



Submission in response to Issues Paper 6: Redress Schemes

June 2014

For further information about this submission please contact:

Simon Gardiner
Open Place
Suite 1, 8 Bromham Place
Richmond 3121
03 9421 6162
sgardiner@openplace.org.au

Introduction

Open Place welcomes the opportunity to address issues relating to “redress schemes” through a response to the Royal Commission’s *Issue Paper 6*.

Open Place is the Victorian Support Service for Forgotten Australians. It commenced service in January 2010 following significant lobbying and advocacy work from Forgotten Australians themselves. Open Place receives funding from the Victorian Department of Human Services and the Commonwealth Department of Social Services. Open Place provides a range of services which includes records, family searching and family reunion, counselling, support and Royal Commission support. It provides an outreach service to regional and rural parts of Victoria. It is based in Richmond, an inner suburb of Melbourne, with a well used drop in and activities centre. It also services 13 social and support groups across Victoria.

Forgotten Australians are the survivors of institutional care which was the standard form of out of home care in Australia for much of the twentieth century. The 2004 Inquiry of the Senate Community Affairs Reference Committee, *Forgotten Australians*, estimated that more than 500,000 children have experienced life in an orphanage, Home or other forms of out of home care in the last century in Australia.

The Senate Committee reported that they had:
...received hundreds of graphic and disturbing accounts about the treatment and care experienced by children in out of home care....their stories outlined a litany of emotional, physical and sexual abuse, and often criminal physical and sexual assault...neglect, humiliation and deprivation of food, education and healthcare.

The Community Affairs Reference Committee: *Forgotten Australians* (2004) and the follow up report *Lost Innocents and Forgotten Australians Revisited* (2009) recommended that the Commonwealth lead the development of consistent and ongoing redress schemes in all States. The two largest States, New South Wales and Victoria, still have no uniform and consistent redress scheme. Survivors are still required to seek redress via often adversarial litigation processes managed by private lawyers. These processes are time consuming, expensive (costs are taken from the settlement amount) and often re-traumatising. Despairingly many Forgotten Australians believe that the States and the institutions are simply waiting for them to die.

Many Forgotten Australians believe that the work of the Royal Commission is the last opportunity for the introduction of a national redress scheme for those whose experiences are so hauntingly and terrifyingly described in the *Forgotten Australians Report* (2004).

The content of this submission is based on advice and feedback to Open Place from many Forgotten Australians and from the Social and Support Groups that are facilitated by Open Place. In writing this submission Open Place has attempted to reflect the breadth of views that have been expressed relating to the complex issues of redress. Open Place is aware there is much to resolve in the detail of the establishment and implementation of a redress system.

What is of fundamental importance however is the endorsement of ***the principal that, in the face of overwhelming need, a redress scheme must be established.*** The Royal Commission, in its recommendations to Government, has a vital role in persuading the Commonwealth that it is in a position to exert enormous pressure on both States and former care providers to participate in a redress scheme.

Issues

Redress schemes as a means of providing redress or compensation to those who suffered child abuse in institutional and out of home care.

Open Place strongly supports the development of a national redress scheme for those who experienced abuse as described in *Forgotten Australians*, (2004). A national redress scheme should include all those brought up in institutional care. It should not be limited to only claims of sexual abuse but should include claims relating to physical and emotional abuse and neglect.

A national redress scheme is needed because there is overwhelming evidence from the experience of *Forgotten Australians* that the current system of redress is piecemeal, adversarial, controlled by past care providers and is, at times, demeaning.

A redress scheme should have three components:

- A redress scheme must include a significant financial component for all who experienced abuse in out of home care. The scheme needs to be contributed to by commonwealth and state governments as well as past providers of care. It needs to be administered by an independent statutory authority. Access to the fund should be kept as straightforward as possible and occur in a non adversarial environment.
- A redress scheme requires the prioritising of the needs of *Forgotten Australians* in order to get access to housing, medical, dental and aged care services.
- A redress scheme also requires that the support needs of *Forgotten Australians* continue to be available from a specialist support service, such as Open Place.

Features of a redress scheme

Token payments have been a feature of past redress arrangements for individuals. These processes have been managed by the institutions themselves. A national redress scheme needs to be committed to an amount of money that will make a significant difference to the lives of survivors who have experienced damaged and traumatic childhoods. These childhood experiences continue to often adversely affect wellbeing in adult hood.

The redress process needs to be separate from both government and institutions. An independent scheme must be developed in each state, following nationally developed guidelines and consultation with stakeholders (including *Forgotten Australians*). This scheme could have many of the features that are outlined in the recent Victorian Parliamentary Inquiry and contained in the report *Betrayal of Trust* (2013).

