

# Submission to inform the Royal Commission into Institutional Responses to Child Sexual Abuse

## Issues Paper 7

### *Statutory Victims of Crime Compensation Schemes*



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SUPPORT  
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INCORPORATED**

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## Introduction

Victim Support Service (VSS) welcomes the commitment of the Royal Commission into Institutional Responses to Child Sexual Abuse to create a safer future for Australian children and improve responses to victims of child sexual abuse. Thank you for considering our submission in response to Issues Paper 7.

Our vision is to see that all victims of crime in South Australia receive the support they need. Our purpose is to work towards this vision. We do this by providing expert information and support to victims.

The organisation has been working with and for victims in South Australia since 1979. We deliver programs which focus on victim engagement and evidence-based practice in areas such as trauma, crime prevention, homicide, domestic violence and child sexual abuse. To do so we partner with governments, non-government organisations, South Australia Police, and the wider community.

Improving how the criminal justice system responds to victims of crime is a priority for VSS. The organisation is concerned with the needs of all victims but approaches this submission with a particular focus on the needs of survivors of child sexual abuse in the context of institutional settings.

## Our expertise

VSS is a statewide non-government community service organisation which provides free support, counselling and information services for adult crime victims, and advocates for victims' rights and community safety. We provide nearly 30,000 responses to victims each year, of which nearly 3,000 are new referrals.

VSS is governed by a voluntary Board of Management drawn from a diverse range of professional backgrounds including law, police, counselling, accounting, business, government and human services. The Board also retains a link with crime victims by retaining at least one crime victim/survivor as a Director.

VSS employs a team of staff drawn from the fields of psychology, social work and counselling deployed from one Adelaide office and seven country offices in South Australia. We provide a comprehensive range of practical and therapeutic services to all adult and older adolescents that have experienced crime, including information about a range of issues including victims of crime compensation, court support, training, counselling, brief intervention and assistance with preparation of Victim Impact Statements. This includes services for individual crime victims, their families, friends and the wider community. A victim does not need to have reported a crime to access VSS services, and victims can contact VSS at any time after the crime – whether it was yesterday, last week or many years ago.

VSS also advocates on behalf of individual clients, and for systemic changes to improve how the criminal justice and the health/welfare systems treat victims of crime.

VSS staff provide consultancy, training and information to other professionals who work with crime victims. Additionally, we deploy a team of trained volunteers to provide:

- court preparation and companionship for victims or prosecution witnesses who attend court;
- community education talks;
- information resources for victims and other professionals.

VSS is primarily funded by the South Australian Attorney-General from the Victims of Crime Fund. In addition, VSS has been funded by:

- The Australian Government's Department of Social Services (DSS) to provide support and counselling services to individuals engaging with, or impacted by, the Royal Commission into Institutional Responses to Child Sexual Abuse;
- The South Australian Office for Women to provide administrative support for the statewide Family Safety Framework initiative;
- The South Australian Department for Communities and Social Inclusion (DCSI) to improve home security and safety for women who are at risk of homelessness as a result of family and domestic violence.

As the specialist victims of crime service in South Australia, and as a DSS funded service to support individuals wishing to engage in the Royal Commission, VSS has supported many individuals over many years to access various redress schemes for adult survivors of institutional child sexual abuse. As such, we have a well-developed and thorough understanding of how these processes and outcomes are experienced by individuals.

There currently are four redress options in SA:

- Civil litigation;
- Institutional redress schemes (such as *Towards Healing*, *Healing Steps*, etc);
- Statutory Victims of Crime Compensation Scheme; and
- *Ex-gratia* Payments payable through Victims of Crime Compensation Scheme for former residents of State care who experienced sexual abuse as children.

Limited statutory compensation was introduced in South Australia in 1969 with the enactment of *Criminal Injuries Compensation Act 1969 (SA)*. This act was repealed in 1978 when the *Criminal Injuries Compensation Act 1978 (SA)* came into force on 1 July. Then, on 1 January 2003, the current *Victims of Crime Act 2001 (SA)* came into effect.

