



Institutional Child Sexual Abuse: The Role & Impact of Redress

**Prepared by Estelle Pearson, David Minty & Justin
Portelli**

Presented to the Actuaries Institute
Injury Schemes Seminar
8 – 10 November 2015
Adelaide

*This paper has been prepared for the Actuaries Institute 2015 Injury Schemes Seminar.
The Institute's Council wishes it to be understood that opinions put forward herein are not necessarily those of the
Institute and the Council is not responsible for those opinions.*

© Finity Consulting

The Institute will ensure that all reproductions of the paper acknowledge the
author(s) and include the above copyright statement.

Institute of Actuaries of Australia

ABN 69 000 423 656

Level 2, 50 Carrington Street, Sydney NSW Australia 2000

† +61 (0) 2 9239 6100 † +61 (0) 2 9239 6170

e actuaries@actuaries.asn.au w www.actuaries.asn.au

The Role & Impact of Redress

Abstract

The Royal Commission was established in order to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters. A key component of the Terms of Reference of the Royal Commission is to investigate:

“what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services”

Recent media commentary has highlighted the nation-changing impact that the Royal Commission will have on child protection within our institutions. Redress is an important part of both addressing and alleviating the impact on survivors of institutional child sexual abuse, recognising the apparent inadequacies of institutions' protection of children in their care in the past.

This paper examines the redress that has been available to victims of institutional child sexual abuse to date. The paper also considers how the availability and reach of redress compares to other means of compensatory justice, and particularly compensation through civil liability. In light of these comparisons, the paper broadly considers and reflects on the various functions of redress as well as the impact of redress on victims on their road to recovery.

Some of the material in this paper may be distressing for some readers. If you have been personally impacted by any of the harms discussed in this paper, assistance and support is available on any of the following 24 hour national helplines:

- Lifeline 131 114
- 1800 Respect 1800 737 732
- MensLine Australia 1300 78 99 78

Keywords: Child Sexual Abuse; Abuse in Care; Institutional Abuse; Molestation Claims; National Redress; State Redress; Role of Redress; Impact of Redress

The Role & Impact of Redress

Table of Contents

1.	Introduction.....	4
	1.1. The Royal Commission.....	4
	1.2. Purpose of this Paper.....	4
	1.3. Assistance and Support	4
	1.4. Acknowledgements and Reliances.....	5
2.	Past Australian Redress Schemes.....	6
	2.1. Redress WA	6
	2.2. Queensland ex gratia scheme	8
	2.3. Tasmanian Abuse in Care ex gratia scheme.....	9
	2.4. Towards Healing.....	11
3.	Overseas Redress Schemes	13
	3.1. Irish Residential Institutions Redress Board	13
	3.2. The Grandview Agreement.....	14
	3.3. The Nova Scotia Compensation Program	15
	3.4. Canadian Indian Residential School Settlement Agreement	17
	3.5. The Netherlands Triptych Restorative Mediation Approach	18
4.	Redress vs Civil Litigation.....	20
	4.1. Hurdles to Civil Litigation compared with Redress	20
	4.2. Redress Participants vs Civil Claim volumes	23
	4.3. Monetary Payment Amounts	24
	4.4. Case Studies	25
5.	Important Functions of Redress.....	29
	5.1. Monetary Payments	29
	5.2. Counselling and Care	31
	5.3. Apologies	31
	5.4. Other benefits and support	31
	5.5. Conclusions on Functions of Redress	32
6.	The Effectiveness of Redress.....	33
	6.1. Feldthusen: Redress versus Civil Litigation and Criminal Compensation	33
	6.2. Leach: Grandview Evaluation	35
	6.3. Watson & RPR: Queensland Forgotten Australians	37
	6.4. IHRD: Canadian Institutions	37
	6.5. Problems with financial payments.....	38
	6.6. Counselling versus Monetary Payments	39
7.	Reflections.....	40
	7.1. Objectives of Redress.....	40
	7.2. Redress as a Package.....	40
	7.3. Trust	40
	7.4. Fairness	41
	7.5. Financial payments	41
	7.6. Ongoing financial support.....	42
	7.7. Counselling and therapy	42
	7.8. Evaluation	42
	7.9. Sustainability	43
	7.10. Royal Commission Proposed National Redress Scheme.....	44
	7.11. Conclusion	45
8.	Bibliography.....	48

1. Introduction

1.1. The Royal Commission

The Royal Commission was established in order to inquire into institutional responses to allegations and incidents of child sexual abuse and related matters. A key component of the Terms of Reference of the Royal Commission is to investigate:

“what institutions and governments should do to address, or alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, including, in particular, in ensuring justice for victims through the provision of redress by institutions, processes for referral for investigation and prosecution and support services”

Recent media commentary has highlighted the nation-changing impact that the Royal Commission will have on child protection within our institutions. Redress is an important part of both addressing and alleviating the impact on survivors of institutional child sexual abuse, recognising the apparent inadequacies of institutions' protection of children in their care in the past.

1.2. Purpose of this Paper

The purpose of this paper is to:

- Examine a number of examples of redress that has been made available to victims of institutional child sexual abuse
- Compare and contrast the various aspects of civil litigation and redress, particularly considering a number case studies
- Consider the important functions of redress including monetary payments, counselling and care, provision of apologies and other benefits and support
- Examine the effectiveness of historical redress in providing healing for survivors of institutional child sexual abuse and consider some key learnings that can be made
- Reflect on the important considerations in the design and implementation of successful, effective redress.

1.3. Assistance and Support

If you have been personally impacted by any of the harms discussed in this paper, assistance and support is available on any of the following 24 hour national helplines:

- Lifeline 131 114
- 1800 Respect 1800 737 732
- MensLine Australia 1300 78 99 78

1.4. Acknowledgements and Reliances

We would like to acknowledge the assistance of Geoff Atkins for his review of this paper and feedback on the content contained.

Much of the factual information contained in this report regarding past Australian redress schemes is informed by content contained in the Royal Commission's Final Report on Redress and Civil Litigation ('Royal Commission's Final Report') and Finity's report on National Redress Scheme Participant and Cost Estimates ('Final Actuarial Report'). Both of these reports are publicly available on the Royal Commission website. We have also examined some of the submissions made to the Royal Commission on redress and some of the case studies investigated by the Royal Commission (also available on the Royal Commission website) in preparing this paper.

The views and opinions expressed in this paper are those of the authors alone.

2. Past Australian Redress Schemes

This section examines a number of examples of redress that have been made available to victims of institutional child sexual abuse in Australia.

The key aspects considered for each scheme include:

- Background to redress
- Provision of monetary payments
- Other services and support offered
- Other scheme design considerations.

Further exploration of the impact and effectiveness of some of these schemes in achieving their objectives and meeting the needs of survivors is included in Section 6 of this paper.

2.1. Redress WA

The Redress WA scheme was established by the WA government following a series of national inquiries which revealed large numbers of children were abused and/or neglected while in State care. The scheme ran from 2008 to 2011 (applications open for one year and three months) and was open to adults who, as children, were abused in State care in a residential setting before 1 March 2006. The scheme covered physical, sexual, emotional and psychological abuse or neglect.

Arguably the broadest of the State based schemes in Australia, the scheme covered all facilities that were subsidised, registered, monitored or approved by the WA Government and included foster homes. The standard of proof for access to the scheme was described as “balance of probabilities”, however it is our understanding that in reality it was closer to “plausibility”.

The intent of the scheme was stated to be primarily about the “healing process” and was designed to:

- Help people move forward with their lives by publicly acknowledging failures in the provision of care to vulnerable children
- Provide a personal apology from the Western Australian Government
- Partly fund a memorial
- Provide access to support services such as psychological and financial counselling
- Assist eligible applicants with the application process
- Provide eligible applicants with an ex-gratia payment. (WA Department for Communities, 2008)

Table 1 below shows the number of participants at each payment tier as well as the mean and median payment amounts for all participants as well as those that

The Role & Impact of Redress

experienced sexual abuse (i.e. excluding participants who experienced only physical, emotional or psychological abuse or neglect, apart from sexual abuse).

Payment Tier	All Abuse		Sexual Abuse	
	Payments Made	Amount Paid (\$000)	Payments Made	Amount Paid (\$000)
1 - \$5,000	861	4,305	258	1,289
2 - \$13,000	1,813	23,569	759	9,797
3 - \$28,000	1,505	41,916	925	25,892
4 - \$45,000	1,123	50,535	949	42,691
Total	5,302	120,325	2,891	79,669
Mean Payment Amount (\$)		22,694		27,558
Median Payment Amount (\$)		13,000		28,000

Table 1 – Redress WA: Payment Summary

Around 2,900 participants (more than 50% of scheme participants) reported some form of sexual abuse, and received almost \$80 million in payments (around two thirds of total scheme payments). The average monetary payment amount offered was close to \$23,000 (or \$28,000 for survivors of child sexual abuse). Coinciding with the scheme, a number of services were also funded which provided counselling and other assistance to scheme applicants.

Participants in Redress WA all received a letter of apology from the WA Premier.

The formation and operation of the Redress WA scheme represented a significant milestone in the recognition and acknowledgement of victims of child abuse in State Care in Western Australia. Despite this, however, there were also some criticisms of the scheme.

Of particular note was the reduction in the payment levels offered. The monetary payments offered under the scheme were originally in the range of \$10,000 to \$80,000. However, after receiving a number of applications into the scheme, but before any payments were made, the maximum payment amount offered was reduced to \$45,000. The reason for this reduction was explained to be a consequence of a higher frequency of applicants reporting more severe levels of abuse than allowed for in the initial funding estimates. This reduction was said to have had a devastating impact on the lives of some survivors (Ellery, 2012), who viewed this reduction as a broken promise and a second betrayal by government. In their submission to the Royal Commission, Tuart Place, a resource service for care leavers whose client cohort is largely comprised of participants in the Redress WA scheme, stated regarding the payment reduction under the Redress WA scheme:

“If the maximum payment had been \$45,000 from the outset, there would have been less of a problem, but lowering the level after applicants had engaged in a process on the understanding the top payment was \$80,000 left many people feeling betrayed and devalued. Some very sad stories emerged of redress applicants owing lawyers more than they received; taking out loans they couldn't afford; or making promises to their families which they couldn't fulfill. Our observation of the great majority of applicants we met was that the primary goal was to have their abuse acknowledged and believed that it was 'not about the

The Role & Impact of Redress

money'. However as soon as the payments were cut, the money and what it symbolised became a central issue." (Tuart Place, 2014)

The experiences of Redress WA participants also highlighted the importance of formal apologies and acknowledgement for some survivors with Tuart Place stating:

"A number of Redress WA applicants described a sense of relief after they received a formal letter of apology from the WA Premier, which satisfied a need to feel acknowledged and believed. Some people framed their letters, and others showed them to their friends and families as evidence of their childhood abuse and trauma. Not everyone was happy with their apology letter however, and a common complaint has been that the apology was not personalised, that is, it did not respond to the individual experience." (Tuart Place, 2014)

2.2. Queensland ex gratia scheme

The Commission of Inquiry into Abuse of Children in Queensland Institutions (known as the Forde Inquiry) was established in 1998 to investigate abuse, mistreatment and neglect of children in Queensland Institutions between 1911 and 1999. The Inquiry examined more than 150 orphanages and detention centres and found significant evidence of abuse and neglect. The Queensland ex gratia scheme was formed following the recommendations of the Forde Inquiry and ran from 2007 to 2010 (applications open from 1 October 2007 to 30 September 2008). The scheme was open to persons experiencing abuse or neglect in detention or in licensed Government or non-Government children's institutions covered by the Forde inquiry.

The scheme did not cover foster care and institutions providing care for children with disabilities or acute health problems. Applicants were required to have been released from care and to have turned 18 years of age on or before 31 December 1999. There was no assessment of the plausibility of abuse or neglect for Level 1 payments. A greater burden of proof was required for Level 2 payments with an assessment of the extent of the severity and impact of abuse. Payments were set in the range of \$7,000 and \$40,000. The Royal Commission's final report suggests that counselling services were made available to redress participants through the Aftercare Resource Centre, through Lotus place.

Table 2 below shows the numbers of claims at each payment tier as well as the mean and median payment amounts for all participants in the scheme.

