. The prospect of returning to an institution, however
7 well run now, however well case-managed those services are,
8 would be extremely difficult, and many Forgotten
9 Australians have talked about ending their lives before
10 entering such places again.

11
12 COMMISSIONER FITZGERALD: The second is a broader
13 question. You've heard throughout these proceedings, but
14 also it is canvassed in the consultation paper, some people
15 have urged us to change Medicare arrangements; others have
16 put a greater emphasis on holistic services or support
17 services similar to your own. Could you just explain to me
18 why do you believe that the support services, that
19 wrap-around service that you provide, are an essential
20 component for this particular group of people?

21
22 MR GARDINER: Because we are able to provide fundamentally
23 a place that is safe. Ms Carroll talked about the work
24 over time that many of the services such as I'm involved
25 with have provided and created. There is credibility here.
26 But we do not think that one size fits all. We do not
27 think it proper to have particularly exclusive and highly
28 clinical counselling approaches to a variety of needs that
29 are represented by Forgotten Australians.

30
31 We are not a mental health service. We are a support
32 service. The notion of pathologising someone to receive
33 counselling via a mental health plan or via a Medicare
34 service I think does those people who need that level of
35 support a great disservice.

36
37 One of the strengths of our program is our counselling
38 program. We are provided relatively generously for this
39 service by our State department. We currently have over
40 550 counselling contracts with external providers, which
41 allows us to contract 20 recurrent annual sessions a year
42 to a counsellor, often of the Forgotten Australian's
43 choice, and Open Place, via its funding, bears the costs of
44 that. There is no initial assessment, there are no
45 treatment goals with all of the paraphernalia that that
46 provides. The strength of that program is that it is
47 growing and it is largely growing because our

1 Forgotten Australian peers talk to each other about that
2 and say, "This is okay".

3
4 COMMISSIONER FITZGERALD: Thank you.

5
6 MS FURNESS: Can I turn your attention to pages 7 and 8 of
7 your submission. You refer there to the severity of abuse
8 and the impact of abuse and you note that the issue has the
9 capacity to become quite divisive.

10
11 MR GARDINER: Yes.

12
13 MS FURNESS: You then indicate at the end of that
14 paragraph on the second page:

15
16 The credibility of the process must be
17 endorsed by all groups.

18
19 You helpfully note that that's not an easy task. Can I ask
20 you to assist the Royal Commission in what you would see as
21 the least divisive and most acceptable matrix that might be
22 adopted?

23
24 MR GARDINER: It is not an easy task and that was perhaps
25 a trifle glib. One of the characteristics of some of our
26 Forgotten Australians is that comparisons are made about
27 length of time in care, "What happened to me", was it
28 better or was it worse. I think this has the potential to
29 create great divisions within the Forgotten Australians and
30 other survivor group communities. That's why the issue of
31 only sexual abuse rather than all the other levels of
32 institutional abuse are also potentially divisive.

33
34 MS FURNESS: How would you suggest it should be done so as
35 to be less divisive but seek to come up with some view
36 that's based on criteria that's known by all?

37
38 MR GARDINER: I think it has to be transparent. I don't
39 think, as we know from our daily work, that you're going to
40 make everybody happy all of the time. We think a base
41 payment for institutional care is a reasonable way to
42 begin.

43
44 MS FURNESS: When you say "transparent", if the scheme set
45 out that there would be one to 20 per cent for impact, for
46 example, 1 to 40 per cent for severity of abuse and another
47 percentage for institutional factors, that would be

1 transparent?
2
3 MR GARDINER: Yes.
4
5 MS FURNESS: Thank you, your Honour.
6
7 THE CHAIR: Thank you. Thank you for your submission and
8 your time today.
9
10 MR GARDINER: Thank you.
11
12 MS FURNESS: Your Honour, the final organisation which is
13 presenting today is knowmore. Perhaps if I can invite you
14 to introduce yourself and your organisation.
15
16 MR STRANGE: Thank you. My name is Warren Strange. I am
17 the acting executive officer of knowmore Legal Service.
18
19 MR BAIGENT: My name is Kit Baigent. I'm a solicitor at
20 the knowmore Legal Service.
21
22 MS FURNESS: The knowmore Legal Service has been set up
23 and funded to assist those who are engaging with the Royal
24 Commission.
25
26 MR STRANGE: That's right.
27
28 MS FURNESS: Can I invite you to speak to your submission.
29
30 MR STRANGE: Thank you. First, I would like to
31 acknowledge the traditional owners of the land upon which
32 we attend today and pay our respects to their elders past
33 and present. As counsel assisting noted, our service has
34 been established as a specific purpose organisation to
35 provide legal assistance to people who are engaging or
36 considering engaging with this Royal Commission. We were
37 established as a separate program with the National
38 Association of Community Legal Centres and we are funded by
39 the Australian Government through the Attorney-General's
40 Department.
41
42 We provide that legal advice and assistance to people
43 via a telephone service and also through face-to-face
44 consultations and an extensive outreach and engagement
45 program. We do this through a team of lawyers but also
46 social workers and counsellors to support clients and a
47 team of Aboriginal engagement advisers to provide specific