As an adjunct to the VOCC Scheme, and underpinned by s 27 of the *Victims of Crime Act 2001 (SA)*, former residents of State care who experienced sexual abuse as children may be able to access an *ex gratia* payment. This constitutes the State Government's response to Recommendation 40 of the *Children in State Care Commission of Inquiry: Allegations of Sexual Abuse and Death from Criminal Conduct* (often referred to as the Mulligan Inquiry) which reads:

That a task force be established in South Australia to closely examine the redress schemes established in Tasmania, Queensland and Western Australia for victims of child sexual abuse; to receive submissions from individuals and relevant organisations on the issue of redress for adults who were sexually abused as children in State care; and to investigate the possibilities of a national approach to the provision of services.<sup>1</sup>

VSS understands that this recommendation has never been fully implemented.

The limitations of both civil litigation and institutional redress schemes have been well documented in Issues Papers 5 and 6 respectively. This submission will consider the statutory victims of crime compensation schemes developed locally and abroad, and will advocate for a new model of redress in South Australia that will provide better outcomes to adult survivors of institutional child sexual abuse.

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<sup>1</sup> E Mulligan, *Children In State Care Commission of Inquiry: Allegations of Sexual Abuse & Death from Criminal Conduct*, 2008, available at: <[www.sa.gov.au/mulliganenquiry](http://www.sa.gov.au/mulliganenquiry)>

## Summary of recommendations

VSS appreciates the opportunity to submit the following recommendations for consideration by the Royal Commission into Institutional Responses to Child Sexual Abuse:

- 1. The implementation of a complex-trauma informed and survivor driven National Redress Scheme in Australia;**
- 2. A retrospective statutory Victims of Crime Compensation (VOCC) Scheme in recognition of the long-term impact of complex trauma on adult survivors' capacity to claim within current time restrictions;**
- 3. Access to free and independent legal advice delivered by legal practitioners trained in complex trauma-informed care and practice (for example, the continuation of Knowmore after the closing of the Royal Commission);**
- 4. Ongoing provision of support services after the close of the Royal Commission into Institutional Responses to Child Sexual Abuse;**
- 5. Access to financial compensation requires the ongoing provision of specialised support services to assist survivors in their application for compensation/redress;**
- 6. Greater transparency regarding the decision-making process involved in assessing ex gratia or discretionary payment applications by former wards of the state;**
- 7. The introduction of an appeals process for unsuccessful ex gratia or discretionary payment claims;**
- 8. Lowering the burden of proof on claimants;**
- 9. The mandatory contribution to a redress fund by non-government institutions where child sexual abuse has taken place; and**
- 10. State-wide community education programs about any reforms to the Victims of Crime Compensation (VOCC) Scheme.**

## Issues Paper 7: Statutory Victims of Crime Compensation Schemes

### Question 1

**What are the advantages and disadvantages of statutory victims of crime compensation schemes as a means of providing redress or compensation to those who suffer child sexual abuse in institutional contexts?**

While many victims face barriers to accessing compensation through the current South Australian VOCC Scheme, there are some advantages to the current system. The current VOCC Scheme offers:

- An alternative to redress when civil litigation is not possible or the survivor does not wish to approach the institution where the abuse took place to access redress;
- Access to free consultation from a lawyer who specialises in VOCC scheme claims to assess the likelihood of success in making a claim (the usual practice is for a VOCC lawyer to write to the Crown Solicitor's office to determine the merits of a claim prior to undertaking any substantial work on behalf of a client; for some victims of crime this process occurs without requiring them to make any payment);
- An alternative to the drawn-out nature of civil litigation (although VOCC Scheme processes can also be time-intensive);
- A way to access compensation that is less likely to re-traumatise the victim (where offences have occurred since 2003, the majority of claims do not require a court hearing and are settled by negotiation between the claimant's lawyer and the Crown Solicitor's office);
- Section 28 of the *Victims of Crime Act 2001 (SA)* gives the Attorney General the power to recoup from known offenders; and
- No statutory limitation for *ex gratia* payments claimed by former state wards and a lower burden of proof in making this claim.<sup>2</sup>

Despite the advantages to the current VOCC Scheme, there are disadvantages when we consider the impact of complex trauma and the recovery needs of the adult survivors. These include:

- From 2015-16, the maximum compensation payment to successful claimants will be \$100,000. However, many adult survivors face significant barriers to claiming compensation because the Victims of Crime Compensation (VOCC) Scheme provided for in the *Victims of Crime Act 2001 (SA)* is not retrospective; under paragraph 2 of Schedule 1 of the *Victims of Crime Act 2001 (SA)*, the repealed *Criminal Injuries Compensation Act 1978 (SA)* continues to apply in regard to an injury resulting from an offence committed before the enactment of the *Victims of Crime Act 2001 (SA)*.
- Limitation periods require an individual to claim within three years of the offence, or within three years from reaching adulthood. A court of law can extend a limitation period, but this then provides an avenue for the offender to become a party to proceedings (s19 of *Victims of Crime Act 2001 (SA)*).
- To determine the maximum amount claimable reference must be made to the amount as legislated at the time of offence. That is:

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<sup>2</sup> See Application Guidelines <http://www.agd.sa.gov.au/services/services-citizens/your-rights/ex-gratia-payments>

22/1/1970 to 10/4/1974	\$1,000
11/4/1974 to 30/6/1978	\$2,000
1/7/1978 to 30/7/1987	\$10,000
1/8/1987 to 31/8/1990	\$20,000
1/9/1990 onwards <sup>3</sup>	\$50,000

- The VOCC Scheme provides financial payment only; there is no ongoing access to therapeutic or other support. This is grossly inadequate for many survivors who require ongoing, if not lifelong, support.
- Lack of accountability of non-government institutions where the abuse took place as there is no mechanism for them to contribute to the VOCC Fund.
- The VOCC Scheme is a fund of “last resort”, where the amount received as a result of a successful claims does not necessarily compare with the severity of the offence and harm done to the adult survivor as a child.
- Both the *Victims of Crime Act 2001 (SA)* and the *Criminal Injuries Compensation Act 1978 (SA)* require that for compensation to be payable, the offence must be either admitted or proven in a court of law beyond reasonable doubt, and that other facts such as the resultant injury be proven on the balance of probabilities. To meet a standard of “beyond reasonable doubt” in the context of this form of abuse is prohibitive, and in reality means many claimants have to rely on *ex gratia* or discretionary payments made by the Attorney General.
- Claimants must report to police or show good reason for not doing so (see further discussion under Question 3d).
- If the offender is deceased or unknown, this makes it extremely difficult for the crime to either be admitted to or proven beyond reasonable doubt, as any corroborative evidence or proof of injury may not be deemed sufficient to progress a claim. According to Adelaide based lawyer, Matthew Mitchell:

[T]he evidence of the victim as to the commission of the offence, unless supported in a material particular by corroborative evidence, is not sufficient to establish the commission of the offence. A report of the offence to police or the applicant’s own statements to psychiatrists and psychologists cannot usually be corroboration.<sup>4</sup>

As institutional child sexual abusers often seek to commit offences when no witnesses are present, this presents a major obstacle for claimants to overcome when seeking compensation.

- Due to limited legal fees payable as governed by regulation, lawyers may be reluctant to push matters to trial or appeal. According to Matthew Mitchell:

The statutory limits on awards, and the subjective nature of assessing compensation under the act, mean that the uncertainty (and usually the relatively small dollar value of the difference in position between the Crown and the Victim’s solicitor) will rarely justify

<sup>3</sup> The maximum amount payable to claimants under the VOCC Scheme will increase to \$100,000 from 2015-16.

<sup>4</sup> M Mitchell, “Criminal Injuries Compensation: *Victims of Crime Act 2001*”, The Law Society of SA CDP Programme, 16 March 2011, p. 3.



the time and risk (particularly of potential costs on the District Court scale) of pursuing a claim to trial and judicial determination.<sup>5</sup>