The Role & Impact of Redress

Payment Tier	Payments Made	Payment Level (\$)	Amount Paid (\$000)
Level 1 only	3,676	7,000	25,732
Level 1 + Level 2 - 1	1,455	13,000	18,915
Level 1 + Level 2 - 2	1,254	21,000	26,334
Level 1 + Level 2 - 3	616	29,000	17,864
Level 1 + Level 2 - 4	167	40,000	6,680
Total	7,168		95,525
Mean Payment Amount (\$)			13,327
Median Payment Amount (\$)			7,000

Table 2 – Queensland ex gratia: Payment Summary

There were close to 7,200 participants in the Queensland ex gratia scheme and it is estimated that around 2,600 (36%) of these experienced some form of sexual abuse. The average monetary payment offered under the scheme was around \$13,000.

Anecdotally we understand that participants receiving only Level 1 payments may not have disclosed the full extent of the abuse experienced while in care (including sexual abuse) as this was not required to obtain a Level 1 ex gratia payment and disclosure of this abuse may have been a cause of unnecessary re-traumatisation.

As the main requirement in receiving the minimum payment level was attendance at one of the institutions covered under the Forde Inquiry, which represents a closed population of children, it was possible for the scheme to offer payments with a lower burden of proof requirement.

Some of the criticisms of the Queensland ex gratia scheme included:

- The low level of monetary payments offered. In reflection on the monetary payments offered under the scheme, one survivor reported to the Royal Commission regarding their experience under the Queensland ex gratia scheme:
 “The government chucked us away in this hell hole, and made me miss out on a childhood, all for \$14,000.” (EN, RC Transcript Day 37, 2014)
- The narrow eligibility criteria which excluded children in foster care placements.
- The relatively short period for which the scheme was open to applications, with some survivor networks suggesting that many survivors were not aware of the existence of the scheme in the period that it was open to applications.

2.3. Tasmanian Abuse in Care ex gratia scheme

The Tasmanian Abuse in Care ex gratia scheme operated for 10 years over four separate rounds and was open to persons who experienced sexual, physical or emotional abuse while in State care, including foster care. The immediate catalyst for the scheme was a case involving child sexual abuse which aired on the ABC current affairs program Stateline in 2003. The then Minister for Health and Human

The Role & Impact of Redress

Services announced on this program that the Tasmanian ombudsman had agreed to carry out an independent review of claims of abuse suffered by adults who had been in State care as children (Tasmanian Department of Health and Human Services, 2014). While later descriptions of the standard of proof for access to the scheme referred to “balance of probabilities”, it is our understanding that in reality it was closer to “plausibility”.

In Rounds 1 to 3, the Tasmanian scheme provided participants with ex gratia payments of up to \$60,000, and in exceptional circumstances the independent assessor was able to recommend payments in excess of \$60,000. In Round 4 of the scheme, which operated from 2011 to 2013, the maximum payment amount was reduced to \$35,000. The scheme, in its third and fourth rounds, also funded three counselling sessions for each participant and provided advice on how to obtain Medicare subsidised counselling.

Table 3 below shows the number and amounts of payments made in each round of the scheme as well as in aggregate.

Round	Payments Made	Amount Paid (\$)	Average Payment (\$)
1 (2003-04)	247	9,400,000	38,057
2 (2005-06)	423	14,600,000	34,515
3 (2007-10)	784	25,300,000	32,270
4 (2011-13)	394	5,500,000	13,959
Total payments	1,848	54,800,000	29,654

Table 3 – Tasmanian ex gratia: Payment Summary

There were over 1,800 payments made over the four rounds of the Tasmanian scheme. It is estimated that around 780 (42%) of these claims involved sexual abuse. The average monetary payment under the scheme was close to \$30,000, slightly higher than under the Redress WA scheme and more than double the average under the Queensland ex gratia scheme.

In their submission to the Royal Commission, the Tasmanian government states that:

“In establishing the Tasmanian review process, the focus was on a healing process for individuals, which would assist adults who had been abused to gain closure.”

It also states that:

“The provision of ex gratia payments was a subsequent addition and only part of the overall system response” (State of Tasmania, 2014)

Despite this however, the issue of fairness and equity remained a key concern for some participants. Some of the issues arising included:

- Participants under all four rounds of the scheme often shared their experiences of redress including the level of monetary payments received. There were a number of cases where participants from the same institution

The Role & Impact of Redress

received varying amounts (particularly with the reduction in the level of payments offered in Round 4 of the scheme).

- Eligibility for the scheme was limited to those who were in State care. This meant that in cases where siblings had been placed under different care arrangements (not necessarily state), some siblings were eligible under the scheme and some were not, despite both experiencing abuse in care. This also led to perceptions of inequity.

2.4. Towards Healing¹

Towards Healing: Principles and Procedures in Responding to Complaints of Sexual Abuse against Personnel of the Catholic Church in Australia (Towards Healing) was adopted by the Australian Catholic Bishops Conference and Catholic Religious Australia in 1996. It is used by all Catholic dioceses and religious orders in Australia excluding the Melbourne Archdiocese, which adopted the Melbourne Response.

Towards Healing was revised in 2000, 2003 and 2010, the first and last revisions followed internal reviews. The original and most recently revised document provides:

“The Church makes a firm commitment to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, an effective response to those who are accused and those who are guilty of abuse, and prevention of abuse.” (Towards Healing, 2010)

Pastoral care (the spiritual care of a person or body of people) is intended to be at the heart of Towards Healing.

There are eight steps in the Towards Healing process:

- 1 Complaint
- 2 Meeting with complainant to provide information on process and offer counselling
- 3 Encouragement to go to the police
- 4 Allegations put to accused person who is stood down pending investigation
- 5 If denied, an independent assessor may be appointed to investigate
- 6 Facilitator moderated meeting between victim and church authority – meeting outcomes usually include apology, payment of counselling costs and agreed financial assistance and reparation
- 7 Where claim is admitted church has to decide what to do with the perpetrator
- 8 Independent review process available to those not satisfied.

Each case and each outcome depend on the individuals involved on both sides and their engagement.

¹ Description of Towards Healing taken from (Truth Justice and Healing Council, 2013)

The Role & Impact of Redress

In the early days of Towards Healing the focus was on apology and pastoral care. Now there is a greater focus on financial payments and there are more lawyers involved (around 60% of claims in NSW/Vic are legally represented). The Truth, Justice and Healing Council notes that greater involvement of lawyers can be helpful, however, the focus moves to negotiation of financial settlement between lawyers and less on the pastoral elements of the scheme.

Payments are based on each survivor's situation and needs and are not tied to a template or table of payments. It is not intended to be a "compensation scheme." Current practice regarding deeds of release varies by diocese/authority and some do not require a release especially for small payments. In the past payments were also subject to confidentiality agreements although this has not been a requirement since 2000.

Between 1995 and 2014, more than 880 payments were made under Towards Healing with an average payment amount of \$48,300 and a total of \$42.5 million. (Royal Commission Final Report, 2015)

There have been criticisms of Towards Healing, particularly around transparency and accountability, independence, consistency and quality of application.

The submission to the Royal Commission on Towards Healing by Lewis Holdway Lawyers includes the following criticisms of the scheme:

"...it appears to us that there is a very wide difference in engagement depending on which responsible authority we are dealing with. A rare few have been highly engaged and sincere. The majority have appeared uncomfortable and only just engaged, and a few have been highly disengaged, clearly only taking part under duress."

"We have also witnessed many facilitations which start very well with a very genuine apology but end with a disappointing offer of ex gratia payment, such that the apology is effectively rendered meaningless to the victim."

"There is no clarity about how the level of an offer of ex-gratia payment is made. We have found it to vary significantly between religious authorities, even up to a ten or twenty fold difference." (Lewis Holdway Lawyers, 2013)

3. Overseas Redress Schemes

This section provides some examples of overseas redress arrangements.

3.1. Irish Residential Institutions Redress Board

The Irish Residential Institutions Redress Board operated for more than 10 years between 2002 and 2013. Under the Residential Institutions Redress Act, an independent Board was appointed by the Minister, with a Chairperson and 10 ordinary members. It was the role of the Board to obtain written information and reports from multiple sources and each applicant was given the opportunity to present evidence and submissions at a hearing with members of the Board. The standard of proof for access to the scheme was the establishment of the eligibility criteria to the satisfaction of the Board who could require evidence to be given on oath or affirmation. The Act stated that the making of an award to an applicant does “not constitute a finding of fact relating to fault or negligence on the part of the relevant person”. (Residential Institutions Redress Act 2002) The Board also received evidence in the form of reports and medical assessments and could interview both the applicant and their medical advisors before determining a final award. There was extensive involvement from lawyers under the scheme, in preparing and presenting applicants cases.

Total awards amounted to €970 million with legal costs of €193 million. (RIRB Annual Report, 2013) The scheme ceased to take claims from 16 September 2011. In 2014 an independent State Body, Caranua, was set up to provide further support to those who had received settlements, Redress Board or Court awards. (Caranua website, 2015) Caranua is funded by the congregations, with €110 million promised of which €75 million had been received by May 2014.

Table 4 below shows the distribution of payments made under the Irish Residential Scheme.

Redress Band	Range of Payment	Number of Payments	Proportion of Participants
I	Up to €50,000	5,643	36.3%
II	€50,000-€100,000	7,507	48.3%
III	€100,000-€150,000	2,069	13.3%
IV	€150,000-€200,000	280	1.8%
V	€200,000-€300,000	48	0.3%
Total payments		15,547	100.0%

Table 4 – Irish Residential Redress: Payment Summary

The average payment made under the scheme was €62,496 or almost \$100,000 based on current exchange rates. A key observation of the Irish residential redress scheme compared to other schemes is the relatively small proportion of scheme participants receiving the maximum payment amounts (only 0.3% of payments made were in the highest redress band. In many ways, this reflected the more legalistic nature of the Irish scheme described above which required significant evidence and support in order for participants to receive payments in the higher bands. While in favour of the higher payments offered, many advocacy groups

The Role & Impact of Redress

have described the application and review process of the Irish Residential scheme as being “considerably more onerous than they would support in an Australian Redress Scheme” (Royal Commission, Final Report, 2015).

Unlike other schemes which have provided direct access to, or guidance to obtaining counselling and psychological care services, the Irish scheme advised that the awards paid under redress included an amount for the expense of past and future reasonable medical treatment (including psychiatric treatment).

One of the major criticisms of the Irish residential redress Scheme was the funding arrangements which required a contribution of €128 million from a coalition of 18 religious congregations in exchange for government indemnity from civil lawsuits. The initial contribution fell significantly short of the eventual cost of the scheme (only covering around 10% of the Board's payments). As such, some institutions, particularly the Roman Catholic institutions, were viewed as “not contributing their fair share” and “getting off the hook, at the expense of taxpayers”.

3.2. The Grandview Agreement

The Grandview Training School for Girls in Ontario operated between 1932 and 1976 and housed on average 120 girls each year. In the early 1990s a police investigation began into claims of physical and sexual abuse that occurred at Grandview and former residents formed the Grandview Survivors Support Group (GSSG) and hired legal counsel. The Ontario Cabinet took a decision in 1992 to pursue an out-of-court settlement and there were extensive meetings between the GSSG, the GSSG legal counsel and Ontario Government representatives and legal counsel. The agreement negotiated between these groups was announced in June 1994.

The Grandview Agreement overview statement contains the following regarding the objective of the Agreement:

“It is an objective of the various components of this Agreement to facilitate a path of healing and recognition of self-fulfilment for its beneficiaries. It is hoped that the coordination of the various components, will, as an integrated whole, produce a more accountable and effective response for survivors of institutionalized and sexual abuse....”

The settlement package under the Grandview Agreement consisted of:

1. General benefits – these were intended to benefit society as a whole and included legislative initiatives (amendments to the Limitations Act in Ontario although there was significant delay before any such changes were made) and research initiatives (the production of a video and booklet about the experiences of Grandview Survivors as well as an evaluation of the Agreement).
2. Group benefits – available to all former wards of Grandview without application and including a dedicated crisis line, self-inflicted tattoo/scar removal, general acknowledgement (the Ontario Government delivered an apology in 1999).