1 support to Indigenous clients. We also work closely with
2 the Aboriginal Legal Services around the country and the
3 Family Violence Prevention Legal Services.
4

5 Very briefly, we commenced operations in July 2013 and
6 we've now assisted over 2,600 clients. We have seen
7 clients from a breadth of circumstances, a breadth of
8 institutions across Australia and they've had a significant
9 range of experiences. We've dealt with clients who are
10 making disclosures about childhood sexual abuse for the
11 first time after decades, through to those who have
12 explored all of their redress opportunities and even in
13 some cases civil litigation options.
14

15 That is a very common question that people come to us
16 with, what opportunities might exist for them to now seek
17 redress or some form of justice and compensation for what
18 they experienced. It is worth noting that of those clients
19 79 per cent to date have been aged 45 years or older.
20 Today in relation to our appearance, obviously, we've made
21 a number of submissions to the Royal Commission. I don't
22 want to speak to the detail of those, but to just highlight
23 some particular aspects.
24

25 Our approach to our submissions has been very much to
26 try and provide some insights based upon what our clients
27 have told us about their experiences and what they need to
28 achieve justice in the future. Our basic position, as set
29 out in our submissions, is that common law rights should be
30 retained, but there should be significant reforms to make
31 that form of justice much more accessible for claimants.
32

33 At the present time, there remain, and there will be
34 even with significant reforms, many systemic, legal and
35 other barriers that will operate to prevent the majority of
36 survivors bringing successful civil claims and Mr Baigent
37 will speak further about that. Our position is that there
38 needs to be an effective redress scheme to sit alongside
39 common law rights.
40

41 Obviously, now that we've had an opportunity to read
42 the submissions of the various governments, the context has
43 perhaps changed somewhat in recent days. I just wanted to
44 make some brief comments around that. It is very clear,
45 from our experience in working with clients, that some form
46 of redress scheme is required. That is beyond argument, we
47 feel. We also think now, from the Royal Commission's work

1 and what we've heard from our clients, it is reasonably
2 clear what a redress scheme should involve in terms of the
3 essential features and the underlying principles and the
4 sorts of outcomes that it should deliver.
5

6 The issue now is really one of how that might be best
7 delivered to survivors. That is the issue that requires
8 leadership and commitment from government. We did see
9 yesterday that the Australian Government make a decision to
10 restore significant funding to the community legal sector.
11 That followed a series of comments and opinions being
12 expressed by people in the sector about the impacts of
13 funding reductions and commendably the government restored
14 that funding that was in issue and in announcing that
15 decision it made the comment yesterday that it was acting
16 in the interests of the most vulnerable in the community,
17 including the Indigenous Australians.
18

19 That decision was very welcome and it indicates that
20 important issues can be reconsidered. In this context I'd
21 simply say that everyone who works at knowmore has been
22 recruited from a background of working with people who have
23 suffered trauma and I think collectively we would say that
24 the clients that we're now assisting are amongst the most
25 disadvantaged that any of us have ever worked with.
26

27 It has been noted that to establish a national redress
28 scheme would be complex and time consuming and certainly
29 that's correct, but that's not an unusual position that
30 governments and policy makers must face and we urge that
31 work continues towards finding the solution that best
32 delivers the outcome that survivors need. It is
33 fundamentally an access to justice issue and the community
34 legal sector, of which we're a part, has significant
35 experience in that. We have accumulated significant
36 insight and knowledge into the relevant issues and we're
37 happy to continue to engage in the process and assist in
38 any way we can if that is of relevance.
39

40 We remain of the view that a single national redress
41 scheme is the ideal for survivors, for reasons of equity
42 and eligibility, fairness, consistency and transparency of
43 outcomes and accountability of institutions. The point can
44 obviously be made that the Commonwealth has noted that
45 redress should lie with the institution that failed to
46 protect the individual survivors. That is of course a
47 valid point, but we simply note that a large cohort of