- The legislation requires evidence to support a claim be provided by a medical practitioner. For many survivors, this is not realistic due to the impacts of the complex trauma they have experienced. VSS has a long standing position of advocating that it should be sufficient for a victim to provide evidence by a qualified allied health practitioner with whom they have an ongoing therapeutic relationship.
- The VOCC Scheme does not include any of the other forms of redress sought by adult survivors, such as an apology from the offender, public recognition and affirmation of a wrong done, and commitment from institutions to better protect children now and in the future.
- In the context of institutional child sexual abuse, many survivors making a claim would do so under the *Criminal Injuries Compensation Act 1978 (SA)* rather than the *Victims of Crime Act 2001 (SA)* due to the time the offence(s) took place. Under this legislation, the claimant has to apply to court for compensation and serve the application on both the Crown Solicitor and the offender. In making the offender a party to proceedings, they then have the legal right to force the matter to trial even when the Crown and victim are in agreement. In addition, any party can require the claimant to undergo a medical examination by a doctor of their own choice, thus enabling “the potential that an offender could use this provision to effectively re-victimise his or her victim”.<sup>6</sup>
- In regard to *ex gratia* payments to former state wards, there is a considerable lack of transparency surrounding the decision-making process of the Attorney General; the Attorney General decides who will be offered payment, the amount of such payment and any conditions to be applied in receipt of the payment. The Attorney General is not obliged to provide reasons for these decisions, and there is no appeal process. In fact, the application process, unlike the VOCC Scheme, does not require legal representation and this may result in claimants not being aware of their legal rights. Further, the only aspect of the process where there is provision to cover legal fees is for funding of \$750 for legal advice to sign a Deed of Discharge and Release. As the amount paid is determined by the severity of the abuse experienced, it seems inadequate that there is no provision for claimants to engage the assistance of a lawyer as they can with the VOCC Scheme. In addition, there is no mechanism regarding *ex gratia* payments to former state wards to hold the perpetrator and/or institution accountable.

## Question 2

**What features are important for making statutory victims of crime compensation schemes effective for claimants?**

Please refer to responses to Questions 3 to 6 below.

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<sup>5</sup> Mitchell, p. 6

<sup>6</sup> J Ellisdon, ‘Criminal Injuries Compensation: Criminal Injuries Compensation Act’, 1969 to 1978 & Victims of Crime Act 2001”, Law Society of SA CPD Program, 16 March 2011, pp. 1-2

### Question 3

**Are there elements of statutory victims of crime compensation schemes, as they currently operate, that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts? For example:**

- a) some schemes have time limits and discretionary provisions to extend the time limits to make claims;**

As noted, the statutory scheme as it operates in South Australia has time limits that prohibit many survivors of institutional child sexual abuse from being eligible to claim. For those who were wards of the State at the time of the offence, they can apply for an *ex gratia* payment as outlined in the Guidelines. For those adult survivors who were not wards of the state, the legislation also provides for *ex gratia* or discretionary payments, but this is at the discretion of the Attorney General with no recourse to any appeal process.

- b) all schemes have caps on payments;**

As noted above, the maximum amount payable is dependent on the time of the offence. In the context of institutional child sexual abuse, this can be very difficult to determine as the offences may take place over many years. For those prior to 1970, there is no compensation payable, those between 1970 to 1974 attract a maximum amount of \$1,000, those between 1974 to 1978 a maximum of \$2,000, those between 1978 to 1987 \$10,000 and those between 1987 to 1990 \$20,000. The maximum payable from 1.9.1990 is \$50,000 but VSS' experience with supporting adult survivors tells us that this maximum amount is very rarely paid out by the state.

Under the *ex-gratia* payments scheme for former state wards, the maximum amount payable to an individual who experiences "serious and lasting harm from sexual abuse whilst in State care" is \$30,000. This can be capped at \$50,000 for cases of "exceptional circumstances, where extreme sexual abuse has occurred".<sup>7</sup>

- c) some schemes have lower caps on payments for offences committed earlier in time and one scheme does not apply to offences committed before 1971;**

As noted above, the South Australian scheme came into effect from January 22 1970. This does not apply to the *ex gratia* payments to former wards of the State or any other *ex gratia* or discretionary payments the Attorney General decides to pay.

- d) some schemes require that the act of violence or offence be reported to the police, or require an explanation if not reported to police; and**

Under both the *Victims of Crime Act 2001 (SA)* and the *Criminal Injuries Compensation Act 1978 (SA)* there is a requirement to report to police or demonstrate good reason for not doing so.