The Role & Impact of Redress

3. Individual benefits – requiring a sworn application and supporting documentation. Claims assessed by an adjudicator from the application and oral hearing process. The standard of proof was the balance of probabilities and the adjudicators were all women and chosen jointly by the GSSG and the Government and included an Aboriginal adjudicator. Approximately 320 claims were validated (Daly p.31, 2014) and each were entitled to the following individual benefits (all in Canadian dollars):
 - a. A financial award for pain and suffering ranging between \$3,000 and \$60,000 using a matrix based on act and injury/harm as a guide and covering physical abuse and mistreatment as well as sexual abuse. The average award was \$37,000
 - b. Major medical/dental up to \$10,000 where no insurance coverage is available
 - c. Therapy/counselling to a maximum of \$10,000
 - d. Residential treatment (e.g. for substance abuse) up to \$5,000
 - e. Funding for vocational or educational training
 - f. A contingency fund of up to \$3,000 to respond to individual needs for items not covered sufficiently by other benefits
 - g. An individual acknowledgement/letter of apology sent by the Ontario government.

Claimants had to sign a deed of release to gain access to individual benefits. The Grandview Agreement is held out as unique amongst redress agreements due to the extensive participation of survivors in its design through negotiation with the Ontario government. The process of adjudication, as well as the structure of the benefits, reflects the input of the survivors.

More details regarding the impact of the Grandview Agreement and its participants can be found in Section 6.

3.3. The Nova Scotia Compensation Program

The Nova Scotia Compensation Program was established following numerous complaints and allegations of sexual and physical abuse from former residents of the Shelburne Training School. The government established an investigation into the allegations which was undertaken by Justice Stratton. The Stratton Report released in June 1995 identified 89 allegations of abuse at three provincial institutions including Shelburne which was the only institution still remaining open. The report found that the Province of Nova Scotia had a moral obligation to respond to the claims of the victims. Following a year of negotiation with around 20 lawyers representing victims, the government agreed to a settlement in May 1996 establishing a \$33 million compensation fund and an alternative dispute resolution process.

A memorandum of understanding (MOU) was released in May 1996 and from June 1996 until November 1997 the Compensation Program operated under the terms of the MOU. The number of claims submitted was significantly higher than expected and at the same time an investigation was being undertaken by an Internal

The Role & Impact of Redress

Investigation Unit (IIU) into allegations of abuse against current employees of Shelburne. A briefing note prepared by the Nova Scotia Department of Justice at the time claimed that the IIU discovered documents thought to have been destroyed and there was increasing evidence that some claimants' statements were unreliable. The program was put on hold in November 1996 and changes to the MOU were made in December 1996 including a requirement that all claims would be investigated by the IIU and the payment of awards above \$10,000 would be by instalment.

The compensation package for validated claims included:

1. A financial award of between \$0 and \$120,000 based on the allocation of the abuse to one of 12 categories of sexual and physical abuse ranging from 12. Minor Physical and/or Sexual Interference (up to \$5,000) to 1. Severe Sexual and Physical Abuse (\$100,000 to \$120,000)
2. A counselling allotment of between \$5,000 (categories 12 to 9) and \$10,000 (categories 5 to 1). All claimants were eligible to receive interim counselling of up to \$5,000 from the time of entry to the Program
3. A personal letter of apology from the Minister.

Claimants were given a six month deadline within which to submit a demand under the Program and were required to sign a deed of release.

It was initially anticipated that there would be 178 to 267 claims. At November 1999 there were 1,260 claims of which 1,181 had been settled. The average compensation was \$30,902 (\$5,945 for counselling and \$24,957 for the base compensation award).

The Auditor General of Nova Scotia conducted an audit and review of the program in 1998 and concluded that:

1. The Program was complying with the guidelines and processes and generally functioning well
2. It was impossible to evaluate the Program from an efficiency and economy perspective
3. They could not assess the value of achieving the objective of avoiding unnecessary additional hardship for individuals and compare it with the additional cost, if any, of having claimant-sensitive processes and controls. The audit did not assess whether the Program achieved its goals with respect to fairness to victims or other involved individuals.

In 1999 Fred Kaufman (a retired Quebec Court of Appeal Judge) was engaged to review the Nova Scotia Government's response to institutional abuse to determine whether it had been 'appropriate, fair and reasonable'. Kaufman was critical of the Stratton Inquiry and argued that it presented a misleading picture of the extent of abuse. He considered that the government had not taken heed of the limitations of the Inquiry expressed in the report and had acted too quickly in instituting the Nova Scotia Compensation Program without due regard to the requirements of validation,

The Role & Impact of Redress

without an adequate assessment of the financial liability for the government and without sufficient consideration of how allegations against current employees would be handled. He concluded that this had been harmful for all involved and left:

“in its wake true victims of abuse who are now assumed by many to have defrauded the government, innocent employees who have been branded as abusers without appropriate recourse, and a public confused and unenlightened about the extent to which young people were or were not abused.” (Kaufman, 2002)

The Canadian Institute for Human Research Development, in their Review of the redress options in addressing individual needs and desired outcomes for victims of institutional child abuse, provided a scathing assessment of the Nova Scotia Compensation Program. Further detail is contained in Section 6.4.

3.4. Canadian Indian Residential School Settlement Agreement

This Agreement covered 139 industrial, boarding and residential schools operating from 1867 to 1996 in Canada. The schools were largely government-funded but run by the church. They represented an attempt to forcibly assimilate Aboriginal children into ‘mainstream’ society and eliminate the cultural and spiritual influences of the children’s parents and communities. The first complaints of sexual abuse, which resulted in criminal prosecution and conviction were in the late 1980s and the first civil claim against the government was in 1988. By 2005 there were 13,500 individual claims and 11 class actions. (Daly p. 41, 2014)

In May 2006, the Canadian Government, legal representatives for survivors, the Assembly of First Nations, Inuit representatives, and many church organisations entered into the Indian Residential School Settlement Agreement (IRSSA) – the largest out-of-court settlement in Canadian history.

Claimants could apply for either a Common Experience Payment (CEP) or Individual Experience Payment as part of an Independent Assessment Process (IAP) or both. Application for a CEP includes only personal information and placement dates at nominated schools. IAP applications include also details of abuse and harm caused, treatment sought or received, work and education history, lost opportunities and future care needs. CEP validation requires only verification of the residential school history. Once IAP eligibility is determined, assessment is based on whether a claim is standard, complex or exceptional:

1. Standard might be through a hearing with an adjudicator or without a hearing based on the written application
2. Complex is through a hearing with an adjudicator with expert evidence generally required
3. Exceptional claims go to court and are determined by a judge.

The Agreement includes the following benefits:

1. CEP of \$10,000 plus \$3,000 for every year after the first of attendance at a school

The Role & Impact of Redress

2. IAP of between \$5,000 and \$275,000 or up to \$430,000 depending on income loss
3. Funding for a commemoration
4. Endowment to the Aboriginal Healing Foundation
5. Truth and reconciliation process
6. Availability of existing mental health and emotional support services for participants.

As at 31 March 2015, a total of 105,536 CEP applications had been received, with 79,286 eligible applications paid. Total CEP payments made to date are in excess of \$1.6 billion with average payments of \$20,455. Over the same period, a total of 37,963 IAP applications had been received with 26,618 resolved through decisions or negotiated settlements. Total IAP payments approved amount to almost \$2.8 billion with average payments of \$113,324 including legal costs. (AANDC website, 2015)

3.5. The Netherlands Triptych Restorative Mediation Approach²

In 2011 a damning report was released by a commission of inquiry (also known as the Deetman commission) sponsored by the Catholic bishops and religious orders of Holland. The report estimated that somewhere between 10,000 and 20,000 Dutch children suffered abuse by Catholic personnel between 1945 and 2010. The Netherlands Triptych Restorative mediation approach was developed at the request of four religious congregations and victims of abuse.

The Triptych approach represents a form of redress that has a particular focus on restorative mediation between both parties. It has three parts plus an appeals process:

1. Separate 'inventory' talks with both the victims and the representative of the institution; the conversation with the victim takes about three hours and starts to build trust.
2. Mediation between the parties; this involves both parties, the mediator and a secretary/lawyer. It is preceded by signing an agreement to mediate and concludes with the signing of an agreement that includes a brief description of what has been talked about/agreed on as well as whether the congregation takes responsibility for the acts as described by the victim and whether an apology was offered and accepted. The agreement is a settlement agreement according to Dutch law but does not deal with the financial aspect.
3. Compensation proposal; this commences with a signed agreement committing to participate in a process of assessing and awarding financial compensation. There are five categories of abuse with compensation ranging from a maximum of €5,000 for the first and a maximum of €100,000 for the fifth category. The award can be appealed. The proposal deals with

² Description based on the submission on Redress Schemes to the Royal Commission by Sydney University Centre for Peace and Justice (2014) and our own review of Bisschops, A. (2014)

The Role & Impact of Redress

physical abuse and emotional abuse as well as sexual abuse. It takes into account the implications of the abuse on the rest of the victim's life.

4. Appeal; victims can raise objections to the proposal and the arbitrator decides whether or not the objections warrant review of the proposal. If the victim does not agree with the outcome of this process, an appeals board will hand down a binding decision.

Under the Triptych Restorative mediation approach, 128 victims received an average of €29,000. In her presentation to the International Conference on Sexual Abuse in the Church and other Institutional Settings, Bisschops argues that compared to other forms of redress, the unique, non-adversarial approach of the Triptych scheme focuses on emotional healing and leads to better outcomes for victims and institutions.

Bisschops also looks at the importance of the attitude of the representatives of the institutions involved in the process. She notes that:

- *“All have to go through a personal process of fear, anxiety, grief, shame, shock, etc and especially a process of growing awareness of the devastating effects of child abuse*
- *All tend to make the same initial mistakes in relating to victims*
- *All four of them [the congregations involved in the Triptych approach] in listening to victims had a profound change of mind, where their first priority became justice for the victims*
- *The victims on their part gradually dropped their distrust and became more friendly and respectful towards the religious superiors.” (Bisschops, 2014)*

4. Redress vs Civil Litigation

This section compares and contrasts various aspects of redress with civil litigation and discusses a number of Australian case studies.

4.1. Hurdles to Civil Litigation compared with Redress

There are a range of barriers to civil litigation by survivors of abuse that redress seeks to overcome including:

Burden of Proof

Different standards of proof exist for different types of disputes. For criminal matters, where the state imposes sanctions such as incarceration of people, a 'high' level of proof is required and in Australia this is a standard of 'beyond reasonable doubt'.

For actions between parties who have a civil dispute and are regarded in legal theory as equals in terms of status and power, the standard of 'balance of probabilities' is applied. Both parties are expected to present evidence for their contention, and the court then decides between them by weighing the evidence and deciding whether the matters alleged are more probable than not in order to accept them as true.

Prior to the enactment of workers' compensation legislation, workers needed to take civil action against an employer and prove negligence on the balance of probabilities in order to obtain restitution for the cost of workplace injuries. The introduction of statutory workers' compensation either supplemented or replaced the common law, generally with different evidentiary standards or even presumed liability on the part of an employer where injury occurred. Such schemes (and third party bodily injury compensation schemes that go beyond the common law in many states) represent redress arrangements for common injuries where civil litigation has been deemed to provide insufficient protection for injured parties. The necessity to prove negligence is often replaced with a strict liability that arises because the injury occurred in the workplace or involved a vehicle.

Victims of crime compensation may rely on a conviction having been entered against a perpetrator. A number of witnesses to the Royal Commission noted they have not pursued this compensation because none of the perpetrators who attacked them had been prosecuted or found guilty.³

Redress arrangements can employ a lower standard of proof such as 'plausibility' or 'reasonable likelihood'. Survivors are generally at a disadvantage relative to institutions in preparing evidence as the institution may be the only source of records, which may be incomplete, no longer in existence or may never have been created. Other witnesses may also be unavailable. Hence, a lower standard of proof, or using some evidence that has emerged in earlier cases to be imputed to the situation of other survivors through the mechanism of the redress scheme, may reduce the burden of proof required from each individual survivor.

³ E.g. Case Study 7 of the Royal Commission (NSW Girls Homes): (RN, RC Transcript Day 48 and (Stone R., RC Transcript Day 49, 2014)

The Role & Impact of Redress

Statute of Limitations

To provide procedural fairness for defendants, courts or legislatures generally set maximum limits of time between when an offence allegedly occurred and when a civil action can be brought. This aims to ensure both that records will still exist and recollection of witnesses will be more reliable.

In order to cope with the impact of abuse, many survivors have suppressed the memories of it, or avoid revealing it because of feelings of shame or perception that they remain at risk of further abuse if they reveal it. As a consequence many survivors have given evidence to the Royal Commission that they have suppressed these memories long into adulthood, and well beyond typical limitation periods, often three years after turning 18 for minors.