These include:

- The establishment of an independent body with the authority to bring the parties to the table
- Engage survivors with respect
- Not bound by legal parameters
- Ensure that relevant organizations take responsibility for funding of redress and for services
- Survivors and advocacy groups must be involved in the design and development of the process

- The process should be subject to regular review

The process of gaining financial redress must be as simple as possible and avoid processes that can re-traumatise survivors. Payments could follow a two tiered approach that has been applied in Queensland and Western Australian. An initial payment is provided for those who meet the basic criteria (in “care” during a particular period of time) and then a second tier payment for those who are able to demonstrate, in a non adversarial environment, that they have suffered abuse.

The scheme in each state must remain open for many years. One of the criticisms of recent State redress schemes are that they closed before many survivors were able to submit claims (see *Lost Innocents and Forgotten Australians Revisited* (2009)).

The second feature of a national redress scheme is the implementation of a whole of government approach to the provision of programs and services for Forgotten Australians across areas such as housing, health and aged care. In particular the needs of older Forgotten Australians are becoming increasingly urgent. This group needs to have its needs officially and formally acknowledged so that planned access to these services can occur as a matter of priority. The Senate Report of 2009 notes that these recommendations were made to the Commonwealth in 2004, that “there is unequivocal evidence of these needs”, but that governments have failed to recognise the needs of this group in the specific design or advertising of these services.

The third feature of a national redress scheme is the continued funding of the national support services for Forgotten Australians (some of these support services also receive state government funding). These specialist services provide informed and individual support that is particular to the needs of Forgotten Australians. The experience of these support services is that, although available to the broad Forgotten Australian community, they tend to provide intensive and enduring support to the most vulnerable in this group. These services play an important role in ensuring that other services such as housing, aged care and medical are able to respond appropriately to the needs and vulnerabilities of Forgotten Australians.

This proposed suite of redress responses are tailored to the task of addressing the restitution, rehabilitation and justice demands arising from the historic wrong that has been done to these survivors.

Commonwealth versus State redress schemes

Inconsistency in managing redress (from the process itself to the outcome provided) has been a feature of current redress schemes. National consistency is essential. It is the view of Open Place that the Commonwealth has the responsibility to both establish and then oversight a uniform redress scheme in each state and territory.

Open Place also argues that the Commonwealth is required to make a financial contribution. The Forgotten Australians are Australian citizens and in their childhood required the protection of the Australian government. This was not forthcoming. The Commonwealth also contributed financially to the upkeep of the institutions by paying child endowment payments directly to the institutions.

Most of the children brought up in institutional and out of home care settings, when removed from their parents’ care, were made wards of state; the state assumed a guardianship responsibility and in legal terms became their parent (despite the reality that

this moral and legal responsibility was neglected). The State bears significant culpability for the treatment these children received. State legislation also required State Governments to oversight the conditions in church and non for profit based institutions even when the children in “care” were not wards of state. For much of the twentieth century conditions and treatment of children in these institutions went unchecked.

Institutions and their proxies (churches) also must be required to contribute on a pro rata basis determined by the number of children over time in their care.

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

Participation by all institutions should be mandatory. This requirement should be included in the national redress framework to be developed by the Commonwealth. The financial contribution of each agency including the States and the Commonwealth should be proscribed.

Civil litigation

The right for survivors to pursue civil litigation despite the creation of a redress scheme should be retained.

Should the financial compensation already received be taken into account in any new scheme?

Previous payments received should be taken into account when assessing compensation within a new redress program. The advantage for survivors who have already been assessed as eligible for compensation is that they will not have to prove again their eligibility to the new redress scheme. The payment received from the redress scheme would however take into account their previous payment.

Conclusion

The case for a nationally constituted redress scheme has been well documented and argued (see *Forgotten Australians* and *Lost Innocents and Forgotten Australians Revisited*, Reports 2004 & 2009). There is incontrovertible evidence that most of the current approaches to redress and compensation are limited and ad hoc, sometimes seemingly capricious and patronising (see *Betrayal of Trust* pages 515-546 and submissions 195 & 203). What is needed is a systemic and coherent national approach that assumes a wrong has been committed and generously and as part of a reconciliation process establishes a system that can ensure equity of access and justice of outcome.

Acknowledgement

Open Place acknowledges the contribution Forgotten Australians have made to this submission.

References

Community Affairs References Committee: *Forgotten Australians, A report on Australians who experienced institutional or out of home care as children*, 2004

Community Affairs References Committee: *Lost Innocents and Forgotten Australians Revisited, Report on the progress with the implementation of the recommendations of the Lost Innocents and Forgotten Australians report*, 2009

Family and Community Development Committee: *Betrayal of Trust, Inquiry into the Handling of Child Abuse by Religious and Other Non- Government Organizations*, 2013