Section 20 (7) of the *Victims of Crime Act 2001 (SA)* states:

*The court must not make an order for compensation in favour of a claimant if it appears to the court that the claimant, without good reason-*

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<sup>7</sup> Application Guidelines <http://www.agd.sa.gov.au/services/services-citizens/your-rights/ex-gratia-payments>

- (a) failed to report the offence to the police within a reasonable time after its commission; or*
- (b) refused or failed to provide information to the police that was within the claimant's knowledge as to the offender's identify or whereabouts; or*
- (c) refused or failed to give evidence in the prosecution of the offender; or*
- (d) otherwise refused or failed to co-operate properly in the investigation or prosecution of the offence,*

*and, in consequence, investigation or prosecution of the offence was not commenced or was terminated or hindered to a significant extent.*

The *Criminal Injuries Compensation Act 1978 (SA)* has a similar clause.

In relation to *ex gratia payments* to former wards of the State, the guidelines state:

When deciding on an *ex gratia* payment, the Attorney-General may take into consideration many things including what level of co-operation you gave to any South Australian Police investigations, and **your criminal history** [emphasis added]. This is why you must allow a police check to be made on you, if you apply for an *ex gratia* payment.<sup>8</sup>

For survivors of institutional child abuse, this is an unrealistic expectation. For various and well documented reasons, many survivors of this type of crime not only do not feel safe to report to police, and certainly do not feel safe to assist prosecution in criminal proceedings; shame, fear of retaliation by the perpetrator and/or institution, as well as re-traumatisation, are just some of the reasons for survivors' reluctance to report.

VSS believes that the most that should be required from a survivor is the name of the offender (if known) and details of the offence (as best remembered) to police as would be required for a Police Incident Report. Anything more, such as giving a full statement, or appearing as a witness for the prosecution, should only happen where the survivor has made an informed choice to do so.

- e) most schemes require repayment of victims' compensation if the recipient later receives compensation from another source (e.g. via damages or settlement in civil litigation).**

Section 29 (2) of the *Victims of Crime Act 2001 (SA)* states:

*If-*

*the Attorney-General makes a payment under this Act to a claimant; and*

*the claimant is subsequently paid compensation or damages by some other person for the injury, financial loss or grief for which the payment under this Act was made; and*

*the compensation or damages received from the other source was not taken into account by the Attorney-General in making the payment or exceeds the amount taken into account by the Attorney-General,*

*the Attorney-General may recover from the claimant, as a debt, the amount of the payment or the amount of the excess (as the case requires) but may not recover more than the amount received from the other source.*

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<sup>8</sup> See Application Guidelines <http://www.agd.sa.gov.au/services/services-citizens/your-rights/ex-gratia-payments>

The *Criminal Injuries Compensation Act 1978 (SA)* section 11A (3) reads:

*Where the Attorney-General has made any payment under this Act to a claimant and the claimant is subsequently paid compensation or damages by some other person for the injury, financial loss or grief in respect of which the payment under this Act was made, the Attorney-General may, if the subsequent award was not reduced by virtue of the payment under this Act, recover from the claimant, as a debt, the amount paid by the Attorney-General, to an extent not exceeding the amount of the subsequent award.*

The same would apply for former wards of the State receiving an *ex gratia* payment as this is governed by this legislation.

#### Question 4

**What changes should be made to address the elements of statutory victims of crime compensation schemes that raise particular difficulties for claims by people who suffer child sexual abuse in institutional contexts?**

To improve outcomes for adult survivors of institutional child sexual abuse, VSS recommends the following:

- Formal recognition of the long-term impact of complex trauma on adult survivors' ability to claim compensation within the time limits stipulated by legislation. VSS recommends that these time limits be removed;
- That the VOCC Scheme be made retrospective to accommodate claims based on historical offences of adult survivors of child sexual abuse;
- Removal of the offender's right to force a matter to trial, or to instigate a medical examination of the claimant;
- A lowering of current burdens of proof, most particularly that of beyond reasonable doubt in relation to the crime being committed. Due to the historical nature of many claims, as well as the ongoing and complex traumatic impacts of this type of abuse, this is simply too burdensome and prohibits survivors from successfully accessing redress.
- Implementation of a transparent decision-making process by the Attorney General in relation to claims for *ex gratia* payments; and
- The adoption of a complex trauma-informed VOCC Scheme whereby all personnel involved are trained to respond more appropriately to survivors.
- The provision of an easy to access statewide consultation service (such as a centralised Victim helpline) that is widely promoted and responds to queries about the VOCC scheme as well as providing a range of other services.