A redress scheme is generally designed to remove any statute of limitations for the period that the scheme operates. For most legislated redress schemes the scope of the scheme will generally include all abuse alleged to have occurred in particular institutions or situations regardless of when it occurred. Of course, where a scheme operates for only a limited period then more recent abuse may not be reported in time, and of course abuse occurring after the scheme ceases to allow claims, falls back to civil litigation standards.

The Victorian Parliament has passed the Limitation of Actions Amendment (Child Abuse) Act which was assented to on 21 April 2015. This abolishes the statute of limitations for child abuse in that state and is fully retrospective and so makes civil litigation similar to redress from that point of view. The NSW Government issued a discussion paper (NSW Department of Justice, 2015) on the issue and invited public comment by 10 March 2015. In February 2015 a South Australian case was rejected in the first instance because of failure to commence proceedings in time (*A, DC v Prince Alfred College* (2015)). This case study is discussed in more detail in section 4.4.

In the Royal Commission's Final Report, it is recommended that the State and Territory governments should introduce legislation to remove any limitation periods that apply to claims for institutional child sexual abuse.

Issues of Legal Personality

Several case studies involving churches highlighted the difficulty of a plaintiff correctly identifying the appropriate entity to sue, as most churches in Australia are unincorporated bodies. While schools and out of home care agencies may be relatively easy to identify, denominations are generally unincorporated and there is often no identifiable 'chain of command' between senior clergy and parish priests. Assets are often held in trusts that do not control or direct the work of the clergy. Similarly, some community based organisations and clubs were often unincorporated. For these organisations, both a lack of assets as well as difficulties in identifying the plaintiff (the managers of the organisation at the relevant time) are additional barriers to litigation.

A legislated redress scheme overcomes the issue of legal personality entirely as the survivor approaches the scheme rather than the perpetrator or the institution where

The Role & Impact of Redress

the abuse allegedly occurred. In turn, some redress schemes have endeavoured to obtain contribution towards the cost of redress from institutions. This has often been on a 'bulk' basis rather than case by case both for administrative efficiency and because some institutions either no longer exist or would be unable to meet the full cost of redress. The latter may particularly be an issue where the institution still delivers services to the community which governments or other institutions are unable or unwilling to provide.

Where the institution is not seen to meet the full cost of redress, some survivors may be less than satisfied as they envisage part of the purpose of the payment as being acknowledgement of wrongdoing as well as a punishment of the institution. This became a particular issue for the Irish Residential Redress Scheme.

In Victoria since 2014, each of the five Anglican dioceses has created a legal entity that is now readily identifiable for victims of any form of alleged abuse to pursue. This change also addressed changes to workers' compensation legislation in that state which no longer treats ministers within a denomination as being, in effect, self-employed.

Cost

The per-claim cost of redress is generally much less than civil litigation since the amount of preparation and evidence required is usually less than in civil or criminal cases. Procedures are generally more administrative in nature, requiring a statement on behalf of the survivor which is then assessed by the scheme administration against the criteria set for accessing compensation or support services. This contrasts with the adversarial approach under civil litigation in Australia requiring judge, plaintiff and defendant and their corresponding support personnel.

For victims of child sexual abuse, the cost of pursuing civil litigation may present a significant barrier to making a claim. This is particularly an issue for many survivors of child sexual abuse who may have a socio-economic disadvantage, often as a consequence of the limited opportunities afforded them following their childhood abuse and trauma. Contrastingly, the financial costs of redress are typically borne by the government or other redress provider with minimal costs borne by redress participants.

Trauma

The necessity to provide evidence of abuse, even to the standard of 'balance of probabilities', can result in survivors reliving the trauma on multiple occasions as statements are prepared, evidence is given in court and cross-examination occurs. Some survivors are not prepared to expose themselves to that extent, and many who have been through civil litigation report considerable regret at having done so even when monetary compensation or even judgement against a perpetrator has been achieved.

To the extent that redress compensates simply for having been at a particular institution at a time when abuse has been assessed as having occurred reduces the evidentiary burden on the survivor, and the administrative nature of most redress proceedings is also less intimidating than court proceedings.

The Role & Impact of Redress

Where a claim for civil compensation follows a successful criminal prosecution, the evidence from that case may obviate the need for the survivors to re-present their evidence, but by that stage of course significant re-traumatising may have already occurred.

Vindication and Justice

While redress arrangements may be administratively efficient and reduce the risk of further trauma for some survivors, the process of deliberation and decision-making “can seem to occur within a black box” (Daly p.186, 2014), and at the end there may be no formal vindication of the survivor as is a likely outcome of a successful civil or criminal case.

4.2. Redress Participants vs Civil Claim volumes

In light of the lower hurdles to accessing redress compared with civil litigation, it is a logical consequence that the volume of redress participants is larger than the volume of civil claims from a given exposed population.

Irish Residential Institutions Redress Board

As discussed in section 3.1, the Irish Residential Institutions Board paid more than €970 million of awards between 2002 and 2013. In its first annual report, the Board established under the above Act reported “The Board anticipates receiving between 6,500 and 7,000 applications in the 3 years allowed under section 8(1) of the Redress Act 2002”. (RIRB Annual Report p.9, 2003)

“By the 31st December 2014 the Board had completed the process in 16,619 cases. 11,988 offers have been made following settlement talks, 3,002 awards have been made following hearings and 557 awards have been made following review. 16 applicants have rejected their awards. 1,072 applications were withdrawn, refused or resulted in no award. By and large applications have been refused as, on the face of the documentation, the application was outside the Board’s terms of reference as laid down in the 2002 Act. In other words, the applications did not relate to residential institutions as defined in the Act. These applications are determined by the Board immediately on receipt so that the applicant is informed at the earliest possible date that his/her application is outside the ambit of the redress scheme.” (RIRB Annual Report p.51, 2013)

While the volume of civil claims in Ireland, prior to the establishment of the Redress Board is unclear, the final number of claims assessed by the Board is about 2.5 times the number estimated in 2003 and the total awards and costs amount to 9 times the original contribution of the 18 religious congregations against which no civil claims could be lodged following the establishment of the redress scheme.

Canadian Indian Residential School Settlement Agreement (IRSSA)

As discussed in section 3.4, by 2005, there were around 13,500 individual cases and 11 class actions made by former residents, following successful prosecutions for child sexual abuse in Canadian industrial, boarding and residential schools. In May 2006

The Role & Impact of Redress

the Government, churches, legal representatives of survivors and of the Aboriginal groups entered into the largest out-of-court settlement in Canadian history, which the courts endorsed in 2007.

As at 31 March 2015, a total of 105,536 CEP applications had been received, with 79,286 eligible applications paid. Over the same period, a total of 37,963 IAP applications had been received with 26,618 resolved through decisions or negotiated settlements.

The number of CEP applications under the Canadian redress settlement is therefore over seven times the number of individual civil cases that had been brought prior to its establishment. This multiple is potentially even higher including IAP applications, however it is unclear how many applicants would have made IAP applications exclusively. It also, of course, unclear how many additional civil claims would have been brought if the out-of-court settlement had not been reached.

Redress in Australia

In their Final Actuarial Report for the Royal Commission (Pearson, Portelli, 2015), Finity highlights the differences in the number of civil claims compared with the volume of historical redress participants. The claims data collected by the Royal Commission, including government claims as well as various insurer and institution claims indicated around 230 claims from residential institutions and foster care in WA. This compares with the estimated 2,900 participants in the Redress WA scheme whose claims included sexual abuse. This represents an increase of more than 10 times. It is also worth noting also that the Redress WA scheme was only open to applications for a period of one year and three months and there is anecdotal evidence that some eligible participants did not make applications to Redress WA in time.

In their estimates of the volume of participants in a national redress scheme, Finity model that a scheme covering institutional child sexual abuse in Australia could draw 60,000 eligible participants (possibly more). This compares to the 3,200 known claims resolved between 1995 and 2014, collected by the Royal Commission in their claims project⁴. These estimates highlight the significant impact that the barriers to civil litigation may have on civil claims volumes, compared with more accessible redress.

4.3. Monetary Payment Amounts

Financial payment amounts received under redress are generally less than those that can be attained through civil settlements. This reflects the lower burden of proof requirement under redress and also the fact that redress payments are made *ex gratia* (that is, irrespective of legal liability) and are not intended to be fully compensatory. Monetary awards achieved through successful civil litigation, on the other hand, is usually intended to fully compensate the successful claimant for loss or injuries incurred as a result of the breach of duty of another.

⁴ The Royal Commission claims project included claims resolved by Government bodies and various institutions and general insurance groups including Catholic Church Insurance, Suncorp, Allianz, IAG, Ansvr and the Salvation Army. While broad reaching, the Royal Commission claims project was not comprehensive and intended to capture only the main sources of Australian civil claims relating to institutional child sexual abuse.

The Role & Impact of Redress

Table 5 below contains a comparison of some of the average and maximum monetary payments offered under the various redress schemes that we have considered in this paper, as well as from the Royal Commission's claims project.

Redress Scheme	Number of Payments	Average Payment Amount ¹	Maximum Payment Amount ¹
Redress WA (incl. Country High School Hostel)	5,302	\$22,694	\$45,000
Queensland ex gratia	7,168	\$13,327	\$40,000
Tasmanian Abuse in Care	1,848	\$29,654	\$60,000
Towards Healing	881	\$48,300	n/a
Melbourne Response ²	310	\$38,800	\$75,000
Salvation Army Procedures ²	506	\$51,000	n/a
Irish Residential Redress Board	15,547	€62,496	€300,000
The Grandview Agreement	320	\$37,700	\$60,000
The Nova Scotia Compensation Program	1,101	\$28,583	\$120,000
Indian Residential School Settlement Agreement	18,191	\$100,530	\$430,000
Triptych Restorative Mediation Approach	128	€29,000	€100,000
Civil Claims 1995-2014 (RC Claims Project) ³	3,174	\$82,220	\$1,003,686

¹ \$AUD, \$CAD or €EUR

² Not considered elsewhere in this paper

³ The maximum of \$1,003,686 represents the average maximum civil claim payment for each year of resolution between 1995 and 2014. The range of maximum payments is \$164,760 to \$4,069,897

Table 5 – Monetary Payment Amounts: Redress vs Civil Litigation

We observe that maximum monetary payments available under civil litigation are significantly higher than under all of the redress schemes considered. Average monetary payments available under civil litigation are also generally higher than all of the Australian schemes. However the Irish Residential Redress Scheme and the Indian Residential School Settlement Agreement both have a higher average payment amount than has been historically achieved by Australian civil claims.

4.4. Case Studies

The following case studies, drawn from both public Royal Commission inquiries and other public sources, highlight some of the barriers to civil litigation:

Fairbridge Farm

In 1909, South African born Kingsley Fairbridge founded the Society for the Furtherance of Child Emigration to the Colonies. Its focus was to educate orphaned and neglected children and train them in farming practices at farm schools located throughout the British Empire. He wanted to see "little children shedding the bondage of bitter circumstances and stretching their legs and minds amid the

The Role & Impact of Redress

thousand interests of the farm.” In 1912 a farm school was established in WA and subsequently immigration to Canada, Rhodesia and other Australian states was encouraged. The Fairbridge Farm at Molong in NSW was opened in 1938 and about 1,200 children were sent there until its closure in 1974. (Migration Heritage Centre website, 2015)

In 2007 a number of former Fairbridge children made claims against the Fairbridge Foundation for abuse they had suffered at the school. After attempts to negotiate the matter failed the claimants brought a class action against the Fairbridge Foundation, the Federal Government and the NSW State Government in 2009. By 2014 the matter had been five years before the NSW Supreme Court and in the first fourteen hearings only procedural matters had been heard. Only in March 2014 did the court agree the matter could proceed to a hearing. At that stage it was expected that the matter could take a further five years with a trial date not expected until mid-2015 for the two lead claimants to then be followed by individual trials for the others involved. (Hill p.1, 2014)

In June 2015 a \$24 million settlement was reached with the more than 150 former residents who were part of the class action (an average amount of around \$135,000 estimated per resident after allowing for plaintiff legal costs). By this stage a further seven Supreme Court hearings had occurred. Former Fairbridge Farm resident, David Hill, quoted legal costs to the defendants at over \$10 million and that eight of the claimants had died since the action commenced (Browne, 2015).

Related to this, 205 former residents of the WA farm had received \$1.1 million compensation under the WA redress scheme up to 2012 (Catanzaro, 2012).