1 survivors suffered that abuse in circumstances where the
2 government was the institution or responsible for the
3 management of the institution in which they were placed,
4 either directly or through the operation of policies such
5 as the Child Migration Scheme and those laws impacting upon
6 the removal of the Stolen Generations.
7

8 I note that numbers reported in the Royal Commission's
9 report and our client numbers are similar to those who
10 suffered abuse in government institutions. It is a
11 difficult exercise because of the crossover but our numbers
12 are certainly similar.
13

14 Any difficulty or delay in implementing the national
15 redress scheme or some other workable model I think
16 underlines the importance of enacting or certainly this
17 Royal Commission recommending meaningful civil litigation
18 reforms. That is another way to achieve an outcome that's
19 entirely consistent with that position of attributing
20 responsibility to the institutions and it will also provide
21 very strong motivation to those institutions with increased
22 exposure to implement appropriate child safety systems in
23 the future. I will pass on to Mr Baigent to speak about
24 some of those civil litigation reforms.
25

26 MR BAIGENT: I will just talk about some quick points.
27 Our submissions are there and they are accessible online,
28 so I'll just raise or highlight a few issues. Firstly, our
29 position is that there's significant public interest in
30 reforming civil liability laws, the main reason being that
31 there's potential to stimulate cultural changes in
32 institutions, but also that the cost of dealing with or
33 addressing unresolved childhood trauma is significantly
34 borne by the Australian community at the moment and not by
35 institutions. That cost is estimated at \$6.8 billion per
36 year and the civil litigation system has potential to shift
37 that back on to the perpetrators and responsible
38 institutions.
39

40 We also see the Victorian bill currently before
41 Parliament as a model law for limitation laws and we also
42 see it as an opportunity to reality test some of the
43 concerns raised by institutions and insurers.
44

45 Finally, in regards to the duty that is proposed, just
46 noting the submissions of the State of South Australia, we
47 don't think it is appropriate or desirable to wait for the

1 common law to develop and that's simply because it is very
2 unlikely for these claims to be litigated, particularly in
3 high courts where that jurisprudence can be developed. It
4 is also not in the interests of children today and the
5 community more generally to wait for those developments to
6 occur. That is all I wish to say.

7
8 MS FURNESS: Thank you.

9
10 THE CHAIR: Just on this question of duty, I was looking
11 at your submissions on page 22. I am not sure where you
12 end up. You speak of a duty that has no content, such as
13 take reasonable measures. The common lawyers would,
14 I think, challenge what you're saying there. A duty to
15 take reasonable care does have content, reasonable care --

16
17 MR BAIGENT: Yes.

18
19 THE CHAIR: -- which will be worked out in the
20 circumstances of each individual case and it has been the
21 conventional weapon of the common law to bring about change
22 in the way various institutions and individuals operate in
23 our society. Are you saying that you don't think it would
24 be effective in this area?

25
26 MR BAIGENT: No, to the contrary. Maybe it is not worded
27 quite as effectively as it could have been. Reasonable
28 measures and articulating reasonable measures is very
29 important, we feel, in this area, because that's where
30 institutions can learn through judicial decision making
31 about what measures are actually effective in this context.

32
33 THE CHAIR: I think that's probably correct, but then
34 I need to understand how that works with the adoption of a
35 regime of absolute liability. If you have absolute
36 liability, you'll never get input from a court as to what's
37 reasonable; you'll always be over the threshold. How do
38 I get the two to work together in your minds?

39
40 MR BAIGENT: Our position as to absolute liability is
41 that, you're correct, it does not allow for that discourse
42 to develop, because, you're right, no decision is made. It
43 goes straight to damage, really, whereas a duty, including
44 reasonable measures, would allow that discourse to occur
45 and examine each individual circumstance and the measures
46 adopted.