#### Question 5

**What forms of redress, including services and payments, should be offered through statutory victims of crime compensation schemes?**

- Our experience with adult survivors has confirmed that, for many survivors seeking redress, what is important is not just the amount of compensation paid but also recognition that the individual has been wronged, and that in being wronged significant, long-term harm has been done to them. In light of this, VSS believes it is important that survivors receive affirmation and acknowledgement that the state recognises that they have been harmed, and if the State is implicated in causing this harm (for example, state wards) then an apology, if sought by the survivors, be given.

- Access to ongoing free legal advice to help survivors make an informed decision about what form of redress to pursue, and throughout the redress process. This legal support needs to be provided from a complex trauma-informed perspective, and this may best be achieved through the establishment of a national accreditation scheme, as recommended by *knowmore*.<sup>9</sup>
- Access to free therapeutic and social support to address the complex trauma caused by the perpetration of the abuse and the response of the institution(s). This needs to be available over the longer term in recognition of complex trauma commonly experienced by survivors.
- VSS does not support payment of legal or therapeutic support being funded as part of an individual's compensation. This support should be in addition to any financial compensation received.
- Free access to state records where any redactions are explained clearly in simple English.
- VSS believes that any VOCC Scheme, new or existing, needs to be well promoted throughout the community so that survivors are aware that they can make a claim.

## Question 6

**To what extent, if any, should those who suffer child sexual abuse in institutional contexts be eligible for additional or different compensation and services, compared to victims of other crimes? Why?**

Research of submissions made by other organisations with a key interest in redress for adult survivors has confirmed VSS is not alone in advocating for the establishment of a National Redress Scheme to be implemented in all states and territories. In Australia and internationally, many inquiries have been conducted that have repeatedly demonstrated the significant and long terms harms done to those who have experienced child sexual abuse in institutional settings. It is now well established that the needs of survivors are multiple, complex and often lifelong. ***As such, any redress scheme needs to be able to address this reality.***

VSS strongly recommends an independent and survivor-driven *National Redress Scheme* be established in Australia.

VSS echoes Victim Support Australia Inc.'s stance in its submission<sup>10</sup> relative to Issues Paper 5, that any such scheme be underpinned by both the *United Nation Declaration of Basic Principles of Justice and the Abuse of Power (1985)*<sup>11</sup> and the *United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005)*.<sup>12</sup>

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<sup>9</sup> knowmore, 'Submission in response to Issue Paper 5: Civil Litigation', available at:

<http://www.childabuseroyalcommission.gov.au/getattachment/13de076f-98a9-4564-bc94-88d2c8005dc0/18-Knowmore>.

<sup>10</sup> Victim Support Australia Inc 'Submission in response to Issue Paper 6: Redress Schemes', available at:

[http://www.victimsupport.org.au/UserFiles/File/VSA\\_SUBMISSION\\_RCIRCSA\\_Redress\\_Schemes\\_17062014.pdf](http://www.victimsupport.org.au/UserFiles/File/VSA_SUBMISSION_RCIRCSA_Redress_Schemes_17062014.pdf)

<sup>11</sup> See <http://www.un.org/documents/ga/res/40/a40r034.htm>

<sup>12</sup> See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

## A complex-trauma informed National Redress Scheme in Australia

Many people who present to services, including Royal Commission Support Services, with trauma-related issues “have multiple unresolved traumas (complex trauma) which often lead to severe, diverse and persistent impacts”.<sup>13</sup>

Complex trauma involves traumatic stressors that are “interpersonal, that is, they are premeditated, planned, and caused by other humans, such as violating and/or exploitation of another person”.<sup>14</sup>

Complex trauma is different to single incidents of trauma; it is cumulative and compounded by other life burdens, such as poverty and homelessness.

The sexual abuse of children in institutional settings is known to cause complex trauma in child and adult survivors.