Parramatta Girls Home and Hay Institution

The Parramatta Girls School was first opened in 1887 in Sydney. The school provided out of home care for girls who were 'neglected', 'uncontrollable' or convicted juvenile offenders. In 1961, a maximum security annex, the Hay Institution was established to house the most rebellious and difficult girls. Case study 7 of the Royal Commission examined these two NSW Government institutions. 16 women gave evidence to the Royal Commission, however only two of the survivors reported receiving any compensation, both under general victims of crime legislation: Ms Patton received \$37,500 and Ms Robb \$10,000 plus counselling. A third survivor, Ms McNally, had received a larger sum but for abuse committed elsewhere.

A number of survivors had not sought compensation because they wanted to put the experience behind them, although even those women generally wanted some form of support and acknowledgement of what had been done to them. Others had been advised not to pursue compensation either because of the Department's known strong adversarial approach and/or the impact of the statute of limitations. There was no suggestion in evidence of survivors or Department witnesses that the Department had ever considered whether it should adopt model litigant behaviour in these matters. (Royal Commission Report of Case Study No. 7, 2014) (RC Transcripts, Days 48-51)

Christian Brothers' Western Australian Homes

The Role & Impact of Redress

Case study 11 of the Royal Commission examined four homes operated in WA by the Christian Brothers order. Potentially the Federal Government (as responsible for the Child Migration Scheme) and the WA Government (as regulator) might also have been found liable.

In relation to civil litigation, the Royal Commission found:

"In August 1993, on the instructions of VOICES, law firm Slater & Gordon commenced proceedings in New South Wales for some 240 claimants seeking damages from the Christian Brothers and other defendants for physical, sexual or psychological abuse at the institutions in the 1950s, 1960s and early 1970s. In November 1993, Slater & Gordon commenced similar proceedings in Victoria for 23 of those claimants who lived in Victoria.

From 1994 to 1996, these New South Wales and Victorian proceedings, sometimes referred to as 'the Slater & Gordon class action', involved interlocutory, or preliminary, hearings in New South Wales, Victoria and Western Australia; one appeal to the New South Wales Court of Appeal; and three applications for special leave to appeal to the High Court of Australia. The underlying claims of abuse were not heard or determined on their merits on any of these occasions.

In mid-1996, the proceedings were settled by the establishment of a trust fund of \$3.5 million for payments to claimants, with provision for limited lump-sum payments and other needs-based payments.

In addition, \$1.5 million was paid towards Slater & Gordon's legal costs and disbursements. The Christian Brothers' legal costs and disbursements totalled at least another \$1.5 million.

The trust fund operated for three years. It made lump-sum payments to 127 men for child sexual abuse as well as other needs-based payments." (Royal Commission Report of Case Study No. 11 p.46 , 2014)

Subsequently a number of men who had not participated in the Slater & Gordon litigation approached the Christian Brothers and were dealt with under the Towards Healing protocol which was by then in place. The evidence given by each of the four witnesses about the process and the settlements they received was negative in sentiment.

The Royal Commission also found that:

"Each of the 11 men (who gave evidence in the case study also) applied to Redress WA and received the maximum payment of \$45,000. Some of the men were very critical of the reduction in the maximum payment from \$80,000 to \$45,000. Some of the men commented on the length of time it took to receive a response." (Royal Commission Report of Case Study No. 11 p.64-66 , 2014)

A, DC vs Prince Alfred College, South Australia

In 2008, the plaintiff brought an action against the college for abuse alleged to have occurred in 1962 when he was 12 or 13. With a three year limitation period, the

The Role & Impact of Redress

action should have been commenced by 1973, when the plaintiff turned 24. The judge allowed him to present his evidence at one time rather than needing to return a second time – that took eight sitting days.

The judge found the plaintiff to be “*an honest and usually reliable witness*”, and noted “*it must be extremely hard to give an accurate history of emotional responses and conditions over a period of 52 years and to do so accurately*”. He noted that the plaintiff had become aware of the arrest in 2005 of the person who had abused him and that in 2007 he had read a victim impact statement to that court in relation to sentencing.

The judge found there were six principal questions for decision in the action against the college but found against the plaintiff in each of them:

- The matter was substantially out of time
- The standards of 1962 in relation to the college's duty of care to the plaintiff were relevant, not current standards, and the college had not breached that (and many of the relevant witnesses for the plaintiff were dead or infirm)
- Vicarious liability for the behaviour of the boarding master was not held
- The plaintiff was not under a disability as contemplated by section 45 of the Limitations Act so could not use that to extend the time to bring an action
- There were no extenuating circumstances for allowing a further extension as the plaintiff had, many years earlier, sued the offending teacher and could have sued the college at the same time but had chosen not to, and this delay was prejudicial to the college as defendant. (Supreme Court of SA, A, DC v Prince Alfred College, 2015)

The case had taken six years to come to judgement. It may be under appeal to the High Court as Justice Ann Vanstone's decision may differ from the words of Chief Justice Gleeson on the 'close connection test'. (Day, RC Transcript, Day 132)

5. Important Functions of Redress

One of the objectives of many redress schemes is to contribute to the healing process for survivors of abuse. As such the elements of redress extend beyond monetary compensation. We discussed in Section 4 some of the issues associated with pursuing compensation through civil litigation for survivors of child sexual abuse. In particular we discussed the potentially traumatising impacts of the validation of evidence through cross examination of the survivor as well as the legal difficulties in establishing causation and breach of duty of care to the requisite standard of proof.

The United Nation's Van Boven principles relating to violations of human rights provide a more complete (but not exhaustive) list of the elements of reparation (or redress) as follows:

- Restitution
- Compensation
- Rehabilitation
- Satisfaction
- Guarantees of non-repetition. (United Nations, 2006)

Looked at in this context, monetary compensation is only one aspect of a complete response to child sexual abuse. This highlights the future looking/healing component of redress rather than the backward looking/verification nature of compensation.

In this section we examine the different aspects of redress drawing on submissions to the Royal Commission and other research and reports on various redress schemes.

5.1. Monetary Payments

While widely acknowledged to be only a part of redress, monetary payments have been a feature of all the redress schemes in Australia and overseas that we looked at in section 2.

A monetary payment to the survivor is symbolic – a concrete acknowledgment that the abuse should not have occurred and the survivor should have been protected by those responsible for their care. In a practical sense a monetary payment can make a difference to the many survivors of abuse living on low incomes. The payment may also provide a sense of justice for the survivor where it comes “directly” from the responsible institution.

In the schemes that we examined there are three main approaches to monetary payments:

- Flat payments where all survivors receive the same amount; this was the approach used in the Indian Residential School Settlement Agreement, called a Common Experience Payment. This payment recognises that all residents of an institution where abuse was widespread were impacted by the experience. The Queensland ex-gratia scheme Tier 1 payments might also be seen as an example of this approach. In flat payment systems

The Role & Impact of Redress

eligibility for the payment is based on less onerous information, e.g. just establishing that a survivor was at an institution during the relevant period. They work well where public inquiry finds that there was widespread abuse in an institution.

- Tiered payments based on an assessment process that uses some combination of type and severity of abuse and the impact of that abuse. This is the model used in many schemes including Redress WA and the Irish Residential Institutions Redress Board. We have read arguments that the impact of abuse should not be included in such an assessment since “proving” how damaged you have been by the abuse is contrary to a healing model and links the monetary payment to the survivor’s behaviour and response to the abuse, not on the perpetrator and what was done. There are also arguments that assessments based on the impact of abuse penalise survivors who have been able to better overcome the difficulties associated with their childhood experiences, otherwise known as ‘copers’.
- A combination of flat and tiered payments; such as the Indian Residential Home Scheme CEP plus Individual Assessment Payments and the Queensland ex gratia scheme Tier 1 and Tier 2 payment approach. Generally under these monetary payment models, further information and “evidence” is required to access the higher monetary payment levels.

In their final report on redress and civil litigation, the Royal Commission recommends that redress scheme operators should give consideration to providing monetary payments by instalments (as opposed to lump sum amounts), particularly given the vulnerability of some survivors. The only redress scheme we looked at that provided payments by instalment was the Nova Scotia Compensation Program. We understand that some other schemes have had a structured settlement option but that this has not had strong support. Survivor groups appear to favour lump sums as providing the best opportunity to make decisions about financial priorities.

There have been a wide range of payment amounts with maximums ranging from \$40,000 in the Queensland ex-gratia scheme to €300,000 in the Irish Residential Scheme. Generally where higher monetary payments are available, there is a more rigorous and expensive process of validation and a greater spread of payments. For example, the Redress WA scheme had around 21% of claimants receive the maximum payment compared with just 0.3% for the Irish scheme. The administrative cost of the Redress WA scheme was around \$3000 per applicant compared with around \$6000 for the Irish scheme.

Common grievances about monetary payments include:

- They are inconsistent between survivors and so appear unfair. This is a particular criticism where the assessment process is not transparent or payment amounts change over time (e.g. Tasmania ex gratia where payments decreased and Towards Healing where they increased).
- The payment is not enough. This seems to have been a particular criticism of Redress WA when the maximum payment reduced from \$80,000 to \$45,000 after the scheme had commenced. It may also be more likely where the recipient of a payment has to sign a deed of release and give up civil rights.

5.2. Counselling and Care

Many of the schemes that we examined provided a level of support for survivors making applications to the scheme. Some schemes provided debriefing or counselling support for a period after the receipt of a monetary payment. Some schemes provided an additional lump sum for ongoing counselling and psychological support. However, none of the schemes that we examined provided lifetime counselling and psychological support services. We observe the numerous submissions to the Royal Commission suggesting the importance and benefit of such services in building resilience, self-esteem and coping mechanisms and healing.

5.3. Apologies

Apologies are an important part of redress. They can represent an acknowledgement of the facts, an acceptance of responsibility by the institution and an assurance of the measures that have been taken to prevent recurrence.

Apologies can have an extremely positive impact when they are sincere and consistent with other actions being taken by the institution. Apologies can be individual and personalised or collective and ceremonial, such as the apology to the Stolen Generation by the Australia government. Our reading suggests that ceremonial apologies developed in consultation with survivors are most effective. These might then be followed by funding for some type of memorialisation for the victims of the abuse.

Part of a restorative process includes facilitated meetings between a survivor and perpetrator (in this case a senior representative of the institution) which provide an opportunity for direct dialogue so that the survivor can feel heard and acknowledged directly by the institution. Note that forgiveness is not an expectation placed on the survivor. This has been a feature of the Towards Healing and the Dutch scheme described in Section 2. The engagement of the institution representative and the process they have gone through (as noted by Bisschops) is crucial to the success of the direct response.

5.4. Other benefits and support

Other benefits and support might include assistance with ongoing health and dental costs or assistance with the costs of education or training. This recognises that out of home care survivors in particular have higher levels of medical issues and are more welfare dependent and may have lost out on an education. Having the option to apply for additional payments for specific needs (as in Grandview) can assist in addressing some of these needs directly.

Other benefits that have been included in schemes include assistance with accessing records and information on time in care as well as travel costs for family reunification.

5.5. Conclusions on Functions of Redress

Compensation is seen as looking back and determining loss whereas redress is seen as future-looking often with an objective of contributing to healing. It is more than a financial payment. In her book, "Redressing Institutional Abuse of Children", Kathleen Daly described redress as including "*all the processes that occur when claimants seek financial payments, benefits and services; how well informed they are; whether they understand the redress process; how they are treated and whether they have a role in shaping the process and designing the outcomes*". (Daly p.115, 2014)

It is important that the redress process is and is seen as being fair and just. This may involve including survivors or their advocates in the design of the redress process and the outcomes. It includes ensuring that survivors are well informed about the scheme and what to expect as well as how survivors are treated throughout the process. Transparency and consistency are important to ensure trust. The various elements of redress – financial payment, counselling, apologies and other benefits – should be integrated if possible. It is vital that the financial payment is not seen as compensation but part of a larger scheme of reparation and redress.

6. The Effectiveness of Redress

There are few studies on how well past redress schemes have performed in achieving their objectives and which components of redress are most effective in terms of the scheme objectives.