47

1 THE CHAIR: Where does knowmore land?
2
3 MR BAIGENT: We land at duty to, "reasonable measures".
4 We think that strikes the necessary balance between the
5 interests of insurers, institutions and children too.
6
7 THE CHAIR: When you say "duty to", you're short-handing
8 the response to the discussion paper, for those who don't
9 know?
10
11 MR BAIGENT: That's correct, yes.
12
13 THE CHAIR: The second alternative in the discussion
14 paper. Thank you.
15
16 MS FURNESS: Thank you, your Honour. Can I draw your
17 attention to page 12 of your submission, where you refer to
18 legal assistance with accessing redress and, in particular,
19 you state that you're of the firm view that it is
20 fundamental that applicants have access to legal assistance
21 as part of, throughout and upon conclusion of any redress
22 process; is that your position?
23
24 MR BAIGENT: Yes.
25
26 MS FURNESS: Isn't it the case that the goal of any
27 redress scheme that is established is that it be
28 sufficiently simple, accessible and transparent so that a
29 person can navigate it themselves without the need for
30 accessing legal assistance at each of the stages you
31 suggest?
32
33 MR STRANGE: Our submission is obviously based on our
34 experience in working with what is now considerable numbers
35 of clients. It is our view, having worked closely with
36 many of those clients, that they would simply be unable to
37 navigate even a quite basic and simple system without some
38 professional support and assistance through processes.
39
40 MS FURNESS: You accept that there are probably many
41 others who haven't accessed knowmore who would like the
42 scheme to be such that they could navigate it without the
43 need for any assistance.
44
45 MR STRANGE: And people should certainly have that choice,
46 I accept there will be some, but we've also seen many
47 clients who are extremely well educated and have had very

1 successful careers who have found engaging with the
2 Royal Commission or engaging with the redress decision just
3 extremely devastating. Their lives have basically been put
4 on hold and they have lost any sense of normality while
5 they try and process those issues.

6
7 MS FURNESS: Wouldn't those people be better or at least
8 equally well served by counsellors assisting them at each
9 stage through the system?

10
11 MR STRANGE: They certainly need professional support and
12 it depends ultimately on the form of any redress scheme
13 that is adopted. The point was made before that lawyers
14 are able or have the training to frame statements to fit
15 within processes and to answer the questions and to deliver
16 the information that a process requires. It need not
17 exclusively be lawyers and I think we have made the point
18 somewhere in our submissions that other workers would
19 certainly have a role in that and certainly in assisting
20 people.

21
22 MS FURNESS: And that role may supplant the role of
23 lawyers in some circumstances?

24
25 MR STRANGE: It is possible for some clients; I wouldn't
26 agree with that as a general proposition. The clients
27 we've dealt with, the majority, we remain of the view,
28 require legal assistance to navigate that type of process.

29
30 MS FURNESS: It is the case that it may supplant the role
31 of lawyers in some circumstances?

32
33 MR STRANGE: There will always be some clients who would
34 be in that position, yes.

35
36 MS FURNESS: You refer in your submission to there being a
37 particular need for services for men. Can you tell us how
38 you formed that view?

39
40 MR STRANGE: Well over half, I think it is now about
41 56 per cent, 57 per cent of our clients identify as being
42 of the male gender and many of those are the ones who have
43 not made disclosures until the Royal Commission has
44 commenced. We have dealt with many clients and certainly
45 those who came forward in the initial stages of the
46 Royal Commission's work, the particular profile was a
47 middle-aged to elderly man who was disclosing abuse either

1 for the first time or for the first time since a childhood
2 disclosure and wasn't believed at the time.

3
4 Things are starting to change a little bit in terms of
5 the provision of services, but certainly there were some
6 service gaps and there still remain service gaps,
7 particularly in regional communities and areas, for men to
8 be able to access or to have a choice around what form of
9 support and counselling they might access.

10
11 MS FURNESS: Thank you. Thank you, your Honour.

12
13 COMMISSIONER FITZGERALD: Can I deal with one issue? You
14 talk about trauma-informed legal services. I understand
15 knowmore would describe itself as that?

16
17 MR STRANGE: Yes.

18
19 COMMISSIONER FITZGERALD: And there are now a couple of
20 law firms that also describe themselves as trauma-informed
21 legal services; is that correct?

22
23 MR STRANGE: I'm not sure if I've heard any legal firms
24 particularly adopting that. Some certainly would be
25 entitled, I think, from our experience, to do that.

26
27 COMMISSIONER FITZGERALD: In recommendation 5 - can you
28 just explain this - you talk about an independent,
29 multidisciplinary and trauma-informed legal service to
30 support survivors being government funded. What would be
31 the necessity to establish a separate legal service, as
32 distinct from trying to ensure that legal services that are
33 engaged with deeply disadvantaged people are more competent
34 in dealing with that particular group?

35
36 MR STRANGE: That is the second or the alternate aspect of
37 our recommendation, that capacity within the Australian
38 community legal sector be built to deliver that. I think
39 there are some issues around sustainable services. If
40 services are done on more of a piecemeal basis by existing
41 services, there will be competing priorities. We know from
42 recent events and recent discussions that the sector is
43 under immense pressure in terms of service delivery and
44 there are many issues to deal with and many competing
45 priorities.