For this reason, VSS strongly recommends that any form of National Redress Scheme should be informed by evidence sourced from complex trauma research.<sup>15</sup>

To provide the best possible outcomes to adult survivors seeking redress for child sexual abuse in institutional settings, the National Redress Scheme should contain the following features:

- Access to financial compensation without legislated time limits;
- Access to free, confidential, complex-trauma informed and evidence-based long-term therapy (throughout redress process and post-redress process)
- Access to educational opportunities (in recognition of the interruption/deprivation of this as children);
- Recognition as a “special needs” group that prioritises access to housing, health care, support and employment services (as is being advocated by Care Leavers Australia Network and Alliance of Forgotten Australians);<sup>16</sup>
- Survivor-driven and informed access to aged care that recognises and responds sensitively to the needs of this population group, in particular, the harm caused by the previous institutionalisation;
- Free access to records where any redactions are clearly explained in plain English;
- Access to free and independent legal advice delivered by legal practitioners trained in complex trauma-informed care and practice (for example, the continuation of *knowmore* after the closing of the Royal Commission)
- The mandatory contribution of non-government institutions to a redress fund where child sexual abuse has taken place;

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<sup>13</sup> ASCA, ‘What is complex trauma?’, 2014, viewed 24 June 2014, <http://www.asca.org.au/about/resources/what-is-complex-trauma.aspx>.

<sup>14</sup> C Courtois, ‘Understanding complex trauma, complex reactions, and treatment approaches’, 2014, *Gift from Within – PTSD Resources for Survivors and Caregivers*, viewed 24 June 2014, <http://www.giftfromwithin.org/html/cptsd-understanding-treatment.html>

<sup>15</sup> Refer to Adults Surviving Child Abuse (ASCA), ‘The Last Frontier: Practice Guidelines for Treatment of Complex Trauma and Trauma Informed Care and Service Delivery’, 2012, available at <http://www.asca.org.au/guideline>>

<sup>16</sup> Care Leavers Australia Network and the Alliance of Forgotten Australians submissions to Issue Paper 5: Civil Litigation, available at [http://www.childabuseroyalcommission.gov.au/getattachment/f9ddd8a-574c-4061-ad46-0acab0204509/25-Care-Leavers-Australia-Network-\(CLAN\)](http://www.childabuseroyalcommission.gov.au/getattachment/f9ddd8a-574c-4061-ad46-0acab0204509/25-Care-Leavers-Australia-Network-(CLAN)) and <http://www.childabuseroyalcommission.gov.au/getattachment/bc61ede6-4858-430f-b05f-95168033f516/11-Alliance-for-Forgotten-Australians>

- Transparency of process;
- Adoption of a complex trauma-informed care and practice;
- Furnishing of apology by perpetrator/institution if sought by survivor;
- Offender accountability; and
- Access to appeal and review of decision-making by redress institutions.

VSS draws the Royal Commission's attention to the Grandview Agreement implemented in Ontario, Canada as an example of a survivor-driven redress package that went beyond the usual legal remedies and usual legal requirements. Graycar and Wangmann provide a comprehensive review of this package, noting:

- the importance of attention to process;
- the formation of a Support Group, with an elected Executive to negotiate with authorities;
- three types of benefits available: group, general and individual;
- complex trauma informed and claimant centred adjudication process that provided choice to survivors;
- complex trauma informed validation process that did not rely on traditional legal practices to verify truth telling; and
- provision of a written decision that included how this decision had been reached.<sup>17</sup>

In making this recommendation, VSS does not imply that individuals should not have recourse to civil litigation, including class actions. VSS believes that anyone who wishes to pursue civil action against their perpetrator(s) or institution(s) should be able to do so. A National Redress Scheme should sit in addition to civil litigation options, and current limitations of civil litigation (as explored by the Commission in Issues Paper 5) remain in need to be addressed and reformed.

## Question 7

### **Are the levels of verification or proof required under statutory victims of crime compensation schemes appropriate for claims by those who suffer child sexual abuse in institutional contexts?**

This has been addressed above. VSS accepts that some level of verification needs to take place consistent with the civil law standard of the balance of probabilities but notes that the process to verify needs should be complex trauma-informed and inquisitorial rather than adversarial. VSS refers the Commission to the Graycar & Wangmann<sup>18</sup> research paper on the Grandview Agreement for a more detailed discussion about survivor informed verification processes.

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<sup>17</sup> R Graycar & J Wangmann, "Redress Packages for Institutional Child Abuse: Exploring the Grandview Agreement as a case study in 'alternative' dispute resolution, *Legal Studies Research Paper No. 07/50*, Sydney Law School, 2007, available at: < [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1001148](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1001148)>.

<sup>18</sup> Graycar & Wangmann, pp. 25-27.

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