Through our reading in preparing this paper we have identified four reports which provide some insight on the impact of redress:

- B. Feldthusen, O. Hankivsky & L. Greaves (2000): Therapeutic Consequences of Civil Actions for Damages for Compensation Claims by Victims of Sexual Abuse
- D. Leach & Associates: Evaluation of the Grandview Agreement Process: Final Report (1997) - unfortunately we were not able to source a direct copy of this report and have needed to rely on references to the findings of this report contained in:
 - R. Graycar and J Wangmann (2007): Redress packages for institutional child abuse: Exploring the Grandview Agreement as a case study in 'alternative' dispute resolution
 - K. Daly (2014): Redressing Institutional Abuse of Children
 - The IHRD report referred to below
- Dr Ian Watson for RPR Consulting: Findings of a survey of Queensland Forgotten Australians (November 2010 to January 2011)
- Institute for Human Resource Development (IHRD) (1998): Review of "The Needs of Victims of Institutional Child Abuse" prepared for the Law Commission of Canada.

We have also drawn on findings and statistics contained in S. Sunga: The meaning of Compensation in Institutional Abuse Programs, G. Shea: Redress Programs Relating to Institutional Child Abuse in Canada (1999) and C. Boyce & A. Wood: Money or Mental Health: The Cost of Alleviating Psychological Distress with Monetary Compensation versus Psychological Therapy (2000).

6.1. Feldthusen: Redress versus Civil Litigation and Criminal Compensation

The study by Feldthusen et al looked at the therapeutic and anti-therapeutic impacts of each of civil litigation, the Criminal Injuries Compensation Board of Ontario (CICB) and the Grandview Agreement. Here therapeutic means the extent to which a legal rule or practice promotes the psychological or physical well-being of the people it affects. The study was based on 87 respondents, being:

- 48 CICB claimants who had been sexually assaulted
- 13 plaintiffs who had commenced civil litigation for sexual assault or incest
- 26 validated Grandview claims all of which included sexual abuse.

Given the relatively small numbers surveyed, the authors express some caution at comparing outcomes across difference schemes or more broadly. It is also

The Role & Impact of Redress

noteworthy that the Grandview group was subject to sexual abuse in a 'total'⁵ institutional setting, whereas abuse may have occurred in a domestic or other setting for the other two groups. This may result in different attitudes and outcomes for these groups.

While the majority of respondents identified therapeutic rather than monetary motivations for pursuing litigation or compensation and these might be expected to be better dealt with in a redress process such as the Grandview Agreement, one of the conclusions of the report is that the authors could not isolate any single process as being superior overall.

This finding incorporates satisfaction with financial outcomes as well as other aspects of the process. In terms of the assessment process itself, redress appears superior with 85% of the Grandview group giving overwhelming approval to the adjudication experience. In contrast 73% of the civil litigation group had great difficulty with the hearings and of the 71% of the CICB group who had an oral hearing only 47% found this satisfactory. This finding does not mean that respondents found any process easy. Feldthusen reports that 84% experienced negative emotional and 53% physical side effects regardless of the process.

There were large differences in financial compensation. Civil litigants received between \$42,500 and \$479,000, the Grandview group each received \$60,000 while the CICB group received between \$5,000 and \$10,000. Only two of the civil litigants were dissatisfied with the financial outcome (including one who received one of the larger awards). Only 34% of the Grandview and CICB groups were satisfied with the financial compensation (note that the report does not give a breakdown between the two groups so we assume that they are not significantly different).

When asked how they felt at the very end of the process, around half (48%) of respondents gave an overall positive response, reporting a sense of closure, validation, empowerment or relief. On this measure the Grandview group at 35% was lower than both the CICB group (56%) and civil litigants (44%). Results were more consistent when asked whether going through the process gave a more positive outlook on life, although the Grandview group (35%) was still lower than the CICB group (44%) and civil litigants (36%).

Despite the results above suggesting that the process did not meet expectations or provide closure for a large proportion of respondents, 50% of the Grandview group would recommend going through the process to other survivors, compared with 42% of CICB respondents and 27% of civil litigants.

One of the conclusions of the report provides a useful reminder of the therapeutic limitations of any process as follows:

"None of the three processes can be expected to provide complete closure or healing in and of themselves. High expectations are problematic because they can lead to disappointment and disillusionment" (Feldthusen, 2000)

⁵ The concept of the 'total' institutional setting referred to here is taken from (Daly, 2014) referencing (Goffman, 1961) who defined a total institution as "a place of residence and work where a large number of like-situated individuals, cut off from the wider society..., together lead an enclosed, formally administered round of life."

6.2. Leach: Grandview Evaluation

This section relies on the findings of the Leach evaluation (reported in Graycar/Wangmann, IHRD and Daly) supplemented with some statistics from Shea.

The evaluation was carried out between July 1996 and March 1997 (before the completion of the adjudication process and before there had been extensive use of the benefits available under the package) and there is some criticism that it occurred too early in the process. We do not know how many participants in the Agreement took part in the evaluation. Some of the key responses from the evaluation we have been able to find are:

- When asked what were the most important elements of the Agreement to them respondents nominated:
 - Having abuse acknowledged by the Government (80%)
 - Being able to tell my story (44%)
 - Financial awards (28%)
 - Connecting with other survivors (24%)
- Almost 48% of respondents were 'very satisfied' with the financial award, 41% were 'somewhat satisfied' and 11% were 'not at all satisfied'. (Note that these satisfaction levels appear to be much higher than those reported in Feldthusen et al, although it may be that 'satisfied' in Feldthusen (35%) is consistent with 'very satisfied' in Leach (48%))
- For those who were dissatisfied with the financial award, this was connected to the level of compensation (in particular that others under a different reconciliation agreement had received more – a view not in actual fact borne out by analysis of the other agreement), a feeling that the Agreement was a 'set up' to benefit the Government at the expense of survivors and the impact that the award had on welfare benefits for those living outside Ontario.
- There was some dissatisfaction with the use of a matrix to determine awards *"using a matrix led to animosities between women related to the amount of their awards and may have fostered a perception of a 'hierarchy of pain'. They also felt that while the matrix approach was offensive, no alternative method could be found"* (from Leach as reported by Graycar/Wangmann).
- There was an overwhelmingly positive response about the written reasons given for the decision on the financial award (regardless of satisfaction with the award itself), with 87% of respondents indicating that this was 'very important' to them.
- 70% agreed either 'somewhat' or 'a lot' that the Agreement had contributed to their healing, however 31% said that the agreement had not helped them 'very much' or 'not at all'. (Note again that these results seem much higher than reported in Feldthusen et al, however they may not be directly comparable since the question in Feldthusen was whether going through the process gave a more positive outlook on life (35%)).

The Role & Impact of Redress

In terms of the other benefits offered, the following table shows the proportion of women using each benefit type:

Benefit	Number using	Proportion Using
Therapy/counselling	123	92%
Tattoo removal	52	39%
Contingency fund	132	98%
Educational assistance	46	34%
Financial counselling	6	4%
Total using at least one benefit	134	100%

Table 6 – Usage of Benefit Types under the Grandview Agreement

Leach makes the following comments about these other benefits:

- “Women indicated that therapy made a significant difference by improving self-esteem, assisting in healing, sustaining them through the Agreement process, assisting in the capacity to cope, and generally being able to ‘move on’”. She also notes that the cessation of the therapy benefits caused some dissatisfaction with claimants who felt that the limit on therapy was not made clear to them and they would have used the benefit in a different way if they had known.
- The contingency fund was the most popular benefit with 53.5% of uses being for health related matters.
- Education benefits “were seen as particularly important as education was something that ‘was stolen from [the women] at Grandview’”.
- Few women took up the financial counselling benefit.
- 80% of women at Grandview surveyed said that benefits such counselling and education enabled them to make concrete changes in their lives.

The evaluation found that the provision of both financial awards and benefits was important noting that:

“Many women told us that while ‘the money may go, the long term benefits of therapy, improved education and training will last’. For many women the benefits have contributed to positive changes in their lives, including improved self-esteem, greater financial independence, an ability to think about planning a future for the first time and the possibility of getting an education and enhancing their skills.” (Leach, 1997)

Like Feldthusen, Leach cautions against establishing unrealistic expectations around what a redress package (even one designed with strong participation of survivors such as Grandview) can achieve in terms of ‘healing’:

“It is unreasonable to expect that the Agreement process could ever be truly positive for the women who participated. References, no matter how informal, to the Agreement as a ‘healing package’ may have contributed to unrealistic expectations about the extent to which a woman’s life could be improved through

The Role & Impact of Redress

the Agreement. Neither the process nor the package of benefits can be expected to undo what happened to them as girls at Grandview. Any future initiatives should be cautious about the language that is used to describe the Agreement." (Leach, 1997)

6.3. Watson & RPR: Queensland Forgotten Australians

This survey was undertaken as part of planning future services for Queensland Forgotten Australians. There were 603 respondents to the survey although we do not know how many of these received a payment under the Queensland ex gratia or other schemes. Amongst the questions, the respondent group was asked to nominate which services had been most important to them from a list (they could tick more than one). In response to this question 59% nominated a payment from the government or past provider, 44% an apology, 30% face-to-face counselling, 24% taking part in public events and 23% an opportunity to share similar experiences. The report notes that the importance of the payment is not surprising because of the high incidence of poverty for the group with 46% only just getting along and 18% being poor or very poor (compared with 26% and 4% for the total Queensland population respectively).

6.4. IHRD: Canadian Institutions

The IHRD review was conducted for the Law Commission of Canada. (There were a number of study objectives including to examine the effectiveness of the redress options in addressing individual needs and desired outcomes of victims of institutional child abuse. The study covered five primary and six secondary institutions (including Grandview). The study included interviews with 74 survivors, key informants and review of relevant documents and reports. Some of the findings of the study were as follows:

1. Public inquiries are seen by survivors to have served their main function, namely to inform society about matters of importance. However satisfaction levels on process and outcomes can vary dramatically from inquiry to inquiry.
2. Formal civil suits are difficult for survivors in terms of process. They can take years to resolve, and enhance stress through the retelling of the story inherent in assessments and discovery procedures.
3. ADR, compensation programs and settlement panels are emerging as methods of choice in addressing the civil components of institutional abuse.
4. The levels or grids used in many instances to categorise abuse in order to determine levels of compensation are heavily criticised by some informants as arbitrary and invalid, and are seen by some to result in inappropriately low compensation awards for survivors.
5. Counselling is seen by survivors and others as the most critical service to be available throughout the process of addressing institutional child abuse.
6. Counselling represents the aspect of addressing institutional abuse that survivors find the most satisfying in terms of their needs and outcomes.
7. Survivors expressed general satisfaction with mutual aid, through support groups, where they existed. They were not of interest to all survivors, but

The Role & Impact of Redress

clearly offered support, information, and a sense of belonging that was important to many.

In their review of the Nova Scotia Compensation Program the Institute for Human Resource Development stated:

“The survivors interviewed were almost unanimously dissatisfied with the process and outcomes of the program. The process was seen as too long, not well enough explained, too controlled by the government, there were concerns about the compensation grid being unfair, and the awards were seen as too low. Survivors did not feel empowered in the process, and felt that the program met the government’s needs, not those of survivors. The major complaint of survivors was that the rules of the program changed after it began, which led to resentment and mistrust.” (IHRD, 1998)

6.5. Problems with financial payments

In the paper “The Meaning of Compensation in Institutional Abuse Cases”, Sunga argues that:

“unless there is a clear articulation that a monetary award does not signify a market transaction, money will tend to indicate some form of exchange for abuse injuries. I will argue that, in fact, a market-based meaning that indicates a transaction has occurred may perpetuate a feeling of disintegration within the abuse survivor.” (Sunga p.42, 2002)

Sunga makes the argument that abuse causes injury to identity, selfhood and integrity and:

“These injuries to identity, selfhood and integrity are not easily identified as we consider these things as existing integrally to ourselves. We cannot separate who we are for the purpose of assigning a symbolic monetary value to part of ourselves. I would propose that money need not be restricted to symbolising an exchange, substitution or compensation for some aspect of our selfhood that has been injured. Rather, in these cases, money can be a form of acknowledgement of the harm. An amount provided to recognise pain does not interfere with the injury. It leaves the pain and recovery in control of the survivor and indicates respect for it.” (Sunga p.50, 2002)

Sunga is also critical of matrix approaches used in some of the Canadian schemes to establish the amount of monetary payment since these do not reflect survivors’ unique experiences and can dehumanize them and makes a number of suggestions for reducing the risk of alienation:

- Discussions between survivors and designers about the impact of abuse
- Consultation with survivors on the language used to describe and explain monetary awards

The Role & Impact of Redress

- Flat payments to recognise solace and injury to identity and personality with additional payments linked to factors which contribute to the impact of abuse (for example, duration of abuse and the relationship with the abuser may be more impactful than the type of abuse)
- Terminology which avoids putting a transactional meaning on the monetary payment.