46
47 I think there are also issues around expertise and

1 sustaining that within a small workforce and by that I'm
2 thinking one or two people in a community legal centre.
3 The fellow from the Aboriginal Legal Service in
4 Western Australia spoke eloquently today about the impact
5 on lawyers of undertaking this type of work and that's
6 certainly I think a valid comment and those issues can be
7 magnified in an environment that isn't perhaps fully
8 attuned or geared to the support of lawyers and other staff
9 who might be undertaking that work.

10
11 COMMISSIONER FITZGERALD: The second thing relates to your
12 answer to a question from Ms Furness in relation to legal
13 intermediaries or legal services. The Commissioners have
14 all heard, in the private sessions and in the roundtables,
15 of concern by particular survivors about the way in which
16 certain lawyers and law firms have treated their claims
17 and, in particular, the high costs associated with action
18 on their behalf. Are there any learnings from knowmore
19 that we need to take into account, any constraints that
20 should be placed on legal services if they are to be part
21 of either assisting people to access the redress scheme or
22 continue to be involved in the common law claims processes?
23

24 MR STRANGE: We have heard many similar stories from many
25 clients who have had deeply unhappy and unsatisfactory
26 relationships with lawyers in the pursuit of redress under
27 existing options. Fundamentally, there will always be law
28 firms who take a commercial or mercantile approach to this
29 type of work. I have had some experience before in the
30 administration of Legal Aid schemes and I have seen firms
31 gear their practice towards a Legal Aid case load.
32

33 The Queensland Law Society for many years, and it may
34 still have, had a practice guideline that law firms should
35 not undertake more than a certain percentage of their work
36 as legally aided - and that was quite a low percentage,
37 I think it was either 10 or 20 per cent - because if it
38 did, the rates weren't sufficient to sustain a practice and
39 that would mean that to sustain profitability, corners
40 might be cut and services might not be delivered in the
41 client's best interests.
42

43 Those sorts of concerns loom large. We do refer
44 clients to lawyers to pursue existing compensation rights,
45 but we've been very stringent about that referral criteria
46 and ensuring that those lawyers will have an understanding
47 of the particular needs of this client group and respond to

1 them in an appropriate way.

2

3 COMMISSIONER FITZGERALD: Without exploring that issue any
4 further, is there anything that the Royal Commission should
5 take into account in the final report in relation to
6 redress that deals with that issue?

7

8 MR STRANGE: I think we would be very reluctant to support
9 any sort of model that had a set fee. I know some of the
10 victims of crime statutory schemes allocate a certain
11 amount for legal costs and people will work accordingly to
12 that fee.

13

14 We emphasise client choice. It should be the choice
15 of clients to engage with whoever they want, whether it is
16 lawyers or a support agency or whoever, to help them
17 navigate the process, but if you have the community legal
18 sector, either through a specific body or through existing
19 networks, undertaking this work, they're not motivated by
20 that commercial reality that drives the private profession
21 and some also of the numbers.

22

23 COMMISSIONER FITZGERALD: Thank you.

24

25 MS FURNESS: I have nothing further, your Honour.

26

27 THE CHAIR: Thank you both for your submission today and
28 the time to present it. Thank you indeed.

29

30 MR STRANGE: Thank you.

31

32 MR BAIGENT: Thank you.

33

34 MS FURNESS: Might I just indicate, as I did at the
35 beginning, that there will be no submission process
36 following this hearing, nor will there be any findings
37 made, and the next step will be for the Commission to
38 prepare its final report which it is anticipated will be
39 with the Governor General by mid this year.

40

41 THE CHAIR: Yes, thank you, Ms Furness. Can I just repeat
42 on behalf of the Commissioners our thanks for the
43 contribution which everyone has made both to these hearings
44 but also by the lodging of submissions. Many, many more
45 submissions than we were able to give time to in this
46 public hearing have been received and of course we've had a
47 very intensive program of consultation through roundtables.

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I have said before - and I think it bears repeating - that the spirit within which the roundtables were conducted, the participation by all survivor groups, government and institutions, was always positive and always productive of real thought and real exchange and for that the Commissioners are indeed grateful.

We now have the very difficult task though of sifting through what has been presented to us and producing a report which, as Ms Furness says, we intend to provide by the middle of this year. Our thanks for all those who have contributed to the process so far. We will adjourn.

AT 3.49PM THE COMMISSION WAS ADJOURNED ACCORDINGLY