Sunga's criticisms of financial payments are echoed in the evaluations and studies noted above.

6.6. Counselling versus Monetary Payments

Many of the submissions to the Royal Commission talk about the importance of counselling. The evaluations and studies that are available also suggest that counselling is very important and that this benefit may lead to greater levels of satisfaction and positive outcomes compared to financial awards.

In her presentation comparing the Netherlands Triptych Mediation Process with other processes for dealing with child sexual abuse cases by the Catholic Church, Bisschops (2014) quotes findings by Boyce & Wood (2010), that in terms of happiness \$1,000 spent on counselling/psychotherapy is "worth" \$32,000 received cash (from inheritance, lottery, etc). We cannot comment on the robustness of the Boyce & Wood findings and to what extent these are supported by other academic research. Boyce and Wood state that:

"The purpose of financial compensation, however, is to alleviate an individual's psychological distress by helping them to find enjoyment elsewhere... On punitive grounds we are not necessarily suggesting that large court payouts are not justified. However, we are suggesting that the sums currently offered may not be the best way to help the injured party overcome any psychological distress unless it is decreed, in the best interests of the injured party, that the money gets spent on some form of psychological therapy" (Boyce & Wood, 2010)

It is unclear that the quantified relationship between spending on counselling/psychotherapy and financial payments, put forward by Boyce & Wood, would hold in a redress context since it is clear from the other research that a financial payment can make a difference to the lives of many survivors and can have positive impacts as it is seen as a concrete acknowledgement of responsibility by the institution. However, this highlights the need for sufficient resources to be directed to counselling in a redress model.

7. Reflections

This section contains our reflections on redress following the research we have done for this paper, especially on the impact of past redress schemes.

7.1. Objectives of Redress

Not all of the redress schemes we looked at had clearly defined objectives. Whether defined or not it appears to us that all the schemes have either an explicit or implicit objective of contributing to healing of survivors through a combination of the redress elements and redress processes. From an institutions perspective 'crystallisation' and 'closure' of the financial liability and reputational damage are also likely to be important objectives of a scheme (although maybe not expressed).

In our view the objectives of a scheme should be articulated. This will guide the design of the scheme and also provide a basis for evaluating its effectiveness. If 'healing' is an objective of a redress scheme it is important to avoid setting unrealistic expectations of what the scheme can achieve. In their submission to the Royal Commission, the Actuaries institute stated that:

"...successful redress schemes have simple and clear objectives. This allows clarity of focus to inform design, development and implementation. It also sets the base for governance sustainability and accountability over the period of operation of the scheme... These objectives must be clearly understood by institutions, victims and other stakeholders. Confusion about the objectives of a scheme will likely lead to perceptions of failure, regardless of whether or not the scheme meets its purpose." (Actuaries Institute, 2014)

7.2. Redress as a Package

Redress is a package of benefits and processes. How participants are treated and how well informed they are in decision-making is part of that package. (Daly 2014).

7.3. Trust

Loss of trust in authority and institutions is a common outcome for survivors. In their findings on the survey of Queensland Forgotten Australians, RPR state that:

"About two thirds of respondents indicated that they had not used some of the services or activities available to them as forgotten Australians... [a] group of Forgotten Australians referred to a lack of trust as the inhibiting factor." (Watson, 2011)

Participation of survivors in designing the process and outcomes assists in building trust (as demonstrated by the Grandview Agreement). Changing the scheme or processes (to the detriment of survivors) destroys trust (WA Redress and Nova Scotia) since this is seen as a manifestation of the power of the authority and the powerlessness of the survivors.

7.4. Fairness

There are many aspects of fairness. Schemes need to treat participants in a consistent way regardless of where they were abused. Participants also need to be treated consistently over time. Fairness also involves establishing the right balance between the needs of survivors and the needs of funders and the institutions involved in designing the scheme benefits and processes.

Fairness is of course in the eye of the beholder. In our research, many schemes were seen by participants as being unfair because of the relative size of the financial payments received.

7.5. Financial payments

Financial payments are a significant source of contention. There can be dissatisfaction about the size of payments either in absolute or relative terms. Payments are almost inevitably lower than a successful civil suit – the quid pro quo for lower barriers to participation and testing of evidence. Clearly articulating the meaning of a payment, the assessment process and written explanations all assist. However it seems inevitable to us that there will always be a large portion of participants who will express dissatisfaction with the financial payment.

A philosophical question to be asked is whether it is reasonable to ask for a deed of release to receive a financial payment? If a scheme is purely survivor focussed then we think the answer is no on the basis that it is unfair to ask a survivor to give up the right to pursue a larger financial payment at a time when they may be more emotionally or financially able to do so or if supportive evidence emerges or legislative changes/precedents improve the chance of success. Given however that redress schemes are inevitably a compromise between the needs of survivors and needs of institutions, deeds of release are likely to be a necessary feature. We do not believe that confidentiality should ever be a requirement of receiving a financial payment.

Validation

It is not possible to talk about financial payments without talking about validation. The Law Commission of Canada (in their report on responses to child abuse in Canadian institutions) pointed to the fact that while a redress package is not simply about financial compensation, the emphasis on validation invariably foregrounds the financial aspects, often at the expense of the other needs of victims of institutional abuse, such as respect, engagement and the aim of avoiding the anti-therapeutic effects of the legal system⁶.

In terms of validation the Law Commission of Canada makes the following points:

- The standard of proof should be commensurate with the benefits offered
- The process should not be revictimising for survivors

⁶ As reported in (Graycar, Wangmann, 2007)

The Role & Impact of Redress

- The process must be fair to all those affected by it, including those who are alleged to have committed abuse.

In Section 2, we noted the criticism of Kaufman about the lack of thought on the validation process in the Nova Scotia Compensation Program and the negative impacts that changing the process had on both survivors, employees at Shelburne and the general public.

7.6. Ongoing financial support

Access to funds to spend on specific needs such as education/training, dental or other health issues appear to result in relatively high levels of satisfaction. We think that this is because there is a very tangible personal benefit linked to the monetary payment. It seems to us that a smaller general financial payment coupled with special purpose funds that can be accessed over time by eligible participants may be more effective than a single payment. In saying this we are cognisant of the higher administrative burden of this approach together with a loss of certainty around financial obligations.

7.7. Counselling and therapy

It seems clear to us that access to counselling and therapy is one of the most important elements of redress. While there are a number of existing sources of counselling and therapy available to survivors in Australia there are significant gaps in those services and barriers to access. The Productivity Commission into Disability Care and Support described the current disability support system as *“underfunded, unfair, fragmented, and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports”*. (Productivity Commission, 2011) It seems to us that similar criticisms could be levelled at supports for survivors of child sexual abuse. We believe that the NDIA might provide a model of how such support could be provided in a more comprehensive and sustainable way.

The Actuaries Institute in their submission to the Royal Commission on redress noted that *“the sheer volume of victims and focus of such a scheme would allow the scheme to become a centre of excellence in the evaluation and provision of support services to survivors of sexual abuse in institutions”*

Such knowledge could be leveraged in terms of the support provided to the much broader group of survivors of all child sexual abuse (it is estimated that around 1 in 4 girls and 1 in 10 boys are victims of some form of sexual abuse and 1 in 10 girls and 1 in 25 boys are victims of penetrative sexual abuse). (Australian Institute of Family Studies, 2013)

7.8. Evaluation

Evaluation of a redress scheme should be built into its design. Evaluation enables processes to be assessed and improved and provides important information to the designers of other redress schemes. It also moves the focus from the cost of the scheme and average financial payments to the effectiveness of the scheme in meeting objectives. In her book, Daly notes:

The Role & Impact of Redress

“Canadian and Australian jurisdictions have had considerable experience with redress schemes for historical abuse, but the wisdom that might have been gained has not been fully realized. To date, of the 15 redress schemes analysed in this book, there are reports or relevant information for seven (two complete and five partial)... However, reports are lacking for eight schemes.” (Daly p.197, 2014)

Also on evaluation, the Actuaries Institute in its submission to the Royal Commission on redress noted:

“schemes that monitor the effectiveness of different modes of support – such as different methods of counselling – and actively seek to research and apply best practice are likely to generate better outcomes for victims and better value for money for scheme funders.”

7.9. Sustainability

A redress scheme must be financially sustainable. A scheme will clearly not meet its objectives if institutions cannot or will not participate in it because of the cost or uncertainty involved. An over emphasis on “affordability” or cost can however be seen as putting the needs of institutions before the needs of survivors thus resulting in a lack of trust which will ultimately undermine the healing objectives of a scheme. There is a clear balance to be determined here between the needs of survivors and financial sustainability.

Clear expectations upfront together with a focus on objective eligibility criteria, assessment and validation processes and ongoing evaluation of those processes in terms of outcomes are important elements in achieving financial sustainability without undermining trust in the scheme.

A strong actuarial control cycle is in our view a necessary component of financial sustainability, coupled with intelligent management to influence the drivers of cost outcomes. Establishing flexibility in funding arrangements will allow this to be pursued without breaking promises.

In our view there are similarities with, and lessons to be learned from the National Disability Insurance Agency in terms of the approach to financial sustainability. In the presentation to the 2015 Actuaries Summit by Sarah Johnson of the NDIA, financial sustainability as it relates to the NDIA was defined as a state where:

- *“the scheme is successful on the balance of objective measures of and projections of economic and social participation and independence, and on participants’ views that they are getting enough money to buy goods and services to allow them reasonable access to life opportunities – that is, reasonable and necessary supports; and*
- *Contributors think that the cost is and will continue to be affordable, under control, presents value for money and, therefore, remain willing to contribute.” (Johnson, 2015)*

The Role & Impact of Redress

7.10. Royal Commission Proposed National Redress Scheme

The Royal Commission into Institutional Child Sexual Abuse has recommended a national redress scheme for survivors of “past” abuse. Below we provide some commentary on the proposed scheme in the context of our reflections above.

Objectives	According to the Royal Commission Terms of Reference “To alleviate the impact of past child sexual abuse” and “ensuring justice for victims through the provision of redress”. Like many other redress schemes there is a clear ‘healing’ element implied by this.
Package	The proposed scheme includes a package of benefits addressing many needs of survivors. Given the breadth of coverage compared with other redress schemes (all institutions rather than residential institutions) the needs of survivors are likely to also be broader.
Trust	The proposal is for a scheme which is independent of institutions and envisages transparent processes. There has been consultation with survivors. Much will depend on the detailed design of processes and how well these processes are executed. Participation of survivors in the design of processes could add to trust however given the range of survivors this is more difficult to achieve than in a “closed” environment (e.g. Grandview). If elements of the proposed scheme are cut back on implementation then this will reduce trust.
Fairness	<p>The proposed scheme includes equal access and equal treatment for survivors. The Royal Commission is clear from a principles perspective that redress is survivor-focused and about providing justice to the survivor not protecting the institution’s interest.</p> <p>The scheme considers only sexual abuse (in keeping with the Commission’s terms of reference). This may be seen as unfair by survivors of physical and emotional abuse in institutions. The analysis of previous redress schemes which covered all types of abuse suggests that survivors of sexual abuse represent around 44% of all those abused and seeking redress.</p> <p>The payment scale is quite steep and means that there will be large differences in financial payments between survivors. This may lead to a perception of unfairness.</p>

The Role & Impact of Redress

Financial payments	<p>Payments are described as “a tangible means of recognising a wrong that a person has suffered”. The maximum and minimum payments (\$10,000 and \$200,000) as well as the target average are defined and are high relative to past Australian redress schemes. The target at \$65,000 is 33% of the maximum amount. The modelling suggests that around 63% of people will get less than the average. The large differences in outcomes for individuals may lead to some dissatisfaction and suggests that detailed explanations will be needed. The assessment process will include independent consideration of the type and impact of abuse (although the detail is to be determined).</p> <p>Given the broad-ranging nature of the proposed redress scheme which is not restricted to a closed population of individuals from a pre-determined list of eligible institutions, there is arguably a necessity for a greater burden of proof requirement, even for minimum payment levels. A deed of release is required but participants have one year to decide and can obtain legal advice.</p>
Special needs funds	The proposed scheme does not include such funds although the financial payment scale is generous relative to previous schemes in Australia and counselling is included as a service not a benefit.
Counselling	Included as a service with the aim of filling the gaps in existing service provision. Financial sustainability of lifelong access needs to be considered in the detailed design and should be outcome focussed rather than an open-ended provision of services. To get the most value from counselling the scheme should be more than a funder of services.
Evaluation	The Royal Commission’s Final Paper does not explicitly recommend any evaluation processes.

Table 7 – Reflections on proposed national redress

7.11. Conclusion

If well designed, a redress package can play a significant role in contributing to the healing of survivors of institutional child sexual abuse and have significant advantages compared to civil litigation. For survivors these advantages include:

- Avoiding some of the anti-therapeutic consequences of the civil litigation system (e.g. delays and the adversarial nature of validation)
- Removing many of the barriers to participation in civil litigation and therefore enabling more people to participate (barriers may be emotional, cultural, financial or legal)
- Responding to a greater breadth of needs of survivors (e.g. apologies, memorialisation, counselling, preventative actions).

The Role & Impact of Redress

Redress can also avoid some of the frictional costs associated with civil litigation and resultant inefficiencies. For institutions redress can assist in crystallising the financial liability and providing closure on the reputational damage of past responses to abuse.

Whilst financial sustainability is imperative, the focus of the objectives of redress should be on survivors, not institutions.

The main disadvantage of redress compared with civil litigation is that financial payments are likely to be less (maybe much less) than a successful civil claim. Another possible disadvantage or risk is the possibility of fraudulent or exaggerated claims of abuse associated with the lower burden of proof required under redress.

Despite the advantages of redress, the only study that we could find comparing redress with civil litigation (Feldthusen, 2000) could not determine that the redress process was superior to civil litigation when measured across a range of factors, including satisfaction with the financial award. This same study did however find overwhelming support for the adjudication process in redress and that almost twice as many respondents would recommend going through the process compared with civil litigation.

There are only limited evaluations of redress schemes so it is difficult to be definitive about the effectiveness of redress. From the research we have performed, it seems to us that positive impacts are more likely to occur when:

1. Survivors are fully engaged with the process including participating in designing it to ensure that it is sensitive to their needs in terms of the language used, application and adjudication processes and the benefits and services available to participants.
2. The scheme is transparent and consistent and participants are fully informed and supported so that there is trust in the scheme.
3. There are not unrealistic expectations on what a scheme can deliver to an individual survivor.
4. The scheme is seen as being fair in terms of the treatment of different survivors. It is also seen as fair in terms of balancing the needs of survivors against financial sustainability.
5. The scheme does not result in more "broken promises."

The Royal Commission has proposed a national scheme for the survivors of past institutional child sexual abuse. The proposed scheme includes many of the elements which contribute to positive outcomes for survivors. However the detail of the design of processes including the eligibility and validation process as well as the actual implementation of these processes will be vital to the 'success' of the scheme in terms of positive outcomes for participants.

We encourage a broad definition of financial sustainability of the scheme encompassing participant outcomes and value for money as well as current and projected cost and affordability for funders. Our research highlights the importance

The Role & Impact of Redress

of ongoing evaluation of any scheme since this will itself contribute to both the actual and perceived success of the scheme in meeting its objectives.

8. Bibliography

Aboriginal Affairs and Northern Development Canada (AANDC) – Statistics on the Implementation of the Indian Residential Schools Settlement Agreement (website accessed 12/10/2015)

<https://www.aadnc-aandc.gc.ca/eng/1315320539682/1315320692192>

Actuaries Institute (2014) – Submission to Issues Paper 6, Redress Schemes

<http://www.childabuseroyalcommission.gov.au/getattachment/b509a108-20ed-4e63-8ad5-0a1b24022e89/84-Actuaries-Institute>

Australian Institute of Family Studies (2013) – Child Family Community Australia Resource Sheet

<https://aifs.gov.au/cfca/publications/prevalence-child-abuse-and-neglect>

Bisschops, A (2014) – The Triptych Mediation Approach versus the official procedures in Ireland and The Netherlands

https://pure.uvt.nl/portal/files/2917237/Presentatie_Onati.pptx

Boyce C, Wood A, (2000) – Money or Mental Health: The Cost of Alleviating Psychological Distress with Monetary Compensation versus Psychological Therapy

<http://www.ncbi.nlm.nih.gov/pubmed/19919728>

Browne R, (29 June 2015) Sydney Morning Herald article – \$24 million payment for Fairbridge Farm abuse victims

<http://www.smh.com.au/nsw/24-million-payment-for-fairbridge-farm-abuse-victims-20150629-gi0hah.html>

Caranua Website – Who we are (website accessed 06/10/2015)

http://www.caranua.ie/who_we_are/who_we_are

Catanzaro J, (26 May 2012) The West Australian article – Child migrant abuse revealed

<https://au.news.yahoo.com/thewest/wa/a/13784175/child-migrant-abuse-revealed/>

Daly K, (2014) – Redressing Institutional Abuse of Children

Dutch Commission of Enquiry – Final Report (Deetman Commission Report - English Summary) (2011)

http://www.onderzoekrk.nl/fileadmin/commissiedeetman/data/downloads/eindrapport/20111216/Samenvatting_eindrapport_Engelstalig.pdf

Ellery S, (2012, 27 June) – Extract from Hansard, p4324c-4339a, Redress WA - Payments

[http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/0f33c9266c4a7fea48257a68000c39c2/\\$FILE/C38%20S1%2020120627%20p4324c-4339a.pdf](http://www.parliament.wa.gov.au/Hansard/hansard.nsf/0/0f33c9266c4a7fea48257a68000c39c2/$FILE/C38%20S1%2020120627%20p4324c-4339a.pdf)

Feldthusen B, Hankivsky O, Greaves L, (2000) – Therapeutic Consequences of Civil Actions for Damages for Compensation Claims by Victims of Sexual Abuse

Goffman E, (1961) – Asylums

The Role & Impact of Redress

Graycar R, Wangmann J, (2007) – Redress packages for institutional child abuse: Exploring the Grandview Agreement as a case study in 'alternative' dispute resolution

Hill D, (2014) - Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse Issue Paper No. 5 Civil Litigation
<https://www.childabuseroyalcommission.gov.au/getattachment/736fd830-523b-4b77-b023-a5441bb4a024/37-David-Hill>

Institute for Human Resource Development (1998) – Final Report: Review of the Needs of Victims of Institutional Abuse
<http://dalspace.library.dal.ca/bitstream/handle/10222/10276/IHRD%20Research%20Needs%20of%20Victims%20EN.pdf?sequence=1>

Johnson S, Twigg J, (2015) – Presentation to the Actuaries Institute 2015 Actuaries Summit: Insuring a better disability system
<http://www.actuaries.asn.au/Library/Events/FSF/2015/4eSarahJohnson.pdf>

Kaufman F, (2002) – Searching for Justice: An independent review of Nova Scotia's response to reports of institutional abuse
<https://www.novascotia.ca/just/kaufmanreport/fullreport.pdf>

Leach D, and Associates (1997) – Evaluation of the Grandview Agreement Process: Final Report (not directly sourced – relied on references from Graycar (2007), Daly (2014) and IHRD (1998))

Migration Heritage Centre Website – The Fairbridge Scheme (website accessed 30/09/15)
<http://www.migrationheritage.nsw.gov.au/exhibition/fairbridge-farm-school/the-fairbridge-scheme/>

NSW Department of Justice - Discussion Paper: Limitation Periods in civil claims for child sexual abuse (January 2015)
<http://www.haveyoursay.nsw.gov.au/assets/Uploads/Discussion-paper-with-attachments-FINAL-2.pdf>

Pearson E, Portelli J, (2015) – National Redress Scheme Participant and Cost Estimates
<http://www.childabuseroyalcommission.gov.au/documents/final-actuarial-report.pdf>

Productivity Commission (2011) – Productivity Commission Inquiry Report: Overview and Recommendation
<http://www.pc.gov.au/inquiries/completed/disability-support/report/disability-support-overview-booklet.pdf>

Report of Case Study No. 7 (2014) – Child sexual abuse at the Parramatta Training School for Girls and the Institution for Girls in Hay
<http://www.childabuseroyalcommission.gov.au/getattachment/0e4ec1ab-f372-496e-a98f-de3c0f268fb9/Report-of-Case-Study-no-7>

The Role & Impact of Redress

Report of Case Study No. 11 (2014) – Congregation of Christian Brothers in Western Australia response to child sexual abuse at Castledare Junior Orphanage, St Vincent's Orphanage Clontarf, St Mary's Agricultural School Tardun and Bindoon Farm School

<http://childabuseroyalcommission.gov.au/getattachment/27a80b05-2b21-48ec-bd94-2f3f02522596/Report-of-Case-Study-no-11>

Residential Institutions Redress Board (RIRB) – Annual Report (2003)

<http://www.rirb.ie/documents/finalAnnualReport2003.doc>

Residential Institutions Redress Board (RIRB) – Annual Report (2013)

http://www.rirb.ie/documents/Annual_Report_2013.doc

Royal Commission (2015) – Final Report on Redress and Civil Litigation

<http://www.childabuseroyalcommission.gov.au/getattachment/0d8ecf95-ba08-47a6-8e29-5d26a0a83eca/Redress-and-Civil-Litigation-Report>

Royal Commission Transcript Day 37, T3944:14-16 (28 January 2014)

Royal Commission Transcript Day 48, 4947.26-4948.25, (26 February 2014)

Royal Commission Transcript Day 49, 5054.46-5055.02, (27 February 2014)

Royal Commission Transcripts Days 48 to 51, 4855-5228, (26 February – 3 March 2014)

Royal Commission Transcript Day 132, 13801.42 to 13802.09, (27 March 2015)

Shea G, (1999) – Redress Programs Relating to Institutional Abuse in Canada

<http://dalspace.library.dal.ca/bitstream/handle/10222/10443/Shea%20Research%20Redress%20Programs%20EN.pdf?sequence>

State of Tasmania (2014) – Submission by the State of Tasmania to the Royal Commission into Institutional Responses to Child Sexual Abuse: Issues Paper 6 – Redress Schemes

<https://www.childabuseroyalcommission.gov.au/getattachment/712552ac-c447-4d57-a4cb-da31f30dc581/49-Tasmanian-Government>

Sunga S, (2002) – The meaning of compensation in Institutional Abuse programs

http://legalaids.on.ca/en/publications/downloads/journal_vol17/Sunga.pdf

Tasmanian Department of Health and Human Services (November 2014) – Review of Claims of Abuse of Children in State Care: Final Report Round 4

http://www.dhhs.tas.gov.au/_data/assets/pdf_file/0004/170554/Child_Abuse_Review_Team_Final_Report_v7.pdf

Towards Healing (2010) – Principles and procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia

<http://www.tjhcouncil.org.au/media/1002/towards-healing-2010-27032013-final-v2013.pdf>

The Role & Impact of Redress

Truth Justice and Healing Council (2013) – Submission to the Royal Commission into Institutional Responses to Child Sexual Abuse: Issues Paper No. 2 | Towards Healing
<http://www.childabuseroyalcommission.gov.au/getattachment/3652d108-f808-4979-a4f1-9b36f2b21a36/15-Truth-Justice-and-Healing-Council1>

Tuart Place (2014) – Submission by Tuart Place to the Royal Commission into Institutional Responses to Child Sexual Abuse Issues Paper 6: Redress Schemes
<http://www.childabuseroyalcommission.gov.au/getattachment/9bb7dacf-e58d-4d10-ae56-6ad6a76620d7/11-Tuart-Place>

UN General Assembly (2006), Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by the General Assembly
http://legal.un.org/avl/pdf/ha/ga_60-147/ga_60-147_e.pdf

Victim Support Service (2015) – Response to Royal Commission into Institutional Responses to Child Sexual Abuse: Consultation Paper – Redress & Civil Litigation – Appendix A: Supreme Court of South Australia judgement, A, DC v Prince Alfred College (4 February 2015)
<http://www.victimsa.org/files/victim-support-service-submission--redress-civil-litigation.pdf>

Victoria - Limitation of Actions Amendment (Child Abuse) Act 2015 (No.9 of 2015)
http://www.austlii.edu.au/au/legis/vic/num_act/loaaaa20159o2015426/index.html

Watson I, (2011) – Findings of a survey of Queensland Forgotten Australians Volume 2
<http://www.ianwatson.com.au/pubs/rpr-report-vol2.pdf>

Western Australian Department for Communities (2008) – Submission to the senate community affairs committee inquiry
http://www.aph.gov.au/~media/wopapub/senate/committee/clac_ctte/completed_inquiries/2008_10/recs_lost_innocents_forgotten_aust_rpts/submissions/sub12_pdf.ashx